Syllabus.

As it is the peculiar province of the highest court of a State to decide whether or not the method pursued in the assessment and collection of taxes is in conformity with the law of the State, this decision is controlling.

It was not made until after this suit was instituted, and, doubtless, not promulgated until the rendition of the decree. The assessors of St. Louis County, in this case, imposed taxes for State, county, school, and city purposes. The bill charged that the whole proceeding was illegal, and sought to restrain the entire levy. On demurrer the Circuit Court held that the city taxes were wrongfully levied, and issued the proper order restraining them, and dismissed the bill so far as it related to State, county, and school taxes. The court should have included State taxes in the restraining order. On this account the decree must be reversed and cause remanded, with directions to enter an order enjoining the collection of the State tax in the bill mentioned. In all other respects the decree is right.

DECREE REVERSED AND REMANDED.

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## FRENCH v. HAY.

In 1859 A. lent to B., who was largely interested in an embarrassed railroad, $5000 to buy certain judgments against the road, and B. having bought, in 1859 and the early part of 1860, judgments to the amount of $31,000, assigned the whole of them to A., absolutely. Subsequently, that is to say in August, 1860, A. made a transfer (so called) of them to B., "upon B.'s payment of $5000, with interest from this date;" and gave to B. a power of attorney of the same date, authorizing him "for me and in my name" to dispose of them as he might see proper. *Held*,

1st. That the so-called transfer was executory, amounting only to an offer that if B. would pay the $5000, B should become owner of the judgments; and that B. having, in May, 1861, gone South and joined the rebels there, and not come back till 1865, could not in 1868 file a bill, and on an allegation that A. had collected the judgments, claim the proceeds, less the $5000 and interest.

2d. That a bill making such an allegation and such a claim was demur-

rable; the bill not being one of discovery, and the complainant having complete remedy at law.

3d. That the road having been sold under a mortgage existing prior to the judgments and bought by A., who, under the laws of the State where it was, organized a new company, issued new stock, and having got, as an allotment to him, a quantity of such stock which he sold for more than enough to pay the judgments—on which satisfaction was then entered—such satisfaction was not in any sense a collection of the judgments.

4th. That if it could be so considered, yet that the sale to A. having been judicially declared void, and set aside, and the old company thus brought again into existence, and B. so reinstated in his old ownership of his stock in it, unimpaired by the sale, he could claim no proceeds of the judgments from A., because, if they were ever his (B.'s) by virtue of the transfer and power of attorney, they remained his still, since no one but the owner could enter satisfaction on them.

APPEAL from the Supreme Court of the District of Columbia; the case being thus:

In 1855, James French and Walter Lenox, of Alexandria, Virginia, obtained from the legislature of Virginia a charter for a railroad between Alexandria and Washington, to be called the Alexandria and Washington Railroad Company. The two persons just named, with a third (a relative of French), owned all the stock; French owning three-fourths of the whole. The capital paid in being inadequate to make and equip the road, the company borrowed $60,000 and gave a deed of trust on the road to secure payment of the debt. The company soon afterwards and before 1859 incurred other debts, which were not secured by mortgage.

In this condition of things Alexander Hay, of Philadelphia, in 1859 advanced to French $5000, and French in the year just named and in the winter and spring of 1860 bought in $31,000 of these unsecured debts. Having reduced them to judgment he assigned the judgments to Hay. And Hay, on the 24th of August, 1860, executed to French these two papers; the first, a transfer, whose character (whether executory or executed) was the chief matter of contest in this case; and a power of attorney whose meaning was not disputed:

Statement of the case.

THE AGREEMENT TO TRANSFER.

"For and in consideration of the sum of $5000, with interest from this date, I hereby assign and transfer to James French, of Alexandria, Virginia, all the judgments, notes, or claims which I hold against the Alexandria and Washington Railroad Company, or against said railroad company, indorsed by the said French and Walter Lenox, or by either of them, to be held by the said French, his heirs and assigns, as his individual property, *upon his payment to me of the above-named sum of* $5000, with interest from this date.

"Given under my hand and seal this 24th of August, 1860.

"A. HAY.

"Witness,

"THOMAS HAY."

THE POWER OF ATTORNEY.

