

which courts exempt instruments of government from seizure, it should be borne in mind that the same rule, so applied, would exempt the property and instruments used by cities and counties, such municipal corporations being themselves mere instrumentalities of the state for the convenient administration of local government. *Meriwether v. Garrett*, 102 U. S. 511; *Klein v. New Orleans*, 99 U. S. 149; *The Fidelity*, 16 Blatchf. 569; *The Protector*, 20 Fed. Rep. 207. The result of that rule, so applied, would therefore be that no penalty could be enforced for refusal to submit to inspection any of the numerous steam police boats, fire extinguishing steamers, relief-boats, ice-boats, and other steam-vessels used by the large seaboard cities; and they would ply among the vessels in crowded ports, and lie at the docks among other shipping, free from supervision of any kind prescribed by congressional enactments. The question of public policy would therefore not be so narrow a one as might seem upon first impression.

With regard to the alleged violations of the sections specially applicable to steamers carrying passengers or merchandise, I do not find that these steamers are liable. They never carry either passengers or merchandise for hire, and if persons or property, not required for the public service in which these vessels are intended to be employed, are by the allowance of those in charge of them sometimes carried, it is not by the authority of the state, and not for compensation, and not within the purpose for which they are maintained. The sections relating to carrying passengers and merchandise are applicable to a steam-vessel solely because of the use to which she is applied, and I do not find that these vessels are so used.

I will sign a decree for the penalties for failure to have the hulls and boilers inspected in the years 1885 and 1886.

## LOWRY v. STORY and others.

(Circuit Court, W. D. North Carolina. May Term, 1887.)

## 1. FEDERAL COURTS—ENFORCING PENALTY IMPOSED BY STATE STATUTE—MARSHAL.

The federal court has no power to enforce against the United States marshal a penalty imposed on a sheriff by Code N. C. § 2079, which provides that every sheriff shall execute all process, to him legally directed, within his county, and make due return thereof, under penalty of forfeiting \$100 for neglect, where such process shall have been delivered to him 20 days before the sitting of the court, etc.

## 2. SAME.

A federal court has no power to execute the penal laws of a state by enforcing penalties against federal officers for neglect of special duties imposed by state statutes on county officers.

## 3. SAME—SERVICE OF PROCESS—CONFORMING TO STATE PRACTICE.

A rule adopted by the federal court regulating the method of serving its process, while the practice of serving process by the state courts remains uncertain, is binding on the United States marshal, and is not in conflict with Rev. St. U. S. § 914, which provides that the practice and mode of proceeding in civil actions, in the circuit and district courts, shall conform, as near as may be, to the practice and modes of proceeding in the courts of record of the state.

## 4. SAME—REJECTING PROVISION OF STATE LAW.

While the federal courts will conform their modes of procedure in civil actions, as near as may be, to the statutes of the state, they will reject any subordinate provision of the state statutes which in their judgment will unwisely incur the administration of law, or tend to defeat the ends of justice in their tribunals.

Motion to Enforce a Penalty of \$100 against David Settle, marshal, for not duly executing process.

*Moore & Cummings*, for the motion.

*R. M. Douglas*, for the Marshal.

DICK, J. The affidavit upon which this motion is founded alleges that a writ of summons was placed in the hands of the marshal more than 20 days before the term of the court to which the same was returnable, together with his lawful fees for service, and the writ was not executed. Notice of motion was accepted by the marshal, and in his answer he admits the allegations of the affidavit; but insists, by way of explanation and defense, that he was not furnished by the plaintiff with copies of the summons to be delivered to the several defendants residing in different and distant localities, in accordance with the course and practice of the court, and the fees for preparing such copies were not paid or tendered.

The counsel of the plaintiff, in their argument and brief, insists that the manifest purpose of section 914, Rev. St. U. S., was to bring about uniformity in the law of procedure in the federal and state courts in the same locality, and requires the federal courts, in all common-law actions, to conform their proceedings, as near as may be, to the laws of the state in which they are held, *any rule of court to the contrary notwithstanding.*