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State Court Jurisdiction of Claims for Federal Penalties, Taxes and Customs Duties

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STATE COURT JURISDICTION OF CLAIMS FOR FEDERAL PENALTIES, TAXES AND CUSTOMS DUTIES

In view of the clear acknowledgment by the Supreme Court of the United States that state courts cannot be required to take jurisdiction of actions by the Federal Government for the enforcement of its penal[1] and revenue laws, it seems proper to give further attention to the subject matter of a recent *Comment* in this LAW REVIEW written for the purpose of demonstrating that a state court must take jurisdiction of civil actions for the enforcement by the Federal Government of its penal and revenue laws, unless the jurisdiction of the federal courts is made exclusive by statute.[2]

For several hundred years it has been held that the courts of one government will not enforce the penal and revenue laws of another government.[3]

It was the early holding of the state courts which has been adhered to that one of the United States will not assume jurisdiction of civil actions brought by another of the states to enforce actions for penalties, including penalties for infraction of the revenue laws, and to collect taxes.[4]

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[1]Penal laws referred to herein are those which are penal in the international sense. "The question whether a statute of one state, which in some aspects may be called penal, is a penal law, in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act." Huntington v. Attrill, 146 U. S. 657, 36 L. Ed. at 1130.

[2]STATE COURT JURISDICTION OF CLAIMS FOR FEDERAL PENALTIES, TAXES AND CUSTOMS DUTIES by Alfred J. Schweppe of the Seattle Bar, 11 WASH. L. REV., 152. This *Comment* was prompted by a fairly recent decision of the Superior Court of the State of Washington for King County, which did not reach the Supreme Court of the State for review, in the action entitled United States of America v. Brewers & Distillers of Vancouver, Ltd., cause No. 275993. The suit was composed of three causes of action; the first for the recovery of $10,000,000 in penalties under the customs laws; the second to recover $6,000,000 in customs duties, and the third to recover $1,250,000 of Internal Revenue taxes. The court refused jurisdiction of the first cause of action because exclusive jurisdiction thereof was vested by statute (28 U. S. C. A. 371) in the Federal Courts, and refused to entertain jurisdiction of the second and third causes of action on the ground that the courts of one sovereign government will not take jurisdiction of civil actions brought by another government for the enforcement of its penal and revenue laws, a ground broad enough to have required the dismissal of the first cause of action also.

[3]The Antelope, 10 Wheat. 66, 123, 6 L. ed. 268; Ludlow v. Van Renssellaer, 1 Johns. 94 (N. Y.); Holman v. Johnson, 1 Cowp. 341, 98 Eng. Rep. 1120; Planche v. Fletcher, 1 Doug. 251, 99 Eng. Rep. 164; Bristow v. Sequeville, 5 Ex. 275, 155 Eng. Rep. 118; Atty. Gen. for Canada v. Wm. Schulze & Co., 9 Scots Law Times Reports 4; Municipal Council of Sydney v. Bull (1909) 1 K. B. 7; Indian & General Inv. Trust, Ltd. v. Borax Consolidated, Ltd., (1920) 1 K. B. 539; The Eva, 126 L. T. 223; In re Visser, (1928) 1 Ch. 877; Reg. v. McVey, 23 Ont. Weekly Notes 32; DICEY, CONFLICTS OF LAWS, (5th ed.), p. 212. Cases from the federal and state courts are collected in Notes 4 and 5.

[4]Penal actions—Scoville v. Canfield, 14 Johns. 338; Delafield v. State of Ill., 2 Hill 159; Teall v. Felton, 1 N. Y. 156; Henry v. Sargent, 13 N. H. 321, 40 Am. Dec. 146; Allegheny v. Allen, 55 Atl. 724 (N. J.) STORY, CONFLICTS OF LAWS, § 621; Cook, Vol. 1, p. 720, § 223; Actions to collect revenue—Henry v. Sargent, 13 N. H. 321, 40 Am. Dec. 146;

Nor will the federal courts take jurisdiction of similar actions brought by the states.[5]

That the state and federal governments are separate and distinct sovereignties has been established beyond question.

