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COMMENT

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A decision of the Supreme Court of the United States, *In re Hohorst*, 150 U. S. 653, rendered in December 1893, is likely to cause some trouble in the Federal courts regarding jurisdiction of parties in patent cases. The question involves the construction of the law of 1887, chap. 373, sec. 1, as amended by that of 1888, chap. 866, sec. 1, and the point in issue is whether, under these laws, suit can be brought in the U. S. courts, in a patent case, in any other district than that whereof the defendant is an inhabitant. The section, after reciting the concurrent and exclusive jurisdiction of the Federal courts, provides that "no civil suit shall be brought before either of said (*i. e.*, District or Circuit) courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant." The Supreme Court has decided that the earlier laws of 1789 and 1875, which are on this point substantially the same as those of 1887 and 1888, applied to *all* suits, including patent suits. (*Chaffee* v. *Hayward*, 20 How. 208; *Butterworth* v. *Hill*, 114 U. S. 128). These laws of 1887 and 1888 have frequently been applied to patent cases, and there has been apparently no objection raised to this application of the laws. But in the case cited at the beginning of this note (*In re Hohorst*), the Supreme Court appears to have taken up a different position. The suit was for the infringement of a patent, and the defendant, an alien corporation, demurred to the bill on the ground that the Circuit Court had no jurisdiction of the person of the defendant. The Supreme Court decided against the defendant, and in the opinion discussed the construction of the section of the Act in question. After pointing out that in patent cases the jurisdiction of the United States courts depends on the subject matter and not on the parties, the Court argues as follows: I. That by statutes in force at the time of the passing of the Acts of 1887 and 1888, the United States courts had original jurisdiction, exclusive of State courts, over patent cases, without regard to amount or value. II. That the section now in question speaks, at the outset, of only so much of the civil jurisdiction of the Circuit courts of the Uuited States as is concurrent with the State courts, and concerning matters in dispute exceeding $2000 in value. III. That the grant in this section to the Circuit Court of jurisdiction arising generally "under the Con-

stitution and laws of the United States," does not affect the jurisdiction granted by earlier statutes over specified cases of that class. The Court concludes: "If the clause of this section, defining the district in which suit shall be brought, is applicable to patent cases, the clause limiting the jurisdiction to matters of a certain amount or value must be held to be equally applicable, with the result that no court of the country, national or state, would have jurisdiction of patent suits involving a less amount or value. It is impossible to adopt a construction which necessarily leads to such a result." The effect of this decision would seem to be that a patent suit can be brought in the Circuit Court of any district in which the defendant can be found and served with process.

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On the subject of construction of statutes, it may be interesting to point out the various ways in which the Supreme Court of the United States has expressed itself at different times as to the means which may be employed to aid in the construction of statutes of uncertain import. Thus, in *Preston* v. *Browder*, 1 Wheat. 121 (1816), the Court say that it is frequently necessary to recur to *the history and situatiom of the country* to ascertain the reason as well as the meaning of statutes. In *Aldridge* v. *Williams*, 3 How. 24 (1845), Ch. J. Taney, after stating that the Court could not be influenced by the construction placed upon a law by the individual members of Congress in the debate, nor by their motives or reasons in supporting or opposing amendments, continues: "The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the Act itself, and we must gather the intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the *public history* of the times in which it was passed." In *Blake* v. *Nat. Banks*, 23 Wall. 307 (1874), an apparently contradictory and badly expressed enactment was interpreted by a reference to the Journals of Congress. In *U. S.* v. *Union Pacific R. R.*, 91 U. S. 79 (1875), the Court substantially adopted the rules of construction laid down by Ch. J. Taney, excluding the views of individual members in debate, and the motives which influenced them in their votes, and stating that the Act itself speaks the will of Congress, and this is to be ascertained from the language used, and that the Court may recur to the history of the times to find the reason and meaning of particular provisions. In *Jennison* v. *Kirk*, 98 U. S. 459 (1878), the Court, after giving a sketch of the

speech of a member in Congress, advocating the passage of an Act, say: "These statements of the author of the Act in advocating its adoption cannot of course control its construction where there is doubt as to its meaning, but they show the condition of mining property in the public lands of the United States, and thus serve to indicate the probable intention of Congress in the passage of the Act." In *Am. Net and Twine Co.* v. *Worthington*, 141 U. S. 473 (1891), the Court, repeating that statements and opinions of the promoters of the Act in the legislative body are inadmissible as bearing on its construction, say that reference to the proceedings of the body may be made to inform the Court of the exigencies of the fishing interests, and the reasons for fixing the duty at a certain amount. The report of the Senate Committee on Education and Labor, recommending the passage of the bill, is quoted by the Court in *Holy Trinity Church* v. *U. S.*, 143 U. S. 464 (1891), as throwing light on the intention of Congress in passing it. This latter case has apparently not always been understood, for the Court, in *In re Downing*, 56 Fed. Rep. 470 (1893), referring to it, say: "The case of *Holy Trinity Church* v. *U. S.* was apparently pressed upon its (the Court's) attention as an authority for permitting courts to discard the language of a statute, and interpret its purpose by the supposed intention of the law-makers, gathered from general considerations of justice or expediency. That adjudication, according to our experience, has been invariably cited where the effort has been made to induce this Court to legislate and substitute its own notions of what the law should be for the plainly expressed will of the legislative body. We do not understand, however, that it sanctions any new rules of statutory interpretation." From the foregoing examination of cases, it would seem that while the remarks of individual members and the proceedings of the legislature as a body cannot be referred to as a guide to the construction of an Act, they may sometimes be taken into account as a means of informing the Court of collateral facts and circumstances which may tend to show more clearly the condition of public affairs that the Act was designed to ameliorate. Or, in other words, they would be referred to only as a means (to use the language of the earlier statements of the Supreme Court) of recurring to "the situation and history of the country" in their relation to the Act under consideration.

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Does a parol promise by a mortgagor to pay the mortgage tax invalidate the written stipulations for interest contained in the

note and mortgage? The decision of this question, teeming as it does with momentous consequences to both borrowers and lenders, into which two classes the whole human race may perhaps be properly divided, was recently rendered by the Supreme Court of California in the case of *Dow* v. *Niles et al.* The Court held, with three of the five justices dissenting, that a decree in the affirmative would invite "more or less falsehood and perjury, and result in some instances in the grossest injustice"; that the person whose needs compelled him to borrow would in nowise be protected from the avarice of the lender, who, accustomed as he is to the business of lending money and fully armed with knowledge in protecting his interests in securities, would never take a written or verbal contract for the payment of the mortgage tax because he would know the contract to be void because of the violation of the provision in the State Constitution to that effect (Section 5 of Article 13). And the verbal promise, if proved, could not possibly have had any force or validity and thus of no advantage to the mortgagee or disadvantage to the mortgagor. The opinion was further expressed that, as there is no limit imposed by the laws or Constitution of the State, any risk additional which the lender must run would only increase the rate of interest, which of course must operate adversely to the interests of the borrower. Reference is also made in the opinion of the Chief Justice, to the case of *Burbridge* v. *Lemmert*, in which the fact that the agreement to pay the taxes on the mortgagee's interest was *in writing*, decided the case in the opposite way, *i. e.*, in favor of the mortgagor, while in the case under discussion it was *parol*. Thus the decree was in conformity with the general rule that parol evidence is inadmissible to add to, contradict, or vary the terms of a written agreement; and also with the intention to proceed in conformity with the view expressed by the framers of the Constitution in the various provisions relating to the subject.