

There is but one other provision of the law touching this question, and that is found in the Rev. St. (2d Ed.) 993, under the title "National Banks," and among the enumerated powers conferred on these banks is the following: "To sue and be sued, complain and defend, in *any* court of law and equity *as fully as natural persons.*" This provision is copied *verbatim* from the currency acts of 1863 and 1864.

There is nothing in this enactment conferring any special jurisdiction on the federal courts in cases where national banks are parties; but these banks are placed on an equal footing with natural persons in all courts of law and equity.

Now in the case of natural persons the citizenship of the parties and the amount in controversy in actions of this nature are both material, and are the controlling elements to jurisdiction in this court.

I need not decide or discuss the question whether a national bank organized under the law of congress and established in the state of Missouri is a citizen of that state under the rule recognizing corporations organized under the laws of a state as citizens of that state, for the purpose of suing and being sued in the federal courts. Even if the affirmative of that proposition could be maintained, there would still be a want of jurisdiction in this case, as the amount in controversy is not sufficient, and on that ground this case must be dismissed, and the costs paid by defendant refunded to him.

HEWAT v. HAVEMYER.

(District Court, E. D. New York. ———, 1880.)

DAMAGES TO CARGO—DRAINAGE OF SUGAR—FREIGHT.—Where a cargo of sugar was brought from Havana to New York in bags, and the consignees refused to pay the freight, alleging damage to the sugar by reason of bad storage, and careless delivery, to the amount of \$1,100, whereupon the master brought suit to recover his freight, *held*, that upon the evidence the ship was not liable for any damage to the sugar which arose from unusual drainage, and not by fault of the ship, and therefore the master is entitled to his freight.

Butler, Stillman & Hubbard, for Hewat.

Man & Parsons, for Havemyer.

BENEDICT, J. The weight of evidence is that the damage to the sugar in question arose from drainage of the sugar itself, for which the ship is not liable. But if the opinion of the claimant's witnesses, that the appearance of the sugar in the stained bags is indisputable evidence of contact with water, be taken to be correct, then the positive evidence in regard to the storage of the sugar, the dry condition of the ship, and the place where the stained bags were found, as to all which there is no dispute, warrants the inference that any contact with water, if it occurred, must have taken place before the bags were shipped, and was not disclosed on their outward appearance when shipped, in which case, also, the ship would not be liable.

There is a small charge of \$5.75 for sugar lost that is covered by the allegations in the answer, but I think the testimony that all the sugar received was delivered is an answer to this demand, in the absence of any evidence that any was lost overboard during the delivery.

The claim of a damage of four cents a pound on the "sweepings" can hardly be held to be covered by the pleadings, but if it were, the proofs do not sustain it. The evidence is that the bags were handled with ordinary care, and in the method then usually pursued, and that the proportion of sweepings, though large, was not excessive. Whatever excess of sweepings there was, is fairly attributable to the condition of the bags and the description of sugar they contained, and is not chargeable to the ship. It is no part of the carrier's contract that sugar, which in handling necessarily runs out because the bags are not strong enough to endure ordinary handling, and must therefore be swept up from the hold, shall be delivered clean.

The libellants are entitled to a decree for the balance of freight unpaid, with interest and costs.

THE UNITED STATES OF AMERICA *v.* GOGGIN.

(*Circuit Court, E. D. Wisconsin.* January 5, 1880.)

INDICTMENT—FRAUD, HOW ALLEGED.—An indictment charging fraud should aver the fraud with sufficient particularity to enable the defendant to prepare his defence, and plead the judgment as a bar to a subsequent prosecution.

G. W. Hazelton, U. S. Dist. Att'y, for the United States.

Jenkins, Elliott & Winkler, for defendant.

DYER, J. This is an indictment for presenting for payment to the pension agent in Milwaukee a false and fraudulent claim for pension moneys. The defendant was tried and convicted at the last term of the court, and the case is again up for consideration upon a motion in arrest of judgment.

It is not without reluctance that I have come to the conclusion with reference to the disposition of the motion which I am constrained to announce, since the evidence adduced on the trial tended strongly to show the perpetration of a gross fraud upon the government; but it is the duty of the court to administer the law according to its best understanding, regardless of consequences.

The defendant was indicted under section 5438, Revised Statutes, which provides that every person who presents for payment to or by any person or officer in the civil service of the United States any claim upon or against the government, or any department thereof, knowing such claim to be false, fictitious or fraudulent, shall be punished as the statute directs. The offence may in one view be regarded as a felony, and in another view as a misdemeanor, since the statute declares with reference to the punishment that the person offending shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than \$1,000 nor more than \$5,000.

The indictment contains three counts, but as they are equivalent in form reference to one will be sufficient. The first count charges that on the fourth day of December, 1877, the defendant did present and cause to be presented for pay-