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ASSIGNMENT OF ERROR.

See JURISDICTION, A, 24.

BOUNDARY LINE.

The court appoints commissioners to run the disputed boundary line in accordance with its decision, announced May 19, 1890, 136 U. S. 479. *Indiana* v. *Kentucky*, 275.

CASES AFFIRMED.

Emert v. *Missouri*, 156 U. S. 296. *Rash* v. *Farley*, 263.

See JURISDICTION, A, 3, 5;
TAXATION, 1.

CASES DISTINGUISHED.

See JURISDICTION, A, 23.

COMMON CARRIER.

See RAILROAD.

CONSTITUTIONAL LAW.

1. A license to pursue any business or occupation, from the governing authority of any municipality or State, can only be invoked for the protection of one in the pursuit of such business or occupation so long as the same continues unaffected by existing or new conditions, which it is within the constitutional power of the legislature to enact. *Gray* v. *Connecticut*, 74.
2. The provisions in the statutes of Connecticut that a person selling or offering for sale, or owning or keeping with intent to sell or exchange, spirituous liquors, without having a license therefor, and that the granting of such license to a druggist shall be discretionary with the county commissioners, are not in conflict with any of the provisions contained in the Fourteenth Amendment to the Constitution of the United States. *Ib.*
3. When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not de-

prive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment to the Constitution of the United States. *Central Land Co.* v. *Laidley*, 103.

4. The act of the legislature of Massachusetts of June 1, 1867, c. 308, to enable the city of Boston to abate a nuisance, and for the preservation of the public health in said city, and which provided for the taking of certain private lands therein, and for their improvement, filling up, and complete draining, so as to abate an existing nuisance and preserve the health of the city, and which further provided for the payment of the cost of the lots so taken through judicial proceedings, was within the constitutional power of the legislature of that State, and the fee in said lands, when acquired by the city, passed to it under the act, and the previous owners ceased to have any interest in them, but were only entitled to reasonable compensation, to be ascertained in the manner provided by the act. *Sweet* v. *Rechel*, 380.
5. It is within the power of Congress to provide, for persons convicted of conspiracy to do a criminal act, a punishment more severe than that provided for persons committing such act. *Clune* v. *United States*, 590.
6. The provision in § 3959 of the Revised Statutes of Missouri that prisoners convicted two or more times of committing offences punishable by imprisonment in the penitentiary, shall be punished with increased severity for the later offences, does not in any way conflict with the provisions of the Fourteenth Amendment to the Constitution of the United States. *Moore* v. *Missouri*, 673.
7. A State may provide that persons who have been before convicted of crime may suffer severer punishment for subsequent offences than for a first offence against the law, and that a different punishment for the same offence may be inflicted under particular circumstances, provided it is dealt out to all alike who are similarly situated. *Ib.*
8. No question which could be regarded as a Federal question having been raised at his trial, the prisoner was not subjected to an unconstitutional ruling in not being allowed to have his case heard at large by seven judges, instead of by three. *Ib.*

See TAXATION, 3;
TOWNSHIP, 2.

CONTRACT.

The parties to these suits having had extensive dealings founded upon mutual agreements and arrangements respecting the manufacture of and licenses to manufacture patented articles, and having had serious misunderstandings touching their accounts, came to an agreement whereby the Thorn Company, in consideration of the sum of $10,000 paid to it by the Washburn and Moen Company, released and discharged the latter from all claims and demands of every kind and nature whatsoever, which it had or could have against that company for and on account of any moneys, properties, or valuable things

which the Washburn Company had received from any persons in settlement for damages or profits accruing to it, on account of infringements committed upon any letters patent, and also on account of any moneys which it had received by way of bonuses or premiums paid to it by parties receiving licenses from it; and discharged and released the Washburn Company from any obligation to account to the Thorn Company for any sums which it might thereafter receive in settlement of claims for damages for infringements prior to the date of that agreement, or for moneys which it should thereafter receive for bonuses or premiums for licenses. The parties worked under this agreement for several years, the Washburn Company paying and the Thorn Company receiving, without objection, from time to time considerable sums as royalties, etc., due thereunder, the Washburn Company settling with parties from whom the royalties were due, sometimes receiving cash in full, sometimes notes, and sometimes compromising on receipt of a lesser sum. After the lapse of about eight years the Thorn Company filed its bill in equity to set aside the agreement and the settlements made under it, claiming that it was entitled to a much larger sum than it had received; and the Washburn Company in its answer denied this claim and filed a cross-bill claiming to recover from the Thorn Company large sums which it had been obliged to yield to licensees in compromising settlements with them. *Held*, (1) That the agreement released the Washburn Company from claims for damages due at its date, but received subsequent thereto, and from claims for royalties due on its own products, or products of its licensees sold prior to its date; (2) that under the circumstances disclosed it was not open to the Thorn Company to claim that $10,000 was not a sufficient consideration for such release; (3) that the Thorn Company, by receiving, for so long a period, royalties as accruing and receipting for them as collected without challenging the accounts rendered, and by its delay in setting up claims for moneys received by the Washburn Company before the date of the agreement, and its delay in contesting settlements and compromises made by that company, must be deemed to have acquiesced in the construction put upon the contract by the Washburn Company, and to have assented to its settlements with licensees; and that the evidence showed no want of diligence or good faith by the latter company in this respect; (4) that the Washburn Company was not entitled to recover the sums claimed in its cross-bill. *Thorn Wire Hedge Co.* v. *Washburn & Moen Manufacturing Co.*, 423.

