precise character of Fox River as a navigable stream, and not leave the matter to be inferred by construction from an imperfect pleading.

DECREE REVERSED, AND THE CAUSE REMANDED FOR FURTHER PROCEEDINGS.

MONCURE *v.* ZUNTS.

1. The provisions of the Code of Procedure of Louisiana concerning sales of real estate under execution require that the sale shall be advertised in a newspaper published in the parish where the land is situated.
2. The policy of Congress, as shown by numerous statutes, has been to adopt for the several courts in suits at common law, the processes and modes of proceeding of the State courts in which they are held.
3. The act of May 26, 1824 (4 Stat. at Large, 62), not only adopts the mode of proceedings then established in the State of Louisiana, but requires the Federal courts to conform to such changes as may be made in that State; and limits very materially the power of the Federal courts to modify or change those rules, as that power exists in the courts of other districts.
4. The seventh section of the act of Congress of March 2, 1867 (14 Stat. at Large, 466), applies only to such advertisements as may be published in behalf of the government, and are to be paid for out of the Federal treasury. It does not affect advertisements for sale of lands under judicial process in suits between individuals.
5. A sale of lands in such cases, under execution from the Federal court in Louisiana, should be set aside in a proper proceeding for that purpose, when it has not been advertised in a newspaper of the parish, and when there is a paper published in such parish.

ERROR to the Circuit Court for the District of Louisiana; the case being thus:

Deas obtained a judgment in the court below against Moncure and others, heirs of Doyal, and, under an execution issued on this judgment, certain real estate was sold lying in the parish of Ascension, of which Zunts, the present defendant in error, became the purchaser. The laws of Louisiana authorize a proceeding by a purchaser at judicial sale somewhat in the nature of a bill of peace to quiet and con-

firm the title acquired at the sale. This proceeding is called a monition, and is instituted in the same court in which the original judgment was rendered, by a publication warning all persons interested to come forward and show cause, if any they can, why the title acquired by the sale should not be confirmed.

In response to this monition issued by Zunts, the present plaintiffs in error, Moncure, Dunlop, and others, appeared in court and opposed the confirmation on several grounds which attacked the validity of the sale for want of conformity in the marshal's proceedings to the laws of Louisiana The issues raised by this opposition were tried by a jury and several bills of exceptions were taken, which presented the points relied on by the plaintiffs in error, to reverse the judgment of the Circuit Court confirming the sale.

The most important of these related to the advertisement of the sale, and to that one this court limited its observations.

The code of procedure of Louisiana originally provided that such sales should be published in the English and French languages in a newspaper of the parish where the seizure was made. Subsequently the law was altered so as to dispense with the publication in French, unless the defendant should request it. But, from this amendment, the parish of Ascension and some other parishes were exempt. So, that there was no question but that the law of Louisiana, in regard to land sold under executory process in the parish of Ascension, required a publication in a newspaper of that parish, in both French and English, as a preliminary to the sale. In the case under consideration no publication was made in the parish of Ascension, though there was a newspaper published there in both the English and French languages, and the only notice given of the sale was an advertisement in the English language, made in May, 1868, in a certain newspaper of New Orleans, such as is spoken of hereafter.

There seemed, therefore, to be no reason to doubt, if the original judgment in this case had been rendered in a State

court of Louisiana, and the proceeding which the court was now considering had been there tried, that the sale could not have been sustained. And the question which this court was called on to decide was, whether the departure of the marshal from the requirements of the Louisiana code in making the sale under executory process of the Federal court was sufficient in this case to invalidate the sale.

The matter depended upon certain acts of Congress. Thus the act of May 26, 1824, to regulate the mode of practice in the courts of the United States for the District of Louisiana,* declared

"That the mode of proceedings in civil causes in the courts of the United States that now are, or hereafter may be, established in the State of Louisiana, shall be conformable to the laws directing the mode of practice in the District Courts of said State: *Provided*, That the judge of any such court of the United States may alter the times limited or allowed for different proceedings in the State courts, and make by rule such other provisions as may be necessary to adapt the said laws of procedure to the organization of such court of the United States, and to avoid any discrepancy, if any such should exist, between such State laws and the laws of the United States."

