

as this plaintiff is concerned, is nothing more or less than a fraudulent device to hinder and delay creditors.

My conclusion therefore is that Holladay and Weidler are not receivers of this property, and that there is nothing to prevent this court from directing a sale of so much of the same as will satisfy the decree herein.

The orders of the court will be that the master sell the property as on execution, and that, on the coming in of his report, the court will consider and determine whether, if possession is withheld, to direct the issue of a writ of possession in favor of the purchaser, or leave him to his action of ejectment.

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BUFFALO INS. CO. v. PROVIDENCE & STONINGTON STEAM-SHIP CO.

(*Circuit Court, S. D. New York.* December 16, 1886.)

WITNESS—MILEAGE—HOW TAXED AS COSTS.

The traveling fees of a witness residing out of the district can only be taxed to the extent of 100 miles.

Appeal by the plaintiff from taxation of the clerk disallowing traveling fees for more than 100 miles of a witness residing in Buffalo, who attended the trial of this cause in the Southern district of New York.

*Carpenter & Mosher*, for plaintiff.

*Miller, Peckham & Dixon*, for defendant.

COXE, J. The taxation by the clerk is correct. The law is well settled in this circuit that the traveling fees of a witness residing out of the district can only be taxed to the extent of 100 miles. *Anon.*, 5 Blatchf. 134; *The Leo*, 5 Ben. 486; *Beckwith v. Easton*, 4 Ben. 357. It is true that this rule may work injustice in some instances, but still greater injustice might ensue from the establishment of a rule permitting the successful party to tax the fees of witnesses brought from the remote corners of the Union to testify upon a collateral or inconsequential issue, when their testimony could as well have been taken by commission. Taxation affirmed.

**WILLIS and Wife v. MILLER, Treasurer, etc., and others.<sup>1</sup>**

(*Circuit Court, E. D. Virginia. October, 1886.*)

**1. CONSTITUTIONAL LAW—OBLIGATION OF CONTRACTS—VIRGINIA COUPONS—VIRGINIA ACT OF MARCH 30, 1871, AND OF MARCH 15, 1884—SCHOOL TAX.**

The act of the Virginia legislature of March 30, 1871, commonly called the "Funding Act," providing that the coupons on bonds issued under that act should be receivable for *all* public taxes and dues, is not invalidated or rendered unconstitutional by the fact that the legislature subsequently, by the act of March 15, 1884, altered the method of collecting the school tax and the mode of its distribution, and segregated that tax from the gross tax collected.<sup>2</sup>

**2. SAME—VIRGINIA ACT OF MARCH 15, 1884.**

So far as the act of the Virginia legislature of March 15, 1884, forbids the receipt of tax-receivable coupons for any state tax, it is an act impairing the obligation of contracts, and is void under the constitution of the United States.

**3. TAXATION—VIRGINIA TAX-RECEIVABLE COUPONS—RIGHT OF TAX-PAYER TO STAND ON TENDER OF COUPONS—VIRGINIA ACTS OF JANUARY 14, 1882, AND MARCH 15, 1884.**

A tax-payer in Virginia is under no obligation to pay state taxes in money, and to surrender his tax-receivable coupons for identification and verification, as provided by the act of January 14, 1882. He has a right to stand upon the tender of the coupons.

**4. TRESPASS—TAX COLLECTOR A TRESPASSER—TAX-RECEIVABLE COUPONS—MEASURE OF DAMAGES.**

Upon the tender of tax-receivable coupons by a tax-payer of Virginia for the payment of taxes due the state, whether the coupons are received or not, the taxes are paid, and any levy by a county treasurer upon the property of the tax-payer after such tender is a trespass; and in an action for damages for such levy, where, at the time it was made, the officer knew that it was illegal, punitive damages may be recovered.

**5. SAME—JOINT TRESPASSERS—STATE OFFICERS ADVISING ILLEGAL TAX LEVY—VIRGINIA ACT FEBRUARY 24, 1886.**

The members of the Virginia "indemnity board," created by the act of February 24, 1886, are jointly liable with a county treasurer for a trespass committed by him in making a levy for non-payment of a state tax after tender by the tax-payer of tax-receivable coupons, where they advised such levy, and promised legal assistance and indemnity in the case of the treasurer being mulcted in damages.

**6. DAMAGES—ILLEGAL LEVY OF TAX—MALICE.**

Malice in law is not necessarily personal hate or ill will of the trespasser towards the person injured, but it is that state of mind which is reckless of law and of the legal rights of the citizen; and the object of exemplary damages or "smart money" is not only to indemnify the sufferer for any loss sustained, but to prevent similar actions on the part of the trespasser in the future.

**At Law. Trespass.**

Prior to the late civil war the state of Virginia borrowed large sums of money upon her bonds bearing 6 per cent. interest to construct works of internal improvement, such as railways, and so forth. Her bonds being in the main held outside of her own borders,—in the north and in England,—she paid no interest on them during the war and during the period of reconstruction. During the war, one-

<sup>1</sup>See *Strickler v. Yager, post, 244.*

<sup>2</sup>As to legislation impairing the obligation of contracts, see *Saginaw Gas-light Co. v. City of Saginaw, 28 Fed. Rep. 529*, and note; *City of Louisville v. Weible, (Ky.) 1 S. W. Rep. 605*, and note.