CONTRIBUTORY NEGLIGENCE.

See RAILROAD.

CORPORATION.

See JURISDICTION, B;
TOWNSHIP, 1, 2.

COURT AND JURY.

1. A request to instruct a verdict for the defendant should be disregarded when the evidence is conflicting. *White* v. *Van Horn*, 3.
2. A request to charge may be disregarded when the court has already fully instructed the jury on the point. *Ib.*
3. The court should refuse to charge upon a purely hypothetical statement of facts, calculated to mislead the jury. *Ib.*
4. An objection to one of a number of charges is unavailable when the charge, taken as a whole, fairly states the question which the jury is to decide by preponderance of proof. *Ib.*

CRIMINAL LAW.

1. An instruction on the trial of a person indicted for murder, whereby the verdict of guilty of murder or manslaughter turns alone upon an inquiry as to the way in which the killing was done, is held to be reversible error. *Brown* v. *United States*, 100.
2. The court committed no error in charging that the fact that the man killed was a white man might be shown by the statement of the defendant taken in connection with other facts and circumstances. *Isaacs* v. *United States*, 487.
3. It is not error in Utah to proceed to trial of a person accused of murder before the filing of the transcript of the preliminary examination had under the Compiled Laws of Utah, § 4883. *Thiede* v. *Utah Territory*, 510.
4. The provision in Rev. Stat. § 1033, that the defendant in a capital case is entitled to have delivered to him at least two entire days before the trial a copy of the indictment and a list of the witnesses to be produced on the trial does not control the practice and procedure of the local courts of Utah. *Ib.*
5. In Utah a juror in a capital case who states on his *voir dire* that he had read an account of the homicide in the newspaper and formed some impression touching it, but that he could lay that aside and try the case fairly and impartially on the evidence, is not subject to challenge for cause. *Ib.*
6. A juror is not subject to challenge for cause in a criminal proceeding against a saloon keeper for homicide, who states on his *voir dire* that he has a prejudice against the business of saloon keeping, but none against the defendant, whom he does not know. *Ib.*
7. When the relations between a defendant, charged with murdering his wife and the wife are to be settled, not by direct and positive but by circumstantial evidence, any circumstance which tends to throw light thereon may be fairly admitted in evidence. *Ib.*
8. Deliberation and premeditation to commit crime need not exist in the criminal's mind for any fixed period before the commission of the act. *Ib.*

9. An indictment for murder in the Eastern District of Texas which alleges that the accused and the deceased were not Indians nor citizens of the Indian Territory is sufficient, without the further allegation that they were not citizens of any Indian tribe or nation. *Wheeler* v. *United States*, 523.
10. When a verdict is general upon all the counts in an indictment, sufficient in form, it must stand if any one of the counts was sustained by competent testimony. *Goode* v. *United States*, 663.
11. In an indictment under Rev. Stat. § 5467, against a letter carrier charged with secreting, embezzling, or destroying a letter containing postage stamps, the fact that the letter was a decoy is no defence. *Ib.*
12. A letter addressed to a fictitious person, known to be such, is a letter within the meaning of the statute, and for the purposes of Rev. Stat. §§ 5467 and 5469 a letter which bears the outward semblance of a genuine communication, and comes into the possession of the employé in the regular course of his official business, is a writing or document within the meaning of the statute. *Ib.*
13. Where a general verdict of guilty is rendered, an objection taken to evidence admissible under one, or a part, of the counts, is untenable. *Ib.*
14. The term "branch post office," as employed in those sections, includes every place within such office where letters are kept in the regular course of business, for reception, stamping, assorting, or delivery. *Ib.*
15. It being shown, in this case, that the branch post office in which the offence was alleged to have been committed was known as the Roxbury station of the Boston post office, that it had been used as such for years, and that it was a post office *de facto*, it was unnecessary to show that it had been regularly established as such by law. *Ib.*
16. The consolidation of several indictments against different persons growing out of the same transaction, and the trial of all at the same time and by the same jury, if not excepted to at the time, cannot be objected to after verdict. *Bucklin* v. *United States* (*No. 2*), 682.
17. The indictment in this case, in every substantial particular, states an offence against the laws of the United States. *Ib.*
18. An instruction, on the trial of several defendants indicted separately for offences growing out of the same transaction, that, while they might find a verdict of guilty as to all the defendants, or find some guilty and some not guilty, they could not find a verdict as to some and disagree as to others, contains prejudicial error which may be taken advantage of by a defendant who is found guilty and convicted. *Ib.*

