

In Re Ayres

In Re Ayres

SooperKanoon Citation : sooperkanoon.com/85507

Court : US Supreme Court

Decided On : Dec-05-1887

Appeal No. : 123 U.S. 443

Appellant : In Re Ayres

Judgement :

In re Ayres - 123 U.S. 443 (1887)

U.S. Supreme Court In re Ayres, 123 U.S. 443 (1887)

In re Ayres

Argued November 14-15, 1887

Decided December 5, 1887

123 U.S. 443

ORIGINAL

SYLLABUS

It is well settled in this Court that while the exercise of the power of punishment for contempt of their orders by courts of general jurisdiction is not subject to review by writ of error, or by appeal, yet, when a court of the United States undertakes, by its

process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the original order being void for want of jurisdiction, the order punishing for contempt is equally void, and if the proceeding for contempt result in imprisonment, this Court will, by its writ of habeas corpus, discharge the prisoner.

Whether a state is the actual party defendant in a suit within the meaning of the Eleventh Amendment to the Constitution of the United States is to be determined by a consideration of the nature of the case as presented by the whole record, and not in every case by a reference to the nominal parties of the record. [Osborn v. Bank of the United States](#), 9 Wheat. 738, [22 U. S. 857](#) , explained and limited.

In order to secure the manifest purpose of the constitutional exemption guaranteed by the Eleventh Amendment, it should be interpreted not literally and too narrowly, but with the breadth and largeness necessary to enable it to accomplish its purpose, and must be held to cover not only suits brought against a state by name, but those against its officers, agents, and representatives where the state, though not named, is the real party against which the relief is asked and the judgment will operate.

If a bill in equity be brought against the officers and agents of a state, the nominal defendants having no personal interest in the subject matter of the suit and defending only as representing the state, and the relief prayed for is a decree that the defendants may be ordered to do and perform certain acts which, when done, will constitute a performance of an alleged contract of the state, it is a suit against the state for the specific performance of the contract within the terms of the Eleventh Amendment to the Constitution, although the state may not be named as a defendant, and conversely a bill for an injunction against such officers and agents to restrain and enjoin them from acts which it is alleged they threaten to do in pursuance of a statute of the state in its name and for its use

and which if done would constitute a breach on the part of the an alleged contract between it and the complainants, is in like manner a suit against the state within the meaning of that Amendment although the state may not be named as a party defendant.

The Court does not intend to impinge upon the principle which justifies suits against individual defendants who, under color of the authority of unconstitutional state legislation, are guilty of personal trespasses and wrongs, nor to forbid suits against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest.

A bill in equity was filed by aliens against the Auditor of the State of Virginia, its Attorney General, and various Commonwealth attorneys for its counties seeking to enjoin them from bringing and prosecuting suits in the name and for the use of the state under the Act of its General Assembly of May 12, 1887, against taxpayers reported to be delinquent, but who had tendered in payment of the taxes sought to be recovered in such suits tax receivable coupons cut from bonds of the state. An injunction having been granted according to the prayer of the bill, proceedings were taken against the attorney general of the state and two commonwealth attorneys for contempt in disobeying the orders of the court in this respect, and they were fined and were committed until the fine should be paid and they should be purged of the contempt. *Held* that the suit was a suit against the State of Virginia within the meaning of the Eleventh Amendment to the Constitution of the United States, and was not within the jurisdiction of the courts of the United States; that the injunction granted by the circuit court was null and void; that the imprisonment of the officers of the state for an alleged contempt of the authority of the circuit court was illegal, and that the prisoners, being before this Court on a writ of habeas corpus, should be discharged.

The Virginia act of 1877 concerning suits to collect taxes from persons who had tendered coupons in payment contains no provision as to the tender, or the proof of it, or the proof of the genuineness of the coupon, which violates legal or contract

rights of the party sued.

If the holder of Virginia coupons receivable in payment of state taxes sells them, agreeing with the purchaser that they shall be so received by the state, the refusal of the state to receive them constitutes no injury to him for which he could sue the state, even if it were suable, and cannot be made the foundation for preventive relief in equity against officers of the state.

On the 11th October, 1887, these petitioners each moved through his counsel for leave to file a petition for a writ of habeas corpus. On the 12th October, leave was granted, and the writs were ordered to be made returnable on Monday, the

Page 123 U. S. 445

17th October. On the return day, return having been made, the court directed the prisoners to be placed in the custody of the marshal of the court. The same day, a motion was made and argued to release them on bail and to fix a day for hearing. On the 18th October, the court ordered the prisoners to be released on their own recognizances, each in the sum of \$1,000, and assigned the cause for argument on the 14th day of the next November.

The case for argument and decision, as stated by the court, was as follows:

"A writ of habeas corpus, directed to the Marshal of the United States for the Eastern District of Virginia, having heretofore been issued, by this Court on the application of Rufus A. Avers, Attorney General of the State of Virginia, the marshal has made return thereto that the petitioner, whose body he produces, was in his custody and detained by him by virtue of an order, judgment, decree, and commitment of the Circuit Court of the United States for the Eastern District of Virginia, a certified copy of which is attached as a part of the return, and further returned that the petitioner had not paid, and refuses to pay, the fine imposed upon him by said order. The order of commitment, dated at Richmond, October 8, 1887, is as follows:"

" *On Attachment for Contempt* "

" In the Circuit Court of the United States"

" *for the Eastern District of Virginia*"

" In Re RUFUS A. AYERS"

" This matter came on this day to be heard upon the rule heretofore issued against Rufus A. Avers, Attorney General of the State of Virginia, to show cause why he should not be attached for contempt in disobeying the restraining order heretofore granted in the suit of *Cooper et al. v. Marye et al.* on the 6th day of June, 1887, and his answer thereto."

" On consideration whereof, the court is of opinion and doth order and adjudge that the said Rufus A. Ayers is guilty of

Page 123 U. S. 446

contempt in his disobedience of said order, and that he do forthwith dismiss the suit of *The Commonwealth v. The Baltimore & Ohio Railroad Company*, instituted by him in the Circuit Court of the City of Richmond, and that for his said contempt he be fined the sum of \$500, and stand committed in the custody of the marshal of this court until the same be paid, and he purge himself of his contempt by dismissing said suit last herein mentioned."

A transcript of the proceedings, orders, and decrees of the Circuit Court of the United States for the Eastern District of Virginia in the suit of *Cooper et al. v. Marye et al.*, referred to in the order of commitment, is also produced, and set out in full as a part of the record in this matter. From that it appears that on June 6, 1887, James P. Cooper and others, suing on their own behalf and for all others similarly situated, being aliens, subjects of Great Britain, filed their bill of complaint in the Circuit Court of the United States for the Eastern District of Virginia against Morton Marye, Auditor of the State of Virginia, Rufus A. Ayers, the Attorney General thereof, and the treasurers of counties, cities, and towns in Virginia, and the commonwealth attorneys of counties, cities, and towns in said state, whose names they prayed they might be allowed to insert in the bill as defendants when

discovered.

In that bill it is alleged that by an Act of the General Assembly of Virginia approved March 30, 1871, and another approved March 28, 1879, the State of Virginia had provided for the issue of a large number of bonds bearing interest coupons, which she thereby contracted should be received in payment of all taxes, debts, and demands due to her, of which large numbers, amounting to many millions of dollars, had been in fact issued; that said coupons, issued under both of said acts, are payable to bearer, and both as a contract to pay interest and as a contract that they shall be received in payment of taxes, are negotiable instruments, free in the hands of any *bona fide* purchaser for value from any equity or burden whatever; that there are outstanding and overdue in the hands of the public at large more than four millions of dollars

Page 123 U. S. 447

of these overdue coupons; that in pursuance of a plan subsequently conceived and adopted to destroy the marketable value of these coupons, the General Assembly of the State of Virginia, by the fifteenth section of an Act dated February 14, 1882, forbade all the officers of the state to pay and redeem the same according to the tenor of the contract contained therein, and by an act dated January 26, 1882, the collectors of taxes were forbidden to receive the same in payment of any taxes due to them; that nevertheless these statutes were declared by the Supreme Court of the United States to be unconstitutional and void; that thereafter the complainants, on the faith of said decision, and the belief caused thereby that the said state would be utterly unable by any legislative enactment to impair the value of said coupons as a tender for taxes, had bought a large quantity of said coupons in the open money market of the City of London and elsewhere, amounting to more than \$100,000 nominally at a cost of more than \$30,000; that this purchase was made for the purpose of selling said coupons to the taxpayers of Virginia, to be used by them as tenders for taxes due said state, the complainants believing that they would be able to sell said coupons to such taxpayers at a considerable advance on the price paid for them, many of which the complainants have sold to said taxpayers; that the General Assembly of Virginia

enacted another statute, dated May 12, 1887, a copy of which is set out as an exhibit to the bill, whereby, as is alleged,

"The treasurer of each county, city, and town in the state is ordered to furnish to the commonwealth's attorney thereof a list of all persons who have tendered the said state's coupons in payment of their taxes, and said commonwealth's attorneys are ordered to institute suits by summary proceedings in the name of said state against all such persons to recover a judgment against them for the amount of said taxes so previously due by them; that the said taxpayers are thereby required to submit to a judgment against them by default, or to appear in court and plead a tender of said coupons, and then prove affirmatively that the coupons tendered by them are the state's coupons, and not

Page 123 U. S. 448

counterfeit and spurious coupons, the burden of proving the same being placed upon the taxpayer, and the coupon being taken to be *prima facie* spurious and counterfeit."

In the bill it is further alleged

"That said act is repugnant to section ten of article one of the Constitution of the United States for the reason that, taken in connection with said act before mentioned of January 26, 1882, it first commands the state's officers to refuse to receive those coupons which are undoubtedly her own, as well as those which are spurious (and your orators charge that there are none such), and then commands her officers to bring said suits against those who have tendered said coupons of said state, as well as against those who have tendered spurious coupons; that it imposes upon the defendants heavy costs and fees, although all taxes due by them were paid by said tender, and it makes the judgment to be recovered in said suit a perpetual lien upon all the property of said taxpayer for said taxes, and for said costs and fees also, thus fixing a perpetual cloud upon the title of said taxpayer to his property."

