tion it is his duty to maintain his firmness, and instead of yielding and surrendering his property, as if he was guilty, to resist, and, through the protection furnished him by the law, vindicate his innocence. But if under such circumstances he does less, and surrenders his property, must the courts be closed to him, so that when he sues for it, and puts in issue the question of his guilt or innocence, he will not be heard, nor his property be restored to him upon his showing that he was wrongfully deprived of it? We think not. A person may be innocent, and yet a wrongful prosecution and false witnesses may not only be productive of great pecuniary loss to, but result also in the imprisonment of, the threatened party. Without encouraging the innocent to submit too readily to unfounded accusations, we can still see no reason why one person who has by such means, without other consideration, come wrongfully into the possession of another person's property should be permitted to retain it. If the wrongful possession is not to be maintained without regard to the merit of the transaction, the injured party must be permitted to sue for its recovery, and the wrong must be redressed if the evidence shows that one was committed.

If Obert was not in fact guilty of embezzling Landa's money, and Landa demanded of him the notes and money now in controversy, and intentionally, by any form of expression, induced him to believe that if he failed to comply with his demands he would be prosecuted and imprisoned on that charge, and if the fears of Obert were aroused to such an extent that he surrendered to Landa said money and notes when he owed him nothing, to avoid such prosecution, the transaction would be duress, within the meaning of the law, and should be set aside. In such a case we can see no use of discussing or considering what a man of ordinary firmness and intelligence would have done under the same circumstances. The question to be decided is, was Obert innocent of the charge, and did he, on account of fear of imprisonment produced by the conduct or representations of Landa and his attorneys, surrender his property? We can see no reason for discriminating under such circumstances against a weak or timid man.

Upon another trial of this cause, if the evidence shall show that Landa had employed lawyers to bring a civil suit against Obert for an amount of money which he claimed had been embezzled by him, and that Landa and his attorneys, or both, informed him of the charge against him, and of their purpose to institute such civil suit, and also informed him, or by any means gave him to understand, that he was charged with being guilty of the crime of embezzlement, and either threatened to cause him to be prosecuted for that offense or made known to him that one result of filing such civil suit would be to so direct the attention of others to the matter as to lead to a criminal prosecution, and his imprisonment on the charge, and that Obert was not in fact guilty of the charge, and was not indebted to Landa, and that he was through such representations or proceedings induced to fear that if he did not accede to the demands then being made upon him he would incur the danger of imprisonment, and if under the influence of the fears so created, and otherwise unwillingly, he surrendered the money and notes now in controversy to Landa or to his attorneys, he will be entitled to a judgment in his favor setting the transaction aside, and for the recovery of the amount of money and notes surrendered, with interest; subject to such defenses, and such only, as would have been applicable if said transactions with regard to the settlement had never occurred.

The evidence indicates that Obert's claim by open account against Landa was surrendered without payment at the same interview, but after the transaction with regard to the other matters was complete. If the transaction with regard to the notes and money shall be set aside, the one transaction is so intimately connected with the other that so much of the settlement as related to the open account should be vacated for the same reason, and subject to any defense that Landa may have against it, independently of said transactions; and regardless of any statement of the amount due him made by Obert at that time he will be entitled to recover a judgment for the principal and interest due upon such account.

We deem it unnecessary to consider the errors assigned upon charges given or refused, as we do not think it likely that the same questions will arise on another trial. The judgment is reversed, and the cause is remanded.

DILLINGHAM v. PUTNAM.

(*Supreme Court of Texas.* June 24, 1890.)

CONSTITUTIONAL LAW—TITLES OF LAWS—APPEAL BY RECEIVERS.

1. Gen. Laws Tex. 1889, p. 58, purports in its title to be "an act to amend * * * an act for the appointment of receivers, and to define their powers and duties, and to regulate proceedings under such appointment of receivers." *Held*, that this is not violative of Const. Tex. art. 3, § 35, which provides that "no bill shall contain more than one subject, which shall be expressed in its title."

2. Such act provides that before an appeal or writ of error is allowed to a receiver he shall give bond, with sureties, in a sum double the amount of the judgment, conditioned that he will prosecute his appeal or writ of error with effect, and will perform the judgment, should it be affirmed. *Held*, that this is not in violation of Const. Tex. art. 3 § 56, prohibiting the enactment of special laws "for the limitation of civil or criminal actions."

3. But such act is void, as it violates Const. Tex. art. 1, § 13, which declares that "all courts shall be open, and every person, for an injury done him, * * * shall have remedy by due course of law," in that it denies to receivers the right to have judgments against them reviewed on the same terms as those prescribed in the case of other persons.

Appeal from district court, Grayson county.