See CONSTITUTIONAL LAW, 5 to 8; HABEAS CORPUS, 1; EVIDENCE, 4, 5, 6, 7; JURISDICTION, A, 18, 19; LOCAL LAW, 1.

CUSTOMS DUTIES.

1. Goods arriving at the port of New York August 7, 1894, entered at the custom house and duties paid August 8, 1894, and the entry liquidated as entered at the custom house August 28, 1894, on which day the tariff act of August, 1894, became a law without the signature of the President, were subject to duty under the act of October 1, 1890, and not to duty under the act of August 28, 1894. *United States* v. *Burr*, 78.
2. The provision in § 1 of the tariff act of 1894, which took effect August 28 of that year, that from and after the first day of August, 1894, there shall be levied, collected, and paid upon articles imported from foreign countries the rates of duty prescribed by that act, does not apply to transactions completed when the act became a law. *Ib.*
3. The third question from the Circuit Court of Appeals is too general and need not be answered. *Ib.*
4. Lentils and white medium beans in a dry state, both mature and ordinarily used for food, though sometimes sold for seed, imported into New York in the years 1887 and 1888, were properly classified by the collector as vegetables under paragraph 286 of Schedule G of the act of March 3, 1883, c. 121, and as such were subject to a duty of ten per cent *ad valorem*. *Sonn* v. *Magone*, 417.
5. *Maddock* v. *Magone*, 152 U. S. 368, affirmed to the point that "in construing a tariff act, when it is claimed that the commercial use of a word or phrase in it differs from the ordinary signification of such word or phrase, in order that the former prevail over the latter it must appear that the commercial designation is the result of established usage in commerce and trade, and that at the time of the passage of the act that usage was definite, uniform, and general, and not partial, local, or personal." *Ib.*
6. Whether the lentils and beans were properly classified by the collector was a matter for the court to decide. *Ib.*
7. The plaintiffs in error imported into the port of New York in November, 1888, a quantity of wool which had been scoured; which was then put upon a comb from which it came in long lengths known as slivers or slubbing; which was then put through a process called gilling, which formed the slivers into a less number of slivers of greater thickness; and which was then taken into the drawing room and finished, from whence it came out in the form of round balls called tops. The collector first classed the goods as waste, and fixed the duty at ten cents a pound under the act of March 3, 1883, c. 121, 22 Stat. 488, which duty was paid; but subsequently the collector imposed on the whole importation, under the same act, a duty of ten cents a pound as wool of the first class, costing under thirty cents per pound in the unwashed condition; then trebled that duty, because imported scoured; and then doubled the result upon the ground that the tops had been changed in their character or condition for the purpose of evading the

duty. The importer declined to pay the excess of duty so imposed, and the United States commenced this action to recover it. *Held*, That the duty of sixty cents a pound was properly imposed, and that there was no error in the rulings of the trial court which are set forth in the opinion of this court. *Patton* v. *United States*, 500.

8. The plaintiff below imported into the port of New York in 1887 and 1888 a quantity of pieces of glass, cut in shapes to order and with bevelled edges, intended to be used in the manufacture of clocks. The collector classified them as "articles of glass, cut, engraved," etc., subject to a duty of 45 per cent *ad valorem*. The importer claimed that they were dutiable as "parts of clocks," and as such subject to a duty of thirty per cent *ad valorem;* paid the duty imposed under protest; and brought this action to recover the excess. The trial court instructed the jury that the burden was on the plaintiff to establish that the articles were parts of clocks; that in determining that question it would not be necessary for the jury to say that they were exclusively used for that purpose; that the fact that an article chiefly used for one purpose had been used by some for a purpose for which it was not originally intended would not change its tariff nomenclature; and if the jury should find that the articles were chiefly used as parts of clocks, that that would determine their tariff classification, but on the other hand, that they must be chiefly and principally used for that purpose; that if they are articles with no distinguishing characteristic, just as applicable for use in fancy boxes or in coach lamps as they are for clocks, then it would be entirely proper to say that they have no distinguishing characteristics as parts of clocks, that they might be used for one purpose just as well as for another; and if the jury should find as to those articles, or any of them, that they have several uses to which they are perfectly applicable, then as to those articles the verdict should be for the defendant. *Held*, that the instructions were manifestly correct, and that in giving the rule of chief use, the principles by which it was to be ascertained were fully stated exactly in accordance with the law announced by this court in *Magone* v. *Heller*, 150 U. S. 70. *Magone* v. *Wiederer*, 555.

