INDEX.

APPEAL.

1. An appeal authorized by the appellant personally, and in good faith entered in this court in the name of his attorney and counsel below, will not be dismissed simply because that counsel had not authorized such entry, when the appellant, on learning of the mistake, appears by other counsel and prosecutes it in good faith. *Davis* v. *Wakelee*, 680.
2. The omission to describe in an appeal bond the term at which the judgment appealed from was rendered is an error which may be cured by furnishing new security. *Ib.*

ATTORNEY AT LAW.

See APPEAL.

CASES AFFIRMED.

1. Reversed upon the authority of *New York, Lake Erie & Western Railroad Co.* v. *Pennsylvania*, 153 U. S. 628. *Delaware & Hudson Canal Co.* v. *Pennsylvania*, 200.
2. *St. Louis* v. *Western Union Tel. Co.*, 148 U. S. 92, affirmed and applied to this case. *Postal Telegraph Cable Co.* v. *Baltimore*, 210.
3. *Machine Co.* v. *Gage*, 100 U. S. 676, approved and followed. *Emert* v. *Missouri*, 296.
4. *Eustis* v. *Bolles*, 150 U. S. 361, affirmed and followed. *Winter* v. *Montgomery*, 385.
5. *McLish* v. *Roff*, 141 U. S. 661, and *Chicago, St. Paul &c. Railway* v. *Roberts*, 141 U. S. 690, affirmed. *Illinois Central Railroad Co.* v. *Brown*, 386.

See CONSTITUTIONAL LAW, 6;
CRIMINAL LAW, 20.

CASES DISTINGUISHED.

See CRIMINAL LAW, 13.

CASES EXAMINED

See RAILROAD, 4.

CIRCUIT JUDGE.

The fact that a Circuit Judge, prior to his appointment, had been counsel for one of the parties in matters not connected with the case on trial, does not disqualify him from trying the cause. *Carr* v. *Fife*, 494.

CONFESSION.

See CRIMINAL LAW, 1, 2, 4.

CONSPIRACY.

See INDICTMENT, 7.

CONSTITUTIONAL LAW.

1. The monopoly and restraint denounced by the act of July 2, 1890, c. 647, 26 Stat. 209, "to protect trade and commerce against unlawful restraints and monopolies," are the monopoly and restraint of international and interstate trade or commerce, and not a monopoly in the manufacture of a necessary of life. *United States* v. *E. C. Knight Company*, 1.

2. The American Sugar Refining Company, a corporation existing under the laws of the State of New Jersey, being in control of a large majority of the manufactories of refined sugar in the United States, acquired, through the purchase of stock in four Philadelphia refineries, such disposition over those manufactories throughout the United States as gave it a practical monopoly of the business. *Held*, that the result of the transaction was the creation of a monopoly in the manufacture of a necessary of life, which could not be suppressed under the provisions of the act of July 2, 1890, c. 647, 26 Stat. 209, "to protect trade and commerce against unlawful restraints and monopolies," in the mode attempted in this suit; and that the acquisition of Philadelphia refineries by a New Jersey corporation, and the business of sugar refining in Pennsylvania, bear no direct relation to commerce between the States or with foreign nations. *Ib.*

3. The Constitution should be interpreted in the light of the law as it existed at the time it was adopted, not as reaching out for new guaranties of the rights of the citizen, but as securing to every individual such as he already possessed as a British subject — such as his ancestors had inherited and defended since the days of Magna Charta. *Mattox* v. *United States*, 237.

4. A statute of a State, by which peddlers of goods, going from place to place within the State to sell them, are required, under a penalty, to take out and pay for licenses, and which makes no discrimination between residents or products of the State and those of other States, is not, as to peddlers of goods previously sent to them by manufacturers in other States, repugnant to the grant by the Constitution to Congress of the power to regulate commerce among the several States. *Emert* v. *Missouri*, 296.

5. Coal, shipped by the owners at Pittsburg in their own barges to Baton Rouge for the purpose of being sold there or sent thence to supply orders, and moored at Baton Rouge in the original barges in which it was shipped at Pittsburg, is subject to local taxation there as a stock in trade, and such imposition of a tax violates no provision of the Constitution of the United States. *Pittsburg & Southern Coal Co.* v. *Bates*, 577.
6. *Brown* v. *Houston*, 114 U. S. 622, affirmed and applied to this case. *Ib.*
7. No. 147 of the Laws of Louisiana of July 12, 1888, providing for the appointment of coal and coke boat gaugers and making it compulsory upon all persons selling coal or coke in a barge to have the same inspected and gauged according to the provisions of that act, is not a regulation of commerce; nor does it lay an impost or duty upon imports or exports from or to other States and Louisiana; nor is such legislation forbidden by the act of February 20, 1811, c. 21, 2 Stat. 641, providing for the admission of Louisiana into the Union; nor does it work an unconstitutional discrimination between the coal of Pennsylvania and the coal of Alabama, coming into Louisiana. *Pittsburg & Southern Coal Co.* v. *Louisiana*, 590.

See CONTRACT;
JURISDICTION, A, 8, 9, 10;
RAILROAD, 3.

CONTRACT.

The provision in act No. 30 of the Louisiana Statutes of 1877 that the surplus of the revenues of parishes and municipal corporations for any year may be applied to the payment of the indebtedness of former years is not mandatory, but only permissory, and creates no contract right in a holder of such indebtedness of former years which can be enforced by mandamus. *United States ex rel. Siegel* v. *Thoman*, 353.

See PATENT FOR INVENTION, 8.

CORPORATION.

See JURISDICTION, D. 2.

COURT AND JURY.

See CRIMINAL LAW, 6, 7, 8, 18, 19.

CRIMINAL LAW.

