DECISIONS

IN THE

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1868.

GIRARD *v.* PHILADELPHIA.

1. Where a testator devises the income of property in trust primarily for one object, and if the income is greater than that object needs, the surplus to others (secondary ones), a bill in the nature of a bill *quia timet*, and in anticipation of an incapacity in the trusts to be executed hereafter, and when a surplus arises (there being no surplus now, nor the prospect of any), will not lie by heirs at law (supposing them otherwise entitled, which here they were decided not to be), to have this surplus appropriated to them on the ground of the secondary trusts having, subsequently to the testator's death, become incapable of execution.
2. Neither the identity of a municipal corporation, nor its right to hold property devised to it, is destroyed by a change of its name, an enlargement of its area, or an increase in the number of its corporators. And these are changes which the legislature has power to make.
3. Under the will of Stephen Girard (for the terms of which see the case *infra*), the whole final residuary of his estate was left to the old city of Philadelphia in trust, to apply the income;

   i. For the maintenance and improvement of his college as a primary object, and after that—

   ii. To improve its police;

   iii. To improve the city property and the general appearance of the city, and to diminish the burden of taxation:

   The court having declared that so long as any portion of the income should be found necessary for improvement and maintenance of the college, the second and third objects could claim nothing, and the whole income being, in fact, necessary for the college,

   Held—i. That no question arose *at this time* as to whether the new

city should apply the surplus under the trusts for the secondary objects to the benefit of the new city, or to that portion of it alone embraced in the limits of the old one.

ii. That whether or not, the trusts being, as was decided in *Vidal* v. *Girard* (2 Howard, 127), in themselves valid, Girard's heirs could not inquire or contest the right of the city corporation to take the property or to execute the trust; this right belonging to the State alone as *parens patriæ*.

APPEAL from the Circuit Court for the Eastern District of Pennsylvania; the case as presented by bill and answer being thus:

The city of Philadelphia, as originally laid out in 1683, and as incorporated in 1701, was situated upon a rectangular plot of ground, bounded in one direction by two streets called Vine and South, a mile apart, and in the other by two rivers (the Delaware and Schuylkill), two miles apart;—the corporate title of the city being "the Mayor, Aldermen, and Citizens of Philadelphia." Upon the neck of land above described the corporate city continued to be contained until 1854; the inhabitants outside or adjoining it being incorporated at different times, and as their numbers extended, into bodies politic, under different names, by the State legislature, and with the city, forming the county of Philadelphia. In 1798, the Revolution having dissolved the old corporation, the legislature incorporated the city with larger powers; and prior to 1854, nearly twenty acts had been passed altering that law, and forming, the whole of them, what was popularly called the charter of the city; but as already said, from 1683 to 1854, the city limits were the same.

In this state of things Stephen Girard, in 1831, after sundry bequests to his relatives and friends, and to certain specified charities, and after announcing that his great and favorite object was the establishment of a college for the education of poor orphans, and that, together with the object adverted to, he had sincerely at heart the welfare of the *city of Philadelphia*, and as a part of it, was desirous to improve the neighborhood of the river Delaware, so that the eastern part

of *the city* might be made better to correspond with the interior—left by will the real and personal residue of an estate of some millions of dollars, to "the Mayor, Aldermen and Citizens of Philadelphia," that is to say, to the city corporation above described, in trust, so far as regarded his real estate in Pennsylvania (this being the important part of his realty), that no part of it should ever be alienated, but should be let on lease, and that after repairing and improving it, the net residue should be applied to the same purposes as the residue of his personal estate, and that as regarded that, it should be held in trust as to $2,000,000, to expend it, or as much as might be necessary, in constructing and furnishing a college and out-buildings for the education and maintenance of not less than three hundred orphans. A lot near Philadelphia, of forty-five acres, was devoted for these structures, and the orphans might come from any part of Pennsylvania (orphans from the city of Philadelphia having a preference over others outside), or from the cities of New York or New Orleans.