9. Papers, coated, colored and embossed to imitate leather, and papers coated with flock, to imitate velvet, imported into the United States in 1888, were subject, under Schedule M of the tariff act of March 3, 1883, c. 121, to a duty of 25 per cent *ad valorem*, as "paper hangings . . . not specially enumerated or provided for in this act," and not to a duty of 15 per cent *ad valorem*, as manufactures of paper, or of which paper is a component material, not specially enumerated or provided for in this act. *Dejonge* v. *Magone*, 562.

DEED.

See LOCAL LAW, 3.

DISTRICT JUDGE.

1. There being a vacancy in the office of District Judge for the District of South Carolina from January 1, 1894, to February 12, 1894, and the term of that court for the Western District being fixed by law for the fifth day of February, 1894, one of the Circuit Judges of the circuit designated and appointed a Judge of one of the District Courts in North Carolina, within the same circuit, to hold and preside over that term. Court was so held and adjourned from day to day. February 12 a commissioned Judge appeared. Plaintiff in error was tried upon an indictment returned against him, found guilty and sentenced. *Held*, (1) That it is within the power of Congress to provide that one District Judge may temporarily discharge the duties of that office in another district; (2) that whether existing statutes authorized the appointment of the North Carolina District Judge to act as District Judge in South Carolina is immaterial; as, (3) he must be held to have been a judge *de facto*, if not *de jure*, and his actions, as such, so far as they affect third persons, are not open to question. *McDowell* v. *United States*, 596.
2. Where there is an office to be filled, and one acting under color of authority fills the office and discharges its duties, his actions are those of an officer *de facto*, and are binding on the public. *Ib.*

EMINENT DOMAIN.

1. The authority of a legislature to enact provisions for taking private property for public use rests upon its right of eminent domain; and it is a condition precedent to its exercise that the statute conferring the power make reasonable provision for compensation to the owner of the land. *Sweet* v. *Rechel*, 380.
2. Unless the constitution of the State in which the lands are situated requires payment or tender of payment for land so taken for public use before the rights of the public therein can become complete, a statute which authorizes the taking of the property for public use and directs the ascertainment of the damages without improper delay and in a legal mode, and which gives the owner a right to judgment therefor, to be enforced by judicial process, is sufficient to transfer the title. *Ib.*

EQUITY.

1. When a decree in chancery awards to a party in the suit a portion of a special fund, forming one of the matters in dispute therein, and denies to him the right to a part of a general fund, forming another and distinct matter in dispute, his acceptance of the awarded share in the special fund does not operate as a waiver of his right of appeal from so much of the decree as denies to him a share in the general fund. *Gilfillan* v. *McKee*, 303.
2. Where a decree is several as to different defendants, and the interest

represented by each is separate and distinct from that of the others, any party may appeal separately, to protect his own interests. *Ib.*