"To all whom it may concern: Be it known, that I, Alexander Hay, of the city of Philadelphia, do hereby constitute and appoint James French, Esq., of Alexandria, Virginia, my true and lawful attorney, *for me and in my name*, to make such disposition as he may deem proper of all the judgments, notes, or claims which I hold against the Alexandria and Washington Railroad Company, or against said company, indorsed by said French and Walter Lenox, or by either of them, to take all necessary steps for collecting the same, or pledge or hypothecate the same, or compromise or sell the same, on such terms as he shall deem proper, and do with them whatever he shall choose, as fully as if they were his individual property; and I do hereby, by these presents, ratify and confirm the same as fully as if I were present acting in person.

"Given under my hand and seal this 24th of August, 1860.

"A. HAY. [SEAL.]

"Witness,

"THOMAS HAY."

No part of the $5000 was ever paid by French to Hay.

In May, 1861, French went south and joined the rebels, Lenox going with him.

In April, 1862, the trustees in the deed of trust sold the road with the franchises, to pay the mortgage on it, and

Hay bought it, paying for it $12,500. Immediately afterward Hay, under the code of Virginia, formed a new company, called the Washington, Alexandria, and Georgetown Railroad Company, and issued new stock. A part of this new stock was allotted to Hay. He subsequently sold it; selling it for more than enough to satisfy the judgments which he held, by French's assignment of them to him, against the old road. He did accordingly satisfy those judgments.

In May, 1865, the rebellion being now suppressed, French and Lenox returned to their homes, in Alexandria, and caused a suit to be brought in the name of the old corporation, for which *they* had procured a charter, against the new company organized by Hay, to recover back the road and old franchises, on the ground that the sale to Hay was void. This suit was decided in favor of the old corporation. The sale was set aside and the old corporation reinstated in its possessions as of ancient and former right.

French now (July, 1868) filed a bill—the bill in this case—against Hay. It recapitulated several of the facts above mentioned, charging that in 1859 Hay agreed to advance to the complainant the necessary money to purchase the outstanding debts of the Alexandria and Washington Railroad Company, and that he did advance the $5000 for that purpose; that in pursuance of the arrangement the complainant, in 1859, and in the winter and spring of 1860, bought up the debts of the company to the amount of $31,000; that the debts thus bought were reduced to judgment and assigned to Hay; that in the purchase the complainant employed and paid out of the money advanced by the defendant something less than $5000, and *that all the money over and above the said sum of* $5000 *paid out in purchase of said debts* (a list of which was attached to the bill) *was furnished and paid out of his own proper money and resources, in the expectation that the same would be repaid or otherwise satisfactorily accounted for by the defendant on a settlement.* The bill then averred that on the 24th of August, 1860, the defendant, by the written assignment and power of attorney already quoted, transferred and assigned

to the complainant all the said claims so purchased, reserving the repayment of $5000 to cover the advances made, and charged that notwithstanding the said assignment the defendant afterwards collected all the said judgments and claims, and appropriated the proceeds thereof to his own use.

Upon these averments an account was prayed for of all the judgments and claims, and a decree that the defendant pay to the complainant all sums of money arising therefrom, with interest, after deducting the said sum of $5000, with any interest due thereon, so as aforesaid advanced to the complainant.

The answer admitted the execution of the transfer and power, but asserted that they were to take effect only on payment of the $5000; that French on the outbreak of the rebellion had joined it and abandoned Alexandria; that the defendant was not bound to wait the issue of the rebellion and to see if French would ever return.

The answer alleged also that independently of all this, French had a complete remedy at law; and that the bill was demurrable.

The court below dismissed the bill and French appealed.

*Mr. F. P. Stanton, for the appellant; Messrs. J. B. Stewart and A. G. Riddle, contra.*

Mr. Justice STRONG delivered the opinion of the court.

It is plain that no other equity is asserted in the bill of the complainant than such as grew out of the alleged assignment and power of attorney of August 24th, 1860. There is none arising out of payments made by the complainant in the purchase of the debts and judgments. So far as it is charged by the bill, every dollar that was paid for the judgments was paid with the defendant's money, advanced by him to the complainant for the purchase. It is true the allegation is made that all the money over and above the $5000 advanced, that was paid in the purchase of the debts, was furnished by the complainant out of his own resources, but it is

not averred that any more than $5000 in all were paid. It is, therefore, the alleged assignment of August 24th, 1860, alone which is the basis of the complainant's equity.

