INDEX.

ADMIRALTY.

1. A steamer steaming in a dark night at the rate of fifteen miles an hour through a narrow inland channel where a local pilot is put in charge of it, should have a lookout stationed on either bow, and the master should be on deck; but a failure to comply with these requirements will not, in case of collision, suffice to condemn the steamer, unless there be proof that the failure contributed to the collision. *The Oregon*, 186.
2. From the facts as stated by the court in the statement of facts and in the opinion, it is held that there can be no doubt that the collision between the Oregon and the Clan Mackenzie was attributable to the inefficiency of the pilot and lookout of the Oregon. *Ib.*
3. Where one vessel, clearly shown to have been guilty of a fault adequate in itself to account for a collision, seeks to impugn the management of the other vessel, there is a presumption in favor of the latter, which can only be rebutted by clear proof of a contributing fault, and this principle is peculiarly applicable to a vessel at anchor, complying with regulations concerning lights and receiving injuries through the fault of a steamer in motion. *Ib.*
4. The provision in Rev. Stat. § 4234 that every sail vessel shall on the approach of a steam vessel during the night time, show a lighted torch upon that point or quarter to which the steam vessel shall be approaching, is no part of the International Code, and would seem to apply only to American vessels, and has no application to vessels at anchor. *Ib.*
5. Under all ordinary circumstances a vessel discharges her full duty and obligation to another vessel by a faithful and literal observance of the International rules. *Ib.*
6. The obligors in a stipulation given for the release of a vessel libelled for a collision are not, in the absence of an express agreement to that effect, responsible to intervenors in the suit, intervening after its release; but the court below may treat their petitions as intervening libels, and issue process thereon, or take such other proceedings as justice may require. *Ib.*
7. The carrier is so far the representative of the owner, that he may sue in his own name, either at common law or in admiralty, for a trespass upon or injury to the property carried. *The Beaconsfield*, 303.

8. If a cargo be damaged by collision between two vessels, the owner may pursue both vessels, or either, or the owner of both, or either; and in case he proceeds against one only, and both are held in fault, he may recover his entire damages of the one sued. *Ib.*

9. A person who has suffered injury by the joint action of two or more wrong-doers, may have his remedy against all or either, subject to the condition that satisfaction once obtained is a bar to further proceedings. *Ib.*

10. If the owner of a vessel, libellant on his own behalf and on behalf of the owner of the cargo, takes no appeal from a decree dismissing the libel as to his own vessel, the owner of the cargo may be substituted as libellant in his place, and the failure of the owner of the vessel to appeal is a technical defence which ought not to prejudice the owner of the cargo. *Ib.*

11. Stipulations in admiralty are not subject to the rigid rules of the common law with respect to the liability of the surety; and so long as the cause of action remains practically the same, a mere change in the name of the libellant, as by substituting the real party in interest for a nominal party, will not avoid the stipulation as against the sureties. *Ib.*

APPEAL.

In equity causes all parties against whom a joint decree is rendered must join in an appeal, if any be taken; and when one of such joint defendants takes an appeal alone, and there is nothing in the record to show that his codefendants were applied to and refused to appeal, and no order is entered by court, on notice, granting him a separate appeal in respect of his own interest, his appeal cannot be sustained. *Beardsley* v. *Arkansas & Louisiana Railway Co.*, 123.

See COSTS.

CASES AFFIRMED.

See EQUITY, 9;
MUNICIPAL BOND, 1, 2;
RES JUDICATA, 2.

CASES DISTINGUISHED.

See CHINESE EXCLUSION, 2;
MUNICIPAL BOND, 3;
RAILROAD, 5.

CHATTEL MORTGAGE.

On the 12th of July, 1889, S. executed to C. a chattel mortgage in Michigan to secure his indebtedness to him and to a bank of which he was president, and the mortgage was placed by the mortgagee in his safe.

On the 17th of August, 1889, H., having no knowledge of this mortgage, purchased for a valuable consideration a note of S. On the 29th of August, 1889, C. caused the chattel mortgage to be placed on record. On the 29th of August, 1890, H. instituted garnishee proceedings against C. averring that he had possession and control of property of S. by a title which was void as to the creditors of S. The garnishee answered setting up title under the chattel mortgage. The court below held that in consequence of the failure to file the chattel mortgage, and of the fact that H. became a creditor of S. in the interim, the chattel mortgage was void under the laws of Michigan as to H., and gave judgment accordingly. *Held*, That in this that court committed no error. *Cutler* v. *Huston*, 423.

CHINESE EXCLUSION.

1. The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that respect enforced exclusively through executive officers, without judicial intervention, having been settled by previous adjudications, it is now decided that a statute passed in execution of that power is applicable to an alien who has acquired a commercial domicil within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to reënter it. *Lem Moon Sing* v. *United States*, 539.
2. *Lau Ow Bew* v. *United States*, 144 U. S. 47, distinguished from this case. *Ib.*
3. No opinion is expressed upon the question whether, under the facts stated in the application for the writ of *habeas corpus*, Lem Moon Sing was entitled, of right, under some law or treaty to reënter the United States. *Ib.*

CIRCUIT COURTS OF APPEAL.

See JURISDICTION, A, 12.

CLAIMS AGAINST THE UNITED STATES.

See DISTRICT ATTORNEY;
ESTOPPEL, 1;
MARSHAL OF A COURT OF THE UNITED STATES.

COMMISSIONER OF A CIRCUIT COURT.

A preliminary examination before a commissioner of a Circuit Court is not a case pending in any court of the United States, within the meaning of Rev. Stat. § 5406. *Todd* v. *United States*, 278.

CONSPIRACY.

See CONSTITUTIONAL LAW, 5.

CONSTITUTIONAL LAW.

1. The Texas statute of May 6, 1882, making it unlawful for a railroad company in that State to charge and collect a greater sum for transporting freight than is specified in the bill of lading, is, when applied to freight transported into the State from a place without it, in conflict with the provision in section 6 of the Interstate Commerce Act of February 4, 1887, c. 104, 24 Stat. 379, as amended by the act of March 2, 1889, c. 382, 25 Stat. 855, that it shall be unlawful for such carrier to charge and collect a greater or less compensation for the transportation of the property than is specified in the published schedule of rates provided for by the act, and in force at the time; and, being thus in conflict, it is not applicable to interstate shipments. *Gulf, Colorado & Santa Fé Railway Co.* v. *Hefley*, 98.
2. When a state statute and a Federal statute operate upon the same subject-matter, and prescribe different rules concerning it, and the Federal statute is one within the competency of Congress to enact, the state statute must give way. *Ib.*
3. In the Fifth Article of Amendments to the Constitution of the United States, providing that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger," the words "when in actual service in time of war or public danger" apply to the militia only. *Johnson* v. *Sayre*, 109.
4. A statute of Pennsylvania imposing a tax upon the tolls received by the New York, Lake Erie and Western Railroad Company from other railroad companies, for the use by them respectively of so much of its railroad and tracks as lies in the State of Pennsylvania, for the passage over them of trains owned and hauled by such companies respectively, is a valid tax, and is not in conflict with the interstate commerce clause of the Constitution when applied to goods so transported from without the State of Pennsylvania. *N. Y., Lake Erie & Western Railroad Co.* v. *Pennsylvania*, 431.
5. It is the right of every private citizen of the United States to inform a marshal of the United States, or his deputy, of a violation of the internal revenue laws of the United States; this right is secured to the citizen by the Constitution of the United States; and a conspiracy to injure, oppress, threaten, or intimidate him in the free exercise or enjoyment of this right, or because of his having exercised it, is punishable under section 5508 of the Revised Statutes. *In re Quarles and Butler*, 532.