3. Some years before the commencement of the civil war, Cochrane, who had already acted as agent of the Choctaws in prosecuting their claims against the United States, contracted with them to continue to prosecute all their unsettled claims, and they contracted to pay him for such services thirty per cent of all sums collected through his efforts, when they should be paid by the United States. Under this contract he had collected a large amount when the war broke out, and the Choctaws sided with the South. On the termination of the war Latrobe was employed by the Choctaws in supporting such claims, and did valuable service. In 1866 Cochrane, being about to die, and desiring to secure pay for the services he had rendered, made a verbal arrangement for assigning the contract to Black, and by will authorized his executor to sell, assign or compromise his claims. He also recognized by his will that Lea was entitled to an interest in the contract equal to his own. This interest afterwards became vested in Gilfillian and his associates. Cochrane's executor, McPherson, agreed with Black for the continued prosecution of the claims on the terms named in the original contract, to which the Choctaws assented. Black and his partner, Lamon, and Lamon individually, continued acting under this contract until 1870, when the Choctaws made a new contract with McKee and his partner to prosecute their claims; and (the partner soon dying) this contract was executed by McKee. Under it the prosecutor was to receive thirty per cent of the amounts awarded, and it was provided that he should adjust the claims of all parties who had previously prosecuted claims for the Choctaws and should pay to the widow of Cochrane five per cent of the thirty per cent. In 1881 the question of the liability of the United States on these claims was referred to the Court of Claims and a judgment was rendered in favor of the Choctaws, which was substantially affirmed by this court, 119 U. S. 1. Congress then made an appropriation of $2,858,798.62 for the payment of that judgment. Before this appropriation was made, and in view of it, the Choctaw council recognized the contract with McKee, and another with Luce, as valid, and appropriated thirty per cent of the amount to be received from Congress under the appropriation to their satisfaction. The council also by the same act appropriated $14,140 as a sum shown to be due to Cochrane for services performed by him in his lifetime. After the passage of the appropriation bill by Congress McKee drew from the Treasury twenty-five per cent of the whole judgment, and Luce five per cent, the two making the thirty per cent. Suits in equity were then commenced against McKee by Lamon, as surviving partner of Black & Lamon; by Gilfillan and others interested with him; by McPherson as executor of Cochrane; and by Mrs. Latrobe as executrix of her husband; setting up their various claims upon the fund. McKee filed a bill of interpleader in

the Lamon case, and subsequent proceedings were had in the several suits as set forth in detail in this and the following two cases. They resulted in decrees that one-half of the special fund should be paid to McPherson, as executor of Cochrane, and the other half to Gilfillan and his associates; and that the general fund should be distributed to Cochrane's widow, to Latrobe, and to Lamon, in specified proportions. Lamon was awarded $35,000 and interest for his services and disbursements, and the claims of Lamon and Black, as assignees of the Cochrane contract, and as surviving partners, were disallowed. McPherson, as executor, appealed from so much of the decree as denied him participation in the general fund; Gilfillan and others from the decree distributing the general fund, and from a decree dismissing their cross-bill; McKee from the decree giving a distributive share in the general fund to Latrobe; and Lamon and Black from the decree disallowing their claim. *Held*, (1) That McPherson had a right of appeal from the decree excluding him from participation in the distribution of the general fund, although he had accepted payment of his share of the special fund; (2) that the sum awarded to Mrs. Cochrane by the Choctaws was intended as a donation to her, and not as compensation to Cochrane, and that the judgment of the court below to that effect should be sustained; (3) further holdings were made in regard to the contentions in *McKee* v. *Lamon*, *ante*, 317, and *McKee* v. *Latrobe*, *ante*, 327, which will be found set forth in the headnotes to those cases respectively. *Ib.*

4. On the facts set forth in the headnote to *Gilfillan* v. *McKee*, it is in this suit, further *Held*, (1) That when the Choctaws transferred the work from Black & Lamon to McKee, there was no intention on the part of anybody to ignore what had already been done; (2) that Lamon, as representing the surviving partners of Black, Lamon & Company, was entitled to recover the reasonable value of their services from the date of the assignment by McPherson to the date of the McKee contract. *McKee* v. *Lamon*, 317.

5. On the facts set forth in the headnote to *Gilfillan* v. *McKee*, just decided, it is further held that Latrobe was entitled to receive from the general fund the value of his services, and that their value was $75,000. *McKee* v. *Latrobe*, 327.

6. In a proceeding — commenced in a court of the State of Washington, under the statutes of that State, by filing a petition to set aside a judgment charged to have been obtained there through fraud and collusion between the plaintiff's attorney of record and the defendant's attorney of record, and against the plaintiff's instructions touching a pretended compromise — and removed on the defendant's motion to the Circuit Court of the United States for that Circuit, it is *Held*, that the cause, although in the nature of a bill in equity, remained, so far as the rights of the plaintiff were concerned, a special proceeding under the territorial statute, and that the powers of the

Federal court, in dealing with it, were gauged not merely by its general equity jurisdiction, but by the special authority given the state courts by statute. *Cowley* v. *Northern Pacific Railroad Co.*, 569.

7. Federal courts may enforce on their equity or admiralty side new rights or privileges conferred by state or territorial statutes as they may enforce new rights of action, given by statute, upon their common law side. *Ib.*

8. The averment in such a petition that the case was a case of fraud within the provisions of the statute of the State was sufficient to give the Federal court jurisdiction to act under the statute, and such jurisdiction could not be defeated by proof that no fraud was actually committed; but the plaintiff would be entitled to recover if he were able to show that he never assented to the pretended compromise, or that he repudiated it, and revoked the authority of his attorneys. *Ib.*

See CONTRACT; MORTGAGE;
JURISDICTION, B; TRUST.