It is further alleged in the bill

"That, by another Act of the General Assembly of said state approved January 26, 1886, it is provided that upon a trial of the issue to be made up under said Act of May 12, 1887, the defendant shall produce the bond from which the coupon so tendered by him was cut, and prove that it was cut from said bond,"

and that as very few of said bonds are owned by persons residing in Virginia, the taxpayers would be utterly unable to produce said bonds as required by said act.

It is further alleged therein

"That by another Act of said General Assembly, approved _____, 1886, it is provided that the taxpayer undertaking to prove said tender shall not be allowed to introduced expert evidence to prove the genuineness of said coupons, and all that have been issued under either of said acts are engraved only, as said acts provided they may be, and are not signed manually."

Wherefore it is alleged that

"said taxpayers who cannot produce said bonds will be utterly unable to prove their coupons to be genuine upon said trial, the state thus forcing them into a lawsuit in her own courts,

Page 123 U. S. 449

in which she has taken effectual precautions beforehand to make it impossible they can win, and to make it a legal certainty that they must lose when they cannot produce said bonds; that said act is a device and trick enacted to take away from and deprive said coupons of their value as tender for taxes."

It is further alleged therein that the Supreme Court of appeals of the State of Virginia has decided that said last-named two acts, requiring said bonds to be produced, and forbidding the use of expert testimony, are valid laws, not repugnant to the Constitution of the United States.

It is further alleged in the bill that as the great bulk of the taxpayers of Virginia pay small sums,

"if her officers are allowed to enforce said Act of May 12, 1887, against them, the profit to be derived from purchasing year orators' coupons will be too small to induce them to do so, and indeed it will be impossible for them to use said coupons at all except in the very limited cases in which they can produce said bonds,"

and that

"your orators will not only loss the profit which they had a right to expect they would make when they purchased said coupons, but they will be unable to sell them to Virginia's taxpayers at any price, and thus their entire property in the same will be destroyed, and your orators charge and aver that in any event, unless they are granted the injunction hereinafter prayed for, they will lose a sum greater than \$2,000."

It is further charged in the bill

"That the treasurer of each county, city, and town in said state is about to report to each commonwealth's attorney the name of every taxpayer who has tendered coupons, and each commonwealth's attorney is going at once to institute the suits provided for by said Act of May 12, 1887, against persons holding coupons bought from your orators, as well as against all others, and they are informed and believe, and so charge, that in every case in which tenders of coupons have been made to the auditor of the state, who is Morton Marye (and many have been made to him), the said auditor, and Hon. R. A. Ayers, who is attorney general thereof, are about to institute the suits

Page 123 U. S. 450

which said act provides for their instituting, whereby all coupons which your orators have sold to Virginia taxpayers will be condemned as spurious, although they are all genuine coupons issued by the State of Virginia, and all her taxpayers will be intimidated and deterred from buying from your orators, and all others in the future, any more of said coupons."

It is further charged in an amended bill

"That acts of the General Assembly of the State of Virginia, which are repugnant to 10 of Article I of the Constitution of the United States, commanded the treasurer of each county to levy on and sell the property of each taxpayer who has tendered coupons in payment of his taxes, and said acts also command said treasurers to return the real property of such taxpayers delinquent where no personal property can be found to be seized and sold, and your orators charge therefore that unless said officers are enjoined from bringing said suits hereinbefore described, the treasurer of each county will proceed to execute said other unconstitutional acts by levying on such taxpayer's property or by returning the same delinquent where no personal property can be found, thus creating a cloud upon the title of such taxpayer's property."

The prayer of the bill is that

"The said Morton Marye, Auditor of Virginia, R. A. Ayers, the Attorney General thereof, and the treasurer and commonwealth's attorney of each county, city, and town in the State of Virginia may be made parties defendant hereto, and that they, their agents and attorneys, may be restrained and enjoined from bringing or commencing any suit provided for by said Act of May 12, 1887, or from doing any other act to put said statute into force and effect, and that until the hearing of a motion for said injunction, a restraining order may be made to that effect,"

and for general relief.

The Act of May 12, 1887, set out as an exhibit to the bill, is as follows:

Page 123 U. S. 451

"An act to provide for the recovery, by motion, of taxes and certain debts due the commonwealth for the payment of which papers purporting to be genuine coupons of the commonwealth have been tendered. (Approved May 12, 1887.)"

"1. Be it enacted by the General Assembly of Virginia that all taxes, including taxes on licenses, now due or which may hereafter become due to the commonwealth in payment of which any paper of instrument purporting to be a coupon detached from a bond of this state shall have been or may here after be tendered and not accepted as payment and not otherwise paid may be recovered in the circuit court having jurisdiction over the county or corporation in which said taxes shall have been assessed or, if the tender was made to the auditor of public accounts in payment of taxes which he is authorized by law to receive, the said taxes may be recovered in the Circuit Court of the City of Richmond."

"2. The court shall have jurisdiction without regard to the amount of the taxes claimed, and though the amount be less than twenty dollars."

"3. The proceeding shall be by motion, in the name of the commonwealth, on ten days' notice, and shall be instituted and prosecuted by the attorney for the commonwealth or corporation in which the proceeding is, or, if it be instituted by direction of the auditor of public accounts, in the Circuit Court of the City of Richmond."

"4. The notice may be served in any county or corporation in the state in the mode prescribed by the first section of chapter one hundred and sixty-four of the Code (edition of eighteen hundred and seventy-three), or it may be served on any agent of the defendant in the county or corporation in which the proceeding is, and the word 'agent,' as here used, shall include any person who shall have made the tender aforesaid on behalf of the defendant, or if there be no known agent of the defendant in the said county or corporation, it may be served by the publishing the same one time in some newspaper printed in the county or city where the tax was assessed; or if there be no paper printed in such county

Page 123 U. S. 452

or city, then in some newspaper published in some county or city nearest to the county or city where such tax was assessed."

"5. The motion may be tried or heard by the court or jury as motions in other civil cases. If the defendant relies on a tender of coupons as payment of the taxes claimed, he shall plead the same specifically and in writing, and file with the plea the coupons averred therein to have been tendered, and the clerk shall carefully preserve them. Upon such plea filed, the burden of proving the tender and the genuineness of the coupons shall be on the defendant. If the tender and the genuineness of the coupons be established, judgment shall be for the defendant on the plea of tender. In such case, the clerk shall write the word 'proved,' and thereunder his name in his official character, across the face of the coupons, and transmit them, together with a certificate of the court that they have been proven in the case, to the auditor of public accounts, who shall deliver the coupons to the second auditor, receiving therefor the check of the second auditor upon the treasurer, which check he shall pay into the treasury to the credit of the proper tax account."

"6. If the defendant fails in his defense, and the taxes claimed are found to be due the state, any coupon filed by him with a plea of tender (and not spurious) shall be returned to him, and there shall be judgment for the commonwealth for the aggregate amount of the taxes due, and the interest thereon from the time they became due till the date of the judgment, with interest on the said aggregate amount from the date of the judgment until payment, and costs."

"7. No antecedent lien of the commonwealth for the taxes for which any judgment is rendered shall be deemed to be merged in the judgment or otherwise impaired by the recovery of the same, but such lien shall continue in force notwithstanding the judgment."

"8. Every such judgment shall be docketed as prescribed by law in other cases, and the clerk shall issue execution thereon, directed to the sheriff of any county (or sergeant of any city), who shall account for the money collected thereon to the auditor of public accounts. "

"9. Should coupons be tendered the officer in satisfaction of said execution, he shall note the fact of such tender upon the execution, and return it to the clerk's office, and thereupon the auditor of public accounts may direct an action to be brought upon the judgment. This action shall be instituted and prosecuted in the mode herein prescribed for actions to recover judgments for taxes, and similar actions may be instituted whenever coupons are tendered in satisfaction of any judgment obtained by the commonwealth under the provisions of this act."

"10. The clerk of the court in which any such judgment is rendered in behalf of the commonwealth shall, as soon as it is rendered, transmit a certified abstract thereof to the auditor of public accounts, who shall record the same in a book to be kept for that purpose."

"11. Immediately after the passage of this act the county and city treasurers, and all other officers authorized by law to collect or receive money for taxes due the commonwealth, including the license taxes, shall report to the commonwealth's attorneys of their respective counties and cities, and also to the auditor of public accounts, the names of all persons assessed or liable therein for taxes due the commonwealth who have heretofore tendered (otherwise than for identification and verification) coupons for such taxes, and which taxes remain unpaid, the amount of the taxes due, on what account, and when they become payable, and a description, as far as possible, of the coupons tendered, and when tendered, and they shall thereafter make like reports whenever and as soon as any such tender may be made. As soon as the auditor of public accounts shall receive such reports, he shall credit the proper officer with the taxes named therein for which coupons were tendered."

"12. The attorneys for the commonwealth and the Attorney General, when it is his duty under this act to represent the commonwealth in any case in the Circuit Court in the City of Richmond, upon such report being made to them or whenever they are otherwise informed of any such tender having been made, shall forthwith institute and prosecute such proceedings as are hereinbefore required. "

"13. In any case instituted under the provisions of this act in which there is a judgment for the commonwealth, a fee of ten dollars shall be allowed the attorney for the commonwealth or the Attorney General, as the case may be, which fee and fees of the clerk and other officers for services rendered in the case, as well as such other costs as are allowed by law in other cases in which the commonwealth is a party, shall be taxed in the costs against the defendant. The commonwealth shall not be liable for any fees or costs in any proceedings under this act."

"14. If any officer fail to perform any duty required of him by this act, he shall be fined not less than one hundred dollars, nor more than five hundred dollars."

"15. This act shall be in force from its passage."

On this bill the following order was made:

" *Circuit Court of the United States for the Eastern District of Virginia*"

"James P. Cooper, H. R. Beeton, F. J. Burt, N. J."