1. If one of two persons accused of having together committed the crime of murder makes a voluntary confession in the presence of the other, under such circumstances that he would naturally have contradicted it if he did not assent, the confession is admissible in evidence against both. *Sparf and Hansen* v. *United States*, 51.
2. If two persons are indicted and tried jointly for murder, declarations of one made after the killing and in the absence of the other, tending to prove the guilt of both, are admissible in evidence against the one making the declarations, but not against the other. *Ib.*

3. An objection to the admissibility of such evidence, made at the trial in the name of both defendants, on the general ground that it was irrelevant, immaterial, and incompetent, furnishes, if the testimony be admitted, sufficient ground in case of conviction for bringing the case to this court, and warrants the reversal of the conviction of the defendant against whom it was not admissible. *Ib.*

4. Confessions of a person imprisoned and in irons, under an accusation of having committed a capital offence, are admissible in evidence against him, if they appear to have been voluntary, and not obtained by putting him in fear or by promises. *Ib.*

5. Section 1035 of the Revised Statutes does not authorize a jury in a criminal case to find the defendant guilty of a less offence than the one charged, unless the evidence justifies it; but it enables the jury, in case the defendant is not shown to be guilty of the particular crime charged, to find him guilty of a lesser offence necessarily included in the one charged, or of the attempt to commit the one charged, when the evidence permits that to be done. *Ib.*

6. In the courts of the United States it is the duty of the jury, in criminal cases, to receive the law from the court, and to apply it as given by the court, subject to the condition that by a general verdict a jury of necessity determines both law and fact as compounded in the issue submitted to them in the particular case. *Ib.*

7. In criminal cases it is competent for the court to instruct the jury as to the legal presumptions arising from a given state of facts; but it may not, by a peremptory instruction, require the jury to find the accused guilty of the offence charged, nor of any offence less than that charged. *Ib.*

8. On the trial in a court of the United States of a person accused of committing the crime of murder, if there be no evidence upon which the jury can properly find the defendant guilty of an offence included in or less than the one charged, it is not error to instruct them that they cannot return a verdict of guilty of manslaughter, or of any offence less than the one charged; and, in such case, if the defendant was not guilty of the offence charged, it is the duty of the jury to return a verdict of not guilty. *Ib.*

9. In an indictment for smuggling opium a description of the property smuggled as "prepared opium, subject to duty by law, to wit, the duty of twelve dollars per pound," is a sufficient description of the property subjected to duty by paragraph 48 of § 1 of the tariff act of October 1, 1890, c. 1244, 26 Stat. 567. *Dunbar* v. *United States*, 185.

10. It is no valid objection to an indictment that the description of the property in respect to which the offence is charged to have been committed is broad enough to include more than one specific article; and any words of description which make clear to the common understanding that in respect to which the offence is alleged to have been committed are sufficient. *Ib.*

11. A defendant who waits till after verdict before making objection to the sufficiency of the indictment waives all objections which run to the mere form in which the various elements of the crime are stated, or to the fact that the indictment is inartificially drawn. *Ib.*
12. One good count in an indictment containing several, is sufficient to sustain a judgment. *Ib.*
13. *United States* v. *Carll*, 105 U. S. 611, distinguished from this case. *Ib.*
14. A charge that the defendant wilfully, unlawfully, and knowingly, and with intent to defraud the revenues of the United States smuggled and clandestinely introduced into the United States prepared opium carries with it a direct averment that he knew that the duties were not fully paid, and that he was seeking to bring such goods into the United States without their just contribution to the revenues, and is therefore not subject to the objection that a *scienter* is not alleged. *Ib.*
15. An objection to the admissibility of testimony as to a count upon which the accused is acquitted is immaterial. *Ib.*
16. Secondary evidence is admissible to show the contents of letters in the possession of the defendant in a criminal proceeding, when he refuses to produce them on notice to do so, and cannot be compelled to produce them. *Ib.*
17. When a competent witness testifies that a writing which he produces was received by him and that a defendant on trial in a criminal proceeding admitted that he sent it to him, a foundation is laid for the introduction of the writing against the defendant, although not in his handwriting. *Ib.*
18. An instruction objected to as misrepresenting the testimony and as attempting to enforce as a conclusion from the misrepresented testimony that which was only a possible inference therefrom, is examined and held to fairly leave the question of fact to the jury, and not to overstate the inference from it, if found against the defendant. *Ib.*
19. An instruction to the jury that "a reasonable doubt is not an unreasonable doubt, that is to say, by a reasonable doubt you are not to understand that all doubt is to be excluded; you are required to decide the question submitted to you upon the strong probabilities of the case, and the probabilities must be so strong as not to exclude all doubt or possibility of error, but as to exclude reasonable doubt," gives all the definition of reasonable doubt which a court can be required to give. *Ib.*
20. *Caha* v. *United States*, 152 U. S. 211, followed in holding that the homicide in question in this case having been committed in December, 1889, before the passage of the act organizing the Territory of Oklahoma, was properly cognizable in the Judicial District of Kansas. *Mattox* v. *United States*, 237.
21. When a person accused of the crime of murder is tried in a District Court of the United States, and is convicted, and the conviction is set aside by this court and a new trial ordered, a properly verified

copy of the reporter's stenographic notes of the testimony of a witness for the government at the former trial who was then fully examined and cross-examined, and who died after the first trial and before the second, may be admitted in evidence against the accused on the second trial. *Ib.*

22. Where there is an averment that a person or matter is unknown to a grand jury, and no evidence upon the subject is offered by either side, and nothing appears to the contrary, the verity of the averment of want of knowledge in the grand jury is presumed. *Coffin* v. *United States*, 432.
23. A charge that there cannot be a conviction unless the proof shows guilt beyond a reasonable doubt does not so entirely embody the statement of presumption of innocence as to justify the court in refusing, when requested, to instruct the jury concerning such presumption, which is a conclusion drawn by the law in favor of the citizen, by virtue whereof, when brought to trial upon a criminal charge, he must be acquitted, unless he is proven to be guilty. *Ib.*
24. While the possession of obscene, lewd, or lascivious books, pictures, etc., constitutes no offence under the act of September 26, 1888, c. 1039, 25 Stat. 496, it is proper in an indictment for committing the offence prohibited by that act to allege the possession as a statement tending to interpret a letter written and posted in violation of that act. *Grimm* v. *United States*, 604.
25. A letter, however innocent on its face, intended to convey information in respect of the place or person where or of whom the objectionable matters described in the act could be obtained, is within the statute. *Ib.*
26. In an indictment for a violation of that act it is sufficient to allege that the pictures, papers, and prints were obscene, lewd, and lascivious, without incorporating them into the indictment, or giving a full description of them. *Ib.*
27. When a government detective, suspecting that a person is engaged in a business offensive to good morals, seeks information under an assumed name directly from him, and that person responding thereto, violates a law of the United States by using the mails to convey such information, he cannot, when indicted for that offence, set up that he would not have violated the law, if the inquiry had not been made of him by the government official. *Ib.*

See INDICTMENT.