R. Dearmond and *O. T. Holt*, for appellant. *W. W. Wilkins* and *C. B. Randle*, for appellee.

STAYTON, C. J. The legislature at its last session enacted a statute which, in all appeals prosecuted by receivers, requires that "before such appeal or writ of error shall be perfected or allowed such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or defendant in error in a sum at least double the amount of the judgment, interest, and costs, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and, in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its judgment, sentence, or decree, and pay all such damages as may be awarded against him. In the event that the judgment of the court to which such appeal or error is taken shall be against such receiver, judgment shall at the same time be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after the rendition of such judgment." Gen. Laws 1889, p. 58. In this case appellant seeks to prosecute an appeal upon a bond, which binds himself and sureties for costs only, while the bond required by the statute above quoted, requires a bond that will bind principal and sureties absolutely, to satisfy the judgment in case of affirmance. The appeal is prosecuted by appellant as a receiver, and for the purpose of having revised a judgment rendered against him in his official capacity, and appellee moves to dismiss the appeal because a *supersedeas* bond has not been filed.

It is urged that the statute in question is violative of the constitution in that the act embraces more than one subject, and because it is a special law regulating the practice or jurisdiction of the courts, or placing a limitation on civil actions. The statute quoted is found in an act entitled "An act to amend sections 2 and 6 of chapter 131 of 'An act to provide for the appointment of receivers, and to define their powers and duties, and to regulate proceedings under such appointment of receivers,' as passed by the twentieth legislature, and approved April 2, 1887." It is believed that the appointment, the fixing of the powers and duties of receivers, and the regulation of proceedings, when it becomes necessary that such appointments shall be made, powers exercised, and duties performed, are so intimately connected as to make an act such as that in question valid under the terms of the constitution, which provides that "no bill * * * shall contain more than one subject, which shall be expressed in its title." The matter of receivers or receiverships is the subject of the act, and is single in the sense of the constitution, for it is this to which the entire act applies. Receivers can only exist through the appointments of courts. Their powers must be such as the law or the order appointing may lawfully give, and the many steps through which those things can be fixed and determined are but proceedings. The purpose of the provision of the constitution cited has been so often stated that it is unnecessary to repeat it, and looking to that, the entire purpose of the act, and the past decisions of this court, we must hold that the statute in question is not violative of section 35, art. 3, of the constitution. Cattle Co. v. State, 68 Tex. 526, 4 S. W. Rep. 865. Nor is it believed that the act, within the meaning of the constitution, is a special law regulating the practice or jurisdiction of the courts, for it affects the proceedings in every receivership, and it would seem that it in no respect comes within the evil intended to be prevented by that section of the constitution which prohibits the passage of enumerated special laws. On the contrary, a proper act on this subject, as in cases of appeals by executors, administrators, guardians, and by municipal corporations created under the general law, would seem to be proper.

The section of the constitution forbidding the passage of special or local laws on enumerated subjects forbids the passage of such laws "for limitation of civil or criminal actions," (Const. art. 3, § 56,) but we do not understand the act in question within the meaning of the constitution to be such a limitation. We understand that section of the constitution to forbid the passage of a law which would extend or restrict the time within which an action should be brought against or in favor of one person, when upon a like cause of action a longer or shorter period of limitation is provided for persons generally of like *status*. It is suggested, however, that the act, if given effect, will in many cases deprive this court of power to exercise the jurisdiction conferred on it by the constitution, and, if this be true, the act cannot in so far be given effect. The constitution gives this court jurisdiction, coextensive with the limits of the state, to hear and determine all civil causes tried in the district courts in the exercise of the jurisdiction conferred on them by the constitution, (Const. art. 5, § 3;) and it further declares that "all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law," (Id. art. 1, § 13.) This applies to a defendant as well as a plaintiff. "Due course of law," in a cause tried in a district court, means a trial according to the settled rules of law in that court, and a further hearing in this court, if either party to the litigation desires it after a final judgment in the trial court. A law which practically takes away from either party to litigation the right to a fair and impartial trial in the courts provided by the constitution for the determination of a given controversy, denies a remedy by due course of law. That the legislature has power to regulate appeals, and to provide for the execution of such bonds as the party appealing may be able to give for the security of the adverse party, is not questioned. But a party's right to appeal to this court cannot be made to depend on his ability to give a bond which will within itself secure to the party successful in the court below full satisfaction of his judgment. Recognizing that fact, the legislature has provided that every person desiring to appeal from a judgment rendered against him in the dis-