After many and very special directions as to the college, followed by a bequest of $500,000 for a city purpose, the will proceeded:

"If the income arising from that part of the said sum of $2,000,000 remaining after the construction and furnishing of the college and out-buildings shall, owing to the increase of the number of orphans applying for admission, or other cause, be inadequate to the construction of new buildings, or the maintenance and education of as many orphans as may apply for admission, then such *further* sum as may be necessary for the construction of new buildings, and the maintenance and education of such further number of orphans as can be maintained and instructed within such buildings, as the said square of ground shall be adequate to, shall be taken from the *final residuary fund* hereinafter expressly referred to for the purpose, *comprehending the income of my real estate in the city and county of Philadelphia, and the dividends of my stock in the Schuylkill Navigation Company;* my design and desire being that the benefits of said institution shall be extended to as great a number of orphans

as the limits of the said square and buildings therein can accommodate."

This final residuary fund was directed to be invested, and the income applied—

"1st. To the further improvement and maintenance of the aforesaid college [as directed in the last quoted paragraph].

"2d. To enable the city to improve its police.

"3d. To enable it to improve the city property, and the general appearance of the city itself, and in effect to diminish the burden of taxation, now most oppressive."

"To all which objects," the will proceeded, "the prosperity of the city, and the health and comfort of its inhabitants, I devote the said fund as aforesaid, and direct the income thereof to be applied yearly and every year forever, *after providing for the college as hereinbefore directed as my primary object.*"

In conclusion, he directed that if the city should wilfully violate any of the conditions of his will, the remainder of his estate should go to the commonwealth of Pennsylvania for certain purposes, excepting, however, the income from his real estate in the city and county of Philadelphia, which it was to hold for the college; and if the commonwealth failed so to apply it, the remainder should go in the same way to the United States.

The above described city corporation, "the Mayor, Aldermen, and Citizens of Philadelphia," having accepted the trust, and built and furnished the college and out-buildings, administered the charity through its organs until 1854. By that time twenty-eight municipal corporations, making the residue of the county, had grown up around the old "city;" some near, some far off, some populous, some occupied yet by farms. They comprised "districts," boroughs, townships, were of various territorial extent, and differed in the details of their respective organizations. In the year named, the legislature of Pennsylvania passed what is known in Philadelphia as the Consolidation Act.

By this act the administration of all concerns of the twenty-nine corporations, including their debts, taxes, property, police, and whatever else pertained to municipal office, and also the government of the county itself, were consolidated into one. All the powers, rights, privileges, and immunities incident to a municipal corporation, and necessary for the proper government of the same, and those of "the Mayor, Aldermen, and Citizens of Philadelphia," and "all the powers, rights, privileges, and immunities, possessed and enjoyed by the other twenty-eight corporate bodies, which, with the old city, made up the county of Philadelphia;" and also "the board of police of the police district, the commissioners of the county of Philadelphia, the treasurer and auditor thereof, the county board, the commissioners of the sinking fund, and the supervisors of the township," were, by virtue of the process of consolidation, vested in "the city of Philadelphia, as established by this act." A police board was to fix the whole number of policemen "*for the service of the whole city.*" The "right, title, and interest," of the "several municipal corporations mentioned in this act, of, in, and to all the lands, tenements, and hereditaments, goods, chattels, moneys, effects, and of, in, and to all other property and estate whatsoever and wheresoever, belonging to any or either of them," were "vested in the city of Philadelphia," and all "estates and incomes held in trust by the county, *present city*, and each of the townships, districts, and other municipal corporations, united by this act," were "vested in the city of Philadelphia, *upon and for the same uses, trusts, limitations, charities, and* conditions, as the same are now held by the said corporations respectively." The act also declared that the new city corporation should be "vested with all the powers, rights, privileges, and immunities," of the old one. The "net debt of the county of Philadelphia, and the several net debts of the guardians for the relief and employment of the poor of the city of Philadelphia," and of the board of health, "and of the controllers of the public schools," and of such of the said twenty-nine municipalities, eighteen being enumerated, as

had contracted debts, were consolidated and formed into one debt, to be called the debt of the city of Philadelphia, in lieu of the present separate debts so consolidated. The consolidation was carried into full effect. The act provided that the corporators of the new city, having elected a mayor and councils, the councils should direct the mayor to appoint a day when "all the powers, rights, privileges, and immunities possessed and enjoyed" by the various corporations, and those also of the old city, should "cease and terminate;" and the councils did accordingly, by resolution, direct the mayor to "issue his proclamation forthwith dissolving the different corporations superseded by the act, to take effect on the 30th instant;" and in obedience thereto, the mayor, by public proclamation, dated the 24th June, 1854, proclaimed that "all the powers, rights, privileges, and immunities possessed and enjoyed" by the now late twenty-eight municipalities, and "by the present mayor and councilmen" of the city of Philadelphia, from the said 30th day of June, 1854, should "cease and terminate."

