
Statement of the case.

MCGEE v. MATHIS.

Where a State, in order to promote the drainage and sale of certain swamp lands belonging to it and which it was desirous of reclaiming, has passed, by way of encouraging purchasers, a law that such lands "shall be exempt from taxation for the term of ten years," and issued transferable scrip receivable for them, a repeal of the exemption act, so far as it concerns lands paid for either before or after the repeal, with scrip issued before the repeal, impairs a contract of the State with the holders of such scrip.

ERROR to the Supreme Court of Arkansas, the case, as stated by the Chief Justice in delivering the opinion of the court, being thus :

In 1850, the United States granted, by act of Congress, to the State of Arkansas, all the swamp and overflowed government lands within its limits, on condition that the proceeds of the lands, or the lands themselves, should be applied, as far as necessary, in reclaiming them for cultivation by means of levees and drains.

The State accepted the grant, and, by an act of the legislature, in 1851, provided for the sale of the lands; for the issue of transferable scrip receivable for any lands, not already taken up, at the time of selection by the holder; for contracts for the making of levees and drains, and for the payment of contractors in scrip or otherwise.

In the fourteenth section of this act it was provided that "to encourage, by all just means, the progress and the completing of the reclaiming such lands, by offering inducements to purchasers and contractors to take up said lands, all said swamp and overflowed lands shall be exempt from taxation for the term of ten years, or until they shall be reclaimed."

In 1855 this section was repealed, and provision was made by law for the taxation of swamp and overflowed lands, sold or to be sold, precisely as other lands.

The plaintiff in error, before this repeal, had become the owner, by transfer from contractors, of a large amount of the scrip issued under the act of 1851, and with this scrip,

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after the repeal, took up and paid for many sections and parts of sections of the granted lands lying in Chicot County.

In 1857 another act of the legislature, local in its nature, provided for the making of levees and drains in Chicot County, and authorized a special tax to meet the cost. This special tax was assessed upon the unreclaimed swamp lands of the plaintiff in error, as well as upon other lands, and the defendant in error, under authority of the act, proceeded to take the necessary measures for the collection of the tax.

The Constitution of the United States ordains that "no State shall pass any law impairing the obligation of contracts."

The plaintiff in error filed his bill in the proper State court, alleging that the acts of 1855 and 1857 impaired the obligation of the contract of the State with the United States, expressed in the grant by Congress in 1850 and its acceptance by the State; and also the contract between the State and the levee contractors, and other lawful holders of swamp land scrip, issued under the act of 1851, that such scrip should be receivable for unlocated swamp lands, and that such lands should not be subject to taxation for ten years from the time when taken up, or until reclaimed; and prayed an injunction to restrain the defendant in error from the collection of the taxes authorized by those acts.

In his answer to the bill, the defendant stated that the state and county taxes imposed on the lands of the complainant had been stricken out of the assessment by order of the County Court, and justified his proceeding as sheriff to collect the special levee tax under the act of 1857.

The cause was brought to hearing in the Supreme Court of Arkansas, by whose decree the bill of the complainant was dismissed, and it now came before this tribunal upon writ of error directed to that court.

Mr. Reverdy Johnson, with a brief of Mr. Garland, for the plaintiff in error:

We here controvert the validity of a statute passed through all branches of the law-making power, and afterwards, on

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argument, declared valid by the highest court of a State. Coming to such an office, we may be excused for some fullness of argument.

The plaintiff in error asserts that the act of 1857, familiarly known as the *Levee Act*, and under which his lands were taxed, is unconstitutional. And to show this, he maintains:

1st. The fourteenth section of the act of 1851, which exempted swamp lands from taxation for ten years, or until reclaimed, was a contract, it being a part of the law which accepted the grant from Congress.

2d. This levee act misuses and diverts from its proper channel the grant of Congress, inasmuch as the act of Congress of 1850 provides that, as far as necessary to the purpose of reclaiming swamp lands by means of levees and drains, the proceeds of the lands, whether from sale or by direct appropriation in kind, shall be applied in that way.

3d. That having received this scrip *representing swamp land*, which was issued to him on contracts made *prior* to the repeal of the fourteenth section of the act of January, 1851, although his lands were entered with this scrip *after* its repeal, they are as much exempt as if entered before the exempting clause was repealed.

