

in its territory to a sister state as will prevent the latter from loss. In order to vitiate the title of the state of Indiana, some proceeding in the nature of "Office found" must have been adopted. It must be understood also that when the state of Indiana bought these lands it came as a subject, and not as a sovereign. It is to be presumed that the state of Indiana got the lands for a legitimate purpose. It is to be further presumed that the state of Georgia would have objected had it seen proper to enforce its political and exclusive rights. If the state of Indiana is to be regarded as an alien, it is laid down in Washburne on Real Property, 74, an alien may purchase and hold lands against all the world except the state; and Briggs, Hall & Sleeper may not say, with Louis XIV., "I am the state."

The title is conveyed from the state of Indiana to Martin R. Green. The deed is signed by the governor, on the authority of a resolution of the legislature of that state; and from Green the chain of title to the complainant is regular and unobjectionable. It is insisted that the deed to George E. Dodge is obnoxious to the act of the legislature of Georgia of 1877 forbidding foreign corporations to hold over 5,000 acres of land in the state. But the deed to Dodge was made before the passage of the act. Besides, this is a question for the state, and it is competent to take care of its own interests. Nobody but the state can raise the question. 3 Washb. Real Prop. 267.

A limited number of the respondents claim title from a different source than Colby, Chase, and Crocker. With regard to these the court can pass no decree. If there be controversy with these parties it can be settled in appropriate proceeding elsewhere.

As against Briggs, Hall & Sleeper; all the heirs of Colby, Chase, and Crocker; against Silas P. Butler, and those who hold under them,—the title of complainant as to these lands is valid, and must be protected, and the prayers of the bill are granted. Let the decree be framed accordingly. No damages have been proven.

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### SCHOURER *v.* COLUMBIA-STREET BRIDGE Co.

(Circuit Court, D. Oregon. April 19, 1886.)

#### WATERS AND WATER-COURSES — NAVIGABLE WATERS IN OREGON — POWER OF THE STATE OVER.

Under the ruling in *Cardwell v. Bridge Co.*, 113 U. S. 205, S. C. 5 Sup. Ct. Rep. 423, the provision in the act of congress of February 14, 1859, (11 St. 383.) admitting Oregon into the Union, which declares that "the navigable waters of said state shall be common highways, and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll therefor," does not prevent the state from authorizing the erection of a bridge across the Willamet river, at Portland, however much it may impede and obstruct the navigation thereof, nor has the United States circuit court any jurisdiction of a suit to enjoin the same.

## Suit in Equity for an Injunction.

*P. S. Willis*, for plaintiff.

*George H. Durham*, for defendant.

DEADY, J. This suit is brought to restrain the defendant from erecting a bridge across the Wallamet river, between the foot of Madison street, in Portland, and T street, in East Portland. An application for a provisional injunction was heard on the bill and a general demurrer thereto.

The plaintiff is a riparian owner, whose land has a frontage of 200 feet on the west bank of the Wallamet river, and is situate about 1,000 feet above the site of the proposed bridge; and his complaint is that the erection of the bridge will so obstruct and hinder the navigation of the river as to prevent vessels engaged in the commerce of this port from, at least with safety and convenience, reaching his property. The bill states that the river at the site of the proposed bridge is about 1,475 feet wide, with a ship channel of about 400 feet in width, and that the bridge will consist of six solid spans of 200 feet each in length, resting on piers built in the river, and one section 270 feet long, resting on a draw pier as a pivot, which, when turned parallel with the stream, will give a passage-way of 120 feet in width on either side of said pivot pier; that the distance from the lower chord of the span is only eight feet above high-water mark; and the construction of the proposed bridge will obstruct and impede the navigation of the river, and the use of the harbor of Portland, which extends from the lower end of the city southward a distance of about three miles, and for a half mile above the plaintiff's property.

The defendant claims the right to build a bridge under an act of the legislature of the state, passed February 26, 1885, (Sess. Laws, 472,) as amended by the act of November 24, 1885, (Sp. Sess. Laws, 14;) but the plaintiff alleges that the same is void or inoperative, as being in conflict with the act of congress passed February 14, 1859, (11 St. 383,) for the admission of Oregon into the Union, wherein it is provided that "all the navigable waters of the state shall be common highways, and forever free, as well to the inhabitants of said state as to all the other citizens of the United States, without any tax, duty, impost, or toll therefor."

The questions arising on this demurrer were considered by this court in *Hatch v. Wallamet Iron Bridge Co.*, 7 Sawy. 127, S. C. 6 Fed. Rep. 326, and again in *Wallamet Bridge Co. v Hatch*, 9 Sawy. 643, S. C. 19 Fed. Rep. 347, where it was held that, by the act of 1859, congress, in the exercise of its power to regulate commerce between the several states, had declared the Wallamet river, as a means of said commerce, "a common highway," and therefore the state of Oregon could not authorize any one to build a bridge across the same which, the circumstances considered, would needlessly impede or obstruct the navigation thereof; and that the question of what constitutes such impediment or obstruction arises under said act of con-