"Chinnery, W. M. Chinnery, F. P. Leon, and"

"W. G. Woolsgon"

" *against* "

"Morton Marye, Auditor, R. A. Ayers, Attorney General,"

"the Treasurers of Counties, Cities, and Towns in"

"Virginia, and the Commonwealth Attorneys of Counties,"

"Cities, and Towns in said state, whose names"

"complainants have leave to insert as they may be"

"discovered"

"Upon reading the bill of the complainants, it is ordered that Morton Marye, Auditor, R. A. Ayers, Attorney General, each and every treasurer of a county, city, or town in the State of Virginia, and each and every commonwealth attorney for a county, city, or town in said state, be restrained from bringing or commencing any suit against any person who has tendered the State of Virginia's tax receivable coupons in payment of taxes due to said state, as provided for and directed by the Act of the Legislature of Virginia approved May 12, 1887, described in the bill, and of which a copy is attached

Page 123 U. S. 455

thereto, and that each and all of said parties, their agents and attorneys, be restrained from doing any act to put said statute into force and effect until the further order of the court."

"And it is ordered that the motion for an injunction in this case be set down for hearing at the Circuit Court of the United States at Richmond, Virginia, on the first Monday in October next, provided that the Attorney General of the State of Virginia or either of the defendants may move the court for an earlier hearing thereof after ten days' written notice to the solicitor of the complainants, and provided further that a copy of this bill and of this order be served on the Attorney General of the State of Virginia within ten days after the filing thereof."

"June 6, 1887."

A copy of this order, together with a copy of the bill, was served on the petitioner Ayers, the Attorney General of Virginia, on June 7, 1887.

On October 8, 1887, the following proceedings took place, *viz.*,

"And now at this day, to-wit at a Circuit Court of the United States for the Eastern District of Virginia held at Richmond, in said district, this eighth day of October, A.D. 1887:"

"J. P. Cooper and others"

"against In Equity"

"Morton Marye, Auditor, etc., and others"

"This cause came on this day to be heard upon the motion of the complainants for a preliminary injunction, and was argued by counsel, upon consideration whereof it is adjudged, ordered, and decreed, for reasons stated in writing and made part of the record, that the injunction be issued as prayed in the bill, and remain in force until the further order of the court."

"HUGH L. BOND"

"Circuit Judge"

"Thereupon the complainants, by counsel, called the attention of the court to the fact that the defendant R. A. Ayers, Attorney General of the State of Virginia, was guilty of

Page 123 U. S. 456

contempt by his disobedience of the restraining order issued in this cause on sixth day of June, 1887, and the said R. A. Ayers, being called upon to answer in this behalf, filed in open court his answer in writing, which answer is in the words following to-wit:"

" *Answer of Defendant R. A. Ayers*"

"The answer of R. A. Ayers, Attorney General of the State of Virginia, to a rule awarded against him by this Honorable Court."

"To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia:"

"By an order entered in the chancery cause of James P. Cooper et als. against Morton Marye and others, summoning him to show cause why he should not be fined and imprisoned for disobeying the injunction heretofore awarded in said suit, restraining him and others from instituting the suits required by an act of the

General Assembly of Virginia entitled"

"An act to provide for the recovery by motion of taxes and certain debts due the commonwealth, for the payment of which papers purporting to be genuine coupons of the commonwealth have been tendered,"

"approved May 12, 1887, by instituting a suit against the Baltimore and Ohio Railroad Co., respondent, answering, says that he admits that he instituted the suit against the Baltimore and Ohio Railroad Company to recover taxes due by it to the State of Virginia after he had been served with the injunction order in this case; that he instituted the said suit because he was thereunto required by the act of the General Assembly of Virginia aforesaid and because he believed this Court had no jurisdiction whatever to award the injunction violated. Respondent disclaims any intention to treat the court with disrespect, and states that he has been actuated alone with the desire to have the law properly administered."

"R. A. AYERS"

"Atty.Gen. of Virginia"

"Subscribed and sworn to before me this eighth day of October, 1887."

"M. F. PLEASANTS, Clerk"

Page 123 U. S. 457

And thereupon the order was made adjudging the petitioner guilty of contempt by his disobedience of said order and requiring him forthwith to dismiss the suit of *The Commonwealth v. The Baltimore and Ohio Railroad Company* instituted by him in the Circuit Court of the City of Richmond fining him \$500 for his contempt and directing that he stand committed in the custody of the marshal of the court until the same be paid, and he purge himself of his contempt by dismissing said suit last mentioned.

In the same case, the proceedings resulting in the commitment and imprisonment of the petitioner John Scott are as follows:

On August 23, 1887, on affidavit showing that John Scott, attorney for the commonwealth for Fauquier County, Virginia, had been served with a copy of the restraining order of June 6, 1877, and that in violation thereof he had brought certain suits against parties in said county for the recovery of taxes alleged to be due by them to the State of Virginia for the year 1886, for which they had previously tendered tax receivable coupons, said actions being brought under the Act of the General Assembly of May 12, 1887, a rule was entered upon the said Scott to show cause, on September 22, 1887, why he should not be attached for contempt. On that day, the said Scott answered the rule, justifying his action on the ground that the order which he had disobeyed was void for want of jurisdiction in the circuit court to make it. On September 24, 1887, in pursuance of leave given, the complainants filed an amendment to their bill making Scott, as attorney for the commonwealth for said County of Fauquier, a formal party defendant and alleging that a judgment had been rendered against the defendant in each of the suits brought by the said Scott under the said act, a list of which, with the amounts of the several judgments, was set out. Thereupon, on October 8, 1887, the following order was made:

"The court therefore doth adjudge, order, and decree that, for his contempt of this Court, said John Scott do pay a fine of \$10, and dismiss the cases which he has brought in the Circuit Court of Fauquier County, Virginia, in violation of the

Page 123 U. S. 458

restraining order heretofore made in the cause of *Cooper and others v. Marye and others* on the 6th day of June, 1887, and further that he enter satisfaction of the judgments heretofore obtained by him against the defendants in said causes, and that he stand committed to the custody of the marshal of this Court until this order is obeyed and the fine hereby imposed upon him is paid. And it is further ordered that the said John Scott do pay the costs of these proceedings."

Similar proceedings were had in respect to J. B. McCabe, the commonwealth's attorney for Loudoun County, Virginia, the other petitioner. On July 11, 1887, an order was entered granting a rule against him to show cause why he should not be attached for an alleged contempt of the court in disobeying the restraining order made in the cause on June 6, 1887. Upon proof by affidavit that the said McCabe, as such attorney, had commenced proceedings under the Act of May 12, 1887, to recover taxes alleged to be due to the State of Virginia from certain parties therein named, who had previously tendered tax receivable coupons in payment thereof, he answered the rule denying the validity of the order which he had violated, and thereupon, on October 8, 1887, the matter coming on to be heard, it was ordered and adjudged by the court

"That the said J. B. McCabe is guilty of contempt in his disobedience of said order, and that he do forthwith dismiss all suits under the Act of May 12, 1887, now pending in the Circuit Court of Loudoun County. And the court doth further order and adjudge that the said J. B. McCabe, for his said contempt, be fined \$100; that he be taken into the custody of the marshal of this court and by him held until the said fine be paid and he purge himself of the said contempt by dismissing the suits brought or prosecuted in violation of the restraining order of this court, and that he pay the costs of these proceedings. "

Page 123 U. S. 485

MR. JUSTICE MATTHEWS delivered the opinion of the Court.

It is established by the decisions of this Court that while

"The exercise of the power of punishment for contempt of their orders by courts of general jurisdiction is not subject to review by writ of error or appeal to this Court,"

yet when

"a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing

for the contempt is equally void,"

and that

"when the proceeding for contempt in such a case results in imprisonment, this Court will, by its writ of habeas corpus, discharge the prisoner."

Ex Parte Fisk, [113 U. S. 713](#) , [113 U. S. 718](#) .

In *Ex Parte Rowland*, [104 U. S. 604](#) , the commissioners of a county in Alabama were, on a writ of habeas corpus, discharged by this Court from imprisonment to which they had been adjudged in consequence of an alleged contempt of the Circuit Court of the United States for the Middle District of

Page 123 U. S. 486

Alabama in refusing to obey the command of a peremptory writ of mandamus issued by that court requiring them to levy certain taxes. This Court said (page [104 U. S. 612](#)):

"If the command of the peremptory writ of mandamus was in all respects such as the circuit court had jurisdiction to make, the proceedings for the contempt are not reviewable here. But if the command was, in whole or in part, beyond the power of the court, the writ, or so much as was in excess of jurisdiction, was void, and the court had no right in law to punish for any contempt of its unauthorized requirements. Such is the settled rule of decision in this Court. *Ex Parte Lange*, 18 Wall. 163; *Ex Parte Parks*, [93 U. S. 18](#) ; *Ex Parte Siebold*, [100 U. S. 371](#) ; *Ex Parte Virginia*, [100 U. S. 339](#) ."

In *Ex Parte Bain*, [121 U. S. 1](#) , it was held that a prisoner who had been tried, convicted, and sentenced to imprisonment by a circuit court of the United States, the indictment having been amended by the district attorney, by leave of the court, after it had been returned by the grand jury, was entitled to his discharge under a writ of habeas corpus issued by this Court on the ground that the proceeding was void. The Court said (page [121 U. S. 13](#)):

"It is of no avail under such circumstances to say that the court still has jurisdiction of the person and of the crime, for though it has possession of the person and would have jurisdiction of the crime if it were properly presented by indictment, the jurisdiction of the offense is gone, and the court has no right to proceed any further in the progress of the case, for want of an indictment."

The question in the present case, therefore, is whether the order of the circuit court of June 6, 1887, forbidding the petitioners from bringing suits under the Act of May 12, 1887, in the name and on behalf of the State of Virginia, as its attorneys, for the recovery of taxes in payment of which the taxpayers had previously tendered tax receivable coupons is an order which that court had power by law to make. The question really is whether the circuit court had jurisdiction to entertain the suit in which that order was made, because the sole purpose and prayer of the bill are by a final decree perpetually to enjoin the defendants from taking any steps in

Page 123 U. S. 487

execution of the Act of May 12, 1887. If the court had power, upon the case made in the record, to entertain the suit for that purpose, it had equal power, as a provisional remedy, to grant the restraining order, the violation of which constitutes the contempt adjudged against the petitioners.