CUSTOMS DUTIES.

1. Carpenters' pincers, scythes, and grass-hooks, made of forged steel, imported into the United States in March, 1889, were dutiable under the last clause of Schedule C in the act of March 3, 1883, c. 21, 22 Stat. 488, 500, as "manufactures, articles or wares, not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, or any other metal." *Saltonstall* v. *Wiebusch*, 601.

DAMAGES.

1. The court having instructed the jury that the obligation of the defendant rested entirely upon the theory that he had stocked the plaintiff's lands to their full capacity and enjoyed their exclusive use, it would have been irrelevant to further charge that defendant's liability was limited to the consumption by his own stock. *Lazarus* v. *Phelps*, 202.
2. The measure of damages for the purpose of jurisdiction, in an action against the grantor of real estate on the warranty of title in his deed of conveyance, is the purchase money paid with interest. *Brown* v. *Webster*, 328.

EQUITY.

1. After the execution and delivery of a mortgage of real estate in South Carolina to a citizen of New York, the estate was sold under a judgment obtained subsequent to the mortgage and the purchasers went into possession. The mortgagee filed a bill in equity against them in the Circuit Court of the United States for the District of South Carolina, asking an injunction against commission of waste, a discovery of the amount and value of trees cut by them since they came into possession, and an accounting to the court for the same, and for a sale of the mortgaged premises for the payment of the mortgage debt. The mortgagor had died before the commencement of the suit, and his heirs were not made parties, they being citizens of the same State as the plaintiff. No objection was made to proceeding in their absence, and a decree of foreclosure and sale was made as to them, and they were further ordered to account for the conversion of the property which they had taken. *Held*, (1) That as the decree was operative to the extent of the foreclosure and sale, it could be sustained in respect of the accounting; (2) that the appellants could not insist, in this court, upon an objection which, if sustained, would curtail the relief to which the appellee was entitled, or overthrow the jurisdiction of the Circuit Court. *McGahan* v. *Bank of Rondout* 218.
2. A national bank commenced an action in a Circuit Court of the United States to have an assessment of the shares of its capital stock made by state officers declared invalid. The defendants demurred upon the ground that the remedy was in equity. The demurrer was overruled, the case went to trial before a jury, and the plaintiff obtained judgment. *Held*, That although the proceedings might have been in accordance with practice in the courts of the State, the plaintiff's remedy was in equity according to practice in the Federal courts, and that the demurrer should have been sustained. *Lindsay* v. *First National Bank of Shreveport*, 485.
3. The road between Fernandina and Cedar Key was the road designated and pointed out in the various acts of the legislature of Florida

referred to in the opinion, as the one on whose completion, and after default, the trustees were authorized to sell. *Johnson* v. *Atlantic, Gulf & West India Transit Co.*, 618.

4. The Trustees of Internal Improvement in the State of Florida, who took possession of the railroad and sold it, were legally entitled to act as such trustees, on the well-settled doctrine that the acts of the several States, in their individual capacities and of their different departments of government — executive, judicial, and legislative — during the war, so far as they did not impair or tend to impair the supremacy of the National authority, or the just rights of citizens under the Constitution, are to be treated as valid and binding. *Ib.*
5. The weight of the evidence, apart from the evidential character of the answers, is clearly to the effect that the railroad, at the time of the sale, was in a thoroughly dilapidated condition, and, in view of its condition, and the state of the country, the price realized was not inadequate. *Ib.*

See ESTOPPEL;
RAILROAD, 1.

ESTOPPEL.

D. was adjudicated a bankrupt in 1869 in California. W. then held six promissory notes executed by him which were proved in bankruptcy against D. D. then removed to New York. After that W., by leave of court, reduced his claim to judgment in a state court of California, the only notice to D. being by publication, and D. never appearing. In 1875 D. petitioned for his discharge. W. opposed it. D. moved to dismiss the objection on the ground that the claim of W. had been absorbed in a judgment obtained after the commencement of the proceedings in bankruptcy, which would remain in force. The court sustained the motion, cancelled the proof of the debt and dismissed the specification of opposition. W. then filed a bill in equity in the Circuit Court of the United States for the Southern District of New York to enforce an estoppel, and to enjoin D. from asserting, in defence of any suit which might be brought upon the judgment, that the debt upon which it was obtained was not merged in it, and from denying its validity as a debt against D. unaffected by the discharge. *Held*, (1) that the judgment was undoubtedly void for want of jurisdiction; (2) that nevertheless D. was estopped in equity from claiming that it was void; (3) that in view of the uncertainty which appeared to exist in New York as to whether a complaint in an action at law would or would not be demurrable, it must be held that the remedy at law was not so plain or clear as to oust a court of equity of jurisdiction; (4) that the decree below restraining D. from asserting that the judgment was invalid should be affirmed. *Davis* v. *Wakelee*, 680.

EVIDENCE.

1. In an action to recover the rental value of plaintiff's land alleged to have been wrongfully taken possession of and occupied by defendant for grazing purposes, a former judgment in plaintiff's favor against the defendant for a like possession and occupation of those lands terminating before the commencement of this action, is admissible in evidence against defendant. *Lazarus* v. *Phelps*, 202.
2. Before a witness can be impeached by proof that he has made statements contradicting or differing from the testimony given by him upon the stand, a foundation must be laid by interrogating the witness himself as to whether he has ever made such statements. *Mattox* v. *United States*, 237.
3. If evidence legally inadmissible is admitted over objection, that fact is ground for reversal by the appellate court. *Waldron* v. *Waldron*, 361.
4. The assertion in argument by counsel of facts of which no evidence is properly before the jury in such a way as to seriously prejudice the opposing party is, when duly excepted to, ground for reversal. *Ib.*
5. Where evidence is admitted for one certain purpose, and that only, the mere fact that its admission was not objected to at the time, does not authorize its use for other purposes for which it was not, and could not have been, legally introduced. *Ib.*
6. It is the duty of the court to correct an error arising from the erroneous admission of evidence when the error is discovered, and when such correction is duly made the cause of reversal is thereby removed. *Ib.*
7. The fact of a divorce being confessed by the pleadings, and being admitted by counsel for defendant in open court, it is unnecessary to prove it, and the divorce record is inadmissible. *Ib.*

See CRIMINAL LAW, 1, 2, 3, 4, 15, 16, 17, 21.