> "In *Abelman v. Booth,* 21 How. 523, 16 L. ed. 175, Chief Justice Taney described in plain language the complex nature of our government as the existence of two distinct and separate sovereignties within the same territorial space, each of them restricted in its powers and each within the sphere of action prescribed by the Constitution of the United States, independent of the other."[6]

See also *United States v. Cruikshank,* 92 U. S. 542, 23 L. ed. 588.

The same right to refuse jurisdiction has therefore been exercised by the state courts in regard to suits by the federal government for the enforcement of its penal and revenue laws, and this refusal has been approved by the Supreme Court of the United States. While in the early history of the United States the federal government by legislation provided that its revenue laws might be enforced in the state courts, the greater number of the state courts refused to assume jurisdiction and thus rendered these laws practically ineffective.[7]

In regard to such a statute,[8] Kent in his *Commentaries,* at page 404 states:

> "After these decisions in Virginia, Ohio, Kentucky and New York the Act of Congress of 3d of March, 1815 C. 100, may be considered as essentially *nugatory.* That act vested in the state courts concurrently with the federal courts cognizance of all 'complaints, suits and prosecutions for taxes, duties, fines, penalties and forfeitures arising and payable under any Act of Congress passed or to be passed for the collection of any direct tax or internal duties.' "

It was undoubtedly because this law was thus rendered nugatory that it was dropped from the laws of the United States and never carried into the Revised Statutes of 1873.

State of Md. v. Turner, and Mayor of Baltimore v. same, 132 N. Y. S. 173; Marshall v. Sherman, 148 N. Y. 9, 42 N. E. at 423; In re Bliss' Estate, 202 N. Y. S. 185; Matter of Hollins, 139 N. Y. S. 713; State of Colorado v. Harbeck, 133 N. E. 357; In re Martin's Estate, 240 N. Y. S. 393.

[5]Actions for Penalties—Huntington v. Attrill, 146 U. S. 672, 36 L. ed. 1123; Southern Ry. Co. v. State, 75 N. E. 272 (Ind.); Virginia v. Paul, 148 U. S. 107, 37 L. ed. 386; United Breweries v. Colby, 170 Fed. 1008; Perkins v. B. & A. R. Co., 90 Fed. 321; Stichtenoth v. Central Stock & Grain Exchange of Chicago, 90 Fed. 1; Hamilton v. Jos. Schlitz Brewing Co., et al., 100 Fed. 675. Actions for revenue—Moore v. Mitchell, 30 F. (2d) 600 (2nd Circuit), aff. on another ground, 281 U. S. 18, 74 L. ed. 673, 50 S. Ct. 175.

[6]Kohl v. U. S., 91 U. S. 367, 23 L. ed. 449.

[7]U. S. v. Lathrop, 17 Johns. 4, (N. Y.); Jackson v. Rose, 2 Va. Cas. 34; Davison v. Champlain, 7 Conn. 244; Haney v. Sharp, 1 Dana (Ky.) 442; Ward v. Jenkins, 10 Metcalf (Mass.) 583; State v. Pike, 15 N. H. 83; Newell v. Natl. Bank of Somerset, 75 Ky. 57; Delafield v. State of Ill., 2 Hill. 159 (N. Y.); Teall v. Felton, 1 N. Y. 156.

[8]3 Stat. at L. 244, 1815.

The Supreme Court of the United States has repeatedly recognized that the courts of a state cannot be compelled to assume jurisdiction of civil actions for the enforcement of the federal revenue laws. In *Hamilton v. Attrill,*[9] the court stated:

> "Upon the question what are to be considered penal laws of one country, within the international rule which forbids such laws to be enforced in any other country, so much reliance was placed by each party in argument upon the opinion of this court in *Wisconsin v. Pelican Ins. Co.,* 127 U. S. 265, that it will be convenient to quote from that opinion the principal propositions there affirmed:
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> 'The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the state for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws and to all judgments for such penalties.' p. 290. . . .
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> "Upon similar grounds, the courts of a state cannot be compelled to take jurisdiction of a suit to recover a like penalty for a violation of a law of the United States. *Martin v. Hunter,* 14 U. S. 304, 330, 337; *U. S. v. Lathrop,* 17 Johns. 4; *Delafield v. Illinois,* 2 Hill. 159, 169; *Jackson v. Rose,* 2 Va. Cas. 34; *Ely v. Peck,* 7 Conn. 239; *Davison v. Champlin,* 7 Conn. 244; *Haney v. Sharp,* 1 Dana 442; *State v. Pike,* 15 N. H. 83, 85; *Ward v. Jenkins,* 10 Met. 583, 587, 1 KENT. COM. 402-404."

It will be noted that in this case the Court reaffirmed the principle earlier stated in the cited case of *Wiconsin v. Pelican Insurance Co.*

That the assumption of jurisdiction by state courts over such actions as are here being considered cannot be forced is clearly recognized by the Supreme Court in *Ex Parte Kentucky v. Dennison.*[10]

> "It is true that in the early days of the government, Congress relied with confidence upon the cooperation and support of the states, when exercising the legitimate powers of the general government, and were accustomed to receive it, upon principles of comity, and from a sense of mutual and common interest, where no such duty was imposed by the Constitution. And laws were passed authorizing state courts to entertain jurisdiction in proceedings by the United States to recover penalties and forfeitures incurred by breaches of their revenue laws, and giving to the state courts the same authoritiy with the district court of the United States to enforce such penalties and forfeitures, and also the power to hear the allegations of parties, and to take proofs, if an application for a remission of the penalty or forfeiture

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[9]146 U. S. 657, 36 L. ed. 1123 at 1129.
[10]65 U. S. 66, 16 L. ed. 717.

should be made, according to the provisions of the acts of Congress. And these powers were for some years exercised by state tribunals, readily, and without objection, until in some of the states it was declined because it interfered with and retarded the performance of duties which properly belonged to them as state courts; and in other states, doubts appear to have arisen as to the power of the courts, acting under the authority of the state to inflict these penalties and forfeitures for offenses against the general government, unless especially authorized to do so by the state.

"And in these cases the cooperation of the states was a matter of comity, which the several sovereignties extended to one another for their mutual benefit. It was not regarded by either party as an obligation imposed by the Constitution. *And the Acts of Congress conferring the jurisdiction merely give the power to the state tribunals, but do not purport to regard it as a duty, and they leave it to the states to exercise it or not, as might best comport with their own sense of justice, and their own interest and convenience.*"

And in *United States v. Jones*[11] the court stated:

"At different times, various duties have been imposed by Act of Congress on state tribunals; they have been invested with jurisdiction in civil suits and over complaints and prosecutions for fines, penalties and forfeitures arising under laws of the United States. 1 Kent 400, *and though the jurisdiction thus conferred could not be enforced against the consent of the state;* yet when its exercise was not incompatible with state duties, and the state made no objection to it, the decisions rendered by the state tribunals were upheld."

The foregoing statements by the Supreme Court have never been repudiated nor their effect lessened. None of the cases relied on by the *Comment* above referred to[12] involved actions wherein enforcement of the penal or revenue laws of the United States was held mandatory.[13] The *Comment* relies to a great extent upon *Claflin v. Houseman*,[14] *Second Employers' Liability Cases*,[15] and *Houston v. Moore*.[16] Authoritative references to these cases demonstrate that they cannot be relied upon as a basis for the point that the states must accept jurisdiction of actions brought by the federal government for the enforcement of its revenue laws. For instance, the Supreme Court obviously disposes of the

[11]109 U. S. 513, 28 L. ed. 1015 at 1018.

[12]11 WASH. L. REV. 152.

[13]For instance: Claflin v. Houseman (Note 14)—action by assignee in bankruptcy to recover a preference; Houston v. Moore (Note 16) Voluntary action of a state itself before a court-martial to punish a state militiaman for failure to report for duty. Second Employers' Liability Cases, (Note 15)—personal injury suits under the Federal Employers' Liability Act.