6. The government of the United States has jurisdiction over every foot of soil within its territory, and acts directly upon each citizen. *In re Debs, Petitioner*, 564.

See INCOME TAX;
INTERSTATE COMMERCE.

CONTRACT.

1. M., after mortgaging lots in Boston to the Episcopal Mission, conveyed them to the wife of B. with a clause in the deed that she thereby assumed and agreed to pay the mortgages, and B. gave M. his bond to ensure his wife's performance of her agreement. B. and wife about the same time conveyed to M. parcels of land in Chicago subject to mortgages, which M. assumed. The mortgages on the Boston lots not being paid, the mortgagee foreclosed them. They were sold for sums less than the amounts due on the mortgages. M. assigned to the mortgagee the bond of B., and a suit in equity was begun in the name of the assignee and of M. against B. and his wife, seeking a decree condemning the latter to pay the debt. The wife answered denying any knowledge of the transaction, which she averred took place without her knowledge or consent, and the answer of B. set up a nonperformance by M. of his agreement to assume and pay the mortgages on the Chicago property, whereby B. had been compelled to pay large sums of money. *Held*, (1) That the mortgagee had only the rights of M. and was subject to all rights of set-off between M. and B.; (2) that the proof left no doubt that the deed to the wife of B. was made without her knowledge and that she was not a party to it; (3) that in whatever aspect it was viewed the assignee of M. could not recover. *Episcopal City Mission* v. *Brown*, 222.

2. S. and three other parties contracted on the 24th of June, 1879, as follows: "S. agrees to represent the entire interests and sales of the coal of the other three parties aforesaid in the trade that may be denominated the Detroit trade by rail or by vessel to Detroit, or to and through Detroit, Michigan; that he will confine himself to the use and handling of their coal alone in all his sales of soft coal for whatever use or purpose or market, taking the same from them in equal quantities; that he will turn in all his present trade and orders on their coal at the price of seventy cents per ton at the mines, and that he will take care of all freights and pay them for their coal by the 20th of the month next after each separate month's delivery to him at the mines of said other three parties, and that he will labor to improve the market price of said coal, giving to said parties the advantage of whatever improvement may be made in the market for said coal, asking no greater part of such increase himself than shall be his fair proportion thereof, and that he will keep his books, sales, and contracts of coal all open to their inspection at all times. Said other abovenamed parties agree to sell coal to no one to conflict with the interests

of said S. under this agreement, and that they will aid and encourage the trade of said S. in all lawful ways in their power, so long as he shall confine his sales and operations in soft coal to the product of their mines." *Held*, (1) That the contract was a several one as between S. and the three other parties, and that an action would lie in favor of either of those parties without joining the others; (2) that the agreement included all contracts and orders which S. then had, whether for the immediate or future delivery of coal, but did not bind the other parties to fill contracts made by him subsequent to June 24, at 70 cents per ton; (3) that the three parties were bound to furnish S. coal to fill contracts made by him for future delivery, at the market price of coal at Detroit at the time S. made such contracts, and not at the market price at the time of the delivery of such coal by the companies to S., from time to time, during the existence of such contracts. *Shipman* v. *Straitsville Mining Co.*, 356.

See EQUITY, 10.

CORPORATION.

In the absence of any controlling decision this court is unwilling to hold that a provision of a general statute imposing a personal liability upon trustees or other officers of a corporation is incorporated into a special charter by a clause therein declaring that the corporation shall possess all the general powers and privileges and be subject to all the liabilities conferred and imposed upon corporations organized under such general act. *Park Bank* v. *Remsen*, 337.

See MUNICIPAL BOND, 8.

COSTS.

An appeal does not lie from a decree for costs; and if an appeal on the merits be affirmed, it will not be reversed on the question of costs. *Dubois* v. *Kirk*, 58.

COURT MARTIAL.

1. A paymaster's clerk in the navy, regularly appointed, and assigned to duty on a receiving ship, is a person in the naval service of the United States, subject to be tried and convicted, and to be sentenced to imprisonment, by a general court martial, for a violation of section 1624 of the Revised Statutes. *Johnson* v. *Sayre*, 109.
2. Article 43 of the Articles for the Government of the Navy, (Rev. Stat. § 1624,) requiring the accused to be furnished with a copy of the charges and specifications "at the time he is put under arrest," refers to his arrest for trial by court martial; and, if he is already in custody to await the result of a court of inquiry, is sufficiently complied with by delivering the copy to him immediately after the Secretary

of the Navy has informed him of that result, and has ordered a court martial to convene to try him. *Ib.*

3. The decision and sentence of a court martial, having jurisdiction of the person accused and of the offence charged, and acting within the scope of its lawful powers, cannot be reviewed or set aside by writ of *habeas corpus*. *Ib.*

CRIMINAL LAW.

1. An indictment under Rev. Stat. § 5511, which charges that the accused, at the time named, did then and there unlawfully and with force and arms seize, carry away, and secrete the ballot box containing the ballots of a voting precinct which had been cast for representative in Congress, and did then and there knowingly aid and assist in the forcible and unlawful seizure, carrying away, and secreting of said ballot box, and did then and there counsel, advise, and procure divers other persons whose names were to the grand jury unknown, so to seize, carry away, and secrete said ballot box, charges but one offence, although it was within the discretion of the trial court, if a motion to that effect had been made, to compel the prosecutor to state whether he would proceed against the accused for having himself seized, carried away, and secreted the ballot box, or for having assisted or procured others to do so. *Connors* v. *United States*, 408.

2. A man, assailed on his own grounds without provocation by a person armed with a deadly weapon, and apparently seeking his life, is not obliged to retreat, but may stand his ground and defend himself with such means as are within his control; and so long as there is no intent on his part to kill his antagonist, and no purpose of doing anything beyond what is necessary to save his own life, is not guilty of murder or manslaughter if death results to his antagonist from a blow given him under such circumstances. *Babe Beard* v. *United States*, 550.

CUSTOMS DUTIES.

1. A charge by the collector of customs at New York for storage in the public store, for labor, and for cartage from the general-order warehouse to the public store made upon uninvoiced and unclaimed goods under the value of $100 sent to a general-order warehouse, and taken thence to a public store for examination on the application of the owner, is a valid charge authorized by law. *Kennedy* v. *Magone*, 212.

DISTRICT ATTORNEY.

1. Mileage or travel fees are allowed to a district attorney as a disbursement or commutation of travelling expenses, irrespective of the

amount of compensation for services to which he is limited by law. *United States* v. *Smith*, 346.

2. *Per diem* allowances to him for attendance, and charges for special services directed by the Attorney General, are compensation for services, and in law form part of the gross sum therefor which may not be exceeded. *Ib.*

EQUITY.