That instrument, however, called an assignment, was, at most, but an executory agreement to assign. Construed with the power of attorney made at the same time, it admits of no other construction. The instrument was signed by Hay alone. French, the complainant, did not sign it, and it is not averred that he promised to pay the $5000. Hay undertook only that French should hold the judgments and claims "upon his payment" of the stipulated consideration, with interest from the date. And the power of attorney given by Hay to French at the same time was an authority to deal with the securities in the name of Hay, and for Hay. The power was worse than useless, if the intention of the parties was that a present ownership of the judgment should be vested in French, without the payment of the agreed price. The utmost effect, therefore, that can be given to these two instruments of August 24th, 1860, upon which alone the complainant must rely, is that they amounted to an offer that if French would pay the $5000 he should be the owner of the judgments. The transmission of the title and the payment of the price were intended to be contemporaneous. If this is so, how long was the defendant under obligation to hold the offer extended? No time for its acceptance was mentioned. The offer was made in August, 1860. The complainant never accepted it. No acceptance is averred in his bill. He never paid or tendered the $5000; he never assumed to pay it. He asserted no claim to the judgments until 1868, when he filed this bill. Now, while it is true that in equity time is generally not considered as of the essence of a contract, it is only true when compensation can be made for its lapse, and the rule is inapplicable in case of an offer that requires acceptance to make a contract. In May, 1861, the complainant having given no indication of acceptance, and having, so far as it appears, asserted no claim to the judgments, abandoned his home, and did not return until 1865. Not until three years after his return

did he commence this action. Was the defendant under obligation to remain inactive and make no efforts to obtain the debts due him, uncertain whether French would ever elect to pay the $5000 and take the judgments? We think not. Nothing in the instruments of August, 1860, imposed such an obligation. To say the least, therefore, it may well be doubted whether the complainant has any right under those instruments that a court of equity will enforce.

And were it conceded that, by the instrument through which he claims, French became the owner of the judgment, as between himself and Hay, we do not perceive how the concession could aid him in this case. If, as the bill avers, Hay collected the judgments and now holds the money for the use of the complainant, there is a complete remedy at law. This is not a bill for discovery, and the aid of a court of equity is not needed.

But the judgments never were collected. It is not pretended that the judgment debtors ever paid anything, or that French or Lenox, who were sureties for the payment of the debts, ever paid anything. In 1862 the railroad and property of the railroad company was sold under a deed of trust which the company had given prior to any of the judgments, and Hay became the purchaser. He paid none of the purchase-money with the judgments he held. He could not have paid with those judgments, for his bid was less than the sum due under the deed of trust, and that sum was prior in right to any of the judgments. Nor is there any attempt to prove that any part of the purchase-money was paid by the judgments. The evidence shows that after Hay purchased, a new company was formed; that a portion of its stock was allotted to him; that he subsequently sold the stock so allotted for a sum greater in amount than the aggregate of the judgments he held against the old company, and that after the formation of the new company, he caused satisfaction of the judgments to be entered of record. In no other manner than this is it now pretended that the judgments have been collected. The presumption of collection that might arise from the entries of satisfaction, if unex-

plained, is rebutted by the proof that all the defendant received was the proceeds of sale of his stock in the new company, by no possibility the fruit of the judgments. And the complainant cannot claim an interest in that stock or its proceeds, without affirming the trustees' sale of the railroad, and the subsequent formation of the new company, followed by the issue of the stock. Such a sale, if valid, would have destroyed the old company, three-quarters of the stock of which the complainant owned. But the sale has been judicially determined to have been invalid, the old company has recovered the property, and the new has been consequently adjudged never to have had a legal existence. The consequence of this is that the complainant now holds his full interest in the old company, unimpaired by any sale. After this it is impossible to see how he can assert that any part of the new stock or its proceeds belonged to him; and if it did not, nothing has been collected for him, even if he can be considered the owner of the judgments. Nor has he been injured by the entries of satisfaction, for if he became the owner of the judgments by force of the instruments of August 24th, 1860, as he avers, he is the owner still, notwithstanding the entries of satisfaction, for no one but the owner could cause valid acknowledgments of satisfaction to be made. For these reasons the decree must be

AFFIRMED.

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## FRENCH, TRUSTEE, *v.* HAY ET AL.

1. A. filed a bill against B., a purchaser of property at a sale made by C., a trustee to sell, charging both B. and C. with collusion and fraud in the sale, and praying discovery from both parties, that the sale might be set aside, &c., and that B., who had taken possession of the property, might be charged with its rents, but not making such a prayer as to C. Both B. and C. appeared and answered. The court charged B. with rents, but did not charge C. B. appealed, and the decree charging him being affirmed, and a master having reported to the inferior court the amount of rents, a final decree was there made against B. for them. At the same time that this decree was made (B. being insolvent), the