

to the control of the navigable waters of the country, and the lands under them, for the purposes of navigation, but for the purpose of erecting piers, bridges, and all other instrumentalities of commerce which, in the judgment of congress, may be necessary or expedient.

Entertaining these views with regard to the power of congress over the whole subject of the regulation of commerce among the several states, including that of the navigable waters of the country, and the lands under the same, as subsidiary to that end, we have no hesitation in declaring our opinion to be that the authority given by the act of June 16, 1886, to build the bridge in question, and, for that purpose, to erect the necessary piers of such bridge upon the lands under water of Arthur kill, is valid and constitutional, and does not injuriously affect any property or other rights of the state of New Jersey. This conclusion resolves also the other questions remaining unanswered, with regard to the true construction of the act, and the capacity of the defendant the Staten Island Rapid Transit Railroad Company to perform the acts necessary to execute the authority given by congress.

The information is dismissed, with costs, and the injunction heretofore granted is dissolved.

**NEW ORLEANS & MEMPHIS PACKET Co. v. JAMES. PLANTERS' TRANSP.
Co. v. SAME. GREENVILLE & N. O. PACKET Co. v. SAME.¹**

(Circuit Court, E. D. Louisiana. June 1, 1887.)

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—CORPORATIONS.

Article 236 of the constitution of Louisiana, which provides that no foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the state upon whom process can be served, is null and void, being an attempt on the part of the state to interpose a restriction on navigation, and therefore in conflict with the provisions of the act of congress approved eighteenth February, 1798, passed in pursuance of a clear authority under the constitution of the United States.²

T. L. Bayne and Geo. Denegre, for complainants.
W. F. & D. C. Mellen, for defendant.

BILLINGS, J. To the plaintiffs' claim defendant interposes the exception that the plaintiffs, chartered or existing under the laws of the state

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar

² A state statute cannot be so construed as to limit the right of any foreign corporation to make contracts in the state for carrying on interstate commerce. *Cooper Manuf'g Co. v. Ferguson*, 5 Sup. Ct. Rep. 739.

Any control or regulation by a state of the navigation of its waters is an encroachment upon the powers of congress. *Ferry Co. v. Com.*, 5 Sup. Ct. Rep. 826. Respecting interstate commerce in general, see *Pearson v. International Distillery*, (Iowa,) 34 N. W. Rep. 1, and note.

of Kentucky, have failed to comply with the provisions of article 236 of the constitution of the state of Louisiana, which provides that no foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the state upon whom process may be served. Held, that the provision of the constitution of Louisiana referred to, being an attempt on the part of the state to interpose a restriction on navigation, and therefore in conflict with the provisions of the act of congress approved February 18, 1793, passed in pursuance of a clear authority under the constitution of the United States, is null and void. *Sinnot v. Davenport*, 22 How. 227.

Exception overruled, and judgment rendered in favor of plaintiffs in each cause.

HICKORY FARM OIL Co. v. BUFFALO, N. Y. & P. R. Co.

(Circuit Court, W. D. Pennsylvania. August 13, 1887.)

1. FOREIGN CORPORATIONS—RIGHT TO HOLD REAL ESTATE—EFFECT OF DEED.

Under the Pennsylvania act of April 26, 1855, (1 Purd. 861,) which forbids a foreign corporation to "acquire and hold" real estate, a deed of conveyance of land to such a corporation is not void. It passes the title, and the corporation may hold the land subject to the commonwealth's right of escheat.

2. SAME—RIGHT OF OBJECTION.

The commonwealth alone can object to the legal capacity of a corporation to hold real estate.¹

Ejectment. Question of law reserved.

John Dalzell, for plaintiff.

J. D. Hancock, for defendant.

ACHESON, J. By consent of the parties, a verdict was taken in favor of the plaintiff, subject to the opinion of the court as to the law, upon the following agreed state of facts:

"(1) It is admitted that the plaintiff has a good record title to the land described in the writ, which is part of a larger tract, containing in all about 400 acres, purchased by and conveyed to plaintiff in 1864.

"(2) That the plaintiff is a corporation, organized under the laws of New York, in the year 1864, under the provisions of an act of the legislature of

¹The commonwealth alone can take advantage of the want of capacity in a corporation to take and hold land. *Bone v. Canal Co.*, (Pa.) 5 Atl. Rep. 751; *Railroad Co. v. Lewis*, (Iowa,) 4 N. W. Rep. 842.

When a corporation is incompetent by its charter to take a legal title to real estate, a conveyance to it is not void, but only voidable, and the sovereign only can object. It is valid until assailed in a direct proceeding for that purpose. *Land Co. v. Bushnell*, (Neb.) 8 N. W. Rep. 389.

Restrictions imposed by the charter of a corporation upon the amount of property that it may hold cannot be taken advantage of collaterally by private persons, but only in direct proceedings by the state. *Jones v. Habersham*, 2 Sup. Ct. Rep. 336.

Where a foreign corporation has the power to acquire real estate, so far as necessary for business, its acquisition of realty cannot be assailed in a collateral proceeding as an act *ultra vires*. Such a question can be raised by the state only, and in a direct proceeding. *Barnes v. Suddard*, (Ill.) 7 N. E. Rep. 477.