trict court may appeal or prosecute a writ of error in this court, and has made most ample provision for securing the party obtaining the judgment in the benefits to result from it, and at the same time for securing the right to the other party to have the judgment of the trial court here revised. If the defeated party desire to supersede the judgment pending appeal, he is required to execute a bond which will secure the payment of the judgment and all damages that may be awarded against him. Rev. St. art. 1404. If the judgment be for the recovery of land or other property, he must execute a bond which will secure to the adverse party the rent or hire of the property, and, if he fails to execute such bonds, the process of the court may issue as though no appeal or writ of error was prosecuted, and thus the adverse party be in position at once to realize the fruits of the judgment obtained by him. Id. art. 1405. If the party during the revision of a judgment against him does not desire or is not able to give a bond that will supersede a judgment, he may appeal or prosecute a writ of error by executing a bond that will only secure the costs of litigation; but in that case the successful party may have process and reap the full benefit of his judgment, as though no appeal or writ of error was prosecuted, (Id. art. 1400,) subject to liability to make restitution if the judgment be reversed. If the party desiring to appeal or to prosecute a writ of error is unable to pay the costs or to give security therefor, he may still have the judgment rendered against him revised in this court upon making affidavit that he is unable to pay the costs. Id. art. 1401. If a party to a suit filed in the district court is unable to pay costs, he is entitled to all process necessary to the proper prosecution of his cause, and to prosecute it without the payment of costs or giving security therefor, in all cases in which he makes affidavit of his inability to pay or give security for costs, unless, on contest, his affidavit is decided to be untrue. Id. art. 1438. Thus is the spirit of the constitution manifested in legislation, and the courts held open to the appeal of every one, whether an individual or corporation, for the law in the administration of justice makes no difference between them.

We are of opinion that an act of the legislature which makes the right of an individual or corporation to prosecute an appeal or writ of error to depend on the giving of a *supersedeas* bond, without reference to the ability or inability of such corporation or individual to give such a bond, is violative of the constitution, and the reasons why such a law should not be sustained are stronger when the party seeking the revision of a judgment against him stands in a fiduciary relation to the property in his hands, or to those interested in it. Property in the hands of a receiver is theoretically in the hands of the court that appointed him, and he has neither the power nor the right to dispose of it, except as the court may direct him to do so. The fund or property is most usually placed in his hands because of the insolvency of its owner, and for the benefit of his or its creditors, to be administered by the court as their respective legal and equitable rights may require, and, as a defendant, a receiver is not personally liable even for costs. In case a judgment is rendered against him, unless in cases in which his own wrong created the liability, he is not liable personally, and there is most frequently no one other than the creditors who are interested in the property in his hands who have any interest in prosecuting appeals or writs of error from judgments rendered against him. Such other creditors are interested in having an erroneous judgment rendered against a receiver set aside, for, if paid, in case the debtor be insolvent, the payment must diminish the fund to which all creditors must look; but must they, and, if they do not, who will, render themselves absolutely liable personally to pay the judgment as a condition on which it may be revised? If so, such legislation indirectly denies them the right to have a judgment in which they are interested revised on the same terms upon which other judgments may be. Other fiduciaries, such as executors, administrators, and guardians, are permitted to appeal or prosecute writs of error without giving any bond at all, simply because the estate from which the judgment to be revised must be paid, if affirmed, is in the custody of a court, and cannot be taken thence without its order in due course of administration. The rule has been extended even to executors acting without the control of probate courts. We do not wish to be understood to hold that hardships which might and would frequently result if the validity of such a law as that in question was sustained would furnish any reason why the courts should not enforce it, nor to hold that all fiduciaries must be placed on the same footing in reference to the terms on which appeals or writs of error may be prosecuted to this court, but to hold that a law which denies to any individual, whether acting in his own right or in a fiduciary capacity, or to a corporation, the right to appeal unless a *supersedeas* bond is executed, is violative of the constitution in that it deprives this court, if given effect, of jurisdiction conferred on it by the constitution, and deprives the party seeking revision of a judgment here of remedy by due course of law. The motion to dismiss the appeal will be overruled.

WESTERN M. & I. CO. v. JACKMAN *et al.*

(*Supreme Court of Texas.* June 13, 1890.)

EXECUTORS AND ADMINISTRATORS—ALLOWANCE OF DEMANDS—SUIT TO ENFORCE.

Under Rev. St. Tex. art. 2067, which provides that "any creditor of a deceased person holding a claim secured by a mortgage, * * * which claim has been allowed and approved, * * * may obtain from the county court * * * an order for the sale of the property upon which he has such mortgage," where an administrator has allowed a claim, but rejected in part the lien of the mortgage securing it, he can only enforce his lien in the county court, and no jurisdiction for that purpose is conferred on the district court by article 2028, which provides that "when a claim for money against an estate has been rejected by an * * * administrator in whole or in part the