mestic. There is, then, a peculiar wisdom in giving to the national government a jurisdiction of this sort which cannot be yielded, except for the general good, and which multiplies the securities for the public peace abroad, and gives to commerce and navigation the most encouraging support at home."*

The case before us is not within the saving clause of the ninth section. That clause only saves to suitors "the right of a common-law remedy, where the common law is competent to give it." It is not a remedy in the common-law courts which is saved, but a common-law remedy. A proceeding *in rem*, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common-law courts, it is given by statute.

It follows, from the views expressed, that the judgment of the County Court must be reversed, and the cause remanded, with directions to dismiss the action for want of jurisdiction.

AND IT IS SO ORDERED.

SEMPLE v. HAGAR.

1. When a want of jurisdiction is patent, or can be readily ascertained by an examination of the record in advance of an examination of the questions on the argument of the merits, this court will entertain and act upon a motion to dismiss for want of jurisdiction.
2. Where two parties held patents for land from the United States, under Mexican grants, both of which included the same lands in part, and one of the parties brought a suit in a State court to vacate the patent of the other, to the extent of the conflict of title, and the State court refused to entertain jurisdiction of the question, and dismissed the complaint, this court has no jurisdiction, under the twenty-fifth section of the Judiciary Act, to review the judgments.

SEMPLE filed a bill against Hagar in one of the State courts of California. The bill alleged that he, the complainant

* Commentaries, § 1672.

Semple, had obtained a patent from the United States for a tract of land, based upon a Mexican grant for the same land, known as the "Colus" grant; that the land so granted had been surveyed by the United States, and included certain lands enumerated; that the defendants claimed part of the same land under a Mexican grant known as the "Jimeno" grant, for which a patent had also been issued by the United States to the defendants; that the surveys of the said grants overlapped; that the grant of the "Jimeno" tract had been obtained by fraud and was a cloud on the complainant's title. The prayer of the bill was that the court might declare "the said fraudulent grant, commonly called the 'Jimeno Rancho,' void, and of no effect, as issued upon false suggestions, and without authority of law."

The defendant demurred to this bill, setting forth nine several grounds of demurrer, and among them these:

1st. That the court had no jurisdiction of the subject of the action.

2d. That there was a defect of parties plaintiff.

3d. That there was a defect of parties defendant.

The court below made a decree dismissing the bill; a decree which on appeal the Supreme Court of California, the highest court of equity of the State, affirmed.

The case was then brought here as being within the twenty-fifth section of the Judiciary Act, which enacts that the final decree in the highest court of law or equity of a State, &c., where there is drawn in question the validity of an authority exercised under the United States and the decision is against the validity, or drawn in question the construction of any clause of a statute or commission held under the United States, and the decision is against the title specially set up by either party under such statute or commission, may be reviewed in this court.

Mr. Wills, for the defendant in error, now, and in advance of the case being regularly called, moved—the record being a short one, and of but ten pages—to dismiss the writ of error for want of jurisdiction. He thus argued:

Opinion of the court.

1. The State courts of California had no jurisdiction of the subject of the action. This court has held, in *Field* v. *Seabury*,* that the question of the validity of a patent for land is "a question exclusively between the sovereignty making the grant and the grantee." The courts of California, carrying out this doctrine, have held, that "a patent imports absolute verity, and that it can only be vacated and set aside by direct proceedings instituted by the government, or by parties acting in the name and by the authority of the government."†

2. It has been decided by the court, in *Moreland* v. *Page*,‡ that this court has not jurisdiction, under the twenty-fifth section of the Judiciary Act, to review the judgment of a State court, when the question involved relates to the proper boundary between two tracts of land, although the owners of both had valid grants from the United States.