In *The State v. County Court of Crittenden*, before the Supreme Court of Arkansas,* it was held that the *fourteenth section* named above was a valid contract under the Constitution. As a contract, from the day of the passage of the act, it held out an *encouragement* to persons to take up these lands. It does not say from the day of entry, but it is general and operates necessarily from the day of its passage. When the legislature passed this law, exemption from taxation became at once one of the conditions of the acceptance of the grant. Until the legislature, by an act for that purpose, accepted the grant from Congress, it was of no avail, and could not be used for the benefit of any one. But when the legislature did accept it, the bounty was in a shape to be used; and whatever the legislature did in that behalf re-

* 19 Arkansas, 360.

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lated back to the grant, and the act granting, as well as the one accepting, formed in themselves, together, one act—an entirety. Both stood then as material parts of the whole.

If, as we have contended, the two acts together made the grant complete, and they alone did this, the grant then became a contract, and any future changes of it were nullities.*

If the law repealing the exempting clause stands, it is apparent that the whole grant falls to the ground. If an essential part of the grant be destroyed, it is a contradiction to say the grant still exists. The grant having been completed, the law would always dictate that it should be upheld and carried out. One rule of law is, that the contract should be supported, rather than defeated. And another, that, as in ordinary contracts, modifications or changes must be made by both parties, or with their knowledge and consent. So it is as to grants; the grantor must dispense with a condition before it is waived.

It is evident from the *Levee Act*, that its object was the attainment of the same end, and by the same means—that is, by leveeing—as contemplated by the act of Congress granting these lands to the State of Arkansas. For this object, Congress had put in the hands of the State a fund, by which she was to build these necessary levees, and the State was bound so to apply the fund. Her obligation to do this formed a part of the contract between her and the United States, and the owners of property have the right to have this contract performed by her. The granting act points out the purpose for which the grant was made. No other can be substituted. By the enactment of this levee law, the State declared, that the laying out and building of these levees in Chicot County was necessary. If so, there is a way already provided; that is, under the terms of the grant, the State must apply the lands granted to her. By this act, the State has attempted to discharge her contract in a different manner from that agreed upon. It amounts to this: she withholds the funds given her for a specific purpose, and to

* *Fletcher v. Peck*, 6 Cranch, 87.

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that extent she abrogates McGee's right, as well as the right of all property-holders there, under the act of Congress, to have those funds, or lands, applied to the building of levees; and besides this, imposes upon them additional burdens to complete the end which Congress had in view in making the grant. This is in the face of the grant. Every right the citizen or property-holder had under this grant is destroyed; and the grant thus misused and diverted is no bounty, but an oppression.

Under the law, a levee contractor might take his pay in lands, drained and leveed, or in scrip worth so much, *each piece of scrip representing so many acres of land*, and this scrip was made assignable, and could be located on any of the unlocated swamp lands. The law authorizing it stamped it with certain characters and properties; made it assignable, and made it the representative of so much land. No one can contend that any contractor took the scrip for itself, or for any inherent value in it, as so many dollars to him. With its value on its face, its negotiability, &c., it was at last but land. While the law made it the representative of land, it pointed out its ultimate destination, or purposes; that is, location upon swamp land. It gave the holder a right to so much land, and until it was located it had no value of itself. Independent of the idea of locating it, it was worthless. It might go from A. to B., and so on through numberless hands, but the last holder of it never received his rights under it till it was converted. Until then, its offices were incomplete.

We have seen that the law of this grant was a contract. This contract said, if A. will drain and levee 1000 acres of land, so as to reclaim the same, he will be paid therefor, if he desires, in swamp land scrip, with which he may enter lands, and such lands shall not be taxed for a period of ten years, or until reclaimed. A. does the work under this law, or this contract; how can his rights, or those of his assignee in the scrip, if there be one, be modified, restricted, or changed in the least? The original holder has the right, then, and the instrument assigned, or *scrip transferred*, carries

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its original legal liabilities into as many hands as it may chance to fall. Such is the well-settled rule as to all assignable paper.* If, then, in a legal as well as a business point of view, the scrip was land; and if the land could not be taxed before the 11th day of January, 1855, how can that be taxed after that date which was the legal result or consequence of scrip issued prior to it? By what authority can the legal characters attaching to this paper, when issued, be changed? It might with equal propriety be said, that a holder of a promissory note, bearing ten per cent. interest upon its face, and allowed by law when it was executed, can be by a subsequent law deprived of the interest on the note, which was a part of the contract called for by settlement, as well as by the paper itself. Yet this cannot be done.† This species of legislation, by which an attempt is made to abridge in any way the rights of a party to a contract already made and entered into, was fully expressed by this court in *Suydam v. Broadnax et al.*‡