The principal contention on the part of the petitioners is that the suit, nominally against them, is in fact and in law a suit against the State of Virginia whose officers they are, jurisdiction to entertain which is denied by the Eleventh Amendment to the Constitution, which declares that

"The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state."

On the other hand, it is contended by counsel for the complainants in that cause, who have argued against the discharge of the petitioners, that the suit is not within that prohibition.

It must be regarded as the settled doctrine of this Court, established by its recent decisions,

"that the question whether a suit is within the prohibition of the Eleventh Amendment is not always determined by reference to the nominal parties on the record."

Poindexter v. Greenhow, [114 U. S. 270](#) , [114 U. S. 287](#) . This, it is true, is not in harmony with what was said by Chief Justice Marshall in [Osborn v. Bank of the United States](#), 9 Wheat. 738, [22 U. S. 857](#) . In his opinion in that case, he said:

"It may, we think, be laid down as a rule which admits of no exception that in all cases where jurisdiction depends on the party, it is the party named in the record. Consequently the Eleventh Amendment, which restrains the jurisdiction granted by the Constitution over suits against states, is of necessity limited to those suits in which a state is a party on the record. The amendment has its full effect if the Constitution be construed as it would have been construed had the jurisdiction of the court never been extended to suits brought against a state by the citizens of another state or by aliens."

And the point as involved in that case was stated by Mr. Justice Swayne, delivering the opinion of the Court in [Davis v. Gray](#), 16 Wall. 203, [83 U. S. 220](#) , as follows:

"In deciding who are parties to the suit, the

Page 123 U. S. 488

court will not look beyond the record. Making a state officer a party does not make the state a party, although her law may have prompted his action and the state may stand behind him as the real party in interest. A state can be made a party only by shaping the bill expressly with that view, as where individuals or corporations are intended to be put in that relation to the case."

But what was said by Chief Justice Marshall in *Osborn v. Bank of the United States*, *supra*, must be taken in connection with its immediate context, wherein he

adds (page [22 U. S. 858](#)):

"The state not being a party on the record, and the court having jurisdiction over those who are parties on the record, the true question is not one of jurisdiction, but whether, in the exercise of its jurisdiction, the court ought to make a decree against the defendants -- whether they are to be considered as having a real interest or as being only nominal parties."

This conveys the intimation that where the defendants, who are sued as officers of the state, have not a real, but merely a nominal, interest in the controversy, the state appearing to be the real defendant and therefore an indispensable party, if the jurisdiction does not fail for want of power over the parties, it does fail, as to the nominal defendants, for want of a suitable subject matter.

This, indeed, seems to be the interpretation put upon this language by Chief Justice Marshall himself in the opinion of the Court delivered by him in the case of [The Governor of Georgia v. Madrazo](#), 1 Pet. 110, [26 U. S. 123](#) -124. After quoting the paragraphs from the opinion in the case of *Osborn v. Bank of the United States*, above extracted, the Chief Justice mentioned the case of [Georgia v. Brailsford](#), 2 Dall. 402, where the action was not in the name of the state, but was brought by the governor in its behalf, and added: "If, therefore, the state was properly considered as a party in that case, it may be considered as a party in this." He further said:

"The claim upon the governor is as a governor. He is sued not by his name, but by his title. The demand made upon him is not made personally, but officially. The decree is pronounced not against the person, but the officer, and appeared to have been pronounced against the successor of the original defendant,

Page 123 U. S. 489

as the appeal bond was executed by a different governor from him who filed the information. In such a case, where the chief magistrate of a state is sued not by his name, but by his style of office, and the claim made upon him is entirely in his official character, we think the state itself may be considered as a party on the

record. If the state is not a party, there is no party against whom a decree can be made. No person in his natural capacity is brought before the court as defendant."

It was therefore held in that case that the state was in fact, though not in form, a party defendant to the suit, and that consequently the circuit court had no jurisdiction to pronounce the decree appealed from. See also [*Ex Parte Madrazo*](#), 7 Pet. 627. This view was reiterated by this Court in [*Kentucky v. Dennison*](#), 24 How. 66, [65 U. S. 98](#) , where it was said to be settled

"that where the state is a party, plaintiff or defendant, the governor represents the state, and the suit may be, in form, a suit by him as governor in behalf of the state where the state is plaintiff, and he must be summoned or notified as the officer representing the state where the state is defendant."

Accordingly, in *Cunningham v. Macon & Brunswick Railroad Co.*, [109 U. S. 446](#) , it was decided that in those cases where it is clearly seen upon the record that a state is an indispensable party to enable the court, according to the rules which govern its procedure, to grant the relief sought, it will refuse to take jurisdiction. The inference is that where it is manifest upon the face of the record that the defendants have no individual interest in the controversy and that the relief sought against them is only in their official capacity as representatives of the state, which alone is to be affected by the judgment or decree, the question then arising whether the suit is not substantially a suit against the state is one of jurisdiction.

The very question was presented in the cases of *New Hampshire v. Louisiana* and *New York v. Louisiana*, [108 U. S. 76](#) . In each of those cases, there was, upon the face of the record, nominally a controversy between two states which, according to the terms of the Constitution, was subject to the judicial power of the United States. So far as could be determined

Page 123 U. S. 490

by reference to the parties named in the record, the suits were within the jurisdiction of this Court, but, on an examination of the cases as stated in the pleadings, it appeared that the state, which was plaintiff, was suing not for its own

use and interest, but for the use and on behalf of certain individual citizens thereof who had transferred their claims to the state for the purposes of suit. It was accordingly unanimously held by this Court that it would look behind and through the nominal parties on the record to ascertain who were the real parties to the suit. The Chief Justice, speaking for the Court in that case, made a review of the circumstances which led to the adoption of the Eleventh Amendment, and in concluding his opinion said:

"The evident purpose of the amendment, so promptly proposed and finally adopted, was to prohibit all suits against a state by or for citizens of other states, or aliens, without the consent of the state to be sued, and in our opinion one state cannot create a controversy with another state, within the meaning of that term as used in the judicial clauses of the Constitution, by assuming the prosecution of debts owing by the other state to its citizens. Such being the case, we are satisfied that we are prohibited both by the letter and the spirit of the Constitution from entertaining these suits, and the bill in each case is dismissed."

The converse of that case is to be found in *Hagood v. Southern*, [117 U. S. 52](#) . There the State of South Carolina, which was the party in interest, was not nominally a defendant. The nominal defendants were the Treasurer of the State of South Carolina, its Comptroller General, and the treasurers of its various counties and their successors in office. The object of the bills was to obtain on behalf of the complainants, by judicial process, the redemption by the state of certain scrip of which they were holders, according to the terms of a statute in pursuance of which it was issued, by the levy, collection, and appropriation of a special tax pledged to that purpose, as they claimed, by an irrepealable law constituting a contract protected from violation by the Constitution of the United States. The decrees of the circuit court granting the relief were reversed, and the cause remanded with

Page 123 U. S. 491

instructions to dismiss the bills on the ground that the suits, though nominally against the officers of the state, were really against the state itself. In its opinion, this Court said (page [117 U. S. 67](#)):

"These suits are accurately described as bills for the specific performance of a contract between the complainants and the State of South Carolina, who are the only parties to it. But to these bills the state is not in name made a party defendant, though leave is given to it to become such if it chooses, and except with that consent it could not be brought before the court, and be made to appear and defend. And yet it is the actual party to the alleged contract the performance of which is decreed, the one required to perform the decree, and the only party by whom it can be performed. Though not nominally a party to the record, it is the real and only party in interest, the nominal defendants being the officers and agents of the state, having no personal interest in the subject matter of the suit and defending only as representing the state. And the things required by the decrees to be done and performed by them are the very things which, when done and performed, constitute a performance of the alleged contract by the state. The state is not only the real party to the controversy, but the real party against which relief is sought by the suit, and the suit is therefore substantially within the prohibition of the Eleventh Amendment to the Constitution of the United States."

The conclusions in the case of *Hagood v. Southern* were justified by what had previously been decided by this Court in the cases of *Louisiana v. Jumel* and *Elliott v. Wiltz*, [107 U. S. 711](#) . Those cases had for their object, one, by injunction, to restrain the officers of the state from executing the provisions of the act of the General Assembly alleged to be in violation of the contract rights of the plaintiffs, and the other, by mandamus, to require the appropriation of money from the treasury of the state in accordance with the contract. This relief, it was decided, was not within the competency of the judicial power. The Chief Justice said on that point (page [107 U. S. 727](#)):

"The remedy sought, in order to be complete, would require the court to assume all the executive authority

Page 123 U. S. 492

of the state so far as it related to the enforcement of this law, and to supervise the conduct of all persons charged with any official duty in respect to the levy,

collection, and disbursement of the tax in question until the bonds, principal and interest, were paid in full, and that too in a proceeding in which the state, as a state, was not and could not be made a party. It needs no argument to show that the political power cannot be thus ousted of its jurisdiction and the judiciary set in its place. When a state submits itself without reservation to the jurisdiction of a court in a particular case, that jurisdiction may be used to give full effect to what the state has by its act of submission allowed to be done, and if the law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose. But this is very far from authorizing the court, when a state cannot be sued, to set up its jurisdiction over the officers in charge of the public moneys, so as to control them as against the political power, in their administration of the finances of the state."

It is therefore not conclusive of the principal question in this case that the State of Virginia is not named as a party defendant. Whether it is the actual party in the sense of the prohibition of the Constitution must be determined by a consideration of the nature of the case as presented on the whole record.