[14]93 U. S. 130, 23 L. ed. 833.

[15]223 U. S. 1, 56 L. ed. 327.

[16]18 U. S. 1, 5 L. ed. 19.

Claflin case as authority for any such proposition in *Huntington v. Attrill,*[17] stating:

> " 'The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the state for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws and to all judgments for such penalties.' p. 290. . . . .
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> "Upon similar grounds, the courts of a state cannot be compelled to take jurisdiction of a suit to recover a like penalty for a violation of a law of the United States. *Martin v. Hunter,* 14 U. S. 304, 330, 337; *U. S. v. Lathrop,* 17 Johns. 4; *Delafield v. Illinois,* 2 Hill. 159, 169; *Jackson v. Rose,* 2 Va. Cas. 34; *Ely v. Peck,* 7 Conn. 239; *Davison v. Champlin,* 7 Conn. 244; *Haney v. Sharp,* 1 Dana, 442; *State v. Pike,* 15 N. H. 83, 85; *Ward v. Jenkins,* 10 Met. 583, 587, 1 KENT, COM. 402-404. *The only ground ever suggested for maintaining such suits in a state court is that the laws of the United States are in effect laws of each state. Claflin v. Houseman,* 93 U. S. 130, 137; Platt, J., in *United States v. Lathrop,* 17 Johns. 22; *Ordway v. Central Nat. Bank of Baltimore,* 47 Md. 217. *But in Claflin v. Houseman the point adjudged was that an assignee under the bankrupt law of the United States could assert in a state court the title vested in him by the assignment in bankruptcy; and Mr. Justice Bradley, who delivered the opinion in that case, said the year before, when sitting in the circuit court, and speaking of a prosecution in a court of the state of Georgia for perjury committed in that state in testifying before a commissioner of the circuit court of the United States, 'It would be a manifest incongruity for one sovereignty to punish a person for an offense committed against the laws of another sovereignty.' Ex parte Bridges,* 2 Wood 428, 430. See also *Re Loney,* 134 U. S. 372."

And the editor of *Cases on Constitutional Law*[18] notes an exception to the rule of the *Second Employers' Liability Cases,* stating in a footnote to those cases:

> "It was an early practice, generally acquiesced in by the states, for the United States to give to the state courts jurisdiction of suits for the enforcement of the federal revenue laws. . . . *Some of the state courts refused to exercise this jurisdiction, U. S. v. Lathrop,* 17 Johns. (N. Y.) 4 (1819); *Ely v. Peck,* 7 Conn. 239 (1828); *and this refusal was approved in Huntington v. Attrill,* 146 U. S. 657, 672, 13 S. Ct. 224, 36 L. ed. 1123 (1892), *upon the ground that one sovereign could not be compelled to enforce the penal laws of another.*"

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[17]See Note 9.

[18]HALL, CASES OF CONSTITUTIONAL LAW, 1926, at p. 953.

In *Houston v. Moore,*[19] there was involved no question of the right of a state court to refuse jurisdiction of an action. The majority of the court found the punishment there inflicted by a state court-martial was in fact also imposed by state law and the state in practically re-enacting the federal law on the subject had chosen to entertain the suit.[20] Furthermore, Mr. Justice Story in dissenting, stated:

> "It cannot be pretended that the states have retained any power to enforce fines and penalties created by the laws of the United States in virtue of their general sovereignty, for that sovereignty did not originally attach on such subjects. . . . .
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> "It is a general principle, too, in the policy, if not the customary law of nations, that no nation is bound to enforce the penal laws of another within its own dominions. The authority naturally belongs and is confided, to the tribunals of the nation creating the offenses. In a government formed like ours, where there is a division of sovereignty, and, of course, where there is a danger of collision from the near approach of powers to a conflict with each other, it would seem a peculiarly safe and salutary rule, that each government should be left to enforce its own penal laws in its own tribunals. It has been expressly held, by this court, that no part of the criminal jurisdiction of the United States can consistently with the Constitution be delegated by congress to state tribunals; (*Martin v. Hunter,* 1 Wheat. 304, 337; S. P. *United States vs. Lathrop,* 17 Johns. 4) and there is not the slightest inclination to retract that opinion. The judicial power of the Union clearly extends to all such cases. No concurrent power is retained by the states, because the subject matter derives its existence from the Constitution; and the authority of congress to delegate it cannot be implied, for it is not necessary or proper in any constitutional sense."

