

Had this been a valid statute, we might have been called upon to discuss the point raised. But it was held in *Van Allen v. The Assessors*, 3 Wall. 573, that this statute was fatally defective, in that it did not contain a proviso that the tax thereby authorized to be imposed should not exceed the rate imposed upon banks organized under the authority of the State. The system of taxation devised by the statute of 1865 was adjudged to be illegal and void. The clause now laid hold of by the relators was simply a proviso or qualification of that system. It necessarily fell with it. When the main idea was thrown out of existence, the subordinate parts, which were adjuncts of and dependent upon the main theory, ceased to exist. There never was, legally speaking, any such proviso or enactment as the relators claim the benefit of. Of course, there could be no such thing as a violation of contract contained in a proviso which never existed. *Warren v. The Mayor*, 2 Gray, 98, 99; *Sedgwick on Statutes*, 413, 414 (ed. of 1874).

*Judgment affirmed.*

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EX PARTE LORING.

This court will not by *mandamus* compel an inferior court to grant a motion to vacate an order setting aside a judgment of nonsuit.

PETITION for a *mandamus* to the Circuit Court of the United States for the Eastern District of Michigan.

This petition shows that at the June Term, 1874, of the Circuit Court of the United States for the Eastern District of Michigan, William B. True, the plaintiff in an action then pending in that court against Elisha T. Loring, the petitioner, after a jury had been empanelled and the testimony on his part concluded, elected to become nonsuit, and that a judgment to that effect was entered. On the 17th October, 1876, at a subsequent term of the court, after notice to the attorney of Loring, True moved to set aside this judgment and restore the cause to the docket for trial. This motion was granted Oct. 31, and, later in the term, Loring appeared by his counsel, and

moved to vacate the order then made. This last motion was refused, Jan. 15, 1877, and, Jan. 29, this petition was filed by Loring for a writ of *mandamus* to the judges of the Circuit Court, requiring them "to vacate the order setting aside said nonsuit."

*Mr. Alfred Russell* for the petitioner.

No opposing counsel.

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

It seems clear to us that the object in this case is to use the writ of *mandamus* as a writ of error. This cannot be done. We may require the Circuit Court to decide in a proper case if it refuses to act, but cannot control its decision. Here the court has acted, and given its decision upon a motion made. We are asked now to require it to reverse that decision. For that, resort must be had to a writ of error after a final judgment has been rendered. The writ of *mandamus* has no such office to perform.

*Petition denied.*

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SELDEN *v.* EQUITABLE TRUST COMPANY.

A corporation whose business is confined to the investment of its capital in bonds secured by mortgage on real estate, and to the negotiation, sale, and guaranty of them, is not a bank or a banker within the meaning of sect. 3407 of the Revised Statutes.

ERROR to the Circuit Court of the United States for the District of Connecticut.

The facts are stated in the opinion of the court.

Argued by *Mr. Assistant Attorney-General Smith* for the plaintiff in error, and by *Mr. Augustus Brandegee* and *Mr. Jeremiah Halsey*, *contra*.

MR. JUSTICE STRONG delivered the opinion of the court.

The Equitable Trust Company is a corporation created by the laws of the State of Connecticut, and its principal office or place of business is at New Haven, in that State. Its "only business