This scrip issued to the levee contractor, carried along with it, by the law which created it, the contract that its fruits or its results should not be taxed; just as much so as the note we have instanced bears interest, and entitles its holder to receive such interest. Any act which enlarged, abridged, or in manner changed the intention of the parties, resulting from the stipulations in the contract, necessarily impaired it; any deviation from its terms, by postponing or accelerating the period of performance which it prescribed, imposing conditions not expressed in the contract, or dispensing with the performance of those expressed, however minute, or apparently immaterial in their effect upon it, impaired its obligation. The exemption, it is true, does not appear on the face of the scrip, nor does it appear either on the certificate of entry, and in both cases we are to fall back to the law for the exemption. It must be, beyond doubt, that

* *Railey v. Bacon*, 26 Mississippi, 455; *Walker v. Johnson et al.*, 13 Arkansas, 522.

† *Reid v. Renss. Glass Factory*, 3 Cowen, 393; 5 Ib. 587.

‡ 14 Peters, 67.

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when McGee received his scrip, it was his idea, as also that of the State, that whatever land he should locate with this scrip should be exempt from taxation. Now parties are always presumed to contract upon, and with a view to, the law. And in inquiries of this kind, could there be any doubt as to the law governing the contract, it is important to ascertain what each party did rely on. If this be true, the whole end and object, and the intention of the contract, are destroyed by taxing the land in question.

The case falls within and much resembles *Hawthorne v. Calef*, fully considered a year or two since.* It was there decided that a State statute, repealing a former statute which made the *stock* of stockholders in a chartered company liable to the *corporation's* debts, is, as respects creditors of the corporation existing at the time of the repeal, a law impairing the obligation of contracts.

The point is decided, also, in *Woodruff v. Trapnall*,† in this court. There, in 1836, the legislature of Arkansas chartered a bank, the whole of the capital of which belonged to the State, and the president and directors of which were appointed by the General Assembly. One section provided, "that bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas." In 1845, this section was repealed. The court ruled that the notes of the bank in circulation at the time of the repeal were not affected by it; holding that, by attempting to discharge the contract by the payment of a smaller sum, or at a different time, or *in a different manner*, than the parties had agreed, impairs the obligation by substituting a contract which the parties never entered into, and to the performance of which they never consented.

Curran v. State of Arkansas et al.‡ seems also in point. The court there said, that the bills of a bank being payable on demand, there was a contract with the holder to pay them; and laws which withdrew the assets of the bank *into a different channel*, impaired the obligation of this contract.

* 2 Wallace, 10.

† 10 Howard, 190.

‡ 15 Id., 304.

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In none of the acts of the Arkansas legislature is the time in which the scrip is to be located limited. The holder of the scrip could wait and use his own option as to the time of locating his scrip. McGee, as such holder, prior to the 11th day of January, 1855, was not entitled merely to the quantity of land represented by this scrip, but, as an encouragement, the additional benefit of an exemption of that land from taxation for ten years from the date of entry.

These lands, then, cannot be taxed for state, county, general, special, or any other purposes. They are entirely free from all taxes for the time named.

Mr. Carlisle, who submitted a brief of Mr. Hemstead, deceased, contra :

I. The question whether the levee law of 1857 impaired any contract, has been decided by the Supreme Court of Arkansas, in *The State v. County Court of Crittenden County*, referred to on the other side, where it was held that swamp and overflowed lands sold by the State, under the provisions of the act of 1851, while the 14th section thereof was in force, were, by contract between the State and purchaser, exempt from general taxation for ten years, unless sooner reclaimed, and that the exemption began at the date of the purchase from the State;—in other words, that the terms of the sale must be regarded as the controlling fact on which the exemption was to be founded, and that if a sale was made when the 14th section was in force, the exemption applied; but if made afterwards, that such lands were taxable for all purposes, like other lands.

This decision is correct, for it is swamp and overflowed land that is exempted from taxation, and nothing else; and therefore no contract could spring into being until the land had been purchased from the State.