1. A bill in equity against the administratrix of a deceased partner in a firm, which was dissolved in the lifetime of the deceased, is the proper remedy for the surviving partner, seeking a settlement in the courts of the District of Columbia, and alleging that on making it a sum would be found due to him; and when it is further alleged that part of the assets is real estate, standing in the name of the deceased, the widow and children of the deceased are proper parties defendant. *White* v. *Joyce*, 128.
2. A bill filed later by the same surviving partner, and called a supplemental bill, alleging that after a decree had been entered, ordering the sale of the real estate, the trustees appointed to effect the sale had been unable to sell it, and further alleging that the deceased had died seized and possessed of certain real estate, and asking that a decree should be made ordering its sale, is not a supplemental bill, but is essentially a new proceeding, under the Maryland laws in force at the time when the District of Columbia was ceded to the United States; in which proceeding it was competent for the heirs to plead the statute of limitations, and in which it was the duty of the court to give to the minor children, defendants, coming into court and submitting their rights to its protection, the benefit of that statute; but the widow and the adult son, who had been guilty of laches, must be left by the court in the position in which they had placed themselves. *Ib.*
3. Where the existence of a contract is a matter of doubt, equity will not, as a rule, decree specific performance, especially when it appears that the property to which it relates was rapidly rising in value. *DeSollar* v. *Hanscome*, 216.
4. According to settled rules, equity will not interfere to remove an alleged cloud upon title to land, if the instrument or proceeding constituting such alleged cloud is absolutely void upon its face, so that no extrinsic evidence is necessary to show its invalidity; nor will it interfere if the instrument or proceeding is not thus void on its face, but the party claiming, in order to enforce it, must necessarily offer evidence which will inevitably show its invalidity and destroy its efficacy. *Rich* v. *Braxton*, 375.
5. But equity will interfere where deeds, certificates, and other instruments given on sales for taxes, are made by statute *prima facie* evidence of the regularity of proceedings connected with the assessments and sales. *Ib.*
6. In view of Rule 33, which provides that "if upon an issue the facts

stated in the plea be determined for the defendant, they shall avail him as far as in law and in equity they ought to avail him," the plaintiffs may properly ask this court to review the decree of the court below, sustaining the sufficiency of the defendants' plea. *Green* v. *Bogue*, 478.

7. Where the facts averred and relied upon in a former suit between the parties which proceeded to final judgment are substantially those alleged in the pending case under consideration, the fact that a different form or measure of relief is asked by the plaintiffs in the later suit does not deprive the defendants of the protection of the prior findings and decree in their favor. *Ib.*

8. Nor is their right affected by the fact that Mrs. Green did not join in the exceptions, or that Mr. Green, who had joined, withdrew his objections, in view of the fact that the exceptions were brought and sought to be maintained in their interest and by their trustees and privies. *Ib.*

9. The allegations of fraud, based upon the existence of an outside contract, are satisfactorily disposed of by the Supreme Court of Illinois in *Barling* v. *Peters*, 134 Illinois, 606. *Ib.*

10. C. contracted in writing in 1884 with R. to purchase from him about 50,000 acres of land in West Virginia, which had been originally granted by the Commonwealth of Virginia to D. in 1796, and which R. had acquired in 1870 from persons who had purchased it at a sale for non-payment of taxes, made in 1857, after the death of D. The contract was made by the acre, at so much per acre. The title was to be examined by F., a lawyer of West Virginia, the attorney of C., and upon his certifying it to be good the first payments were to be made. The total number of acres within the defined limits were agreed to by both parties, but a further survey was to be made at the expense of C., in order to ascertain what tracts and how many acres within those limits were held adversely to B. under a possessory title. F. certified that the title was good, except as to sundry small tracts held adversely, and C. thereupon made the first payment under the contract. Partial surveys having been made, C. declined to carry out his agreements, and filed a bill in equity, setting up that there had been mutual mistakes as to the amount of the conflicting claims, and praying for a rescission of the contract. This bill was met by an answer denying that there had been such mistakes, and by a cross bill. After sundry other pleadings, and after some evidence was taken, C. filed an amendment charging fraud upon R. and his agent, and setting up that the contract had been induced by fraudulent concealments and representations on their part. Further proof was taken, and a hearing below resulted in a decree in favor of R. In this court, after a careful review of the pleadings and proof, it is *Held*, That the Circuit Court was right in concluding that C. was not entitled to a rescission of the contract. *Clark* v. *Reeder*, 505.

See LACHES, 2, 3; TAX SALES IN WEST VIRGINIA, 8.

ESTOPPEL.

1. Congress having appropriated in payment of a judgment against the United States in the Court of Claims, the full amount of the judgment, with a provision in the appropriation law that the sum thus appropriated shall be in full satisfaction of the judgment, and the judgment debtor having accepted that sum in payment of the judgment debt, the debtor is estopped from claiming interest on the judgment debt under Rev. Stat. § 1090. *Pacific Railroad* v. *United States*, 118.
2. It is of the essence of estoppel by judgment that it is certain that the precise fact was determined by the former judgment. *DeSollar* v. *Hanscome*, 216.

See LACHES;
RAILROAD, 5.

EVIDENCE.

1. There was no error in permitting medical witnesses testifying in behalf of the plaintiff to be asked whether the examinations made by them were made in a superficial or in a careful and thorough manner. *Northern Pacific Railroad Co.* v. *Urlin*, 271.
2. It is competent for a medical man called as an expert to characterize the manner of the physical examinations made by him. *Ib.*
3. When a party is represented by counsel at the taking of a deposition, and takes part in the examination, that must be regarded as a waiver of irregularities in taking it. *Ib.*
4. When a deposition is received without objection or exception, objections to it are waived. *Ib.*
5. In an action against a railroad company to recover for personal injuries, the declarations of the party are competent evidence when confined to such complaints, expressions, and exclamations as furnish evidence of a present existing pain or malady, to prove his condition, ills, pains, and symptoms; and if made to a medical attendant are of more weight than if made to another person. *Ib.*
6. There is no error in not permitting the defendant to cross-examine the plaintiff on a subject on which he had not been examined in chief. *Ib.*
7. Evidence offered by the plaintiff to show the profits of his business and admitted over objections is *held* not to be such as to enable the jury to intelligently perform its duty of finding the earnings of the plaintiff after allowing for interest on capital invested, and for the energy and skill of his partners. *Boston & Albany Railroad Co.* v. *O'Reilly*, 334.
8. Other evidence, admitted over objections, *held* to be too uncertain to be made the basis for damages, and to have probably worked substantial injury to the rights of the defendant. *Ib.*

See MARSHAL OF A COURT OF THE UNITED STATES, 1;
PRACTICE, 2; RAILROAD, 10.

EXCEPTION.

1. The fact that objections are made to the admission or exclusion of evidence and overruled is not sufficient, in the absence of exceptions, to bring them before the court. *Newport News and Mississippi Valley Co.* v. *Pace*, 36.
2. It is the duty of counsel excepting to propositions submitted to a jury, to except to them distinctly and severally, and where they are excepted to in mass the exception will be overruled if any of the propositions are correct. *Ib.*
3. There is nothing in this case to take it out of the operation of these well-settled rules. *Ib.*

See PRACTICE, 9.

HABEAS CORPUS.

See COURT MARTIAL, 3.

HUSBAND AND WIFE.

See CONTRACT, 2.

INCOME TAX.

