

it is not competent for the court to go into an investigation to determine the guilt or innocence of the juror. That is to be ascertained only in one way, — by a separate trial of the party upon an indictment for the offence; and the only competent evidence in such case is the record of his conviction or acquittal. It would be a strange and unprecedented thing for a court, upon the challenge of a juror, to go into a side trial, whether he had committed a felony, such as highway robbery, arson, or murder. No one would contend that such a procedure is admissible; and if not in those cases, it is not admissible in any case where the commission of a public offence is the ground of challenge.

The court may take judicial notice, from the existence of war, that a whole people are public enemies; but it cannot take judicial notice that a whole people, or individuals of it, have violated the municipal laws of the country. If such violation be relied upon to exclude a person from becoming a witness or a juror, it must be shown, not by evidence of what others may have seen or heard, but by the record of the party's conviction.

KETCHUM *v.* BUCKLEY.

Where the President, at the close of hostilities, appointed a military governor of one of the States, the people whereof had been in rebellion against the United States, — *Held*, that such appointment did not change the general laws of the State then in force for the settlement of the estates of deceased persons, nor remove from office those who were at the time charged by law with public duties in that behalf.

ERROR to the Supreme Court of the State of Alabama.

In accordance with a special statute of Alabama, authorizing the appointment of a general administrator and general guardian for Mobile County, and for other purposes, approved Dec. 14, 1859, Wesley W. McGuire having been duly appointed to that office for the term of four years, he, March 7, 1864, made and delivered to the probate judge of the county his bond, in the penal sum of \$150,000, conditioned according to law, with

Ketchum and others as his sureties thereon. Letters of administration were granted to him Sept. 21, 1865, upon the estate of William Buckley, deceased, by the Probate Court of said county, by virtue whereof he administered upon the estate. In May, 1869, in answer to a citation served upon him at the instance of the heirs of Buckley, he made a final settlement of his administration of the estate, and decrees were entered against him for the sums due to each of them respectively. Executions were issued on the decrees, and returned "no property found." George W. Buckley, one of said heirs, thereupon brought suit in the Circuit Court of Mobile County for the sum due to him by said decree, alleging that for the *devastavit* of the assets of the deceased, committed by the said McGuire, he and the other defendants, his sureties, were liable on the bond.

McGuire died after the commencement of this suit. His sureties set up that at the time of his appointment Alabama, as one of the so-called Confederate States, was at open war with the United States, but that before June 20, 1865, the Confederate government was subdued, the insurrectionary government of the State overthrown, and her entire people under martial law; that the President, in his proclamation of June 21, 1865 (13 Stat. 767), declared that the rebellion had "deprived the people of the State of Alabama of all civil government;" that he appointed Lewis E. Parsons governor, and authorized him to organize civil government in the State; that Parsons, in pursuance of the proclamation, and by virtue of the authority thereby conferred, called a convention of the people to be elected as therein prescribed to meet at Montgomery, to inaugurate civil government in the State; that he retained in office by name all justices of the peace and certain other officers, but declared that sheriffs and judges of the Probate Court were only retained until others should be appointed upon application of the people of the respective counties, but he authorized them to continue to discharge the duties of their respective offices upon taking the oath of fidelity to the United States; that George W. Bond had been elected probate judge of that county in May, 1861, for the term of six years, and was in office when the insurrectionary State government was overthrown; that said Parsons appointed said Bond to the office of probate

judge; that the office of said McGuire as general administrator and general guardian had, by reason of the premises, ceased before the letters of administration were granted to him on the estate of said Buckley; that he was not named in the proclamation as one of the officers retained; that the grant of the letters to him was therefore void; and that his sureties were not liable for his administration of said estate.

The Circuit Court held, on demurrer, the defence to be insufficient to bar the suit. Judgment was rendered for the plaintiff, and it having been affirmed by the Supreme Court, the defendants sued out this writ of error.

Mr. Thomas J. Price, for the defendant in error, moved to dismiss the writ for want of jurisdiction, and to affirm the judgment below.

Mr. Philip Phillips and *Mr. E. S. Dargan*, *contra*.

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

We are not willing to hear an argument on the only possible Federal question presented by this case. It is now settled law in this court that during the late civil war "the same general form of government, the same general law for the administration of justice and the protection of private rights, which had existed in the States prior to the rebellion, remained during its continuance and afterwards. As far as the acts of the States did not impair or tend to impair the supremacy of the national authority, or the just rights of the citizens, under the Constitution, they are in general to be treated as valid and binding." *Williams v. Bruffy*, 96 U. S. 176; *Horn v. Lockhart et al.*, 17 Wall. 570; *Sprott v. United States*, 20 id. 459; *Texas v. White*, 7 id. 700. The appointment by the President of a military governor for the State at the close of hostilities did not of itself change the general laws then in force for the settlement of the estates of deceased persons, and did not remove from office those who were at the time charged by law with public duties in that behalf. It is not alleged that the governor after his appointment undertook by any positive act to remove McGuire from the position he occupied as general administrator, or that McGuire himself at any time ceased to perform

the duties of his office by reason of what was done by the President or others towards the restoration of the State to its political rights under the Constitution of the United States. From all that appears in the record, he continued to act during the whole of his term as general administrator of the county, notwithstanding the changes that were going on in the other departments of the State government. Under these circumstances, it is so clear that the judgment of the court below was right, that we grant the motion to affirm.

Judgment affirmed.

EXPRESS COMPANY v. RAILROAD COMPANY.

A contract between A., a railroad company, and B., an express company, stipulated that B. should lend A. \$20,000, to be expended in repairing and equipping its road, and that A. should grant to B. the necessary privileges and facilities for the transaction of all the express business over the road, the sum found to be due A. therefor, upon monthly settlement of accounts, to be applied to the payment of the loan and the interest thereon. The contract was to continue for one year, when, if the money with interest thereon was not paid, it was to continue in force until payment should be made. After B. had advanced the money, and entered upon the performance of the contract, A. conveyed all its property, including its franchises, to C. in trust to secure the payment of certain bonds issued by it. Default having been made in their payment, C. brought a foreclosure suit, and obtained a decree placing the road in the hands of a receiver and ordering its sale. The receiver having declined to carry out the contract with B., the latter, with the consent of the court, brought its bill in equity for specific performance against him, A., and C. *Held*, 1. That the receiver is the only necessary party defendant. 2. That the transaction between the companies is not a license, but simply a contract for transportation creating no lien, the specific performance whereof would be a form of satisfaction or payment, which the receiver cannot be required to make.

APPEAL from the Circuit Court of the United States for the Western District of North Carolina.

This is a bill in equity, filed June 18, 1875, by the Southern Express Company, a corporation of Georgia, against the Western North Carolina Railroad Company, a corporation of North Carolina, W. A. Smith, and Henry Clews, for the specific performance of a contract entered into Dec. 2, 1865, between the railroad company and the complainant.