ESTOPPEL.

1. The facts set up by the defendant as an estoppel suggest the rule "*de minimis non curat lex.*" *Wisconsin Central Railroad Co.* v. *Forsythe*, 46.

2. L. filed his petition in a state court of Nebraska, setting forth that he was the owner, as trustee for two infants, of an undivided two-thirds interest in a tract of land in that State, and individually in his own right of the other undivided third; that the lands yielded no revenue and were encumbered with unpaid taxes, etc.; and praying for leave to sell or mortgage one-half of the lands, declaring his willingness to join in the deed or mortgage as to his individual interest. A supplementary petition accompanied this and was filed with it, certifying to the integrity of L., and praying that power might be given him to sell or mortgage the premises as asked. This petition was signed by several parties in interest, among whom was H. The court, in its decree, recited the title as stated in the petition, and authorized the sale as asked for. On a bill filed by H. to establish his title to one undivided third part of the lands, and prosecuted after his death by his administrator, *Held*, that the alleged title of H. was *res judicata;* that he was estopped from maintaining this suit; and that it was not open to him or his representative in this suit to question the authority of the attorney of H. in the proceedings in the state court. *Hilton's Administrator* v. *Jones*, 584.

EVIDENCE.

1. It is competent to explain by proof declarations of a privy in interest, admitted in evidence without objection, although they might have been found inadmissible, if objected to. *White* v. *Van Horn*, 3.

2. An objection going to the effect, and not to the admissibility of evidence, should be disregarded. *Ib.*
3. The credibility of a female witness cannot be impeached by asking her whether she has not had some difficulty with her husband. *Thiede* v. *Utah*, 510.
4. When the defendant in a criminal case consents that a member of the jury shall act as interpreter for a witness speaking a foreign language, none of his rights are prejudiced by the juryman's so doing. *Ib.*
5. A boy five years of age is not, as matter of law, absolutely disqualified as a witness, and in this case his disclosures on the *voir dire* were sufficient to authorize his admission to testify. *Wheeler* v. *United States*, 523.
6. On the trial of parties charged with the criminal offence of conspiring to stop the mails, contemporary telegrams from different parts of the country, announcing the stoppage of mail trains, are admissible in evidence against the defendants if identified and brought home to them. *Clune* v. *United States*, 590.
7. So, too, the acts and declarations of persons not parties to the record are in such case admissible against the defendants if it appears that they were made in carrying the conspiracy into effect, or attempting to carry it into effect. *Ib.*

See CRIMINAL LAW, 2, 7.

EXCEPTION.

1. An exception in bulk to a refusal to charge several propositions, separately numbered but offered in bulk, cannot be maintained if any one proposition be unsound. *Thiede* v. *Utah Territory*, 510.
2. Exceptions to the ruling of the court in a jury trial, tendered twelve days after the verdict was rendered, are too late. *Ib.*
3. It is doubtful whether the record and bill of exceptions present for review the matters complained of in the brief of counsel. *Clune* v. *United States*, 590.
4. Instructions of the court below, to become part of the record, must be incorporated in a bill of exceptions, and be authenticated by the signature of the trial judge. *Ib.*

FOREIGN JUDGMENT.

1. A citizen and resident of this country, who has his principal place of business here, but has an agent in a foreign country, and is accustomed to purchase and store large quantities of goods there, and, in a suit brought against him by a citizen and in a court of that country, appears and defends with the sole object of preventing his property within the jurisdiction, but not in the custody of that court, from being taken in satisfaction of any judgment that may be recovered against him there, cannot, in an action brought against him in this

country upon such a judgment, impeach it for want of jurisdiction of his person. *Hilton* v. *Guyot*, 113.

2. The admission, at the trial in a court of a foreign country, according to its law and practice, of testimony not under oath and without opportunity of cross-examination, and of documents with which the defendant had no connection and which by our law would not be admissible against him, is not of itself a sufficient ground for impeaching the judgment of that court in an action brought upon it in this country. *Ib.*

3. When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is *prima facie* evidence, at least, of the truth of the matter adjudged; and the judgment is conclusive upon the merits tried in the foreign court; unless some special ground is shown for impeaching it, as by showing that it was affected by fraud or prejudice, or that by the principles of international law, and by the comity of our own country, it is not entitled to full credit and effect. *Ib.*