1. *Hylton* v. *United States*, 3 Dall. 171, further considered, and, in view of the historical evidence cited, shown to have only decided that the tax on carriages involved was an excise, and was therefore an indirect tax. *Pollock* v. *Farmers' Loan & Trust Co.*, 601.
2. In distributing the power of taxation the Constitution retained to the States the absolute power of direct taxation, but granted to the Federal government the power of the same taxation upon condition that, in its exercise, such taxes should be apportioned among the several States according to numbers; and this was done, in order to protect to the States, who were surrendering to the Federal government so many sources of income, the power of direct taxation, which was their principal remaining resource. *Ib.*
3. It is the duty of the court in this case simply to determine whether the income tax now before it does or does not belong to the class of direct taxes, and if it does, to decide the constitutional question which follows accordingly, unaffected by considerations not pertaining to the case in hand. *Ib.*
4. Taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes. *Ib.*
5. Taxes on personal property, or on the income of personal property, are likewise direct taxes. *Ib.*
6. The tax imposed by sections twenty-seven to thirty-seven, inclusive, of the act of 1894, so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and, therefore, unconstitutional and void because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid. *Ib.*

INJUNCTION.

See INTERSTATE COMMERCE, 4, 5, 6, 7, 8, 9.

INTERSTATE COMMERCE.

1. While the government of the United States is a government of enumerated powers, it has full attributes of sovereignty within the limits of those powers, among which are the power over interstate commerce and the power over the transmission of the mails. *In re Debs, Petitioner*, 564.
2. The powers thus conferred are not dormant, but have been assumed and put into practical exercise by Congressional legislation. *Ib.*
3. In the exercise of those powers the United States may remove everything put upon highways, natural or artificial, to obstruct the passage of interstate commerce, or the carrying of the mails. *Ib.*
4. While it may be competent for the government, through the executive branch, and in the use of the entire executive power of the Nation, to forcibly remove all such obstructions, it is equally within its competency to appeal to the civil courts for an inquiry and determination as to the existence and the character of any of them, and if such are found to exist or threaten to occur, to invoke the powers of those courts to remove or restrain them, the jurisdiction of courts to interfere in such matters by injunction being recognized from ancient times and by indubitable authority. *Ib.*
5. Such jurisdiction is not ousted by the fact that the obstructions are accompanied by or consist of acts in themselves violations of the criminal law, or by the fact that the proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt; as the penalty for a violation of such injunction is no substitute for, and no defence to, a prosecution for criminal offences committed in the course of such violation. *Ib.*
6. The complaint filed in this case clearly shows an existing obstruction of artificial highways for the passage of interstate commerce and the transmission of the mails, not only temporarily existing, but threatening to continue, and under it the Circuit Court had power to issue its process of injunction. *Ib.*
7. Such an injunction having been issued and served upon the defendants, the Circuit Court had authority to inquire whether its orders had been disobeyed, and when it found that they had been disobeyed, to proceed under Rev. Stat. § 725, and to enter the order of punishment complained of. *Ib.*
8. The Circuit Court having full jurisdiction in the premises, its findings as to the act of disobedience are not open to review on *habeas corpus* in this or any other court. *Ib.*
9. The court enters into no examination of the act of July 2, 1890, c. 647, 26 Stat. 209, on which the Circuit Court mainly relied to sustain its

jurisdiction; but it must not be understood that it dissents from the conclusions of that court in reference to the scope of that act, but simply that it prefers to rest its judgment on the broader ground discussed in its opinion, believing it important that the principles underlying it should be fully stated and fully affirmed. *Ib.*

See CONSTITUTIONAL LAW, 1, 2; RAILROAD, 4.

INTERNAL REVENUE.

See CONSTITUTIONAL LAW, 5.

JUDGMENT.

1. An unreversed judgment of a Circuit Court is not a nullity, and cannot be collaterally attacked. *Cutler* v. *Huston*, 423.
2. The order of the Circuit Court finding the petitioners guilty of contempt, and sentencing them to imprisonment, was not a final judgment or decree. *In re Debs, Petitioner*, 564.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. A question in relation to the physical and mental condition of a juror and his competency to return a verdict is a question of fact, and this court upon a writ of error to the highest court of a State in an action at law cannot review its judgment upon such a question. *In re Buchanan*, 31.
2. In an action against a corporation for the breach of a contract to transfer a certain number of its shares to the plaintiff, he testified to their value; and the defendant's president, being a witness in its behalf, testified that they were worth half as much; the jury returned a verdict for the larger sum; exceptions taken by the defendant to the competency of the plaintiff's testimony on the question of damages were sustained; and the court ordered that a new trial be had, unless the plaintiff would file a remittitur of half the damages, and, upon his filing a remittitur accordingly, and upon his motion, rendered judgment for him for the remaining half. *Held*: no error of which either party could complain. *Koenigsberger* v. *Richmond Silver Mining Co.*, 41.
3. The petition for removal in this case was insufficient because it did not show of what State the plaintiff was a citizen at the time of the commencement of the action. *Mattingly* v. *Northwestern Virginia Railroad Co.*, 53.
4. The appeal in this case having been taken prior to the passage of the act of March 3, 1891, c. 517, 26 Stat. 826, is not governed by that act, although the citation was not signed till April 14, 1891, and not served until April 17. *Ib.*

5. Neither signing nor service of citation is jurisdictional. *Ib.*
6. When the record fails to affirmatively show jurisdiction, this court must take notice of the defect. *Ib.*
7. As this case was improperly removed from the state court, this court reverses the decree, remands the cause with direction to remand it to the state court, and subjects the party on whose petition the case was removed to costs in this and the Circuit Court. *Ib.*
8. No question as to jurisdiction in this case having been taken in the court below or here, this court waives the inquiry whether an objection to the jurisdiction might not, if seasonably taken, have compelled a dismissal. *Catholic Bishop of Nesqually* v. *Gibbon*, 155.
9. When the validity of no treaty or statute of, or authority exercised under, the United States, nor of a statute of, or authority exercised under, any State, is drawn in question by a state court, it is essential to the maintenance of jurisdiction here that it should appear that some title, right, privilege, or immunity under the Constitution or laws of the United States was specially set up or claimed there, and that the decision of the highest court of the State, in which such decision could be had, was against the title, right, privilege, or immunity so set up or claimed; and in that regard, certain propositions must be regarded as settled: 1. That the certificate of the presiding judge of the state court, as to the existence of grounds upon which the interposition of this court might be successfully invoked, while always regarded with respect, cannot confer jurisdiction to reëxamine the judgment below; 2. That the title, right, privilege, or immunity must be specially set up or claimed at the proper time and in the proper way; 3. That such claim cannot be recognized as properly made when made for the first time in a petition for rehearing after judgment; 4. That the petition for the writ of error forms no part of the record upon which action is taken here; 5. Nor do the arguments of counsel, though the opinions of the state courts are now made such by rule; 6. The right on which the party relies must have been called to the attention of the court, in some proper way, and the decision of the court must have been against the right claimed; 7. Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved so that the state court could not have given judgment without deciding it; that is, a definite issue as to the possession of the right must be distinctly deducible from the record before the state court can be held to have disposed of such Federal question by its decision. *Sayward* v. *Denny*, 180.
10. Tested by these principles it is quite apparent that this writ of error must be dismissed. *Ib.*
11. This court is without jurisdiction to enter a consent decree at this term in a cause finally determined at October term, 1893, and improperly retained upon the docket at this term. *Virginia* v. *Tennessee*, 267.
12. Where the jurisdiction of the court below is in issue, and the case is

certified here for decision, the certificate must be granted during the term at which the judgment or decree is entered. *Clovin* v. *Jacksonville*, 456.