The substantial averments of the bill are 1st, that the complainants were the owners of \$100,000 worth of tax-receivable coupons of Virginia, for which they had paid over \$30,000; 2d, that they have sold \$50,000 of that amount for \$15,000 or more to taxpayers of Virginia, who have tendered the same to the proper state officials in payment of their taxes, but the said officers have refused to receive the same; 3d, that if the officers of the state are permitted to enforce the Act of May 12, 1887, the complainants will be unable to sell the remaining \$50,000 of their coupons to the taxpayers of that state at any price, and thus their entire property in the same will be destroyed; 4th, that the Act of May 12, 1887, is unconstitutional and void, because it impairs the obligation of the contract of

Page 123 U. S. 493

the State of Virginia by which it agreed to receive coupons cut from its bonds in payment of debts, demands, and taxes due to it.

The particulars in which this contract is alleged to be violated by the provisions of that act are first that, in disregard of tenders of tax receivable coupons made by taxpayers in payment of taxes, the act of the General Assembly peremptorily requires actions at law to be brought in the name of the State of Virginia against all such taxpayers as delinquent; second, because in the trial of such actions it is required that the defendant shall not only prove the fact of tender, but the genuineness of the coupons tendered; third, that as part of that proof, he is required to produce the bond itself from which such coupon is said to have been cut; and, fourth, that he is not permitted to produce expert testimony to prove the genuineness of the coupons tendered. The prayer of the bill is that the Attorney General of the State of Virginia, and the commonwealth's attorneys for the counties, be restrained by injunction from commencing and prosecuting any suits under the Act of May 12, 1887, for the recovery of taxes against parties alleged to be delinquent, but who in fact have tendered tax receivable coupons in payment of taxes due.

It is to be noted that there is no direct averment in the original or amended bills that the coupons alleged to have been tendered in payment of taxes by those taxpayers against whom the defendants threatened to bring suits under the Act of May 12, 1887, were purchased from the complainants, although it incidentally appears otherwise upon the record that some of them may have been. The injunction, however, prayed for is to prevent the bringing of any suits under that act against taxpayers who have tendered coupons, whether the coupons were purchased from the complainants or not. It is also to be observed that the only personal act on the part of the petitioners sought to be restrained by the original order of June 6, 1887, in pursuance of the prayer of the bill, is the bringing of any suit under the Act of May 12, 1887, against any person who had tendered tax receivable coupons in payment of taxes due to the State of Virginia. Any such suit

Page 123 U. S. 494

must, by the statute, be brought in the name of the state and for its use.

It is immaterial, in our opinion, to consider the matters which are alleged in respect to the course and conduct of such a suit after its institution, by reason of the provisions contained in other acts of the General Assembly of the state restricting the mode of proof of the genuineness of the coupons tendered. What is required by the Act of May 12, 1887, is that,

"If the defendant relies on a tender of coupons as payment of the taxes claimed, he shall plead the same specifically and in writing, and file with the plea the coupons averred therein to have been tendered, and the clerk shall carefully preserve them. Upon such plea filed, the burden of proving the tender and the genuineness of the coupons shall be on the defendant. If the tender and the genuineness of the coupons be established, judgment shall be for the defendant on the plea of tender. In such case, the clerk shall write the word 'proved' and thereunder his name in his official character, across the face of the coupons, and transmit them, together with a certificate of the court that they have been proven in the case, to the auditor of public accounts, who shall deliver the coupons to the second auditor, receiving therefor the check of the second auditor upon the treasurer, which check he shall pay into the treasury to the credit of the proper tax account."

If a suit may be rightfully brought at all by the state to recover a judgment for taxes in such a case, certainly there is nothing in these provisions that violates any legal or contract right of the party sued. If he defends the action on the ground of a lawful tender of payment, he must, of course, plead the tender, and may rightfully be required to bring into court the tender alleged to have been made. Under the issue upon this plea, the burden is upon the defendant of proving the truth of its allegations. What shall be the amount and kind of proof necessary to establish the defense involves questions of law which can only be raised and decided in the course of the trial. Their determination is for the court where the trial is to be had. If, in pursuance of other acts of the General Assembly, the contract rights of the defendant, as a taxpayer having

tendered tax receivable coupons, are denied to him in that trial, by reason of requirements in regard to the nature and quantity of proof as to the genuineness of the coupons, the errors of law thus committed can only be remedied, according to the common course of judicial proceedings, by a writ of error which, as it would present a federal question, might ultimately be sued out in this Court. But it is not to be assumed in advance, either, that such questions will arise, or that if they arise they will be erroneously decided. The question, therefore, is narrowed to the single inquiry of the equitable right of the complainants to enjoin the petitioners against bringing any such suits at all.

It seems to be supposed in argument that the right of taxpayers in Virginia who have tendered tax receivable coupons in payment of their taxes to the proper collecting officer to be forever thereafter free from suit by the state to recover judgment for such taxes rests upon the proposition that such a tender is in law a payment of the taxes, so as to extinguish all claim for them on the part of the state. This proposition, indeed, is said to be justified by the authority of certain language in the opinion of this Court in the case of *Poindexter v. Greenhow*, [114 U. S. 270](#). In that case, the effect of a tender in payment of taxes upon the subsequent act of the collector in seizing the personal property of the taxpayer was considered and decided, but there is nothing in the opinion which countenances the idea that such a tender was a payment of the taxes so as to extinguish all subsequent claim of the state therefor. Its effect was precisely defined in the following statement (page [114 U. S. 299](#)):

"His tender, as we have already seen, was equivalent to payment so far as concerns the legality of all subsequent steps by the collector to enforce payment by distraint of his property. "

There is nothing in the opinion to indicate that the party making the tender was relieved from the operation of the rule of law, making it necessary to keep the tender good, or that a subsequent action at law for the recovery of the taxes would be unlawful, reserving, of course, in such a case, the admitted right of the defendant to plead the fact of his tender and bring it into court, in pursuance of the usual practice in such cases, as a defense.

It follows, therefore, in the present case that the personal act of the petitioners sought to be restrained by the order of the circuit court, reduced to the mere bringing of an action in the name of and for the state against taxpayers, who, although they may have tendered tax receivable coupons, are charged as delinquents, cannot be alleged against them as an individual act in violation of any legal or contract rights of such taxpayers.

Much more difficult is it to conceive that it constitutes a grievance of which the complainants in the principal suit have any legal right to complain. No suits against the complainants themselves are apprehended, and their pecuniary interest in the actions threatened against taxpayers who have made tenders of tax receivable coupons purchased from them, with their guarantee against loss in consequence thereof, is collateral and remote. The bringing of such actions is no breach of any contract subsisting between the complainants and the State of Virginia. All rights under the contract contained in the coupons they parted with when they transferred them to taxpayers. If the complainants have agreed in that transfer that they shall be received by the state in payment of taxes, that is a contract between the complainants and the taxpayer, their assignee, to which the state is not a party. It is one the complainants have voluntarily entered into, and for which the state cannot be held responsible.

In that aspect, the case does not differ in principle from *Marye v. Parsons*, [114 U. S. 325](#) . The consequential losses in the diminution of the market value of the coupons which they still hold, and the liability of the complainants to make good their warranty to taxpayers to whom they have transferred the others, are not direct and legal consequences of any breach of the contract made with the State of Virginia by which the coupons are made receivable in payment of taxes. As such damage could not be recovered in a direct action upon the contract if the state were suable at law, so neither can it be made the foundation of any preventive relief by injunction.

These considerations, however, are adverted to in this connection

Page 123 U. S. 497

not so much for the purpose of showing that the substance of the bill presents a case the subject matter of which is not within the jurisdiction of the court as to show that it does not allege any grounds of equitable relief against the individual defendants for any personal wrong committed or threatened by them. It does not charge against them in their individual character anything done or threatened which constitutes, in contemplation of law, a violation of personal or property rights or a breach of contract to which they are parties.

The relief sought is against the defendants, not in their individual but in their representative capacity, as officers of the State of Virginia. The acts sought to be restrained are the bringing of suits by the State of Virginia in its own name and for its own use. If the state had been made a defendant to this bill by name, charged according to the allegations it now contains -- supposing that such a suit could be maintained -- it would have been subjected to the jurisdiction of the court by process served upon its governor and attorney general according to the precedents in such cases. [*New Jersey v. New York*](#), 5 Pet. 284, [30 U. S. 288](#) , [30 U. S. 290](#) ; [*Kentucky v. Dennison*](#), 24 How. 66, [65 U. S. 96](#) -97; Rule 5 of 1884, 108 U.S. 574. If a decree could have been rendered enjoining the state from bringing suits against its taxpayers, it would have operated upon the state only through the officers who by law were required to represent it in bringing such suits, *viz.*, the present defendants, its attorney general, and the commonwealth's attorneys for the several counties. For a breach of such an injunction these officers would be amenable to the court as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment.

The nature of the case, as supposed, is identical with that of the case as actually presented in the bill, with the single exception that the state is not named as a defendant. How else can the state be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys, and its agents? And if all such officers, attorneys, and agents are personally subjected to

the process of the

Page 123 U. S. 498

court so as to forbid their acting in its behalf, how can it be said that the state itself is not subjected to the jurisdiction of the court as an actual and real defendant?

It is, however, insisted upon in argument that it is within the jurisdiction of the circuit court of the United States to restrain by injunction officers of the states from executing the provisions of state statutes void by reason of repugnancy to the Constitution of the United States; that there are many precedents in which that jurisdiction has been exercised under the sanction of this Court, and that the present case is covered by their authority.

The principal authority relied upon to maintain this proposition is the judgment of this Court in the case of [Osborn v. Bank of the United States](#), 9 Wheat. 738. As strengthening the argument based upon that decision, our attention is called by counsel to a feature of the case which it is said does not clearly appear from the official report by Mr. Wheaton. The original record of the case shows that the bill, after setting out the substance of the act of the Legislature of Ohio complained of, alleged that Osborn, the auditor of the state, and the officer upon whom the execution of the statute of the state was enjoined, "daily gives it out in speeches that he will execute and enforce the provisions of the said act of Ohio against your orators." And it is part of the prayer of the bill

"to stay and enjoin said Ralph Osborn, auditor as aforesaid, and all others which it may concern in any wise, from proceeding against your orators under and in virtue of the act of Ohio aforesaid, or any section, part, or provision thereof."

