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U.S. Supreme Court Decisions

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the banks agreed to surrender the evidences of indebtedness held by the county against the bank and to accept certificates of deposit, payable in installments over a period of years. This suit was instituted to test the validity of the action of the commissioners in this behalf. **HELD:** That the commissioners did not exceed the authority vested in them by law.

U. S. SUPREME COURT DECISIONS

Under War Risk Insurance policies a beneficiary named by insured, who is not permitted to take at the time of insured's death, may receive the award if Congress later includes him among the permitted class.—*White v. U. S.*, 46 Sup. Ct. Rep. 274.

The objection that defendant was tried upon two indictments at the same time and was, therefore, deprived of the full number of jury challenges that he would have had if tried separately is not one that can be raised on habeas corpus.—*Ashe v. U. S.* 46 Sup. Ct. Rep. 333.

Although a public utility in the past may have charged excessive amounts to depreciation expense, thus accumulating reserve account balances greater than necessary to maintain adequately the property, it cannot be required to draw on these balances in order to overcome deficits in future earnings and to sustain rates which could not otherwise be sustained.—*Utility Commission v. New York Tel. Co.*, 46 Sup. Ct. Rep. 363.

The original general jurisdiction of the District Court is not enlarged so as to permit suit to be brought in a district where neither plaintiff nor defendant is an inhabitant, even though the plaintiff could have brought the suit in a State Court of concurrent jurisdiction from which the defendant could have removed the case to such District Court.—*Seaboard Milling Co. vs. Chicago, Rock Island*, 46 Sup. Ct. Rep. 247.

The drainage acts of South Dakota which authorize the assessment of costs and benefits for maintenance and repair, do not extend to property outside of the original drainage district. Where the levy is void for lack of statutory power to make the levy injunctive relief may be had without appeal to the state court. The test of Federal equity jurisdiction is the inadequacy of the remedy on the law side of the Federal court and not the inadequacy of the remedy in the state courts.—*Risty vs. Chicago, Rock Island*, 46 Sup. Ct. Rep. 236.

A petition by a Federal officer to remove to a Federal Court for trial a prosecution against him for murder must negative the possibility that he was doing acts other than official acts at that time and on that occasion, or make it clear and specific that whatever was done by him leading to the prosecution was done under color of his Federal official duty. Mandamus being invoked to secure the return of the prosecution to the State Courts the Supreme Court granted the writ, holding that the defendants were not in position to take advantage of Section 33 of the Judicial Code. In part, the Court said: "The defendants when called upon to testify before the coroner were not obliged by Federal law to do so. Indeed, even under state law, they might have stood mute, because the proceeding was one in which they were accused of crime. They, themselves, show that they voluntarily made the statements upon which these indictments were founded. While, of course, it was natural that, if not guilty, they should have responded fully and freely to all questions as to their knowledge of the transaction with a view of showing their innocence, nevertheless their evidence was not in performance of their duty as officers of the U. S."—*Maryland vs. Soper*, 46 Sup. Ct. Rep.—.

Summarizing the law as to the nature and extent of the restriction on state taxation of national banks, the U. S. Supreme Court used the following language: 1. "The purpose of the restriction is to render it impossible for any State, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business; 2. The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such a way as to bring it into substantial competition with the business of national banks: 3. Moneyed capital is brought into such competition where it is invested in shares of state banks or in private banking, and also where it is employed substantially as in the loan and investment features of banking, in making investments by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and re-investment; 4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction."—*First National Bank vs. Anderson*, 46 Sup. Ct. Rep. 135.