4. A judgment for a sum of money, rendered by a court of a foreign country, having jurisdiction of the cause and of the parties, in a suit brought by one of its citizens against one of ours, is *prima facie* evidence only, and not conclusive of the merits of the claim, in an action brought here upon the judgment, if by the law of the foreign country, as in France, judgments of our own courts are not recognized as conclusive. *Ib.*

5. In an action upon a foreign judgment, an answer admitting that "certain attorneys entered, or undertook to enter, the appearance of the defendant" in the action in the foreign court; and alleging that the judgment was entered without his knowledge, in his absence, and without any hearing; but not alleging that the attorneys were not authorized to enter his appearance in that action, or that he appeared and answered under compulsion, or for any other purpose than to contest his personal liability, is insufficient to show that the foreign court had no jurisdiction of his person. *Ritchie* v. *McMullen*, 235.

6. Averments, in an answer to an action upon a foreign judgment, that it was "an irregular and void judgment," and "without any jurisdiction or authority on the part of the court to enter such a judgment upon the facts and upon the pleadings," are mere averments of legal conclusions, and are insufficient to impeach the judgment, without specifying the grounds upon which it is supposed to be irregular and void, or without jurisdiction or authority. *Ib.*

7. To warrant the impeaching of a foreign judgment, because procured by fraud, fraud must be distinctly alleged and charged. *Ib.*
8. A judgment rendered by a court having jurisdiction of the cause and of the parties, upon regular proceedings and due notice or appearance, and not procured by fraud, in a foreign country, by the law of which, as in England and in Canada, a judgment of one of our own courts, under like circumstances, is held conclusive of the merits, is conclusive, as between the parties, in an action brought upon it in this country, as to all matters pleaded and which might have been tried in the foreign court. *Ib.*

FORGERY.

See LOCAL LAW, 1.

HABEAS CORPUS.

1. The Supreme Court of the District of Columbia had jurisdiction and authority to determine the validity of the act of July 23, 1892, c. 236, which authorized the waiver of a jury and to dispose of the question as to whether the record of a conviction before a judge without a jury, where the prisoner waived trial by jury according to statute, was legitimate proof of a first offence, and this being so, this court cannot review the action of that court and the Court of Appeals in this particular on *habeas corpus*. *In re Belt*, 95.
2. The general rule is that the writ of *habeas corpus* will not issue unless the court, under whose warrant the petitioner is held, is without jurisdiction; and that it cannot be used to correct errors. *Ib.*
3. Ordinarily a writ of *habeas corpus* will not lie where there is a remedy by writ of error or appeal; but in rare and exceptional cases it may be issued although such remedy exists. *Ib.*

INDIAN.

See CRIMINAL LAW, 2, 9.

INDICTMENT.

See CRIMINAL LAW, 9, 11, 16, 17.

INSOLVENCY.

See JURISDICTION, B.

JUDGMENT.

See FOREIGN JUDGMENT.

JUDICIAL NOTICE.

See JURISDICTION, A, 14.

JUROR.

See CRIMINAL LAW, 5, 6;
EVIDENCE, 4.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

1. The decision by a state court that the pleadings were sufficient to permit the examination and determination of the case presents no Federal question. *Grand Rapids & Indiana Railroad Co.* v. *Butler*, 87.
2. This court has no jurisdiction of a writ of error to a state court, on the ground that the obligation of a contract has been impaired, when the validity of the statute under which the contract was made is admitted, and the only question is of its construction by that court. *Central Land Company* v. *Laidley*, 103.
3. *Colorado Central Mining Co.* v. *Turck*, 150 U. S. 138, affirmed and applied to this case upon the points: (1) that when the jurisdiction of a Circuit Court of the United States is invoked upon the ground that the determination of the suit depends upon some question of a Federal nature, it must appear, at the outset, from the pleadings, that the suit is one of that character of which the Circuit Court could properly take cognizance at the time its jurisdiction was invoked; and (2) that when the jurisdiction of a Circuit Court is invoked solely on the ground of diverse citizenship, the judgment of the Circuit Court of Appeals is final, although another ground for jurisdiction in the Circuit Court may be developed in the course of subsequent proceedings in the case. *Borgmeyer* v. *Idler*, 408.
4. The mere fact that the matter in controversy in an action is a sum of money received by one of the parties as an award under a treaty with a foreign Power, providing for the submission of claims against that Power to arbitration, does not in any way draw in question the validity or the construction of that treaty. *Ib.*
5. This case is dismissed for want of jurisdiction, on the authority of *San Francisco* v. *Itsell*, 133 U. S. 65; *Beatty* v. *Benton*, 135 U. S. 244; and *Eustis* v. *Bolles*, 150 U. S. 361; and cases cited. *California* v. *Holladay*, 415.
6. The Federal question sought to be raised here not having been presented in the state court, the case is dismissed for want of jurisdiction. *Winona & St. Peter Land Co.* v. *Minnesota* (*No. 2*), 540.
7. This court has appellate jurisdiction over a judgment rendered by a Circuit Court of Appeals of the United States in a suit brought by the United States in the Circuit Court of the circuit, to cancel a patent for an invention. *United States* v. *American Bell Telephone Co.*, 548.
8. Where the appellate jurisdiction of this court is described in a statute in general terms so as to comprehend the particular case, no presump-