In repudiating jurisdiction of actions for taxes courts are not refusing to enforce a debt but are refusing to exercise the force and authority which rightfully should be exercised by the government imposing the tax.

> "Taxes are not debts. It was so held by this court in the case of *Lane County v. Oregon,* reported in 74 U. S. 71. Debts are obligations for the payment of money founded upon contract, express or implied. Taxes are imposts levied for the support of the government or for some special purpose authorized by it." *Meriwether v. Garrett,* 102 U. S. 472, 26 L. ed. 197.

In the case of *Moore v. Mitchell,* 30 F. (2d) 600, (Second Circuit) the court stated:

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[19]See Note 16.

[20]Even the restricted holding in this case was questioned in the Claflin case wherein the court stated in regard to it: "Justice Story and Johnson dissented; and perhaps the court went further in that case than it would now." 23 L. ed. at 840.

"Taxes are imposts, not debts, collected for the support of the government. *Meriwether v. Garrett,* 102 U. S. 472, 26 L. ed. 197. The form of procedure to collect them cannot change their character. No contractual or quasi contractual obligation to pay arises out of the indebtedness. *The enforcement of revenue laws rests not on consent but on force and authority.*"

Furthermore, penalties in favor of a government and taxes are among the provisions for the public order of a state which another state should not be required to pass upon. As stated by Judge Learned Hand in the case of *Moore v. Mitchell,* 30 F. (2d) 600 (Second Circuit), wherein it was held that the federal court should not exercise jurisdiction of an action by a state for taxes,

"To pass upon the provisions for the public order of another state is, or at any rate should be, beyond the powers of a court; it involves the relations between the states themselves, with which courts are incompetent to deal, and which are entrusted to other authority . . . . Revenue laws fall within the same reasoning; they affect a state in matters as vital to its existence as its criminal law."

And in a case relating to the collection of penalties connected with revenue laws, the court in *State of Arkansas v. Bowen,*[21] stated in reference to penal and revenue laws:

"Such laws relating to the domestic economy of a state and to the management of its domestic affairs, are to be enforced directly by the courts of the state which enacts the law, and not by the courts of other jurisdictions.

"This rule prevails under the international law between nations, and it has been held repeatedly that it prevails in the United States as between the states, and is not within the provision of the Constitution of the United States which provides:

'That the judgments of the courts of any state are to have such faith and credit given them in every court within the U. S. as they have by law or usage in the state in which they were rendered.'

"This does not relate to actions to recover penalties and fines, nor to actions authorized by statutes relating directly to the collection of the revenues of a state, or the enforcement of fines, penalties and forfeitures for non compliance with or violation of such statutes."

The same principle has been established in the RESTATEMENT, CONFLICT OF LAWS, p. 724 et seq., as follows:

"Topic 4. Access to Courts.

Scope Note: Although a state may have jurisdiction, as the word is defined in No. 42, to act judicially in a certain case or class of cases, it may not do so, either because the particular court exercises its discretion not to exercise jurisdiction in the case before it, or because of

[21] 9 Mackey, 291, (Dist. of Col.) aff. 3 App. Cases D. C. 537.

a wider policy not to exercise judicial jurisdiction in a general class of cases. . . ."

"No. 610. Action on Foreign Public Right.

No action can be maintained on a right created by the law of a foreign state as a method of furthering its own governmental interests. . . .

c. No action can be maintained by a foreign state to enforce its license or revenue laws, or claim for taxes.

Illustration:

2. By the law of State X, a license fee of $5 is due from every person who builds a house. A, domiciled in state Y, builds a house in X. X sues A in Y for the license fee. The suit will be dismissed. . . .