It also appears that it was part of the decree of the circuit court, from which the appeal was prosecuted,

"that the defendants, and each of them, be perpetually enjoined from proceeding to collect any tax, which has accrued or may hereafter accrue, from the complainants under the act of the General Assembly of Ohio in the bill and

proceedings mentioned."

But the act of the Legislature of Ohio declared to be unconstitutional and void in that case had for its sole purpose the levy and collection of an annual tax of \$50,000 upon each office of discount and deposit of the bank of the United States within that state, to

Page 123 U. S. 499

be collected, in case of refusal to pay, by the auditor of state by a levy upon the money, banknotes, or other goods and chattels, the property of the bank, to seize which it was made lawful, under the warrant of the auditor, for the person to whom it was directed to enter the bank for the purpose of finding and seizing property to satisfy the same. The wrong complained of and sought to be prevented by the injunction prayed for was this threatened seizure of the property of the bank. An actual seizure thereof in violation of the injunction was treated as a contempt of the court for which the parties were attached, and the final decree of the circuit court restored the property taken to the possession of the complainant. In disposing of the case in this Court, the opinion of Chief Justice Marshall, 9 Wheat. [22 U. S. 871](#) , concludes as follows:

"We think then that there is no error in the decree of the Circuit Court for the District of Ohio so far as it directs restitution of the specific sum of \$98,000 which was taken out of the bank unlawfully and was in the possession of the defendant Samuel Sullivan when the injunction was awarded in September, 1820, to restrain him from paying it away or in any manner using it and so far as it directs the payment of the remaining sum of \$2,000 by the defendants Ralph Osborn and John L. Harper, but that the same is erroneous so far as respects the interest on the coin, part of the said \$98,000, it being the opinion of this Court that while the parties were restrained by the authority of the circuit court from using it, they ought not to be charged with interest. The decree of the Circuit Court for the District of Ohio is affirmed as to the said sums of \$98,000 and \$2,000, and reversed as to the residue."

The mandate from this Court was in accordance with the terms of this judgment.

There is nothing, therefore, in the judgment in that cause as finally defined which extends its authority beyond the prevention and restraint of the specific act done in pursuance of the unconstitutional statute of Ohio, and in violation of the act of Congress chartering the bank, which consisted of the unlawful seizure and detention of its property. It was conceded throughout that case, in the argument at the bar and in the

Page 123 U. S. 500

opinion of the court, that an action at law would lie either of trespass or continue against the defendants as individual trespassers guilty of a wrong in taking the property of the complainant illegally, vainly seeking to defend themselves under the authority of a void act of the General Assembly of Ohio. One of the principal questions in the case was whether equity had jurisdiction to restrain the commission of such a mere trespass -- a jurisdiction which was upheld upon the circumstances and nature of the case and which has been repeatedly exercised since. But the very ground on which it was adjudged not to be a suit against the state and not to be one in which the state was a necessary party was that the defendants personally and individually were wrongdoers against whom the complainants had a clear right of action for the recovery of the property taken, or its value, and that therefore it was a case in which no other parties were necessary. The right asserted and the relief asked were against the defendants as individuals. They sought to protect themselves against personal liability by their official character as representatives of the state. This they were not permitted to do, because the authority under which they professed to act was void.

In pursuance of the principles adjudged in the case of *Osborn v. Bank of the United States, supra*, it has been repeatedly and uniformly held by this Court that an injunction will lie to restrain the collection of taxes sought to be collected by seizures of property imposed in the name of the state, but contrary to the Constitution of the United States, the defendants being officers of the state threatening the distraint complained of. The grounds of this jurisdiction were stated

in *Allen v. Baltimore & Ohio Railroad Co.*, [114 U. S. 311](#) . The vital principle in all such cases is that the defendants, though professing to act as officers of the state, are threatening a violation of the personal or property rights of the complainant, for which they are personally and individually liable. This principle was plainly stated in the opinion of the court in *Poindexter v. Greenhow*, [114 U. S. 270](#) , as follows (page [114 U. S. 282](#)):

"The case, then, of the plaintiff below is reduced to this: he had paid the tax demanded of him by a

Page 123 U. S. 501

lawful tender. The defendant had no authority of law thereafter to attempt to enforce other payment by seizing his property. In doing so, he ceased to be an officer of the law and became a private wrongdoer. It is the simple case in which the defendant, a natural private person, has unlawfully, with force and arms, seized, taken, and detained the personal property of another."

It was also stated (page [114 U. S. 288](#)):

"The *ratio decidendi* in this class of cases is very plain. A defendant sued as a wrongdoer, who seeks to substitute the state in his place, or to justify by the authority of the state, or to defend on the ground that the state has adopted his act and exonerated him, cannot rest on the bare assertion of his defense. He is bound to establish it. The state is a political corporate body, can act only through agents, and can command only by laws. It is necessary, therefore, for such a defendant, in order to complete his defense, to produce a law of the state which constitutes his commission as its agent and a warrant for his act. This the defendant in the present case undertook to do."

The legislation under which the defendant justified, being declared to be null and void as contrary to the Constitution of the United States, therefore, left him defenseless, subject to answer to the consequences of his personal act in the seizure and detention of the plaintiff's property and responsible for the damages occasioned thereby.

This principle is illustrated and enforced by the case of *United States v. Lee*, [106 U. S. 196](#) . In that case, the plaintiffs had been wrongfully dispossessed of their real estate by defendants claiming to act under the authority of the United States. That authority could exist only as it was conferred by law, and as they were unable to show any lawful authority under the United States, it was held that there was nothing to prevent the judgment of the court against them as individuals for their individual wrong and trespass. This feature will be found on an examination to characterize every case where persons have been made defendants for acts done or threatened by them as officers of the government, either of a state or of the United States, where the objection has been interposed that the state was the real defendant, and has been

Page 123 U. S. 502

overruled. The action has been sustained only in those instances where the act complained of, considered apart from the official authority alleged as its justification and as the personal act of the individual defendant, constituted a violation of right for which the plaintiff was entitled to a remedy at law or in equity against the wrongdoer in his individual character.

The present case stands upon a footing altogether different. Admitting all that is claimed on the part of the complainants as to the breach of its contract on the part of the State of Virginia by the acts of its General Assembly referred to in the bill of complaint, there is nevertheless no foundation in law for the relief asked. For a breach of its contract by the state it is conceded there is no remedy by suit against the state itself. This results from the Eleventh Amendment to the Constitution, which secures to the state immunity from suit by individual citizens of other states or aliens. This immunity includes not only direct actions for damages for the breach of the contract brought against the state by name, but all other actions and suits against it, whether at law or in equity. A bill in equity for the specific performance of the contract against the state by name it is admitted could not be brought. In *Hagood v. Southern*, [117 U. S. 52](#) , it was decided that in such a bill, where the state was not nominally a party to the record, brought against its officers and agents, having no personal interest in the subject matter of the suit and

defending only as representing the state, where

"the things required by the decree to be done and performed by them are the very things which, when done and performed, constitute a performance of the alleged contract by the state,"

the Court was without jurisdiction, because it was a suit against a state.

The converse of that proposition must be equally true, because it is contained in it -- that is, a bill the object of which is by injunction indirectly to compel the specific performance of the contract by forbidding all those acts and doings which constitute breaches of the contract must also necessarily be a suit against the state. In such a case, though the state be

Page 123 U. S. 503

not nominally a party on the record, if the defendants are its officers and agents, through whom alone it can act in doing and refusing to do the things which constitute a breach of its contract, the suit is still, in substance, though not in form, a suit against the state. Such is the precise character of the suit in the circuit court against the petitioners, in which the order was made the violation of which constitutes the contempt for which they have been committed to the imprisonment from which they seek delivery by these writs.

It may be asked what is the true ground of distinction, so far as the protection of the Constitution of the United States is invoked, between the contract rights of the complainant in such a suit and other rights of person and of property. In these latter cases, it is said that jurisdiction may be exercised against individual defendants notwithstanding the official character of their acts, while in cases of the former description, the jurisdiction is denied.

The distinction, however, is obvious. The acts alleged in the bill as threatened by the defendants, the present petitioners, are violations of the assumed contract between the State of Virginia and the complainants, only as they are considered to be the acts of the State of Virginia. The defendants, as individuals, not being

parties to that contract, are not capable in law of committing a breach of it. There is no remedy for a breach of a contract, actual or apprehended, except upon the contract itself and between those who are by law parties to it. In a certain sense and in certain ways, the Constitution of the United States protects contracts against laws of a state subsequently passed impairing their obligation, and this provision is recognized as extending to contracts between an individual and a state; but this, as is apparent, is subject to the other constitutional principle, of equal authority, contained in the Eleventh Amendment which secures to the state an immunity from suit. Wherever the question arises in a litigation between individuals which does not involve a suit against a state, the contract will be judicially recognized as of binding force notwithstanding any subsequent law of the state impairing its obligation. But this right is incidental to

Page 123 U. S. 504

the judicial proceeding in the course of which the question concerning it arises. It is not a positive and substantive right of an absolute character, secured by the Constitution of the United States against every possible infraction, or for which redress is given as against strangers to the contract itself, for the injurious consequences of acts done or omitted by them. Accordingly, it was held in *Carter v. Greenhow*, [114 U. S. 317](#) , that no direct action for the denial of the right secured by a contract, other than upon the contract itself, would lie under any provisions of the statutes of the United States authorizing actions to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States. In that case, it was said (page [114 U. S. 322](#)):

"How, and in what sense, are these rights secured to him by the Constitution of the United States? The answer is by the provision of Article I, Section 10, which forbids any state to pass laws impairing the obligation of contracts. That constitutional provision, so far as it can be said to confer upon or secure to any person any individual rights, does so only indirectly and incidentally. It forbids the passage by the states of laws such as are described. If any such are nevertheless passed by the legislature of a state, they are unconstitutional and void. In any

judicial proceeding necessary to vindicate his rights under a contract affected by such legislation, the individual has a right to have a judicial determination declaring the nullity of the attempt to impair its obligation. This is the only right secured to him by that clause of the Constitution."