See APPEAL; JUDGMENT, 2; EXCEPTION; PRACTICE, 9; RAILROAD, 8.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Under the act of February 22, 1889, c. 180, for the division of the Territory of Dakota into two States, and for the admission of those and other States into the Union, and providing that the Circuit and District Courts of the United States shall be the successors of the Supreme and District Courts of each Territory, as to all cases pending at the admission of the State into the Union, "whereof the Circuit or District Courts by this act established might have had jurisdiction under the laws of the United States, had such courts existed at the time of the commencement of such cases," the Circuit Court of the United States for the District of South Dakota has jurisdiction, at the written request of either party, of an action brought in a District Court of that part of the Territory of Dakota which afterwards became the State of South Dakota, by a citizen of that part of the Territory, since a citizen of the State, against a citizen of another State, and pending on appeal in the Supreme Court of the Territory at the time of the admission of the State into the Union. *Koenigsberger* v. *Richmond Silver Mining Co.*, 41.
2. In a suit in equity to restrain the issue of bonds by a municipal corporation, brought by a taxpayer, the jurisdiction of the Circuit Court is determined by the amount of the interest of the complainant, and not by the amount of the issue of the bonds. *Colvin* v. *Jacksonville*, 456.

See COMMISSIONER OF A CIRCUIT COURT; JURISDICTION, A, 8; PATENT FOR INVENTION, 8; TRESPASS.

JUROR.

A suitable inquiry is permissible in order to ascertain whether a juror has any bias, to be conducted under the supervision of the court and to be largely left to its sound discretion; and in this case there was no error in not allowing a juror to be asked, "Would your political affiliations or party predilections tend to bias your judgment in this case either for or against the defendant?" *Connors* v. *United States*, 408.

LACHES.

1. Whenever property is claimed by one owner, and he exercises acts of ownership over it and the validity of such acts is not questioned by his neighbors till after the lapse of many years when the statute of limitations has run, and those who, for any apparent defects in the

title to the property, would naturally be most interested in enforcing their claims, make no objection thereto, a fair presumption arises, from the conduct of the parties, that the title of the holders and claimants of the property is correctly stated by them. *Teall* v. *Schroder*, 172.

2. Independently of any limitation for the guidance of courts of law, equity may, in the exercise of its own inherent powers, refuse relief where it is sought after undue and unexplained delay, and when injustice would be done in the particular case by granting the relief asked. *Abraham* v. *Ordway*, 416.

3. This case is peculiarly suited for the application of this principle, as the plaintiffs claim that the lands in dispute became, after the divorce of Elizabeth Abraham from Burnstine, her legal and statutory as distinguished from her equitable separate estate, and that the trust deed to Norris, by sale under which the defendant acquired title, was absolutely void, while it appears that nineteen years elapsed after the execution of that deed before this suit was brought, that Elizabeth Abraham was divorced from her second husband thirteen years before the institution of these proceedings, that she paid interest on the debt secured by the trust deed for about eight years without protest; that she did not pretend to have been ignorant of the sale under the trust deed, nor to have been unaware that the purchaser went into possession immediately, and continuously thereafter received the rents and profits; and on these facts it is held that the plaintiffs and those under whom they assert title have been guilty of such laches as to have lost all right to invoke the aid of a court of equity. *Ib.*

4. In 1858 H. loaned to W. a sum of money, receiving from him his note payable in one year with interest. No part of the sum on the note was ever paid, either to H. in his lifetime or to his representatives. Simultaneously with the loan H. conveyed to K. as trustee a tract of land in Nebraska to secure the payment of the note. The remaining interest of W. in the tract subsequently came to T. through sundry mesne conveyances. H. paid the taxes on the property from March, 1862, until his death in 1876. Shortly before his death he gave directions to have the trust deed foreclosed, and proceedings were taken to that end, a judgment was obtained, the property was sold to H., and a deed made to him accordingly. H. verified the petition which was the foundation of these proceedings, but the day before it was filed he died. The deed to him after the sale was delivered to his children, who in good faith filed the same for record and continued to pay taxes on the property, claiming to be owners. During all that time and down to 1888 neither W. nor any one claiming under him except H. and his representatives, ever exercised any right of ownership of the land. Then T. commenced proceedings in a state court of Nebraska, which were removed into the Federal court,

to have the tax sale deed set aside and declared void, and to redeem from that sale, and such proceedings were had that a decree was entered allowing redemption. *Held*, that the doctrine of laches was applicable; that the claim was stale; and that no court of equity would be justified in permitting the assertion of an outstanding equity of redemption, after such a lapse of time, and in the entire absence of the elements of good faith and reasonable diligence. *Harter* v. *Twohig*, 448.

See EQUITY, 2.

LIMITATION, STATUTES OF.

See RAILROAD, 6.

LOCAL LAW.

In Oregon a general verdict for the plaintiff, where the complaint alleges that the plaintiff is entitled to the possession of certain described property which is unlawfully detained by the defendant, and the possession of which the plaintiff prays to recover, is sufficient. *Bennett* v. *Harkrader*, 441.

District of Columbia. *See* EQUITY, 2.
Michigan. *See* CHATTEL MORTGAGE.
Montana. *See* PRACTICE, 4.
New York. *See* RES JUDICATA.
West Virginia. *See* TAX SALES IN WEST VIRGINIA.
Wisconsin. *See* RAILROAD, 2, 4.

MAILS, TRANSMISSION OF.

See INTERSTATE COMMERCE.

MARRIED WOMEN.

See CONTRACT, 1.

MARSHAL OF A COURT OF THE UNITED STATES.

1. On proof of the loss of the written authority issued by a marshal to a deputy marshal whom he had appointed, parol evidence is admissible to show the facts of the appointment and of the services of the deputy. *Wright and Wade* v. *United States*, 232.
2. One acting as a *de facto* deputy by authority of the marshal comes within the provisions of the act of June 9, 1888, c. 382, 25 Stat. 178, "for the protection of the officials of the United States in the Indian Territory." *Ib.*
3. It is the obvious purpose of the act not only to bring within the jurisdiction of the United States those who commit crimes against certain persons therein enumerated, when engaged in the performance of their duties, but also to bring within the same jurisdiction those committing offences against such officials after they have ceased to perform their duties. *Ib.*

MILITIA.

See CONSTITUTIONAL LAW, 3.

MORTGAGE.

See CONTRACT, 1.

MUNICIPAL BOND.

1. *Lyons* v. *Munson*, 99 U. S. 676, affirmed to the point that under c. 907 of the laws of New York for 1869, the county judge was the officer charged by law with the duty to decide whether municipal bonds could be legally issued in payment of subscriptions to railroad stock, and that his judgment was conclusive till reversed by a higher court. *Andes* v. *Ely*, 313.
2. *Orleans* v. *Platt*, 99 U. S. 684, affirmed to the point that such a judgment could not be collaterally attacked. *Ib.*
3. These judgments are not affected by *Craig* v. *Andes*, 93 N. Y. 405, as that case has since been held by the Court of Appeals of New York to have been a collusive case, and not to stand in the way of a re-examination. *Ib.*
4. The attaching a condition to his signature by a petitioner under that statute of New York does not necessarily vitiate it. *Ib.*
5. One who contracts with a corporation as such cannot afterwards avoid the obligations so assumed by him on the ground that the supposed corporation was not one *de jure*. *Ib.*
6. If the county judge in a notice issued by him under that act fails to specify the place at which the hearing on the petition will be had, it will be presumed that his regular office is the place intended for it. *Ib.*
7. When municipal bonds issued in payment of a subscription to railroad stock recite on their face that all necessary steps have been taken to justify their issue, the municipality is estopped from showing the contrary in an action brought by a *bona fide* holder to enforce them. *Ib.*
8. A town, under the laws of the State of New York, is a corporation, so far as respects the making of contracts, the right to sue, and the liability to be sued. *Ib.*

OFFICER IN THE ARMY.