The old city covered about two square miles; the new one, which covered the whole old county of Philadelphia, about a hundred and twenty-nine. In point of population, however, the old city embraced a fourth or fifth part of all the inhabitants of the new one. In the popular branch of the new city legislature, composed of eighty-five members, the old city enjoyed twenty. In the higher branch it had six members, the residue having eighteen. The debt of the old city had been small, and its credit high. By the consolidation the debt became large.

By the Consolidation Act, it may be well to add, the councils of the city, in laying taxes, were required so to lay them as to show how much was laid for each object supported, respectively, and this exhibition was required by the act to be printed on the tax-bills furnished to the tax-payers, as thus:

"For the relief of the poor, 15 cents in the $100 of the assessed value of said property.

"For public schools, 28 cents in the $100 of the assessed value of said property.

"For lighting the city, 9 cents in the $100 of the assessed value of said property.

"For loan tax, 75 cents in the $100 of the assessed value of said property.

"*For expenses of police, 22 cents in the $100 of the assessed value of said property, &c., &c., &c.*"

In the erection and furnishing of the college and outbuildings, the whole fund of $2,000,000 was exhausted, and the whole income of the final residuary fund was now habitually drawn upon for the maintenance and education of the orphans, numbering, at the time when the bill was filed, about three hundred and thirty, and limited to this number, because the income from even the residuary fund was inadequate to the maintenance and education of a greater number. However, a part of Girard's estate consisted of coal lands in Pennsylvania, not yet ripe for being worked, whose value was largely increasing, and from which, when it should be found expedient to work them, the revenue would, perhaps, be very great.

In this state of things certain heirs of Girard filed their bill in the court below, praying an account; and that a master might be appointed to inquire into the gross value, and then present capacity for annual yield of the coal lands, and if such an inquiry showed a capacity for affording income "immensely" beyond all the wants of the college, and all proper charges on the estate, that then, if the court should be of opinion that the whole residuary estate was applicable to the college (a matter denied by the bill), that it would decree "such surplus, found to exist beyond and beside all possible and lawful wants of the college," &c., to the complainants.

The court below dismissed the bill, which action of it was the ground of the appeal.

Mr. C. Ingersoll, for the heirs, admitting that the validity of the trusts of Girard's will had been settled by this court

in *Vidal* v. *Girard*,* and stating that the present case turned upon the supposed intention of the testator, contended:

1. That the final residuary fund, applicable to the support of the college, was only that described as "my real estate in the city and county of Philadelphia, and the dividends of my stock in the Schuylkill Navigation Company," and that of the coal lands, and other remaining property, Girard had died intestate.

2. That if this were not so, yet, that with the complete annihilation of the old city corporation, and its absorption or merger into the immense body politic created by the Consolidation Act, the whole object of the testator, beyond the college, fell to the ground; that

(i.) The new city became incompetent to act as a trustee, and

(ii.) That if it still were competent, the trusts themselves, beyond the college, were now incapable of execution.

The old city—"the city"—was, after the college, the sole object of Girard's bounty. The suburbs were absolutely excluded from it. He wished to improve, finish, and adorn municipal work already far advanced; an object practicable when the city was but two miles square, and mostly built on; impracticable when an immense county—with swamps to be drained, hills to be levelled, and valleys to be raised; farm land largely, a suburb sempiternal—was converted by name, but not in fact, into a city. The whole city legislature was changed. To disunite the control from the beneficial interest, and give the command to those who are not citizens, is to violate the will. Yet those who, by the will, would now have the control of the Girard estates, were a feeble minority, incapable of protecting it against those who had an interest immediately opposed to its going to the limited space which the testator designed, and an interest directly in favor of appropriating it to themselves. The devise was to municipal discretion; the discretion of the late city; a discretion controllable by its own citizens. The

* 2 Howard, 127.

