

The truth is, that, in the nature of things, a metal and its oxide or sulphate are totally distinct and unlike. Any substance subjected to a chemical change by uniting with another substance loses its identity: it becomes a different mineral species. The basis of common clay is the metal aluminium, and the basis of lime is the metal calcium. But no one would think of calling clay and lime metals; nor, if artificially made, would he call them manufactures of metals. They have lost all their metallic qualities. In just the same manner, iron ceases to be iron when it becomes rust, which is oxide of iron; or when it becomes copperas, which is sulphate of iron. None would think of calling blue vitriol copper. So white lead, nitrate of lead, oxide of zinc, and dry or orange mineral, are not metals: they have no metallic qualities. In the poverty of language, they have no distinct names, it is true, as lime and clay and vitriol have; but each is designated by a scientific periphrasis, in which the name of the metal which forms one of its chemical elements is used. This use of the name has probably been one cause of the confusion which has arisen on the subject.

*Judgment affirmed.*

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#### SPENCER *v.* UNITED STATES.

No suit can be maintained against the United States under the Abandoned and Captured Property Act (12 Stat. 820), if the property in question was neither captured, seized, nor sold pursuant to its provisions, and the proceeds were not paid into the treasury.

#### APPEAL from the Court of Claims.

This cause was argued by *Mr. Joseph Casey* for the appellant, and by *Mr. Assistant Attorney-General Edwin B. Smith* for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

In this case, the Court of Claims has certified here, in answer to inquiries from us, (1) that the cotton in question did not come into the hands of any agent of the United States as abandoned or captured property, and was not sold as such;

and (2) that the proceeds of the sale were not paid into the treasury of the United States.

Upon this state of facts, the judgment of the court below was clearly right. It is certain that no suit can be maintained against the United States under the Abandoned and Captured Property Act, if the property has neither been captured, seized, nor sold pursuant to its provisions, and the proceeds are not in the treasury.

*Judgment affirmed.*

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#### McMANUS v. O'SULLIVAN ET AL.

This court has no jurisdiction to re-examine the judgment of a State court where a Federal question was not in fact passed upon, and where a decision of it was rendered unnecessary in the view which the court below took of the case.

ERROR to the Supreme Court of the State of California.

Submitted by *Mr. Calhoun Benham* for plaintiff, and by *Mr. John M. Coghlan* and *Mr. William Irvine* for defendants.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Terence B. McManus, under whom the plaintiff claims, entered into the possession of the premises in controversy in 1854, or thereabouts. He continued his possession until his death in 1861, at or about which time the defendants entered and held adversely to his estate until the commencement of this action in August, 1867.

When McManus entered, and during all the time he was in possession, the city of San Francisco was asserting title to the property, under a Mexican pueblo right, before the commissioners appointed under the act of Congress providing for the settlement of private land-claims in California, and before the courts upon appeal. A decree was rendered in favor of the city by the Circuit Court of the United States, May 18, 1865. From this decree an appeal was taken to this court; pending which an act was passed, March 8, 1866, entitled "An Act to quiet the title to certain lands within the corporate limits of the city of San Francisco." 14 Stat. 4. Upon the passage of this act, the appeal was dismissed.