See CONSTITUTIONAL LAW, 3.

OFFICER IN THE NAVY.

See CONSTITUTIONAL LAW, 3;
COURT MARTIAL.

PARTNERSHIP.

See EQUITY, 2.

PATENT FOR INVENTION.

1. Arthur Kirk was the original inventor of the invention patented to him by letters patent No. 268,411, issued December 5, 1882, for a new and useful improvement in movable dams; and that invention was the application of an old device to meet a novel exigency and to subserve a new purpose, and was a useful improvement and patentable, and was not anticipated by other patents or inventions and was infringed by the dams constructed by the plaintiff in error. *Du Bois* v. *Kirk*, 58.
2. The fact that the defendant is able to accomplish the same result as the plaintiff by another and different method does not affect the plaintiff's right to his injunction. *Ib.*
3. Processes of manufacture which involve chemical or other similar elemental action are patentable, though mechanism may be necessary in the application or carrying out of the process, while those which consist solely in the operation of a machine are not; and where such mechanism is subsidiary to the chemical action, the fact that the patentee may be entitled to a patent upon his mechanism does not impair his right to a patent for the process. *Risdon Iron and Locomotive Works* v. *Medart*, 68.
4. A valid patent cannot be obtained for a process which involves nothing more than the operation of a piece of mechanism, that is to say, for the function of a machine. *Ib.*
5. A patent only for superior workmanship is invalid. *Ib.*
6. If it appears, upon demurrer to a bill to restrain infringement of letters patent, that the patent is invalid, the bill should be sustained. *Ib.*
7. Letters patent No. 248,599, granted October 25, 1881, to Philip Medart for the manufacture of belt pulleys, and letters patent No. 248,598, granted October 25, 1881, to him for a belt pulley, and letters patent No. 238,702, granted to him March 8, 1881, for a belt pulley, are all invalid. *Ib.*
8. A person in the employ of a smelting company invented a new method of tapping and withdrawing molten metal from a smelting furnace. He took out a patent for it, and permitted his employer to use it without charge, so long as he remained in its employ, which was about ten years. After that his employer continued to use it, and, when the patent was about to expire, the patentee filed a bill against the company, praying for injunctions, preliminary and perpetual, and for an accounting. Before the return of the subpœna the patent had expired. On the trial it appeared that the invention had been used for more than seventeen years with the knowledge and assent of the patentee, and without any complaint on his part, except that the company had not paid royalties after he quitted its employment. The defences

were, (1) that the Circuit Court had no jurisdiction of the case because no Federal question was involved and there was no diversity of citizenship of the parties; (2) that, even if there was a Federal question involved, the Circuit Court as a court of equity had no jurisdiction of the case because complainants had a plain, adequate, and complete remedy at law. The court below sustained both of the defences and dismissed the bill. *Held*, that the decree was fully justified. *Keyes* v. *Eureka Consolidated Mining Co.*, 150.

9. Under letters patent No. 300,687, granted June 17, 1884, to John M. Boyd for improvements in hay elevators and carriers, the patentee, in view of the state of the art, was entitled, at most, only to the precise devices mentioned in the claims, and that patent, so construed, is not infringed by machines constructed under patent No. 279,889, granted June 19, 1883, to F. B. Strickler. *Boyd* v. *Janesville Hay Tool Co.*, 260.
10. If letters patent be manifestly invalid upon their face, the question of their validity may be raised on demurrer, and the case may be determined on the issue so formed. *Richards* v. *Chase Elevator Co.*, 299.
11. Letters patent No. 308,095, issued November 18, 1884, to Edward S. Richards for a grain transferring apparatus, are wholly void upon their face for want of patentable novelty and invention. *Ib.*
12. Reissued letters patents No. 7851, granted August 21, 1877, to Henry H. Eby for an improvement in cob-carriers for corn-shellers are void, as being for a different invention from that described and claimed in the original letters, specification, and claim. *Eby* v. *King*, 366.
13. It is doubtful whether the Commissioner of Patents has jurisdiction to consider and act upon an application for a surrender of letters patent and reissue, when there is only the bare statement that the patentee wishes to surrender his patent and obtain a reissue. *Ib.*
14. Whether, when a patent has been surrendered and reissued, and such reissue is held to be void, the patentee may proceed upon his original patent, is considered and discussed, but is not decided. *Ib.*
15. Reissued letters patent No. 5184, granted to Francis Kearney and Luke F. Tronson December 10, 1872, for an improvement in spark-arresters, are void for want of patentable novelty. *Lehigh Valley Railroad Co.* v. *Kearney*, 461.

POWER OF ATTORNEY.

When a power of attorney to sell and convey lands of the donor of the power, duly executed, is placed on record in the State in which the lands are situated, in the place provided by law for that purpose, and sales and transfers of the lands covered by the power are made by the donee of the power, and are in like manner placed on record, all persons interested, whether residing in the State or elsewhere, are charged with the necessary knowledge on those subjects, and are held to all the consequences following its acquisition. *Teall* v. *Schroder*, 172.

PRACTICE.

1. Error cannot be imputed to a court for refusing to allow an amendment or supplement to an answer, after the case had progressed to a final hearing, nor to its judgment in disregarding the allegations of such proposed amendment. *Roberts* v. *Northern Pacific Railroad Company*, 1.
2. While it cannot be safely said that, in no case can a court of errors take notice of an exception to the conduct of the trial court in permitting leading questions, such conduct must appear to be a plain case of the abuse of discretion. *Northern Pacific Railroad Co.* v. *Urlin*, 271.
3. When the court has fully instructed the jury on a subject, a request to further charge in the same line and in the same manner may be refused as calculated to confuse the jury. *Ib.*
4. When the verdict in this case was rendered, the jury was polled at the request of the defendant and each answered that the verdict as read was his. No objection was made by defendant or request that the verdict should be signed, and judgment was entered in accordance with the verdict. *Held*, that this was a waiver by the defendant of the irregularity in the foreman's not signing the verdict as required by the local law of Montana. *Ib.*
5. Where a case has gone to a hearing, testimony been admitted to a jury under objection but without stating any reasons for the objection, and a verdict rendered, with judgment on the verdict, the losing party cannot, in the appellate court, state for the first time a reason for that objection which would make it good. *Boston & Albany Railroad Co.* v. *O'Reilly*, 334.
6. While an appellate court will not disturb a judgment for an immaterial error, yet it should appear beyond a doubt that the error complained of did not and could not have prejudiced the rights of the party duly objecting. *Ib.*
7. The fact that no such officer as master commissioner is known to the law does not impair the validity of a reference to a person as such. *Shipman* v. *Straitsville Mining Co.*, 356.
8. The findings of a referee having been ordered to stand as the findings of the court, the only question before this court is whether the facts found by him sustain the judgment. *Ib.*
9. As the case was not tried by the Circuit Court upon a waiver in writing of a trial by jury, this court cannot review exceptions to the admission or exclusion of evidence, or to findings of fact by the referee, or to his refusal to find facts as requested. *Ib.*

See EQUITY, 6;
JURISDICTION, A, 4, 5, 6, 7;
TRESPASS, 3.