No. 611. Action for a penalty.

No action can be maintained to recover a penalty, the right to which is given by the law of another state."

The cases cited in the *Comment* referred to, rely upon the provision of the U. S. Constitution, Art. VI, providing that the Constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land and "the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." But it has never been supposed that this provision requires a state court to take jurisdiction of every action involving a federal law. It will be noted that in the quotation from *Wisconsin v. Pelican Insurance Co., supra* at Note 13, that the Supreme Court repudiated this provision of the Constitution as a basis for requiring state courts to entertain federal court actions to enforce the revenue laws of the United States. Furthermore, there are vast fields based on federal laws of which the state courts, notwithstanding the above mentioned article of the Constitution, cannot assume jurisdiction.

> "No part of the criminal jurisdiction of the United States can, consistently with the Constitution, be delegated to state tribunals. The admiralty and maritime jurisdiction is of the same exclusive cognizance; and it can only be in those cases where, previous to the Constitution, state tribunals possessed jurisdiction independent of national authority, that they can now constitutionally exercise a concurrent jurisdiction."[22]

Article VI of the Constitution is no more imperative in its terms than Article IV, § 1 which commands that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." Notwithstanding this latter provision the Supreme Court has held that one state need not entertain jurisdiction of a suit in favor of another state for the enforcement of revenue laws.

> " 'The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the state for the recovery of pecuniary penal-

[22]Martin v. Hunter's Lessee, 1 Wheat. 304, 4 L. ed. 97 at 105.

ties for any violation of statutes for the protection of its revenue, or other municipal laws and to all judgments for such penalties.' p. 290.

'*The application of the rule to the courts of the* several states and of the United States is not affected by the provisions of the Constitution and of the Act of Congress, by which the judgments of the courts of any state are to have such faith and credit given to them in every court within the United States as they have by law or usage in the state in which they were rendered.' . . .''[23].

See also the quotation from *Arkansas v. Bowen, supra.*[24]

And as stated above the state courts have almost uniformly refused jurisdiction of suits under the penal and revenue laws of other states.[25]

The class of cases here being considered constitute an exception to those which the Constitution requires a state to entertain.

"These provisions of the Constitution, (Art. IV, § 1) and laws of the United States are necessarily to be read in the light of some established principles, which they were not intended to overthrow. They give no effect to judgments of a court which had no jurisdiction of the subject matter or of the parties. *D'Arcy v. Ketchum,* 52 U. S. 165; *Thompson v. Whitman,* 85 U. S. 457. And they confer no new jurisdiction on the courts of any state; and therefore do not authorize them to take jurisdiction of a suit or prosecution of such a penal nature, that it cannot, on settle rules of public and international law, be entertained by the judiciary of any other state than that in which the penalty was incurred. *Wisconsin v. Pelican Ins. Co.* above cited.''[26]

In *Delafield v. State of Ill.,* 2 Hill (N. Y.) 159, the court stated:

"Again, crimes are only punishable by the government against which they are committed and the state courts will not enforce the penal laws of the United States or of any other state. This rests on a general principle wholly independent of the federal Constitution. *U. S. v. Lathrop,* 17 Johns. 4."

The conclusion upon the subject here discussed must be:

1. That one government cannot as a matter of right recover monetary penalties and taxes in the courts of another.

2. This principle applies to suits by the federal government in the state court notwithstanding Art. VI of the United States Constitution providing that the laws of the United States are "the supreme law of the land, and the judges in every state shall be bound thereby.''[27]

DE WITT WILLIAMS.*

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[23]Huntington v. Attrill, 146 U. S. 657 at 685, 36 L. ed. 1123 at 1139.
[24]See quotation at Note 21.
[25]See cases collected in Note 4.
[26]Huntington v. Attrill, 146 U. S. 657, 36 L. ed. 1123.
[27]Huntington v. Attrill, 146 U. S. 657, 36 L. Ed. 1123; Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 32 L. ed. 239.
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