The contractor for making levees might, indeed, do either of two things: take land in kind, or take land scrip. If he took scrip he might locate it, as the law then stood, upon any unselected swamp land in the State. But it did not follow that because a contractor held scrip he might continue

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to hold it as long as he pleased, and finally locate it on swamp land, and then have the land exempted from taxation for ten years.

We concede that lands purchased before the repeal of the fourteenth section of the act of 1851, were not taxable for public purposes for ten years. The Supreme Court of Arkansas said so in the case just referred to and cited on the other side, and that is the law of that case. But we deny that the claims of the plaintiff in error in the case now before this court can receive any benefits from that decision.

That court, in the case we have under review, thus referred to that decision, and thus treated the question. We adopt its language as our argument.

“In the offer of the State the exemption was held out as an inducement to purchasers and contractors to purchase, or, in the language of the act, ‘to take up’ the *lands*, and not as an inducement to contractors to take *scrip*. Until the offer was accepted, or, in other words, until a purchase was made, there was no contract. Did the State not have a right to withdraw her offer? Was she bound to wait, in order that the holders of the scrip, after speculation had ceased to be desirable, might have an opportunity to secure the exemption? The State was under no obligation, legal or moral, to do so. According to the plain provisions of the act of 1851, the contractor might take land in kind or take land scrip. It was left to his choice to do either. Various considerations might, and doubtless in many instances did, influence the contractor to take scrip instead of land in kind. If he took land it was to be at the price per acre previously fixed by the commissioners, and he was confined in his selection to such lands only as were reclaimed, however undesirable they might be. But if he took scrip, it could, as the law then was, be floated, and with it the contractor could purchase unselected swamp land, lying anywhere within the limits of the swamp land grant, at the same price per acre, even though the land thus purchased should be intrinsically more valuable than those which had been reclaimed. Again: the lands being wild and productive of no present income, the contractor might not be willing to invest the proceeds of his labor in them, and wait indefinitely for the fruits of the investment; whereas the scrip

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being assignable, he could, by receiving and selling it, realize its then present cash value. To take land in kind was one thing, and to take scrip was quite another. If the contractor took land, he became a purchaser, and acquired the exemption. But if he took scrip, he did not become a purchaser, and did not acquire the exemption. To hold that the State, in the offer to sell her swamp lands, as expressed in the fourteenth section of the act of 1851, proposed as an inducement to contractors to take scrip, that the lands which they might afterwards purchase with it should be exempt from taxation, would not only do violence to a settled rule of construction, which is, that privileges and exemptions granted by the State shall be strictly construed, and that nothing shall be held to have passed except what is clearly and explicitly granted, but would also be at war with what seems to us to be the plain reading of the statute."

The fourteenth section was a gratuity or bounty offered to a small part of the community at the expense of the rest; and while it is true that those who availed themselves of it, by purchasing lands when it was in force, must have its benefits, yet those who did not can have no claim of that sort at all. They, at least, must take the law as they find it when they become the owners of swamp land by purchase from the State. They are not deceived. No faith has been broken. They are only called upon to contribute their mite to the support of a government which protects them and their property.

II. But supposing the fourteenth section had not been repealed, still the exemption in that section must be construed in reference to state and ordinary county taxes alone, and should not be held to embrace special or local assessments. Every exemption of property from taxation must be strictly received, and terms of ambiguity in the grant must operate against the grantee, and in favor of the public. In other words, nothing passes which is not clearly granted.*

It will be observed that the fourteenth section of the act of 1851 exempts lands taken up from "taxation." This term

* Bank v. Billings, 4 Peters, 561; Ohio L. & T. Co. v. Debolt, 16 Howard, 435.

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does not embrace special local assessments where the fund raised is expended for the improvement of the property taxed. Legislative sanction of such assessments is ordinarily procured by the action of the parties interested, and is widely distinguishable from taxation for governmental or public purposes.

In *The State v. New Orleans Nav. Co.*,* Judge Martin says:

“The words impost, tax, or duty, must be confined to the idea which they commonly and ordinarily present to the mind,—exactions to fill the public coffers, for the payment of the debt and the promotion of the general welfare of the country, not to a contribution provided to defray the expenses of building bridges, erecting causeways, or removing obstructions in a water-course, to be paid by such individuals only who enjoy the advantages resulting from such labor and expense.”