PUBLIC LAND.

1. In May, 1854, J. settled on a quarter section of public land in California, which had not been then offered for public sale, and improved

it. Before May, 1857, the government survey had been made and filed, showing the tract to be agricultural land, not swamp or mineral, and not embraced within any reservation. In May, 1857, J. duly declared his intention to claim it as a preëmption right under the act of March 3, 1853, c. 145, 10 Stat. 244, and paid the fees required by law, and the filing of this statement was duly noted in the proper government record. J. occupied the tract until about 1859, when he left for England, and never returned. The land was found to be within the granted limits of the grant to the Central Pacific Railroad Company, by the act of July 1, 1862, c. 120, 12 Stat. 489. That company filed its map of definite location March 26, 1864, and fully constructed its road by July 10, 1868. It demanded this tract and the Land Office denied the claim. In 1885 the preëmption entry of J. was cancelled. On August 28, 1888, T. made entry of the premises under the homestead laws of the United States, and subsequently commuted such entry, made his final proofs, paid the sum of $400, took the government receipt therefor, and entered into possession. *Held:* (1) That the tract being subject to the preëmption claim of J. at the time when the grant to the railroad company took effect, was excepted from the operation of that grant; (2) that after the cancellation of that entry it remained part of the public domain, and, at the time of the homestead entry of T., was subject to such entry. *Whitney* v. *Taylor*, 85.

2. In the administration of the public lands, the decisions of the land department upon questions of fact are conclusive, and only questions of law can be reviewed in the courts. *Catholic Bishop of Nesqually* v. *Gibbon*, 155.
3. In the absence of some specific provision to the contrary in respect of any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision and direction of the Secretary of the Interior. *Ib.*
4. The decision of the Secretary of the Interior of March 11, 1872, sustaining the claim of the plaintiff in error to a small tract — less than half an acre — of the 640 acres claimed under the act of August 14, 1848, c. 177, 9 Stat. 323, if not conclusive upon the plaintiff in law, was right in fact. *Ib.*
5. The act of Congress of June 21, 1860, c. 167, confirming the claim of Preston Beck, Jr., to a grant of land from Mexico made before the Treaty of Guadalupe Hidalgo, by necessary implication contemplated that the grant should be thereafter surveyed, and that such survey was essential for the purpose of definitely segregating the land confirmed from the public domain. *Stoneroad* v. *Stoneroad*, 240.
6. Such survey could only be made by the proper officer of the political department of the government. *Ib.*
7. Such survey having been made by such officer, and on the trial of this

case evidence having been introduced tending to show that land of the defendant in controversy lay outside of the lines of that survey, but within the limits of the designated boundaries of the grant under which the plaintiff claimed, the defendant was entitled to have the jury instructed that if they found from the evidence that the grant had been properly surveyed by the United States, and that that survey had been approved, as the correct location of the grant, and that the land in dispute in the defendant's occupation and possession was outside the limits of the survey, they must find for the defendant, although they might believe that the land so in dispute was within the boundaries of the grant, as set forth in the original title papers thereof. *Ib.*

8. The right of the defendant in error to avail himself of the legal privilege of appeal from the survey to the Secretary of the Interior is not concluded by any expression of opinion by the court in this case. *Ib.*
9. A survey made by the proper officers of the United States, and confirmed by the Land Department, is not open to challenge by any collateral attack in the courts. *Russell* v. *Maxwell Land Grant Co.*, 253.
10. The location certificate in this case, though defective in form, was properly introduced for the purpose of showing the time when the possession was taken, and to point out, as far as it might, the property which was taken possession of. *Bennett* v. *Harkrader*, 441.
11. The instructions complained of properly presented to the jury the two ultimate questions to be decided by it. *Ib.*

RAILROAD.

1. Where a railroad company, having the power of eminent domain, has entered into actual possession of lands necessary for its corporate purposes, whether with or without the consent of their owner, a subsequent vendee of the latter takes the land subject to the burthen of the railroad, and the right to payment from the railroad company, if it entered by virtue of an agreement to pay, or to damages if the entry was unauthorized, belongs to the owner at the time the railroad company took possession. *Roberts* v. *Northern Pacific Railroad Company*, 1.
2. If a land-owner, knowing that a railroad company has entered upon his land, and is engaged in constructing its road without having complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages. *Ib.*
3. So far as it was within the power of the State of Wisconsin, through and by its legislature, to authorize the county of Douglas, in that State, to contract with the Northern Pacific Railroad Company for the construction of its road within that county on a designated line,

and to establish a lake terminus within the same, and upon the fulfilment of those conditions to convey to it certain of its unsettled public lands, that power was conferred and the contract between the county and the railroad company in respect thereof was ratified by the act of March 23, 1883; and, if there was any want of regularity in the proceedings of the county, it was thereby waived and corrected. *Ib.*

4. Said grant was made on a valuable consideration, which was fully performed when the railroad company had constructed its road and had established the lake terminus in the county as it had contracted to do; and the company then became entitled to a conveyance of the lands, and so far as the Supreme Court of Wisconsin can be regarded as having held to the contrary, the courts of the United States are not bound to follow its decision when applied to a corporation created by an act of Congress, for National purposes, and for interstate commerce. *Ib.*
5. Applying to this case the rules in regard to estoppel laid down in *Cromwell* v. *Sac County*, 94 U. S. 352, it is *Held*, that the question or point actually litigated in the state court in *Ellis* v. *Northern Pacific Railroad*, 77 Wisconsin, 114, was not the same with those before the Federal court in this case, and hence, as the causes of action in the two courts were not the same, the judgment in the state court, while it might determine the controversy between the parties to it as respects the pieces of land there in question, would not be conclusive in another action upon a different claim or demand. *Ib.*
6. In an action by an employé of a railroad company against the company, based upon the general law of master and servant, and brought to recover damages for an injury which had happened to the plaintiff in Kansas while on duty there, an amended petition which changes the nature of the claim, and bases it upon a statute of Kansas giving the employé in such a case a right of action against the company in derogation of the general law, is a departure in pleading, and sets up a new cause of action; and the statute of limitations as applied to such new cause of action treats the action as commenced when the amendment was incorporated into the pleadings, and not as begun when the action itself was commenced. *Union Pacific Railway Co.* v. *Wyler*, 285.
7. This result is not in any way affected by the fact that the amended petition was filed by consent, as such consent covers only the right to file the amendment, but does not waive defences thereto when filed. *Ib.*
8. Writs of error to Circuit Courts of Appeals in actions for damages for negligence of railroad corporations are allowed when the corporations are chartered under the laws of the United States. *Union Pacific Railway Co.* v. *Harris*, 326.
9. In an action against a railway company to recover for injuries caused by a collision with a car loaded with coal for a coal company which

had escaped from the side track and run upon the main track, it is *held*, in view of the evidence, to be no error to charge that the railway company is bound to keep its track clear from obstructions, and to see that the cars which it uses on side tracks are secured in place, so that they will not come upon the track to overthrow any train that may come along. *Ib.*

10. When in such an action the defendant sets up a written release of all claims for damages signed by plaintiff, and the plaintiff, not denying its execution, sets up that it was signed by him in ignorance of its contents, at a time when he was under great suffering from his injuries, and in a state approaching to unconsciousness, caused by his injuries and by the use of morphine, the question is one for the jury, under proper instructions from the court; and in this case the instructions were proper. *Ib.*

REFEREE.