testator having excluded all parts but that known to him as the city, the new city could not hold the estates for itself; that is to say, for the region of the twenty-nine municipalities, twenty-eight of which were not devised to, but excluded from devise. Having had a right, as he had, to devise as he did, to one municipality exclusively of the others, no legislature could make over his property to the excluded districts, contrary to his will. Conceding that perhaps the franchises of the old city might have been extended over more territory, and its capacities enlarged, yet the annexation of twenty-eight municipalities, and the addition of sixty-four times more territory, with room for sixty-four times more population, and the consolidation and merger of them with the city, and a complete *fusion and recast of the whole*— this was a different thing. The old city had, moreover, been, in form, dissolved; and, if it had not been, yet the body now pretending to be the devisee, was a body unknown to the testator; one composed of elements foreign to his devise; in fact, not his devisee. The devise had so lapsed. The new city was thus unfit and incapable of being trustee, even if the trusts, after and beyond the college, were longer capable of being executed. But

2. These trusts could not now, either administratively or arithmetically, be executed.

In *Soohan* v. *The City*,* decided after the Consolidation Act, it was held that orphans, born in the limits of the old city, were entitled to the same preference as they had previously enjoyed; in other words, that orphans born beyond the limits of the old city were not, in the sense of the will, orphans born in the city; in fact, that the old city and new city were not the same thing. How was the *police* of the old city since the consolidation to be improved? In the first place the old city no longer existed. Moreover, the testator could not endow one part of the police; for the force is not divided into parts. There is no police for the old city apart from the remaining region which with it makes the new

* 33 Pennsylvania State, 9.

city. The police is one. The policemen are by the terms of the act to be "for the whole city." It spreads undivided, and everywhere alike.

Or how apply the income, easily applied to beautify the ancient city, to improve the "general appearance" of a region a hundred and twenty-nine miles square, far the larger part of which was no city, but on the contrary, farms?

Or how apply it to diminish taxation in the old city, taxes being of necessity now laid uniformly throughout the whole vastly greater region alike?

The doctrine of *cy-pres*, illustrated in Richard Baxter's well-known case,* was inapplicable to our States, where there was no established religion, and did not help the matter. The surplus income beyond the wants of the college thus went, the learned counsel contended, to the heirs.

Messrs. Meredith and Olmstead, contra:

1. The college is the object to which all others are subservient. And if the trusts for municipal purposes cannot be executed by any one, then the whole trust estate must be applied for the purposes of the college.† Public trusts and charitable trusts may be considered as synonymous.‡

2. The trust for municipal purposes was to have effect only if there was a surplus beyond the wants of the college. There is no such surplus. There can be, therefore, no question *now*. And with forty-five acres of ground to be covered by college buildings, and the whole State of Pennsylvania with the cities of New York and New Orleans as a field from which to bring fatherless children, it is not likely that any surplus will ever arise. Coal dug from coal lands is not income from those lands. It is the land itself. When the coal is exhausted, as by mining it will be, the land has little

* 1 Vernon, 248.

† Case of Thetford School, 8 Reports, 131; Pickering *v.* Shotwell, 10 Pennsylvania State, 23; McLain *v.* School Directors, 51 Id. 196; City *v.* Girard's Heirs, 45 Id. 28.

‡ Cresson's Appeal, 30 Pennsylvania State, 450; Magill *v.* Brown, Brightley, 350; Attorney General *v.* Aspinwall, 2 Mylne & Craig, 622.

value. The proceeds of the coal must be invested as capital, and income from it alone used.

3. The Consolidation Act by express terms declared that trusts held by any of the old corporations should remain inviolate in the new. Independently of which, the change of name or enlargement of franchises does not destroy the identity of a municipal corporation.*

4. The devise for municipal purposes—if it be a devise in trust and not a gift to the mayor, aldermen, &c., absolutely (in which latter case clearly the heirs have no right to an account)—can be executed if ever a surplus shall exist. Our answer to the bill illustrates some of the modes. It says:

"The defendants can apply such surplus to the cost of maintaining the police in that part of the new city which formerly made the old one, and reduce the rate of taxation for the support of the police, on the property situated within these limits, to the difference between the sum applicable from the residuary for that purpose, and the sum assessed on property outside of the said limits; and if the sum applicable from the said residuary for the expenses of the police, will amount to the whole sum necessary for such expenses within the said limits, they may levy no tax upon property within the said limits for such expenses. If such surplus will exceed the amount needed for the police expenses within the said limits, they will be enabled to improve the corporate property within the said limits, or apply it to improve the appearance of that portion of the city without resort to taxation for that purpose. And if it will be within the terms of the trust to disregard the specific objects mentioned, then they may and can pay such surplus, beyond that which is needed for the necessities of the college, directly into the city treasury in aid of the tax fund, and levy and assess upon the property within the said limits a sum less the amount so paid in aid of that fund."†

5. If the trust for municipal purposes has been forfeited by the acts of the trustees, then by the terms of the will,

* Luttrel's Case, 4 Reports, 88; Haddock's Case, Sir T. Raymond, 439; S. C. 1 Ventris, 355.

