

If he fails to do this he acquires no title, and his invention or discovery, no matter what it may be, is lost to him, and is henceforward no more his than if he had never been in any wise connected with it. It is made, thereupon, as it were by accretion, irrevocably a part of the domain which belongs to the community at large. The invention here in question is within this category.

*Decree affirmed.*

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SMITH *v.* UNITED STATES.

This court will refuse to hear a criminal case, unless the convicted party suing out the writ of error is where he can be made to respond to any judgment which may be rendered here.

ERROR to the Supreme Court of Washington Territory.

*Mr. John J. McGilvra* for the plaintiff in error.

*Mr. Solicitor-General Phillips, contra.*

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

It is clearly within our discretion to refuse to hear a criminal case in error, unless the convicted party, suing out the writ, is where he can be made to respond to any judgment we may render. In this case it is admitted that the plaintiff in error has escaped, and is not within the control of the court below, either actually, by being in custody, or constructively, by being out on bail. If we affirm the judgment, he is not likely to appear to submit to his sentence. If we reverse it and order a new trial, he will appear or not, as he may consider most for his interest. Under such circumstances, we are not inclined to hear and decide what may prove to be only a moot case.

This cause was docketed here Dec. 29, 1870. In due time a brief was filed on behalf of the plaintiff in error, and the cause has been regularly continued at every term since, no one appearing here in person to represent the plaintiff. At this term we dismissed the writ, on motion of the United States, for want of prosecution, but have since reinstated it on motion of the counsel for the plaintiff in error, who now moves to have it set down for argument. This motion we deny, and order

that, unless the plaintiff in error submit himself to the jurisdiction of the court below on or before the first day of our next term, the cause be left off the docket after that time. *The People v. Genet*, 59 N. Y. 80; *Leftwich's Case*, 20 Gratt. 723; *Commonwealth v. Andrews*, 97 Mass. 544; see also 31 Me. 592.

*Motion to set down the case for argument denied.*

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OMAHA v. HAMMOND.

Where a contract, entered into by a city for the construction of certain public works, provides that they shall be completed under the supervision and to the satisfaction of an officer of the city, his action, in finally accepting them, is an announcement of his decision that the terms of the contract have been complied with, and is binding upon the city.

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

The facts are stated in the opinion of the court.

Submitted on printed arguments by *Mr. S. A. Strickland* for the plaintiff in error, and by *Mr. E. Wakely* for the defendant in error.

MR. JUSTICE MILLER delivered the opinion of the court.

The defendant in error, plaintiff below, sued the city of Omaha on a contract for the construction of two public wells in the streets of that city. The contract was in writing, and by its terms plaintiff was "to sink and construct two wells, . . . said wells to be circular, twelve feet in diameter, and to be curbed with a brick wall nine inches in thickness, and arched over in a secure and proper manner, the whole to be completed under the supervision and to the satisfaction of the chief engineer of the fire department of said city."

For this work the city was to pay plaintiff "one hundred dollars for each and every one thousand gallons of water which each of said wells shall be capable of producing, and shall produce, within twenty-four hours; the capacity of said wells to be tested by the chief engineer of the fire department of the city of Omaha aforesaid. And upon the report of said officer being made to the council of said city, showing that the wells