EXCEPTION.

1. A bill of exceptions may be signed after the expiration of the term at which the judgment was rendered, if done by agreement of parties made during that term. *Waldron* v. *Waldron*, 361.
2. If such bill is not delivered to counsel within the time fixed by the agreement, objection to the failure to do so must be taken when the bill is settled, and, if decided against the objector, the question should be reserved. *Ib.*

See JURISDICTION, A, 4;
MANDAMUS, 1.

FRAUD.

See PLEADING.

HABEAS CORPUS.

See JURISDICTION, A, 9, 10.

INDICTMENT.

1. The offence of wilful misapplication by the president of the funds of a national bank, in violation of section 5209 of the Revised Statutes, is not sufficiently set forth by an indictment alleging that the defendant, as the president of a national bank, wilfully misapplied a certain sum, of the moneys, funds, and credits of the bank, in the manner following, to wit, that the defendant, without the knowledge or consent of the bank, or of its board of directors, and knowing himself and another person named to be insolvent and worthless, procured of the latter divers promissory notes, some of them endorsed by the defendant, but all without other security; "with which said notes, by and through the device and pretence of discounting the same, and making loans thereon, and with the proceeds of said loans so made thereon and thereby obtained by him," knowing those notes "to be inadequate security for the moneys so obtained," he took up and satisfied his indebtedness to the bank; that "thereafter in turn, by substituting the notes of" the defendant, sometimes endorsed by the other person, and sometimes by some third person named, the defendant, knowing these notes to be inadequate security for the sums they represented, and they having with them no other security, took up and cancelled and pretended to pay to the bank the indebtedness created to it by him as aforesaid; and that the defendant "did from time to time, by the fraudulent device and means aforesaid, as well as by passing differences between the face of said various notes and the indebtedness aforesaid, which they were from time to time to satisfy, to the credit of" the defendant to the bank, upon the accounts of the bank, gradually increase the amount of his actual indebtedness to the bank; "all of which said sums were misapplied wilfully, and in the manner aforesaid, out of the moneys, funds, and credits of" the bank, and were converted to the defendant's use, benefit, and advantage, with the intention to injure and defraud the bank and its depositors and other persons doing business with it. *Batchelor* v. *United States*, 426.

2. The offence of aiding or abetting an officer of a national bank in committing one or more of the offences set forth in Rev. Stat. § 5209 may be committed by persons who are not officers or agents of the bank, and consequently it is not necessary to aver in an indictment against such an aider or abettor that he was an officer of the bank, or occupied any specific relation to it when committing the offence. *Coffin* v. *United States*, 432.

3. In an indictment for soliciting or inciting to the commission of a crime, or for aiding or assisting in its commission, it is not necessary to state the particulars of the incitement or solicitation, or of the aid or assistance. *Ib.*

4. The plain and unmistakable statement of this indictment as a whole is, that the acts charged against Haughey were done by him as president of the bank, and that the aiding and abetting was also knowingly

done by assisting him in the official capacity in which alone it is charged that he misapplied the funds. *Ib.*

5. This indictment further examined and held to clearly state the misapplication and actual conversion of the money by the methods described, that is to say, by paying it out of the funds of the bank to a designated person when that person was not entitled to take the funds, and that owing to the insolvency of such person the money was lost to the bank. *Ib.*
6. A conspiracy to commit an offence against the United States is not a felony at common law; and if made a felony by statute, an indictment for so conspiring is not defective by reason of failing to aver that it was feloniously entered into. *Bannon and Mulkey* v. *United States*, 464.
7. In an indictment for a conspiracy under Rev. Stat. § 5440, the fact of conspiring must be charged against all the conspirators, but the doing of overt acts in furtherance of the conspiracy may be charged only against those who committed them. *Ib.*

See CRIMINAL LAW, 9, 10, 12, 14, 24, 26.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 1, 2, 4, 5, 7.

JUDGMENT.

See ESTOPPEL.

JUDICIAL NOTICE.

See PATENT FOR INVENTION, 11.

JURISDICTION.

A. OF THE SUPREME COURT OF THE UNITED STATES.

1. A judgment in a Circuit Court of Appeals upon the claim of an intervenor set up in a Circuit Court against the receiver of a railroad appointed by that court in a suit for the foreclosure of a mortgage upon the road, is a final judgment which cannot be reviewed in this court. *Rouse* v. *Letcher*, 47.
2. The decision of the highest court of a State that it was competent under an indictment for murder simply, to try and convict a person of murder in the first degree if the homicide was perpetrated in the commission of or attempt to commit robbery, presents no Federal question for consideration. *In re Robertson*, 183.
3. When the record in a case brought here from the highest court of a State by writ of error discloses no Federal question as decided by that court, there is nothing in the case for this court to consider. *Ib.*
4. The assignment in this court of errors to portions of the charge in an

action below raises no question for the consideration of this court, unless exceptions were duly taken to them. *Lindsay* v. *Burgess*, 208.

5. C., being summoned before a committee of the Senate of the United States and questioned there as to certain transactions, declined to answer the questions upon the grounds that they related to his private business, and that they were not authorized by the resolution appointing the committee. He was thereupon indicted in the Supreme Court of the District of Columbia under the provisions in Rev. Stat. §§ 102, 103, 104. He demurred to the indictment, and, the demurrer being overruled, an appeal was taken to the District Court of Appeals, where the indictment was sustained as valid, and the case remanded. He then applied to this court for permission to file a petition for the issue of a writ of *habeas corpus*. *Held*, (1) That the orderly administration of justice will be better subserved by declining to exercise appellate jurisdiction in the mode desired until the conclusion of the proceedings; (2) that if the judgment goes against the petitioner and a writ of error lies, that is his proper and better remedy; (3) that if a writ of error does not lie, and the Supreme Court of the District is without jurisdiction, the petitioner may then apply for a writ of *habeas corpus*. *In re Chapman, Petitioner*, 211.