† See Kirby *v.* Shaw, 19 Pennsylvania State, 258.

it is forfeited to the commonwealth. But if it cannot be executed, and if the college is not entitled to take the income, who is entitled to the funds? The commonwealth, as *parens patriæ*. If the devise had been to A. and his heirs, and A. had died without heirs, the estate would not go to the heirs of the testator, but would escheat. There is no reason why, in the case of a devise in trust for a charity, which has vested and taken effect and fails, a different rule should exist.*

Mr. Justice GRIER delivered the opinion of the court, and after observing that the attempt to restrain the alienation of the realty, being inoperative, could not affect the validity of the devise, and that the income of the whole residuary was devoted to the three objects stated by the testator, the college being the "primary object," and that so long as any portion of this residuary fund should be found necessary for "*its* improvement and maintenance," on the plan and to the extent declared in the will, the second and third objects could claim nothing—proceeded as follows:

The bill admits this to be a valid charity, and claims only the residue after that is satisfied. Now, it is admitted (for it has been so decided),† that till February, 1854, the corporation was vested with a complete title to the whole residue of the estate of Stephen Girard, subject to these charitable trusts, and consequently, at that date, his heirs at law had no right, title, or interest whatsoever in the same. But the bill alleges that the act of the legislature of that date (commonly called the "Consolidation Act"), which purports to be a supplement to the original act incorporating the city, has either dissolved or destroyed the identity of the original corporation, and it is consequently unable any longer to administer the trust. Now, if this were true, the only

* Attorney-General *v.* Ironmongers' Company, 2 Bevan, 313; Magill *v.* Brown, Brightly, 395; Fountain *v.* Ravenal, 17 Howard, 369; Guardians of the Poor *v.* Green, 5 Binney, 558; Cresson's Appeal, 30 Pennsylvania State, 450.

† Vidal *v.* Girard, 2 Howard, 127.

consequence would be, not that the charities or trust should fail, but that the chancellor should substitute another trustee.

It is not insisted that the mere change or abbreviation of the name has destroyed the identity of the corporation. The bill even admits that a small addition to its territory and jurisdiction might not have that effect, but that the annexation of twenty-nine boroughs and townships has smothered it to death, or rendered it utterly incapable of administering trusts or charities committed to it when its boundaries were Vine and South Streets, and the two rivers. There is nothing to be found in the letter or spirit of this act which shows any intention in the legislature to destroy the original corporation, either by changing its name, enlarging its territory, or increasing the number of its corporators. On the contrary, "all its powers, rights, privileges and immunities, &c., are continued in full vigor and effect." It provides, also, that "all the estates, &c.," held by any of the corporations united by the act, shall be held "upon and for the same uses, trusts, limitations, charities, and conditions, as the same were then held."

By the act of 4th of April, 1852, the corporation was "authorized to exercise all such jurisdiction, to enact all such ordinances, and to do and execute all such acts and things whatsoever, as may be necessary for the full and entire acceptance, execution, and prosecution of any and all the devises, bequests, trusts, and provisions contained in said will." It may also "provide, by ordinance or otherwise, for the election and appointment of such officers and agents as they may deem essential to the due execution of the duties and trusts enjoined and created by the will of the late Stephen Girard."

Now, it cannot be pretended that the legislature had not the power to appoint another trustee if the act had dissolved the corporation, or to continue the rights, duties, trusts, &c., in the enlarged corporation. It has done so, and has given the widest powers to the trustee to administer the trusts and charities, according to the intent of the testator, as declared in his will.

The legislature may alter, modify, or even annul the franchises of a public municipal corporation, although it may not impose burdens on it without its consent. In this case the corporation has assented to accept the changes, assume the burdens, and perform the duties imposed upon it; and it is difficult to conceive how they can have forfeited their right to the charities which the law makes it their duty to administer. The objects of the testator's charity remain the same, while the city, large or small, exists; the trust is an existing and valid one, the trustee is vested by law with the estate, and the fullest power and authority to execute the trust.

