Territory, or from the Supreme Court of the Territory to the District Court when the action was commenced. None could issue from this court, for there was nothing here, so far as the pleadings show, to remand. None was necessary from the Supreme Court of the Territory to the District Court, because the condition of the bond is to pay if the judgment should be affirmed. The affirmance, therefore, is the material fact which is to fix the liability. That is averred in the complaint and not denied in the answer.

JUDGMENT AFFIRMED.

LONGSTRETH *v.* PENNOCK.

The Pennsylvania statute of June 16th, 1836, which provides that where property upon demised premises, and liable to distraint, is seized on execution and sold, the officer making the sale shall pay the rent (provided it does not exceed one year's rent) in preference to the judgment on which the execution issued, extends, by an equitable intendment, to a seizure of goods similarly situated, by an assignee in bankruptcy. A landlord's claim is accordingly, in Pennsylvania, first paid out of the bankrupt's goods liable to distress on demised premises, and before making a dividend of their proceeds among the creditors generally.

ERROR to the Circuit Court of Pennsylvania; the case being thus:

A Pennsylvania statute of June 16th, 1836,* enacts as follows:

"The goods and chattels being in or upon any messuage, lands, or tenements, which are or shall be demised for life or years or otherwise, taken by virtue of an execution, and liable to the distress of the landlord, shall be liable for the payment of any sums of money due for rent at the time of taking such goods in execution: *Provided*, That such rent shall not exceed one year's rent.

"After the sale by the officer, of any goods or chattels as

* Purdon's Digest, edition of 1873, p. 879.

aforesaid, he shall first pay out of the proceeds of such sale, the rent so due, and the surplus thereof, if any, he shall apply towards satisfying the judgment mentioned in such execution."

This statute being in force, Pennock rented a warehouse in Philadelphia to Wattson & De Young, at the yearly rent of $4500, payable in equal quarterly instalments. Wattson & De Young, the lessees, being in possession of the premises, and having therein a stock of goods more than sufficient to pay the rent if a distress had been made, were adjudicated bankrupts, and Longstreth, their assignee, took possession of the premises, and of the stock upon them. The landlord claimed of him the rent due and accrued up to the date of the issuing of the warrant in bankruptcy, and it having been paid to him under a stipulation to restore the same if the assignee were not allowed credit therefor on the settlement of his account, and he not having been allowed such credit, this action was brought by him to test his right to get back what had been so paid for rent accruing prior to the warrant, which was for much less than a year's rent. The Circuit Court adjudged that the payment was rightfully made, and that the assignee could not recover it back. The assignee now brought the case here.

Mr. J. C. Longstreth, for the assignee, plaintiff in error; Mr. J. B. Townsend, contra.

Mr. Justice SWAYNE delivered the opinion of the court.

The assignee acquired his title to the movable property found on the demised premises, subject to the rights of all other persons.* The rent in question was for a period which terminated when the assignee took possession, and the entire period was within a year of that time. Before the commencement of the proceedings in bankruptcy, the defendants in error might have distrained; and it is agreed that the property upon the premises was more than sufficient to satisfy the demand. The statute of Pennsylvania, of June

* Gibson *v.* Warden, 14 Wallace, 244.

16th, 1836, provides that where property under such circumstances is seized and sold under execution, the rent due for a period not exceeding one year shall be paid first out of the proceeds of the sale. This case is within the equity of that statute.* The question presented is one belonging to the local law of Pennsylvania. We think it was correctly decided by the Circuit Court.

JUDGMENT AFFIRMED.

CANNON *v.* NEW ORLEANS.

1. An ordinance of the city of New Orleans, which demands of all steamboats which shall moor or land in any part of the port of New Orleans a sum measured by the tonnage of the vessel, is a tonnage tax within the meaning of the Federal Constitution, and, therefore, void.
2. It is a tax for the privilege of stopping in the port of New Orleans, and cannot be justified under the plea that it is intended as a compensation for the use of wharves built by the city.
3. For the use of wharves, piers, and similar structures, whether owned by individuals or by the city or other corporation, a reasonable compensation may be charged to the vessel, to be regulated in the interest of the public by the State legislature or city council.
4. But in the exercise of this right care must be taken that it is not made to cover a violation of the Federal Constitution, which prohibits the States to lay any duty of tonnage.
5. Any duty, or tax, or burden imposed under the authority of the States which is in its essence a contribution claimed for the privilege of arriving and departing from a port of the United States, and which is assessed on a vessel according to its carrying capacity, is a violation of that provision unless the consent of Congress be obtained.

ERROR to the Supreme Court of Louisiana; the case being thus:

The Constitution of the United States ordains as follows:†

"Congress shall have power to regulate commerce with foreign nations and *among the several States*, and with the Indian tribes. No State shall, without the consent of Congress, lay any duty of tonnage."

---

* Sedgwick's Statutory and Constitutional Law, 296.

† Article 1, §§ 8, 10.