

views. In that case the facts were these: By the nineteenth section of the act of July 2, 1864, there was granted to the railroad company, for the purpose of aiding in the construction of its road, every alternate section of public land (except mineral land) designated by odd numbers, to the amount of 10 alternate sections per mile on each side of the road on the line thereof not reserved, etc. By the twentieth section, whenever 20 consecutive miles were completed and accepted, patents were to be issued to the company for land on each side of the road to the amount designated. It was contended that this grant was to be measured by the separate sections of 20 miles of road, and that, to fill out the grant, land must be taken opposite each section, respectively. But the court ruled otherwise, and held that the grant was in aid of the construction of the road as a whole, and might be filled out by lands anywhere along the line. I quote the language of the opinion:

“The position that the grant was in aid of the construction of each section of twenty miles, taken separately, and must be limited to land directly opposite to the section, is equally untenable. The grant was to aid in the construction of the entire road, and not merely a portion of it, though the company was not to receive patents for any land except as each twenty miles were completed. The provision allowing it to obtain a patent then was intended for its aid. It was not required to take it; it was optional for it then, or to wait until the completion of other sections or of the entire road. The grant was of a quantity of land on each side of the road, the amount being designated at so many sections per mile, with a privilege to receive a patent for land opposite that portion constructed, as often as each section of twenty miles was completed. If this privilege were not claimed, the land could be selected along the whole line of the road without reference to any particular section of twenty miles. When lateral limits are assigned to a grant, the land within them must, of course, be exhausted before land for any deficiency can be taken elsewhere; and, when no lateral limits are assigned, the land department of the government, in supervising the execution of the act of congress, should undoubtedly as a general rule, require the land to be taken opposite to each section; but in some instances good reasons may exist why a selection elsewhere ought to be permitted. If, as in the present case, by its neglect for years to withdraw from sale land beyond twenty miles from the road, the land opposite to any section of the road has been taken up by others, and patented to them, there can be no just objection to allowing the grant to the company to be satisfied by land situated elsewhere along the general line of the road.”

This sustains me in the construction I place upon these grants, that only two things are necessary in determining the rightfulness of the appropriation of timber—*First*, that it be taken from public lands adjacent to the line of road; and, *second*, that it be used in the construction of the road. This disposes of substantially all the questions in the case. One or two minor matters remain for notice.

As appears from the agreed statement of facts, a part of the road was completed before June 8, 1882, the time limited by the special act and its amendment; and a portion has been constructed since. For convenience I shall call the first part the old line, and the latter part the new line. Now, the special right given by the special act—that is, the right to take timber for repairs—is by the proviso specifically limited

to the old line, so that no timber can be taken from lands adjacent to it for repairs on the new line, and, conversely, none from land adjacent to the new line for repairs on the old. Again, for the rights granted under the general act both the old and the new lines are to be taken as parts of one road, so that timber can be taken from any part of the entire line for the construction of any part of the road provided for in the original organization. Again, I think there can be no doubt that section and depot houses, snow-sheds, and fences are properly to be considered, in the purview of the act, a part of the railroad.

I have not hitherto noticed the agreed statement of facts in the second case, for the matters that I have been considering dispose of every question in that case except that which arises upon the eighth paragraph, which is "that one-fourth of said timber has been used in the construction of new switches and side tracks along the line of road completed subsequent to June 8, 1882;" and that presents the question whether this timber was used in the construction of the railway. On the one side it is claimed that this refers to repairs, new switches, etc., being in lieu of old switches, etc. On the other hand it is claimed that this means absolutely new switches, etc.; that is, switches, etc., where there were none before. I think it immaterial which is the meaning. Of course, if repairs, it was unlawful, because upon the new line; and if, on the other hand, absolutely new switches and side tracks, they were upon a line of road already completed, so that they were merely additions, extensions, and improvements. The grant does not extend to these matters, but is exhausted when the line is once completed. Of course we all know that the developments of the country and increase of business will require constant additions; new depots, section-houses, switches, and side tracks. The demand for these will never be exhausted, but will continue as long as the surrounding country increases in population and business. Now, the grant was not intended to aid in supplying these successive demands. It was to aid in the first construction, and when that was completed the grant was exhausted. So, in either event, this appropriation of timber was unlawful.

Of course the supply of timber for other roads was not within the contemplation of the act.

This disposes of all questions in the case. From the views above expressed, it follows that the judgment of the district court in each case must be modified. In the first case judgment will be entered in favor of the government for the amount of timber shipped to the Utah lines, and for the \$1,000 worth of timber cut on land adjacent to the new lines for repairs on the old; and in the second place judgment will be for the one-fourth which was used in the construction of new switches and side tracks.

ROLLINS v. LAKE COUNTY.

(Circuit Court, D. Colorado, May 7, 1888.)

1. COUNTIES—LIMITATION OF INDEBTEDNESS.

The provision of Const. Colo. art. 11, § 6, to the effect that "the aggregate amount of indebtedness of any county, for all purposes," exclusive of debts contracted before its adoption, "shall not exceed at any time" a certain limit therein named, is not confined to debts by loan. Following *People v. May*, 9 Colo. 80, 10 Pac. Rep. 641.

2. SAME—COMPULSORY OBLIGATIONS.

Warrants issued by a county in payment of compulsory obligations, viz., fees of witnesses, jurors, constables, sheriffs, and the like, are not within the prohibition; and it is no defense to an action upon such warrants that at the time they were issued the general limit of county indebtedness fixed by the constitution had been reached. Overruling *People v. May*, 9 Colo. 404, 13 Pac. Rep. 888.

At Law. Action by Frank Rollins upon certain county warrants issued by the board of county commissioners of Lake county. The case was tried to the court.

Teller & Orahood, for plaintiff.

A. E. Parks and *H. B. Johnson*, for defendants.

BREWER, J. This action is upon county warrants. The circumstances which surround it make it one of peculiar importance. For 10 years, and from the admission of the state in 1876, many counties, whose tax levy was insufficient to meet current expenses, had been issuing warrants, which had accumulated to, as counsel says, at least \$1,000,000. No question seems to have been made during these years as to the validity of such action; but the question being thereafter presented to the supreme court of the state, it construed section 6, art. 11, of the constitution of the state in such a manner as to invalidate the bulk of these warrants. The plaintiff, being a non-resident, comes into the federal court, and invokes its judgment as an independent tribunal on the question thus determined by the state supreme court.

No more delicate or responsible duty is ever cast upon the federal court than when it is asked to determine, not what the state supreme court has decided, but whether its decision shall be followed. While the federal courts are in a certain sense independent tribunals, yet they sit within the state to construe and enforce its laws. Whenever a construction has been placed upon a state statute or constitution by her supreme court, that determines for both state and federal courts all questions and rights arising after such construction; but, when the rights or claims of right arose prior to such construction, then the duty rests upon the federal courts of independent examination and determination. The rule controlling in such cases is fully and clearly stated in the recent case of *Burgess v. Seligman*, 107 U. S. 33, 2 Sup. Ct. Rep. 10, as follows:

"Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and