Whatever the fears or fancy of the complainants may be, as to the moral ability of this overgrown corporation, there is no necessary or natural inability which prohibits it from administering this charity as faithfully as it could before its increase. In fact, it is a matter in which the complainants have no concern whatever, or any right to intervene. If the trust be not rightly administered, the *cestui que trust*, or the sovereign may require the courts to compel a proper execution.

In the case of Vidal,* the Supreme Court say, that "if the trusts were in themselves valid in point of law, it is plain that neither the heirs of the testator, or any other private person, would have any right to inquire into or contest the right of the corporation to take the property or execute the trust; this would exclusively belong to the State in its sovereign capacity, and as *parens patriæ*, and its sole discretion."

This is not an assertion that the legislature, as *parens patriæ*, may interfere, by retrospective acts, to exercise the *cy-pres* power, which has become so odious from its application in England to what were called superstitious uses. Baxter's case, and other similar ones, cannot be precedents where there is no established church which treats all dissent as superstition. But it cannot admit of a doubt that, where there is a valid devise to a corporation, in trust for chari-

* 2 Howard, 191.

table purposes, unaffected by any question as to its validity because of superstition, the sovereign may interfere to enforce the execution of the trusts, either by changing the administrator, if the corporation be dissolved, or, if not, by modifying or enlarging its franchises, provided the trust be not perverted, and no wrong done to the beneficiaries. Where the trustee is a corporation, no modification of its franchises, or change in its name, while its identity remains, can affect its rights to hold property devised to it for any purpose. Nor can a valid vested estate, in trust, lapse or become forfeited by any misconduct in the trustee, or inability in the corporation to execute it, if such existed. Charity never fails; and it is the right, as well as the duty of the sovereign, by its courts and public officers, as also by legislation (if needed), to have the charities properly administered.

Now, there is no complaint here that the charity, so far as regards the primary and great object of the testator, is not properly administered; and it does not appear that there *now* is, or ever will be, any residue to apply to the secondary objects. If that time should ever arrive, the question, whether the charity shall be so applied as to have the "effect to diminish the burden of taxation" on all the corporation, or only those within the former boundaries of the city, will have to be decided. The case of *Soohan* v. *The City*, does not decide it; nor is this court bound to decide it. The answer shows how it may be done, and the corporation has ample power conferred on it to execute the trust according to either hypothesis; and, if further powers were necessary, the legislature, executing the sovereign power, can certainly grant them. In the meantime the heirs at law of the testator have no concern in the matter, or any right to interfere by a bill *quia timet*. Their anticipations of the future perversion of the charity by the corruption or folly of the enlarged corporation, and the moral impossibility of its just administration, are not sufficient reasons for the interference of this court to seize upon the fund, or any part of it, and to deliver it up to the complainants, who never had, and by

the will of Stephen Girard, were not intended to have any right, title, or claim whatsoever to the property.

In fine, the bill was rightly dismissed, because:

1st. The residue of the estate of Stephen Girard, at the time of his death, was, by his will, vested in the corporation on valid legal trusts, which it was fully competent to execute.

2d. By the supplement to the act incorporating the city (commonly called the "Consolidation Act"), the identity of the corporation is not destroyed; nor can the change in its name, the enlargement of its area, or increase in the number of its corporators, affect its title to property held at the time of such change.

3d. The corporation, under its amended charter, has every capacity to hold, and every power and authority necessary to execute the trusts of the will.

4th. That the difficulties anticipated by the bill, as to the execution of the secondary trusts, are imaginary. They have not arisen, and most probably never will.

5th. And if they should, it is a matter, whether probable or improbable, with which the complainants have no concern, and cannot have on any possible contingency.

DECREE AFFIRMED WITH COSTS.

THE BANKS *v.* THE MAYOR.

1. Where an act of a State legislature authorized the issue of bonds, by way of refunding to banks such portions of a tax as had been assessed on Federal securities made by the Constitution and statutes of the United States exempt from taxation, and the officers who were empowered to issue the obligations refused to sign them, because, as they alleged, a portion of the securities for the tax on which the bank claimed reimbursement, was, in law, not exempt, and the highest court of the State sanctioned this refusal: *Held*, that this was a decision by a State court against a right, privilege, or immunity claimed under the Constitution or a statute of the United States, and so that this court had jurisdiction under the 25th section of the Judiciary Act, and the amendatory act of February 5th, 1867.
2. Certificates of indebtedness issued by the United States to creditors of the