See PRACTICE, 7, 8.

REMOVAL OF CAUSES.

See JURISDICTION, A, 3, 7.

RES JUDICATA.

1. The rulings of the Court of Appeals of New York, unanimously made, that the warehouse company did not become indebted to the plaintiff by reason of its endorsement of the notes which form the basis of this action, as the company was an accommodation endorser, of which fact the plaintiff was chargeable with notice, and that the liability of Remsen, as trustee of the company, was not primary, but secondary, and dependent altogether upon a statute of that State of a penal character, ought to be recognized in every court as, at least, most persuasive, although the case in which the ruling was made has not yet gone to final judgment. *Park Bank* v. *Remsen*, 337.
2. This court has held in *Chase* v. *Curtis*, 113 U. S. 452, that that statute of New York is penal in character, and must be construed with strictness against those sought to be subjected to its liabilities. *Ib.*

See EQUITY, 7, 8.

SELF-DEFENCE.

See CRIMINAL LAW, 2.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 4;
COMMISSIONER OF A CIRCUIT COURT;
CONSTITUTIONAL LAW, 1, 5;
COURT MARTIAL, 1, 2;
CRIMINAL LAW, 1;
ESTOPPEL, 1;
INCOME TAX, 6;
INTERSTATE COMMERCE, 7, 9;
JURISDICTION, A, 4; B, 1;
MARSHAL OF A COURT OF THE UNITED STATES, 2;
PUBLIC LAND, 1, 4, 5.

B. STATUTES OF STATES OR TERRITORIES.

Kansas.	*See* RAILROAD, 6.
New York.	*See* CORPORATION; MUNICIPAL BOND, 1, 8; RES JUDICATA.
Pennsylvania.	*See* CONSTITUTIONAL LAW, 4.
Texas.	*See* CONSTITUTIONAL LAW, 1.
West Virginia.	*See* TAX SALES IN WEST VIRGINIA, 6, 7.
Wisconsin.	*See* RAILROAD, 3.

TAX SALES IN WEST VIRGINIA.

1. C., in his lifetime, was in possession, claiming ownership under divers patents of the Commonwealth of Virginia, of several contiguous tracts of land in West Virginia, described in the several surveys thereof. In September, 1875, they were sold for non-payment of taxes assessed upon them for the year 1874, and, under the operation of the tax laws of that State, the title was suspended for one year, the State being the purchaser, in order to enable the owner to pay the taxes within that year, and thus free the land from the charge. C. died three months before the expiration of the year. After his death and after the expiration of the year, his heirs commenced proceedings under the state statutes, praying for leave to pay all back taxes and to acquire the title to the lands which had then become vested in the State. Decrees were entered giving them permission to redeem, and releasing the lands from the forfeiture and from all former taxes and damages. Under these decrees they made the payments. They then found that an adverse title to the lands was set up by purchasers at tax sales made in 1869 for the non-payment of taxes assessed in 1868, to persons claiming under other alleged surveys, and under other grants from the Commonwealth, and under other tax sales made prior to the separation, which are set forth in detail in the opinion of the court. The heirs of C. thereupon filed their bill in equity against the persons setting up such adverse title, praying for a decree annulling the deeds under which the defendants claimed title, and the removal thereby of the cloud created by them on the plaintiff's title. *Held*, (1) That the claims of the heirs of C. were sustained, unless overthrown by the evidence adduced by the defendants; (2) that the examination and review of that evidence by the court showed that the tax sale of 1869 had no validity, and that there was nothing in the case to affect the validity of the claim of the heirs of C. *Rich* v. *Braxton*, 375.
2. By the law of Virginia in force prior to the creation of the State of West Virginia, it was the duty of the sheriff or collector, when lands were sold for taxes, to purchase them on behalf of the Commonwealth for the amount of the taxes, unless some person bid that

amount; and any lands so purchased and certified to the first auditor vested in the Commonwealth without any deed for that purpose, and could have been redeemed in the mode prescribed by the statute. *Ib.*

3. Whatever title Virginia had to lands so purchased and not redeemed, and which were within the territory now constituting West Virginia, passed to the latter State upon its admission to the Union. *Ib.*
4. The time given by the constitution and laws of West Virginia to redeem lands that had become the property of Virginia by forfeiture or by purchase at sheriff's sale for delinquent taxes, and which had not been released or exonerated in conformity to law, expired June 20, 1868. *Ib.*
5. By section 3 of Article XIII of the constitution of West Virginia, the title to lands of the character described which were not redeemed, released, or otherwise disposed of, and which was vested in and remained in the State, was transferred to and vested — (1) In any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees) for so much thereof as such person shall have had actual, continuous possession of under color or claim of title for ten years, and who, or those under whom he claims, shall have paid the state taxes thereon for any five years during such possession; or (2) if there were no such person, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees) for so much of said land as such person shall have title to, regularly derived, mediately or immediately, from or under a grant from the Commonwealth of Virginia, which, but for the title forfeited, would be valid, and who, or those under whom he claims, has or shall have paid all state taxes charged or chargeable thereon for five successive years after the year 1865, or from the date of the grant, if it was issued after that year; or (3) if there were no such person as aforesaid, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees) for so much of said land as such person shall have had claim to and actual, continuous possession of, under color of title, for any five successive years after the year 1865, and have paid all state taxes charged or chargeable thereon for said period: and the defendants' case belongs to neither class. *Ib.*
6. The proceedings instituted by the commissioner of the school fund, under the act of November 18, 1873, for the sale of escheated, forfeited, and unappropriated lands were, in a judicial sense, *ex parte;* neither *in rem* nor *in personam.* *Ib.*
7. The words in the 13th section of that act — "at any time before the sale of any such land . . . such former owner or any creditor of such former owner of such land, having a lien thereon, may pay . . . all costs, taxes, and interest due . . . and have an order made in the order book . . . which order, so made, shall operate as a release on

all former taxes on said land, and no sale thereof shall be made," embrace those — (in this case the heirs of C.) — who in law would have owned the lands, if they had not been sold for taxes, or, if sold, had been redeemed within the prescribed time after the sale at which the State purchased. *Ib.*

8. In West Virginia it is the settled rule that a court of equity has jurisdiction to set aside an illegal or void tax deed. *Ib.*

See EQUITY, 10.

TRESPASS.

1. By the law of those States of the Union whose jurisprudence is based on the common law, an action for trespass upon land can only be brought within the State in which the land lies. *Ellenwood* v. *Marietta Chair Co.*, 105.
2. A count alleging a continuing trespass upon land, and the cutting and conversion of timber growing thereon, states a single cause of action, in which the trespass upon the land is the principal thing, and the conversion of the timber is incidental only; and cannot be maintained by proof of the conversion, without also proving the trespass upon the land. *Ib.*
3. A court sitting in one State, before which is brought an action for trespass upon land in another State, may rightly order the case to be stricken from its docket, although no question of jurisdiction is made by demurrer or plea. *Ib.*

VERDICT.

See PRACTICE, 4.