The Ordinance of 1787 declared that

“All navigable waters leading into the St. Lawrence and Mississippi, and the carrying-places between the same, shall be common highways, and forever free, as well to the inhabitants of the territory as the citizens of the United States, or those of any other state that may be admitted into the confederacy, without any *impost, tax, or duty* therefor.”

This provision was literally copied in the act of Congress of March 2d, 1805, and it was held in the case from which Judge Martin's remarks are quoted, that the charter of the New Orleans Navigation Company, which authorized a tax to be levied on vessels navigating the Mississippi, for the purpose of raising a fund to be applied to the *improvement of that navigation*, was not a tax, or impost, or duty within the meaning of the act of Congress, or the ordinance from which it was copied.

Under a law of Louisiana, the owner of land on the Mississippi River was required to construct levees or embankments; and if the owner failed to construct or keep in repair

* 11 Martin, 309.

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his portion of the levee, the district inspector had the levee built or repaired, and assessed the cost upon the land of the delinquent proprietor. And in *Crowley v. Copley*,* this assessment was held not to be within the act of Congress, which exempted from State taxation all public lands of the United States for five years after sale by the government.

In *The matter of the Mayor of New York*,† certain churches insisted that their lots were exempt from assessments for opening, enlarging, or otherwise improving streets in the city of New York, made pursuant to an act of legislature, passed in 1813. The court said that “these assessments were intended and directed to be made upon the owners of lands and lots who might receive ‘benefit and advantage’ by the improvement. The exemption granted by the act of 1801 was in the general act for the *assessment and collection of taxes*; and the provisions of that act referred to general and public taxes to be assessed and collected for the benefit of the town, county, or state at *large*. The words of the exemption were, that no church, or place of public worship, nor any school-house, should be taxed by any law of this State. The word ‘taxes’ meant burdens, charges, or impositions put or set upon persons or property for public uses, and this was the definition which Lord Coke gives to the word *talliage*,‡ and Lord Holt§ gave the same definition, in substance, to the word ‘tax.’ To pay for the opening of a street, in a ratio to the benefit or advantage derived from it, was no *burden*. It was no *talliage* or *tax*, within the meaning of the exemption.”

In *Northern Liberties v. St. John's Church*|| the same question arose, and the Supreme Court of Pennsylvania put the same construction on the word “tax,” and held that the church property, though exempt from taxation under the general revenue law, was nevertheless subject to local assessments, appropriated to the improvement of the property itself.

* 2 Louisiana Annual, 329.

† 2 Institutes, 532.

‡ 13 Pennsylvania State, 104.

† 11 Johnson, 50.

‡ Carthew. 438.

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The same principle has been decided by the Supreme Court of Arkansas, in *Washington v. The State*,* and by the highest court in Missouri, in *Egyptian Levee Co. v. Hardin*.†

The cases, in short, show the uniform construction which the judiciary have put upon the terms, "taxes," and "taxation," as employed in their constitutions and revenue laws. And when we apply the rule, already alluded to, that exemptions must be strictly construed, it becomes clear that the fourteenth section of the act of 1851 did not intend to exempt swamp lands from special local assessments, to be expended for the benefit of the lands themselves, by making and repairing levees to protect them; and if the levee act of 1857 has that object in view only, it is obnoxious to no constitutional objection, whether repealed or unrepealed, and the obligation of no contract was impaired, because, as to that, no contract ever existed.

The CHIEF JUSTICE delivered the opinion of the court, and after stating the case, proceeded:

The first question which requires consideration in the case before us is: Was the levee tax imposed in violation of any contract between the State and the United States?

It is not doubted that the grant by the United States to the State upon conditions, and the acceptance of the grant by the State, constituted a contract. All the elements of a contract met in the transaction,—competent parties, proper subject-matter, sufficient consideration, and consent of minds. This contract was binding upon the State, and could not be violated by its legislation without infringement of the Constitution.

The contract required the State to appropriate the lands granted to the purpose of reclaiming them. The lands themselves might be conveyed to the levee contractors for work performed, or the contractors might be paid in money or in scrip representing land. If the State, therefore, after acceptance of the grant, and without applying the lands or their

* 13 Arkansas, 752.