But where the contract is between the individual and the state, no action will lie against the state, and any action founded upon it against defendants who are officers of the state the object of which is to enforce its specific performance by compelling those things to be done by the defendants which, when done, would constitute a performance by the state, or to forbid the doing of those things which, if done, would be merely breaches of the contract by the state, is in substance a suit against the state itself, and equally within the prohibition of the Constitution.

It cannot be doubted that the Eleventh Amendment to the Constitution

Page 123 U. S. 505

operates to create an important distinction between contracts of a state with individuals and contracts between individual parties. In the case of contracts between individuals, the remedies for their enforcement or breach in existence at the time they were entered into are a part of the agreement itself, and constitute a substantial part of its obligation. *Louisiana v. New Orleans*, [102 U. S. 203](#) . That obligation, by virtue of the provision of Article I, Section 10, of the Constitution of the United States, cannot be impaired by any subsequent state legislation. Thus, not only the covenants and conditions of the contract are preserved, but also the substance of the original remedies for its enforcement. It is different with contracts between individuals and a state. In respect to these, by virtue of the Eleventh Amendment to the Constitution, there being no remedy by a suit against the state, the contract is substantially without sanction except that which arises out of the honor and good faith of the state itself, and these are not subject to coercion. Although the state may at the inception of the contract have consented as one of its conditions to subject itself to suit, it may subsequently withdraw that consent and resume its original immunity without any violation of the obligation of its contract in the constitutional sense. [Beers v. Arkansas](#), 20 How. 527; *Railroad*

Co. v. Tennessee, [101 U. S. 337](#) . The very object and purpose of the Eleventh Amendment were to prevent the indignity of subjecting a state to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several states of the union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer to complaints of private persons, whether citizens of other states or aliens, or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the mandates of judicial tribunals without their consent and in favor of individual interests. To secure the manifest purposes of the constitutional exemption guaranteed by the Eleventh Amendment requires that it should be interpreted

Page 123 U. S. 506

not literally and too narrowly, but fairly and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit, it must be held to cover not only suits brought against a state by name, but those also against its officers, agents, and representatives where the state, though not named as such, is nevertheless the only real party against which alone in fact the relief is asked and against which the judgment or decree effectively operates.

But this is not intended in any way to impinge upon the principle which justifies suits against individual defendants who, under color of the authority of unconstitutional legislation by the state, are guilty of personal trespasses and wrongs, nor to forbid suits against officers in their official capacity either to arrest or direct their official action by injunction or mandamus where such suits are authorized by law and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest. In respect to the latter class of cases, we repeat what was said by this Court in *Board of Liquidation v. McComb*, [92 U. S. 531](#) , [92 U. S. 541](#) :

"A state, without its consent, cannot be sued by an individual, and a court cannot substitute its own discretion for that of executive officers in matters belonging to

the proper jurisdiction of the latter. But it has been well settled that when a plain official duty requiring no exercise of discretion is to be performed and performance is refused, any person who will sustain personal injury by such refusal may have a mandamus to compel its performance, and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby for which adequate compensation cannot be had at law may have an injunction to prevent it. In such cases, the writs of mandamus and injunction are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the nonperformance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void."

An example and illustration of this class will be found in *Seibert v. Lewis*, [122 U. S. 284](#) .

Page 123 U. S. 507

Nor need it be apprehended that the construction of the Eleventh Amendment, applied in this case, will in any wise embarrass or obstruct the execution of the laws of the United States in cases where officers of a state are guilty of acting in violation of them under color of its authority. The government of the United States, in the enforcement of its laws, deals with all persons within its territorial jurisdiction as individuals owing obedience to its authority. The penalties of disobedience may be visited upon them without regard to the character in which they assume to act or the nature of the exemption they may plead in justification. Nothing can be interposed between the individual and the obligation he owes to the Constitution and laws of the United States, which can shield or defend him from their just authority, and the extent and limits of that authority the government of the United States, by means of its judicial power, interprets and applies for itself. If, therefore, an individual, acting under the assumed authority of a state, as one of its officers, and under color of its laws comes into conflict with the superior authority of a valid law of the United States, he is stripped of his representative character and subjected in his person to the consequences of his individual conduct. The state

has no power to impart to him any immunity from responsibility to the supreme authority of the United States.

In contradistinction to these classes of cases, for the reasons given, we adjudge the suit of *Cooper and Others v. Marye and Others*, in which the injunctions were granted against the present petitioners, to be in substance and in law a suit against the State of Virginia. It is therefore within the prohibition of the Eleventh Amendment to the Constitution. By the terms of that provision, it is a case to which the judicial power of the United States does not extend. The circuit court was without jurisdiction to entertain it. All the proceedings in the exercise of the jurisdiction which it assumed are null and void. The orders forbidding the petitioners to bring the suits for bringing which they were adjudged in contempt of its authority it had no power to make. The orders adjudging

Page 123 U. S. 508

them in contempt were equally void, and their imprisonment is without authority of law. It is ordered, therefore, that the petitioners be discharged.

MR. JUSTICE FIELD, concurring.

I concur in the judgment discharging from arrest and imprisonment the Attorney General of Virginia, and other officers of the state, who were adjudged by the circuit court to be guilty of contempt in refusing to obey the order of that court in the case of *Cooper v. Marye*, and were fined, and committed until the fine should be paid and they should purge themselves of their contempt by doing the acts commanded. I also concur in the main position stated in the opinion of the Court, upon which the discharge of the petitioners is ordered -- namely that the case of *Cooper v. Marye* was in law and fact a suit by subjects of a foreign state against the State of Virginia. To a suit of that character the judicial power of the United States cannot, by the Eleventh Amendment of the Constitution, be extended. The object of that suit was to enjoin the attorney general and the commonwealth's attorneys of the several counties, cities, and towns of Virginia from bringing any suits in the name of the commonwealth to enforce the collection of taxes for the

payment of which coupons originally attached to her bonds had been tendered. To enjoin the officers of the commonwealth, charged with the supervision and management of legal proceedings in her behalf, from bringing suits in her name is nothing less than to enjoin the commonwealth, for only by her officers can such suits be instituted and prosecuted. This seems to me an obvious conclusion.

The reason given in the bill in *Cooper v. Marye* for seeking the injunction is that the state has passed various acts creating impediments in the way of holders of coupons establishing their genuineness, by which their value will be practically destroyed, and the performance of these obligations be evaded, unless the officers of the state are restrained from prosecuting such suits. The numerous devices to which the state has resorted in order to escape from her obligations under the

Page 123 U. S. 509

forms of law may, it is true, seriously embarrass the coupon holder in the assertion of his claims; but that is not a sufficient reason for denying to the state the right to prosecute her demands for taxes in her own courts. If the obstacles to the maintenance of the claims of the coupon holder, presented by the state legislation, are repugnant to the Constitution and laws of the United States, we cannot assume in advance that they will be sustained by the courts of Virginia when the coupons tendered are produced in the suits mentioned, and for that reason deny to her a hearing there upon her own demands. If they should be sustained, a remedy may be found in this tribunal, where decisions in conflict with the Constitution and laws of the United States may be reviewed and corrected.

There are many cases -- indeed, they are of frequent occurrence -- where officers of the state, acting under legislation in conflict with the Constitution and laws of the United States, may be restrained by the federal courts, as where those officers attempt, by virtue of such legislation, to take private property for public use without offering compensation or in other ways to deprive one of the use and enjoyment of his property. I do not understand that the opinion of the Court is against this doctrine, but, on the contrary, that it is recognized and approved. There is a wide

difference between restraining officers of the state from interfering in such cases with the property of the citizen and restraining them from prosecuting a suit in the name of the state in her own courts to collect an alleged claim. Her courts are at all times as open to her for the prosecution of her demands as they are open to her citizens for the prosecution of their claims.

I, however, make this special concurrence in the opinion of the majority because of language in it expressing approval of the positions taken by the Court in *Louisiana v. Jumel*, from which I dissented -- not agreeing with the majority either in the statement of the object of that case or in the law applicable to it. 107 U.S. [101 U. S. 728](#) . I considered that case as brought to compel the officers of the state to do what she had by her laws and former constitution consented they might

Page 123 U. S. 510

by the judicial tribunals be required to do. I expressed at the time, against the majority of the Court, my conviction of the invalidity and unconstitutionality of the ordinance of repudiation embodied in the new Constitution of Louisiana. At the same time, I also expressed, in *Antoni v. Greenhow*, my opinion of the equally invalid legislation of Virginia. 107 U.S. [107 U. S. 784](#) . I adhere to my dissenting opinions in those cases, and in concurring in the judgment in this case, I do not in any respect depart from or qualify what I there said.

MR. JUSTICE HARLAN, dissenting.

As I adhere to the views expressed by me in *Louisiana v. Jumel*, [107 U. S. 746](#) ; *Antoni v. Greenhow*, [107 U. S. 801](#) , and *Cunningham v. Macon*, [109 U. S. 458](#) , and as I concurred in the judgments in *Poindexter v. Greenhow*, [114 U. S. 273](#) , and *Allen v. Baltimore & Ohio Railroad Company*, [114 U. S. 311](#) , I feel obliged to dissent from the opinion and judgment in these cases.

In *Cooper v. Marye, &c.*, the jurisdiction of the circuit court cannot be questioned so far as it depends upon the citizenship of the parties, for the plaintiffs are subjects or citizens of Great Britain, and the defendants are citizens of Virginia. Whether the plaintiffs merely as holders of Virginia coupons, and not taxpayers in

that commonwealth, have any legal ground of complaint by reason of the refusal of her officers to accept, when tendered, like coupons which the plaintiffs sold or transferred to taxpayers to be used in meeting their taxes; whether the statutes under which those officers proceeded, or intend to proceed, are repugnant to the Constitution of the United States, and therefore void; whether the preliminary injunction in question should or should not have been refused upon the ground that such taxpayers have a complete and adequate remedy at law; whether the necessity of avoiding conflicts between the courts of the United States and the officers of a state, acting in obedience to her statutes, was not ample reason for refusing

Page 123 U. S. 511

to grant such injunction; or whether an officer ought to be enjoined from merely bringing a suit in behalf of the public -- the suit itself not necessarily, or before judgment therein, involving an invasion of the property rights of the defendant therein -- are all matters which the circuit court, sitting in equity, was competent to determine upon the final hearing in *Cooper v. Marye, &c.*; Those questions are not open for consideration here except upon the appeal from the final decree in that case; consequently I am not at liberty now to express an opinion as to any of them.