6. It is a judicious and salutary general rule not to interfere with proceedings pending in the courts of the District of Columbia, or in the Circuit Courts of the United States, in advance of their final determination. *Ib.*

7. In a suit in equity to enforce the rights of a mortgagee in mortgaged realty, the defence that the temporary withholding of the mortgage from record invalidated it as against creditors cannot be made in the first instance in this court, when the issue is not made by the pleadings, and was not otherwise raised in the court below. *McGahan* v. *Bank of Rondout*, 218.

8. A review by the appellate court of a State of a final judgment in a criminal case, is not a necessary element of due process of law, and may be granted, if at all, on such terms as to the State seems proper. *Andrews* v. *Swartz*, 272.

9. The repugnancy of a state statute to the constitution of the State will not authorize a writ of *habeas corpus* from a court of the United States, unless the petitioner is in custody by virtue of such statute, and unless also the statute conflicts with the Federal Constitution. *Ib.*

10. When a state court has entered upon the trial of a criminal case, under a statute not repugnant to the Constitution of the United States, and has jurisdiction of the offence and of the accused, mere error in the conduct of the trial cannot be made the basis of jurisdiction in a court of the United States to review the proceedings upon writ of *habeas corpus*. *Ib.*

11. A writ of error, under the act of March 3, 1891, c. 517, § 5, from this

court to a Circuit or District Court of the United States, in a case of conviction of an infamous and not capital crime, may be allowed, the citation signed, and a supersedeas granted, by any justice of this court, although not assigned to the particular circuit; and the same justice may order the prisoner, after citation served, to be admitted to bail, by the judge before whom the conviction was had, upon giving bond in a certain sum, in proper form and with sufficient sureties; and if that judge declines so to admit to bail, because in his opinion the order was without authority of law, and the bond if given would be void, he may be compelled to do so by this court by writ of mandamus. *Hudson* v. *Parker*, 277.

12. A decree by a Circuit Court dismissing a bill in equity as to one defendant who had demurred, leaving the case undisposed of as to other defendants who had answered, does not dispose of the whole case, and is not a final decree from which an appeal can be taken to this court. *Bank of Rondout* v. *Smith*, 330.
13. This court cannot review in error or on appeal, in advance of the final judgment in the cause on the merits, an order of the Circuit Court of the United States remanding the cause to the state court from which it had been removed to the Circuit Court. *Illinois Central Railroad Co.* v. *Brown*, 386.
14. The granting by the Supreme Court of a State of a writ of prohibition directed to an inferior court directing it to abstain from further proceedings in an action pending in it, and to a receiver of a railroad appointed by that court, directing him to turn over the property to a receiver appointed by another court of the State, presents no Federal question for the decision of this court. *St. Louis, Cape Girardeau & Fort Smith Railway* v. *Missouri ex rel. Merriam*, 478.
15. It is too late to urge in this court stipulations between parties not brought to the attention of the court below. *Carr* v. *Fife*, 494.
16. The value of the matter in dispute, if not stated in the record, may, for the purpose of jurisdiction, be shown by affidavits. *Ib.*
17. Section 1011 of the Revised Statutes, as amended by the act of February 18, 1875, c. 80, providing that there shall be no reversal by this court upon a writ of error "for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court," does not forbid the review of a decision, even on a plea in abatement, of any question of the jurisdiction of the court below to render judgment against the defendant, though depending on the sufficiency of the service of the writ. *Goldey* v. *Morning News*, 518.
18. As, under the act of March 3, 1875, c. 137, it was in the power of the court to rearrange the parties and to place them on different sides according to the actual facts, it is to be assumed that that power was exercised by the court below, and its action in that respect is not reviewable here. *Evers* v. *Watson*, 527.
19. After a final decree in a case, an apparent want of jurisdiction on

the face of the record cannot be availed of in a collateral proceeding. *Ib.*

20. In an action upon a contract to sell shares of stock to the plaintiff, the defendant set up allegations of fraud. A jury was waived and the court found separately and specifically upon all the allegations respecting the contract, and that the contract set up in the complaint was sustained by the evidence. No error was assigned or exceptions taken. *Held*, (1) That this court cannot review those findings; (2) that they are sufficient to sustain the judgment. *Fox* v. *Haarstick*, 674.

See APPEAL;
TAX AND TAXATION, 2.

B. OF CIRCUIT COURTS OF THE UNITED STATES.

An averment that the plaintiff is "a citizen of London, England," is not sufficient to give the Circuit Court jurisdiction on the ground of his alienage, the defendant being a citizen; and on the question being raised in this court, the case may be remanded with leave to apply to the Circuit Court for amendment and for further proceedings. *Stuart* v. *Easton*, 46.

C. OF THE COURT OF CLAIMS.

See PATENT FOR INVENTION, 7.

D. OF STATE COURTS.

1. In a personal action brought in a court of a State against a corporation which neither is incorporated nor does business within the State, nor has any agent or property therein, service of the summons upon its president, temporarily within the jurisdiction, cannot be recognized as valid by the courts of any other government. *Goldey* v. *Morning News*, 518.
2. A corporation sued in a personal action in a court of a State, within which it is neither incorporated nor does business, nor has any agent or property, does not, by appearing specially in that court for the sole purpose of presenting a petition for the removal of the action into the Circuit Court of the United States, and by obtaining a removal accordingly, waive the right to object to the jurisdiction of the court for want of sufficient service of the summons. *Ib.*

LACHES.

The delay of the plaintiffs for four years to assert their claim is, under the circumstances, fatal to it. *Evers* v. *Watson*, 527.

LIMITATION, STATUTES OF.

See PATENT FOR INVENTION, 8.