The *seventh* section of an act of March 2d, 1867,† it was contended below, however, had repealed or modified this former practice act. This act of 1867 was an act making appropriations for sundry civil expenses of the government for the year 1868. Among these expenses were the publication of the laws of Congress in newspapers of each State, the publication of advertisements of the departments, and other matters in the District of Columbia, and the laws concerning the army and navy in the United States Army and Navy Journal. The seventh section of this act authorized the clerk of the House of Representatives to name one or more newspapers published in each of the eleven States which had been in insurrection (naming them) in which the

* 4 Stat. at Large, 62.

† 14 Id. 466.

treaties and laws of the United States should be published, and in some one or more of which

"All such advertisements as may be ordered for publication in said districts *by any United States courts or judge thereof, or any officer of such courts*, or of any executive officer of the United States, shall be published, the compensation provided, and other terms of publication shall be fixed by said clerk, at a rate not exceeding two dollars per page for the publication of treaties and laws, and not exceeding one dollar per square of eight lines *for the publication of advertisements, the account for which shall be adjusted by the proper accounting officers and paid in the manner now allowed by law in like cases.*"

The law further provided that the clerk of the House should give notice to the heads of departments and each judge of the United States courts of the paper selected, and that thereafter it should be the duty of such executive officers to furnish to such selected paper only an authentic copy of the publications to be made as aforesaid.

The court below, contrary to the request of the parties opposing the confirmation of the sale, who asked for the opposite construction, charged that an advertisement of the property sold by the marshal in newspapers published in New Orleans, selected under the act of Congress just quoted, by the clerk of the House of Representatives of the United States, was a sufficient advertisement in a newspaper, under the law.

And it was recited in the bill of exceptions that it appeared from the evidence that it had been the practice of the marshal to make this kind of advertisement since that act of Congress.

Mr. P. Phillips and Mr. Conway Robinson, for the plaintiffs in error, contended:

That the legal advertisements spoken of in the act of 1867 were such as might be ordered for publication by any United States court or any judge or other officer thereof; but that the advertisement, under an execution for the sale

Argument for the defendant in error.

of property, was not made by order of the court, or by any officer thereof, but was required by *law*, and was not dependent on any authority less than the law itself. It was, therefore, not within the letter of the statute; still less was it within its spirit when it was shown that the advertisements intended were those for which the public treasury was responsible.

Mr. T. J. Durant, *contra*, argued in support of the views of the court below:

1. That the seventh section of the act of 1867 had repealed or modified the old act of 1824. It was on the very subject of court advertisements in the Federal districts. An advertisement for a marshal's sale, in a Federal district, is an advertisement ordered for publication in that district by a United States court, by the judge thereof, and by one of its officers, to wit, the marshal. It thus falls, by a singular multiplicity of descriptions, within the very words of the act. The act of 1824, requiring, as it does, uniformity with State practice, cannot stand with the act of 1867, presenting a departure from it. The adoption, in 1824, of the Louisiana mode of advertising property for sale under *fi. fa.*, did not prevent Congress from abrogating that adoption in 1867, when, in the judgment of the legislative branch of the government, a new rule for advertising judicial sales under process from the United States court in Louisiana became necessary. The Federal, and not the State law, was supreme.

2. The bill of exceptions stated that the advertisement conformed to the existing practice of the court; to that which had in fact become the rule of the court, and under this rule the marshal acted.

Reply:

The utmost duration of the practice set up can only extend from the 2d March, 1867, the date of the act, to May, 1868, when the advertisement was made. Will the court hold this pretended practice of a year sufficient to overturn the law settled from the foundation of the State government?

Opinion of the court.

Mr. Justice MILLER delivered the opinion of the court.