† 27 Missouri, 495

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proceeds in money or scrip to the purpose of reclamation, had sought, by means of taxation, to compel purchasers to pay for the levees and drains necessary to reclaim their land, it would certainly be difficult to say that the contract was not violated. But the case before us hardly comes within this description. The allegation and proofs do not show that the State had not applied all the lands granted and their proceeds to the making of levees and drains before proceeding to impose the special tax; and if this was done, and the work of reclamation remained still incomplete, the imposition of such a tax for the completion or preservation of the work, cannot be regarded as inconsistent with the obligation of the contract between the State and the United States.

The next and only remaining question is: Was the levee tax in violation of any contract between the State and the complainant?

It seems quite clear that the act of 1851, authorizing the issue of transferable land scrip and its receipt from locators of land in payment, and the provision in the fourteenth section, offering inducements to purchasers and contractors by exempting from taxation, for ten years or until reclaimed, all the swamp or overflowed lands, constituted a contract between the State and the holders of the land scrip issued under the act.

When the scrip was issued to a contractor, it represented a certain quantity of land untaxable for ten years, unless the land should be sooner made fit for cultivation. When transferred to another person, it represented to him a like quantity of like land. The contract of the State was to convey the land for the scrip, and to refrain from taxation for the time specified. Every piece of scrip was a contract between the State and the original holder and his assigns. Now what was the effect of that contract when made? Did it not bind the State to receive the scrip in payment for swamp land, exempted for a limited time from taxation? The scrip, if not receivable for lands, was worthless. To annul the quality of receivability was to annul the contract. But the

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exemption of the lands for which it was receivable from taxation was a principal element in its value; and repeal of the exemption was the destruction of this element of value. This was clearly an impairment of the contract. The State could no more change the terms of the contract by changing the stipulated character of the land to be conveyed in satisfaction of the scrip as to liability to taxation, than it could abrogate the contract altogether by refusing to receive the scrip at all in payment for land.

We are constrained to regard the repeal of the exemption act, so far as it concerns lands paid for, either before or after the repeal, by scrip issued and paid out before repeal, as impairing the contract of the State with the holders of the scrip.

It was strenuously urged for the defendant, that the exemption contemplated by the statute was exemption from general taxation, and not from special taxation for local improvements benefiting the land, such as the making of levees; and many authorities were cited in support of this view. The argument would have great force if the provision for exemption had been contained in a general tax law, or in a law in framing which the legislature might reasonably be supposed to have in view general taxation only. But the provision under consideration is found in a law providing for the construction of levees and drains, and devoting to that object funds supposed to be more than adequate, derived from the very lands exempted, and the exemption is for ten years, or until reclaimed, and is offered as an inducement to take up the lands, and thus furnish those funds. It is impossible to say that this exemption was not from taxation for the purpose of making these levees and drains as well as from taxation in general. Any other construction would ascribe to the legislature an intention to take the whole land for the purposes of the improvement, and then to load it with taxation for the same object, in the hands of purchasers whom it had led to expect exemption from all taxation, at least until the land should be reclaimed.

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The decree of the Supreme Court of Arkansas must, therefore, be reversed and the cause remanded, with instructions to enter a

DECREE IN CONFORMITY WITH THIS OPINION.

N. B. The same order was made in cases Nos. 28, 29, 30, 31, 32, and 33, argued with the above case, and which the Chief Justice said were governed by its decision.

UNITED STATES *v.* HOFFMAN.

1. The writ of prohibition can only be used to prevent the doing of some act which is about to be done, and can never be used as a remedy for acts already completed.
2. Therefore, where the court to which the writ should be issued, has already disposed of the case, so that nothing remains which that court can do, either by way of executing its judgment or otherwise, no prohibition will be granted.
3. And this is true, though the final disposition of the case was made after service on the judge of a rule to show cause why the writ should not issue, and though other cases of the same character may be pending in the same court.

ON a motion for prohibition.

At the last term of this court the relator made application for a writ of prohibition to the judge of the District Court of the Northern District of California, to prevent that court from proceeding further in a certain cause in admiralty. This court, without looking into the question of the alleged want of jurisdiction, granted a rule on the judge of that court to show cause why the writ should not be issued; and an order accompanied the rule, that he should proceed no further in the case until the decision of this court in the premises.

The return of the judge to that rule was now before this court. The substance of it was, that after the rule had been served upon him the libellant in the admiralty suit came into court, and moved for permission to pay all the costs that had accrued, and to dismiss his suit. After hearing