LOCAL LAW.

Montana. *See* TRUST, 3.
South Carolina. *See* TENANT IN COMMON.

MANDAMUS.

1. The judge in a Circuit Court having settled and signed a bill of exceptions, this court will not, on an application, supported by affidavits that the bill as settled and signed is incorrect, issue a writ of mandamus requiring him to resettle them. *Streep, Petitioner, In re*, 207.
2. A corporation organized under the laws of Pennsylvania brought an action in ejectment in the Circuit Court of the United States in the Western District of Virginia. The defendant by plea set up that a conveyance of the land had been made to the Pennsylvania corporation collusively, and for the purpose of conferring jurisdiction on the Circuit Court. The court was of opinion that the allegations of the plea were sustained, and dismissed the action for want of jurisdiction. The plaintiff duly excepted and the exceptions were allowed and signed. The plaintiff then prayed for a writ of error to this court upon the question of jurisdiction, and a writ was allowed "as prayed for" at the same term of court. At a subsequent term the plaintiff applied to the court below for an order certifying the question of jurisdiction to this court pursuant to § 5 of the Judiciary Act of March 3, 1891, c. 517, 26 Stat. 826. This application being denied, the plaintiff applied to this court for leave to file a petition for a writ of mandamus requiring the court below to certify the question of jurisdiction to this court. *Held*, that leave should be denied, as, independently of other considerations, the requisition of the statute in that respect had already been sufficiently complied with. *In re Lehigh Mining & Manufacturing Co., Petitioner*, 322.

See CONTRACT;
JURISDICTION A, 11.

MASTER AND SERVANT.

See NEGLIGENCE.

MORTGAGE.

See EQUITY, 1;
JURISDICTION, A, 7;
TRUST, 3.

MUNICIPAL BOND.

1. July 3, 1869, the qualified voters of Perry County, Illinois, voted to subscribe to the capital stock of the Belleville & Southern Illinois Railroad and to issue its bonds in payment thereof, conditioned that "no bonds should be issued or stock subscribed until the railroad company should locate their machine shops at Duquoin." In December, 1870, the county court directed the bonds to be issued, and they were issued and duly executed, and were delivered to the company and by it put into circulation; but the shops were never located at Duquoin. *Held*, in view of the legislation of Illinois reviewed in the opinion, and of

the provisions in the constitution of 1870, which came into force after the vote to issue the bonds, but before their issue, that the county court by its order to issue the bonds, and the county officers by issuing them, violated their duty as prescribed by the statutes; and as the bonds contained no recital precluding inquiry as to the performance of the condition upon which the people voted in favor of their issue, it was open to the county to show that it had not been performed, which being shown, the bonds became subject to the provisions of the constitution of 1870, and were invalid. *Citizens' Saving & Loan Association* v. *Perry County*, 692.

2. The bonds issued by the same county to the Chester & Tamaroa Coal & Railroad Company were issued in obedience to a vote of the people taken at an election ordered and held with reference to the act of April 16, 1869, referred to in the opinion of this court, which act required that a majority of the legal voters living in the county should be in favor of the subscription; and as the county court, in ordering the issue of the bonds, certified on its record that all the conditions prescribed had been complied with, and as the fact that a majority of the voters living in the county at the time of the election did vote for the issue of the bonds is one not determinable by any public record, *Held*, that it would be rank injustice to permit it to be set up after the lapse of so many years, and that the issue was valid and the bonds are binding on the county. *Ib.*

NATIONAL BANK.

See EQUITY, 2;
INDICTMENT.

NEGLIGENCE.

1. Occupations which cannot be conducted without necessary danger to life, body, or limb, should not be prosecuted without taking all reasonable precautions against such danger afforded by science. *Mather* v. *Rillston*, 391.
2. Neglect in such case to provide readily attainable appliances known to science for the prevention of accidents, is culpable negligence. *Ib.*
3. If an occupation attended with danger can be prosecuted by proper precaution without fatal results, such precaution must be taken, or liability for injuries will follow, if injuries happen; and if laborers, engaged in such occupation, are left by their employers in ignorance of the danger, and suffer in consequence, the employers are chargeable for their injuries. *Ib.*

PARTNERSHIP.

1. Where a deed is executed on behalf of a firm by one partner, the other partner will be bound if there be either a previous parol authority or a subsequent parol adoption of the act. *McGahan* v. *Bank of Rondout*, 218.

2. In such case ratification by the other partner may be inferred from his presence at the execution and delivery of the deed, or from his acting under it or taking the benefits of it with knowledge. *Ib.*

PATENT FOR INVENTION.

1. The invention protected by letters patent No. 222,895, issued December 23, 1879, to William D. Gray for improvements in roller mills, is not infringed by the machine used by the defendant in error. *The Roller Mill Patent*, 261.
2. Letters patent No. 238,677, issued March 8, 1881, to William D. Gray for improvements in roller mills, are void for want of novelty. *Ib.*
3. The improvement in sewer gratings patented to Henry W. Clapp by letters patent No. 134,978, dated January 21, 1873, involved no invention. *Palmer* v. *Corning*, 342.
4. Letters patent 271,363, issued January 30, 1883, to James Ritty and John Birch for a cash register and indicator, are valid, and are infringed by the defendant's machine. *National Cash Register Co.* v. *Boston Cash Indicator Co.*, 502.
5. Even if there were findings sufficient to show that the United States had in any manner infringed letters patent No. 52,925, granted February 27, 1866, to Hiram Berdan for an improvement in breech-loading fire-arms, in the absence of anything disclosing a contract the use would be a tort, creating no cause of action cognizable in the Court of Claims. *United States* v. *Berdan Fire-arms Manufacturing Co.*, 552.
6. Where several elements, no one of which is novel, are united in a combination which is the subject of a patent, and these several elements are thereafter united with another element into a new combination, and this new combination performs a work which the patented combination could not perform, there is no infringement. *Ib.*
7. As to letters patent No. 88,436, granted to Hiram Berdan March 30, 1869, for an improvement in breech-loading fire-arms, it appears that the use of that invention was with the consent and in accordance with the wish of the inventor and the Berdan Company, and with the thought of compensation therefor, which facts, taken in connection with other facts referred to in the opinion, establish a contractual relation between the parties sufficient to give the Court of Claims jurisdiction. *Ib.*
8. The contract was not a contract to pay at the expiration of the patent, but the right to recover accrued with each use, and the statute of limitations is applicable to all uses of the invention prior to six years before the commencement of the action. *Ib.*
9. The Court of Claims did not err in fixing the amount of the royalty. *Ib.*
10. If there be any invention in the machine patented to Martin R. Roberts by reissued letters patent No. 7341 for an improvement in coal screens and chutes, dated October 10, 1876, (upon which the

court expresses no opinion,) it is clear that it was not infringed by the defendant's machine. *Black Diamond Coal Co.* v. *Excelsior Coal Co.*, 611.