The act of Congress of May 26th, 1824, declares that "the mode of proceedings in civil cases in the courts of the United States that now are, or hereafter may be, established in the State of Louisiana, shall be conformable to the laws directing the mode of practice in the District Courts of said State," and, though there is a provision authorizing the judges of those courts to make alterations necessary to conform the practice to the organization of the Federal courts, this authority is quite limited. This statute, then, in establishing the practice of the State courts as the practice of the Federal courts, however the State laws may modify that practice, and in limiting the power of the Federal courts in that State over their own rules of practice, is a departure from the otherwise uniform action of Congress on that subject. The mode of procedure in the courts of Louisiana, conforming very nearly to those of the civil law, and both the code of procedure and the civil code of that State differing so widely from the system of common law adopted in all the other States, was the reason of this special purpose of Congress to require the Federal courts in that State to conform to the usages of the local law. This has been frequently noticed in this court.

It is said, however, that the act of 1824 has been repealed or modified by the seventh section of the act of March 2d, 1867.

The strict grammatical construction of the seventh section, relied on by the counsel of the defendant in error to show that the act of 1824 has been repealed or modified, limits its application to such advertisements and publications as must be adjusted by the proper accounting officers, and paid in the manner now allowed by law in like cases. That this means accounting officers of the Federal treasury and payments by or on behalf of the United States, we cannot doubt. Such language would hardly be used in reference to the costs of court, to be paid by private parties, in a litigation between themselves. Nor would any legislative body use the phrase "accounting officers" in reference to the clerk

or marshal in taxing the costs of advertisements in the regular course of their duties. It is a phrase well known as referring to the auditors and controllers of the treasury, who pass upon all claims against the government before they can be paid out of the public treasury. The cases then to which the section by its term applies are such publications as the Federal government is concerned in, and for which it may have to pay.

This view is confirmed by the manifest purposes of the act. These are, first to require that the clerk of the House of Representatives should select, in the States lately in insurrection, the newspapers in which such publications should be made as the United States required, instead of the heads of departments and other officers who had heretofore exercised that discretion; secondly, that he should also fix the scale of prices, within a limit prescribed by the act, which the government should be charged for such publications.

Nor is this view affected by the fact that judges of courts and other officers of the court, meaning marshals and clerks, are among those required to make publications in the papers so selected; for in the proceedings of these courts in revenue seizures, confiscations, cotton cases, forfeitures, and the like, many notices are required to be published and are published by these officers, for which the United States pays, and which, before the marshal can get the allowance for it, must be passed upon by the accounting officers of the treasury.

Whether we look, then, to the language of this seventh section, or to the manifest purpose and object of the act, we are constrained to limit its application to such publications as the Federal government may make on her own account, and for which payment is to be made out of the Federal treasury.

If the language of the section were much more favorable than it is to the construction contended for by the defendant in error, we should pause long before concluding that Congress had reversed in this instance its uniform policy of conforming the modes of proceeding in the Federal courts to those of the States, and had repealed *pro tanto* the act of 1824,

which laid down that as the law for Louisiana with an express limitation in the power of the court to modify it, and that it had invaded the rule long received as an axiom, that the descent, alienation, and transfer of real estate was governed rightfully by the law of the State wherein it lay. We are quite satisfied that Congress had no such intent in passing the act of 1867.

The effort to support the course of the marshal, by showing that he acted under a rule of the court, is hardly worth consideration. The mere circumstance that for a few months that officer, acting under the construction of the act of 1867, which we have just shown to be erroneous, had advertised only in the newspapers selected by the clerk of the House of Representatives, did not constitute a rule of the court.

We are of opinion that the sale should have been set aside for want of the advertisement in the parish where the land lay. The judgment of the Circuit Court affirming the sale is, therefore, REVERSED, and the case remanded with directions to proceed

IN CONFORMITY TO THIS OPINION.

St. Louis v. The Ferry Company.

The ferry-boats of a corporation incorporated in one State, and carrying passengers, &c., forward and back across a river to a city situated in another State, are not taxable under a law taxing boats "*within* the city," in a case where the relation of the boats to the city was simply that of contact, as one of the termini of their voyage; and the place where they were laid up when not in use, and where their pilots and engineers resided, and where the real estate of the corporation including a warehouse was situated, was on the opposite shore and in another State. This is not altered by the facts that the boats were enrolled in pursuance of our navigation acts at the city; that the ferry company had an office there; that its president, vice-president, and other principal officers lived there; that the stockholders mainly resided there, and none in the State opposite; that there the ordinary business meetings of the di-