Mr. Reverdy Johnson, for the plaintiff in error, contra, argued in support of the jurisdiction; contending, also, that the question, whether the jurisdiction did or did not exist, was one which the court would not settle in this preliminary way; that the question could not be settled without a thorough examination of the record; and that this could not be made until the case came up in regular order; that then, when the court would understand the whole matter, it could better decide the delicate matter of jurisdiction.

Mr. Justice GRIER delivered the opinion of the court.

In all cases of a motion to dismiss the writ of error for want of jurisdiction, the court must necessarily examine the record to find the questions decided by the State court. But in many cases the question of jurisdiction is so involved with the other questions decided in the case, that this court cannot eliminate it without the examination of a voluminous record,

* 19 Howard, 332.

† Leese *v.* Clarke, 18 California, 571; Same *v.* Same, 20 Id. 423. See, also, Beard *v.* Federy, 3 Wallace, 479.

‡ 20 Howard, 522.

and passing on the whole merits of the case. In such instances, the court will reserve the question of jurisdiction till the case is heard on the final argument on the merits.

In the case before us, the want of jurisdiction is patent; it requires no investigation of a long bill of exceptions. It was not decided by the court below on its merits, if it had any. It furnishes no reason for a postponement of our decision of the question.

If, in such cases, the court would postpone the consideration of the question of jurisdiction, we would put it in the power of every litigant in a State court to obtain a stay of execution for three years, or more, by a frivolous pretence that it comes within the provisions of the twenty-fifth section of the Judiciary Act. In many States, all the land titles originated in patents from the United States; and if every question of boundary, of descent, of construction of wills, of contracts, &c., and which may arise in State courts, may be brought here on the mere suggestion that the party, against whom the State court gave their judgment, derived title under a patent from the United States, we should enlarge our jurisdiction to thousands of cases, and increase, unnecessarily, the burdens of this court, with no corresponding benefit to the litigant. It is plain that, in such cases, there is not "drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States."

We have here a very brief record, and, on the facts of the case, we cannot shut our eyes to the total want of jurisdiction, under the twenty-fifth section, or any other section of the Judiciary Act.

It is plain, that if the court had assumed jurisdiction, and had declared the defendant's patent void, for the reason alleged in the bill, the defendant would have had a case which might have been reviewed by this court, under the twenty-fifth section, and one on which there might have been a question and difference of opinion. But it is hard to perceive how the twenty-fifth section could apply to a judgment of a State court, which did NOT decide that ques-

tion, and refused to take jurisdiction of the case. The matter is too plain for argument.

MOTION GRANTED.

SUPERVISORS *v.* UNITED STATES, EX RELATIONE

1. On application by a creditor for *mandamus* against county officers to levy a tax to pay a judgment, the defendant cannot impeach the judgment by setting up that interest was improperly given in it. This would be to impeach it collaterally.
2. The statute of Illinois, which enacts that when a judgment is given against a county, the county commissioner shall draw a warrant upon the treasurer for the amount, "which shall be paid as other county debts," cannot be taken advantage of on error, in case of an application for a *mandamus* to levy a tax to pay a judgment, where such a warrant was applied for and refused, and where there are no funds in the county treasury with which to pay the judgment.
3. Where power is given by statute to public officers, in permissive language —as that they "*may*, if deemed advisable," do a certain thing—the language used will be regarded as peremptory where the public interest or individual rights require that it should be.

ERROR to the Circuit Court of the United States for the Northern District of Illinois, the case being thus:

A statute of Illinois, of February 16th, 1863, enacts as follows:

"The board of supervisors under township organization, in such counties as may be owing debts which their current revenue, under existing laws, is not sufficient to pay, *may, if deemed advisable*, levy a special tax, not to exceed in any one year one per cent. upon the taxable property of any such county, to be assessed and collected in the same manner and at the same time and rate of compensation as other county taxes, and when collected to be kept as a separate fund, in the county treasury, and to be expended under the direction of the said county court or board of supervisors, as the case may be, in liquidation of such indebtedness."

With this statute in force, the State Bank, relator in the