11. The court takes judicial notice of the fact that hoppers with chutes beneath them are used for many different purposes. *Ib.*

PLEADING.

The charges of fraud in this case are too vague to be made the basis of a bill to set aside a judicial sale. *Evers* v. *Watson*, 527.

PRACTICE.

1. Applications to this court for a writ of error to a state court are not entertained unless at the request of a member of the court, concurred in by his associates. *In re Robertson*, 183.
2. A party who is not prejudiced by an erroneous ruling of the judge in the trial below has no right to complain of it here. *Lazarus* v. *Phelps*, 202.
3. It is unnecessary to consider in detail errors which do not appear in the bill of exceptions, or which do not appear to have been excepted to on the trial, or which seem to have been quite immaterial, so far as excepted to. *Bannon and Mulkey* v. *United States*, 464.
4. An objection that the receiver took part with the register on the hearing and decision of a case in the land office cannot be taken for the first time in this court. *Carr* v. *Fife*, 494.

See APPEAL; CRIMINAL LAW, 11; EVIDENCE, 3, 4, 5, 6, 7; EXCEPTION, 2; JURISDICTION, A, 4, 5, 7; D, 2. MANDAMUS, 2.

PUBLIC LAND.

1. The grant of the Agua Caliente to Lazaro Pina by Governor Alvarado in 1840 was a valid grant, and embraced the tract in controversy in this action. *Hays* v. *Steiger*, 387.
2. Taking all the facts together, it is quite clear that the receiver and the register affirmatively found the fact of abandonment. *Carr* v. *Fife*, 494.
3. The decision of the land office upon the questions involved in this case was conclusive, unless the charges of fraud and conspiracy were sustained, and it is evident that the court below carefully considered the evidence on these points. *Ib.*
4. When a plaintiff seeks to invalidate a patent of land by averring misconduct on the part of officials in a contest case, a complete record of the proceedings is relevant and important. *Ib.*
5. In the absence of fraud and imposition the findings and decisions of the land office cannot be reviewed as to the facts involved. *Ib.*
6. A., being qualified to make a homestead entry, entered in good faith

upon public land within the indemnity limits of a railroad grant, but not within the place limits. He demanded at the local land office the right to enter 160 acres as a homestead. This was refused on the ground that the tract was within the limits of the grant, although at that time the land had not been withdrawn from entry and settlement. This was subsequently done, and the land conveyed to the railway company. A. remained upon the land, cultivating it. In an action to recover possession from him, brought here from a state court by writ of error, *Held*, that the application was wrongfully rejected, and that his rights under it were not affected by the fact that he took no appeal. *Ard* v. *Brandon*, 537.

7. In the year 1866 the mere occupation of public land, with a purpose at some subsequent time of entering it for a homestead, gave the party so occupying no rights. *Maddox* v. *Burnham*, 544.

8. In 1870 W. entered upon public land within the indemnity limits of a railway grant, occupied it, and continued to do so. It had then been withdrawn from the market by the Secretary of the Interior under instructions from Congress, and was eventually selected by the railroad company as part of its grant. *Held*, that W. acquired no equitable rights, as against the railroad company, by his occupation and settlement. *Wood* v. *Beach*, 548.

9. In an action to recover possession of land in Utah the plaintiff set up that it was part of a grant to a railroad company under which he claimed. In the statute making the grant there were exceptions and reservations. The plaintiff failed to show that the tract he claimed was not within them. The trial court ruled that he had failed to show title, and its ruling was upheld by the Supreme Court of the Territory. *Held*, that this was not error. *Corinne Company* v. *Johnson*, 574.

See PRACTICE, 4.

RAILROAD.

1. In 1866 the legislature of Georgia enacted a law loaning the credit of the State to a railroad company by endorsing its bonds to the amount of $10,000 per mile, and further providing that the endorsement should operate as a mortgage on all the property of the company. These bonds were issued to the amount of $1,950,000, endorsed and sold. In 1868 the new constitution of the State then adopted provided that the State should not loan its credit to any company without a provision that the whole property of the company should be bound to the State as security prior to any other indebtedness. In 1870 the legislature passed an act "to amend" the act of 1866, authorizing the governor to endorse the company's bonds to a further extent of $3000 per mile "in addition to $10,000 as recited in the act of which this is amendatory." The new bonds were issued, varying in form from the former bonds, were endorsed by the State, and were sold. In 1873 the company defaulted in the payment of the bonds of 1866, and the governor took

possession of the property. The legislature then by joint resolution declared the bonds of 1866 to be valid, and those of 1870 to be unconstitutional. In 1875 the governor ordered the property sold under the provisions of the act of 1866, and the sale took place that year, the State being the purchaser at $1,000,000 and taking the conveyance. The bonds issued under the act of 1866 were then taken up and retired. The holders of the bonds issued in 1870 filed a bill in equity to set aside the sale, but the bill was dismissed upon the ground that the State was a necessary party, and could not be brought in without its consent. Meanwhile, the State having sold the whole property, a supplemental bill was filed in that case by leave of court against the purchasers, attempting to charge the property in their hands with a trust in favor of the holders of the bonds of 1870, charging that the State had been their trustee to enforce their equitable rights, and had been guilty of a breach of its trust by selling the property at a price much below its real value. *Held*, (1) That the plaintiffs were not entitled to be subrogated to the mortgage security taken by the State, and as such to maintain this suit, because the property had passed out of the possession of the State when this suit was brought, and because the State was a necessary party to the enforcement of such a claim; (2) that the only bonds secured by the statutory mortgage were those issued in 1866, and that those issued in 1870 were not secured by it; (3) that even if they had been secured by it these complainants were junior creditors to those holding the bonds of 1866, with rights subordinate to theirs, and it was their duty to attend the sale and protect themselves by raising the bid to an amount sufficient for that purpose; (4) that they could not avoid the sale without tendering reimbursement to the first mortgage creditors, which they had not done. *Cunningham* v. *Macon & Brunswick Railroad Co.*, 400.