The only inquiry now to be made is whether *Cooper v. Marye* is a suit against Virginia within the meaning of the Eleventh Amendment to the Constitution of the United States. If it be, I agree that the prisoners must be discharged, for the judicial power of the United States does not extend to suits against a state by citizens of another state or by subjects of foreign countries. But I am of opinion that it is not a suit of that character. I stand upon what was adjudged in *Osborn v. United States Bank*, 9 Wheat. at page [22 U. S. 857](#) . Chief Justice Marshall, speaking for the Court in that case, said:

"It may, we think, be laid down as a rule *which admits of no exception* that in all cases where jurisdiction depends on the party, it is the party *named on the record*. Consequently, the Eleventh Amendment, which restrains the jurisdiction granted

by the Constitution over suits against states, is, of necessity, limited to those suits in which a state is a party on the record. The amendment has its full effect if the Constitution be construed as it would have been construed had the jurisdiction of the court never been extended to suits brought against a state by the citizen of another state or by aliens. The state not being a party on the record, and the court having jurisdiction over those who are parties on the record, the true question is not one of jurisdiction, but whether, *in the exercise* of its jurisdiction, the court *ought* to make a decree against the defendants, whether they are to be considered as having a real interest or as being only nominal parties."

These principles have been recognized in several decisions of

Page 123 U. S. 512

this Court, notably in *United States v. Lee* and *Kaufman v. Lee*, [106 U. S. 196](#) , [106 U. S. 213](#) -215. That was an action to recover a body of land in Alexandria County, Virginia, two hundred acres of which constituted Arlington Cemetery, previously established by the United States as a military station and as a national cemetery for the soldiers and sailors of the union. When the action was brought, that cemetery was in the actual possession of the United States by the defendants, as their officers. Those officers certainly had no personal interest in the result of the suit. They simply represented the United States, who were the real parties in interest. As the United States were not parties to the record, and because they could not be made parties, the Court proceeded to a determination of the case between the parties before it. The result was a judgment determining that Lee had a legal right to the possession of Arlington Cemetery as against the officers of the United States having it under their control. The authority and duty of the Court to proceed in the case, notwithstanding the United States were not before the Court, was rested mainly upon the decision in *Osborn v. Bank of the United States*, from which was quoted, with emphatic approval, the following language:

"If the State of Ohio could have been made a party defendant, it can scarcely be denied that this would be a strong case for an injunction. The objection is that, as

the real party cannot be brought before the court, a suit cannot be sustained against the agents of that party, and cases have been cited to show that a court of chancery will not make a decree unless all those who are substantially interested be made parties to the suit. This is certainly true where it is in the power of the plaintiff to make them parties; but if the person who is the real principal, the person who is the true source of the mischief by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong which they would afford against him could his principal be joined in the suit."

And in order that no one might suppose that *Osborn v. Bank of the United*

Page 123 U. S. 513

States had been modified or overruled by subsequent decisions, the Court in the *Lee* case, after referring to several decisions, said:

"These decisions have never been overruled. On the contrary, as late as the case of [*Davis v. Gray*](#), 16 Wall. 203, the case of *Osborn v. Bank of the United States* is cited with approval as establishing these among other propositions:"

"Where the state is concerned, the state should be made a party if it can be done. That it cannot be done is a sufficient reason for the omission to do it, and the Court may proceed to decree against the officers of the state in all respects as if the state were a party to the record. In deciding who are parties to the suit, the Court will not look beyond the record. Making a state officer a party does not make the state a party, *although her law may have prompted his action and the state may stand behind him as a real party in interest*. A state can be made a party only by shaping the bill expressly with that view, as where individuals or corporations are intended to be put in that relation to the case."

"Though not prepared to say now that the Court can proceed against the officer 'in all respects' as if the state were a party, this may be taken as intimating, in a general way, the views of the Court at that time."

In *Poindexter v. Greenhow*, [114 U. S. 270](#) , we sustained a suit by a private individual against a treasurer, charged with the duty of collecting taxes, to recover certain personal property which the defendant had seized for the nonpayment of taxes due Virginia from the plaintiff in that suit. In seizing the property, the officer disregarded the tender, previously made, of the state's coupons. It was earnestly contended that as the officer only did what the state by her statutes had commanded him to do, and had himself no personal interest in the matter, the suit against him was in legal effect one against the state; that a suit to recover property seized for the nonpayment of taxes, in conformity with the statutes of Virginia, had the same result as a direct suit against the state to compel her performance of her contract with the coupon holder or to enjoin her officer from carrying those statutes into effect. But this view was overruled, mainly upon the authority of *Osborn v. Bank of the United States*, from which the Court

Page 123 U. S. 514

quoted with approval the same passages as are to be found in the opinion in *Lee's Case*, and in reference thereto observed:

"This language, it may be observed, was quoted with approval in *United States v. Lee*. The principle which it enunciates constitutes the very foundation upon which the decision in that case rested."

In *Poindexter's Case*, we said that the immunity from suit secured to the states by the Constitution

"does not exempt the state from the operation of the constitutional provision that no state shall pass any law impairing the obligation of contracts, for it has long been settled that contracts between a state and an individual are as fully protected by the Constitution as contracts between two individuals. It is true that no remedy for a breach of its contract by a state, by way of damages as compensation, or by means of process to compel its performance, is open, under the Constitution, in the courts of the United States by a direct suit against the state itself on the part of the injured party, being a citizen of another state or a citizen or subject of a foreign

state. But it is equally true that whenever, in a controversy between parties to a suit of which these courts have jurisdiction, the question arises upon the validity of a law by a state impairing the obligation of its contract, *the jurisdiction is not thereby ousted, but must be exercised*, with whatever legal consequences to the rights of the litigants may be the result of the determination."

Upon identically the same grounds rests our decision in *Allen v. Baltimore & Ohio Railroad*, [114 U. S. 311](#) , in which we maintained the right of that company to an injunction to prevent the collection of taxes by distraint upon its property after a tender of the state's tax receivable coupons in payment of such taxes. That suit was against the Auditor of Public Accounts and the Treasurer of Virginia. They certainly had no personal interest in the collection of the taxes, but were only obeying the statutes of the state which they assumed to be constitutional and binding upon them. But the effect of that suit was to say to the State of Virginia that she should not collect her revenue in the mode proposed by the statute, and thereby violate rights secured by the Constitution of the United States. In vain was it urged by the officers of the

Page 123 U. S. 515

state that Virginia was the real party in interest; that, as the state could only act by her officers, to enjoin them was to enjoin the state, and that consequently the suit was one against the state within the meaning of the Eleventh Amendment. This Court overruled that contention, holding in substance that, the State of Virginia not being named as a party and it being impossible to make her a party, her officers could be prevented from touching the property of the railroad under a statute void under the Constitution of the United States.

The result, then, of former decisions is that a suit against officers of the United States to recover property not legally in their possession is not a suit against the United States, and that neither a suit against officers of the state to recover property illegally taken by them in obedience to the statutes of the state nor a suit brought against state officers to enjoin them from taking, under the command of the state, the property of a taxpayer who has tendered coupons for taxes due to

her were suits against the state within the meaning of the Eleventh Amendment of the Constitution. And now it is adjudged in the cases before us that a suit merely against state officers to enjoin them from bringing actions against taxpayers who have previously tendered tax receivable coupons is a suit against the state. There is, I grant, a difference between the cases heretofore decided and the case of *Cooper v. Marye*, but the difference is not such as to involve the jurisdiction of the circuit court, but rather, to use the language of Chief Justice Marshall, "the exercise of its jurisdiction."

The Commonwealth of Virginia has no more authority to enact statutes impairing the obligation of her contracts than statutes impairing the obligation of contracts exclusively between individuals. [*New Jersey v. Wilson*, 7 Cranch 164, 11 U. S. 166](#) ; [*Providence Bank v. Billings*, 4 Pet. 514, 29 U. S. 560](#) ; [*Green v. Biddle*, 8 Wheat. 1, 21 U. S. 84](#) ; [*Woodruff v. Trapnall*, 10 How. 190, 51 U. S. 207](#) ; [*Wolff v. New Orleans*, 103 U. S. 358](#) , [*103 U. S. 367*](#) ; [*New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 650](#) , [*115 U. S. 673*](#) . A statute which is void as impairing the obligation of the state's contract affords no justification to anyone and confers no authority. If an officer proposes to enforce such a

Page 123 U. S. 516

statute against a party the obligation of whose contract is sought to be impaired, the latter, in my judgment, may proceed by suit against such officer, and thereby obtain protection in his rights of contract as against the proposed action of that officer. A contrary view enables the state to use her immunity from suit to effect what the Constitution of the United States forbids her from doing -- namely to enact statutes impairing the obligation of her contract. If an officer of the state can take shelter behind such immunity while he proceeds with the execution of a void enactment to the injury of the citizen's rights of contract, it would look as if that provision which declares that the Constitution of the United States shall be the supreme law of the land, anything in the Constitution or laws of a state to the contrary notwithstanding, had lost most, if not all, of its value in respect to contracts which a state makes with individuals.

I repeat that the difference between a suit against officers of the state enjoining them from seizing the property of the citizen in obedience to a void statute of the state and a suit enjoining such officers from bringing, under the order of the state and in her name, an action which, it is alleged, will result in injury to the rights of the complainant is not a difference that affects the jurisdiction of the Court, but only its exercise of jurisdiction. If the former is not a suit against the state, the latter should not be deemed of that class.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com