2. A special statutory exemption or privilege (such as immunity from taxation or a right to fix and determine rates of fare) does not accompany the property of a railroad company in its transfer to a purchaser, in the absence of an express direction in the statute to that effect. *St. Louis & San Francisco Railway Co.* v. *Gill*, 649.

3. When a state legislature establishes a tariff of railroad rates so unreasonable as to practically destroy the value of the property of companies engaged in the carrying business, courts of the United States may treat it as a judicial question, and hold such legislation to be in conflict with the Constitution of the United States, as depriving the company of its property without due process of law, and as depriving it of the equal protection of the laws. *Ib.*

4. *Railroad Commission Cases*, 116 U. S. 307; *Dow* v. *Beidelman*, 125 U. S. 681; *Chicago, Milwaukee &c. Railway* v. *Minnesota*, 134 U. S. 418; *Chicago & Grand Trunk Railway* v. *Wellman*, 143 U. S. 339; and *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, examined in detail. *Ib.*

5. When, by legislation and consolidation, a railroad which was originally all in one State becomes consolidated with other roads in other States, and the State originally incorporating it enacts laws to regulate the rates of the consolidated road within its borders, the proper test as to the reasonableness of these rates is as to their effect upon the consolidated line as a whole. *Ib.*

6. When a State prescribes rates for a railroad, only a part of which is within its borders, the company may raise the question of their reasonableness by way of defence to an action for the recovery of penalties for violating the directions. *Ib.*

7. The fifth section of the charter from the State of Virginia to the Atlantic, Mississippi and Ohio Railroad Company, which vested it "with all the rights and privileges conferred by the laws of this Commonwealth, and subject to such as apply to railroad corporations generally, subjected it to state laws regulating rates, notwithstanding provisions of exemption in statutes organizing other previous companies to whose rights it succeeded; and the Norfolk and Western Railroad Company, when it became possessed of the property and rights of the Atlantic, Mississippi and Ohio Railroad Company, took them subject in like manner to such laws. *Norfolk & Western Railroad Co.* v. *Pendleton*, 667.

8. In the absence of express statutory direction, or of an equivalent implication by necessary construction, provisions, in restriction of the right of the State to tax the property or to regulate the affairs of its corporations, do not pass to new corporations succeeding, by consolidation or by purchase under foreclosure, to the property and ordinary franchises of the first grantee. *Ib.*

9. A mortgage of the franchises and property of a corporation, made in the exercise of a power given by statute, confers no right upon purchasers at a foreclosure sale to exist as the same corporation, but, at most, to reorganize as a new corporation subject to the laws existing at the time of the reorganization. *Ib.*

See EQUITY, 3, 4, 5.

REASONABLE DOUBT.

See CRIMINAL LAW, 19, 23.

REMOVAL OF CAUSES.

1. A party in a cause pending in a state court who petitions for its removal to a Federal court, or who consents to its removal, cannot after removal object to it as not asked for in time. *Connell* v. *Smiley*, 335.

2. When it is not shown when, or at whose instance, or upon what ground a removal of a cause from a state court was effected, and no copy of the petition or of the substance of it is in the bill or annexed to it, everything must be presumed against the party objecting to it. *Evers* v. *Watson*, 527.

STATUTE.

A. Statutes of the United States.

See Constitutional Law, 1, 2; Indictment, 1, 2, 7; Criminal Law, 5, 9, 24; Jurisdiction, A, 5, 11, 17, 18; Mandamus, 2.

B. Statutes of States and Territories.

Florida. *See* Equity, 3.
Louisiana. *See* Constitutional Law, 7; Contract.
Missouri. *See* Constitutional Law, 4.
Montana. *See* Trust, 3.

SUBROGATION.

See Railroad, 1.

SUPERSEDEAS.

See Jurisdiction, A, 11.

TAX AND TAXATION.

1. When Congress grants to a railway company organized under the laws of a Territory a right of way over an Indian reservation within the Territory, and the road is constructed entirely within the Territory, that part of it within the reservation is subject to taxation by the territorial government. *Maricopa and Phœnix Railroad Co.* v. *Arizona*, 347.
2. The question whether it is so subject to taxation is one within the jurisdiction of this court, when properly brought here, irrespective of the amount involved. *Ib.*

TENANT IN COMMON.

1. In South Carolina a tenant in common of real estate, who takes sole possession of it, excluding his cotenant, is chargeable with what he has received in excess of his just proportion, and is liable to account to him for the rents and profits of so much of the common property as he has occupied and used in excess of his share. *McGahan* v. *Bank of Rondout*, 218.

TRUST.

1. A provision, in a deed of real estate in trust to secure the payment of a debt, which authorizes the trustee to sell the property at auction on breach of condition, first giving thirty days' notice of the time and place of sale by advertising the same for three successive weeks in a newspaper, is complied with so far as respects notice, by publication

of such notice for three successive weeks, the first publication being more than thirty days before the day of sale. *Bell Silver & Copper Mining Co.* v. *First National Bank of Butte*, 470.

2. If such notice describes the property to be sold in the language of the mortgage, it is sufficient. *Ib.*

3. A trust deed in the nature of a mortgage may confer upon the trustee power to sell the premises on default in the payment of the debt secured by the deed, and a sale thereunder, conducted in accordance with the terms of the power in the deed, will pass the granted premises to the purchaser on its consummation by conveyance; and this rule obtains in Montana, notwithstanding the provisions in § 371 of its Revised Statutes. *Ib.*

WRIT OF ERROR.

See PRACTICE, 1.