tion can be indulged of an intention to oust or to restrict such jurisdiction; and any subsequent statute claimed to have that effect must be examined in the light of the objects of the enactment, the purposes it is to serve and the mischiefs it is to remedy, bearing in mind the rule that the operation of such a statute must be restrained within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it. *Ib.*

9. When the judgment actually rendered in the court below was for an amount giving this court jurisdiction, which amount was reached by adding to a verdict for $5000, interest from the time of the verdict to the time of the entry of the judgment in a district where the local state law does not permit that to be done, and the plaintiff below, although excepting to the allowance of interest, and to the refusal of the court below to permit a remittitur, brings no writ of error to correct the alleged error, this court cannot dismiss a writ of error brought by the defendant to review other rulings in the case. *Baltimore & Ohio Railroad Co.* v. *Griffith*, 603.

10. When the highest court of a State, in rendering judgment, decides a Federal question, and also decides against the plaintiff in error upon an independent ground, not involving a Federal question, and broad enough to support the judgment, this court will dismiss the writ of error, without considering the Federal question. *Rutland Railroad Co.* v. *Central Vermont Railroad Co.*, 630.

11. A statute of a State imposed a tax upon the gross earnings of railroad companies, and provided that the tax upon a leased railroad should be paid by the lessee, and deducted from the rent. A lessee paid the tax upon the railroad of its lessor, and deducted it from the rent, and was sued in equity by the lessor for the rent, without deduction for the tax. The highest court of the State gave judgment for the lessee; and held that the statute, so far as it imposed a tax upon gross earnings derived from interstate commerce, was contrary to the Constitution of the United States; but that the provision for the payment of the tax by the lessee, and its deduction from the rent, was constitutional; and further held, independently of the question of constitutionality, that, as between the lessor and the lessee, it was the duty of the lessor to pay the tax; that the lessee having been compelled by law to make the payment to discharge an obligation of the lessor, the law implied a promise to repay; that the lessor having made no suggestion that the statute was unconstitutional, and no offer to indemnify the lessee, the lessee could not, in prudence, do otherwise than pay the tax, and was under no duty to incur the expense, delay and perils of litigation to test the constitutionality of the statute; and that the lessor, in a court of equity, could not have relief for what, as between the parties, itself should have done, and what, by its own laches, it had suffered to be done, professedly in its behalf, by the

lessee. *Held*, that this court has no jurisdiction to review the judgment. *Ib.*

12. When, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for the appellate court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief, the court will not proceed to a formal judgment, but will dismiss the appeal. *Mills* v. *Green*, 651.

13. When, pending an appeal from a decree dismissing a bill in equity to secure a right to vote at the election of delegates to a constitutional convention, the election is held, and the convention assembles, on the days appointed by the statute calling the convention, the appeal must be dismissed, without considering the merits of the bill. *Ib.*

14. This court, on appeal from the Circuit Court of the United States, takes judicial notice of the days of public general elections of members of the legislature, or of the constitutional convention of a State, as well as of the times of the commencement of its sitting, and of the dates when its acts take effect. *Ib.*

15. The decision by the highest court of a State that the grantor of a portion of the ground of a mining claim is estopped, on general principles of law and by the statutes of the State, from claiming priority of title to a space of vein intersection within the granted premises, by reason of his locating the portion retained by himself before a location of the granted portion by his grantee, presents no Federal question. *Gillis* v. *Stinchfield*, 658.

16. The several questions raised by the counsel for the petitioner are matters for the determination of the courts of the State, and their determination there adversely to the petitioner involves no denial of due process of law, or the infraction of any provision of the Constitution of the United States. *Lambert* v. *Barrett*, 660.

17. The administration of justice ought not to be interfered with on mere pretexts. *Ib.*

18. Whether an indictment in a state court is sufficient in its description of the degree of the offence charged is a matter for the state court to determine, and its decision in that respect presents no Federal question. *Moore* v. *Missouri*, 673.

19. The final judgment of a court of the United States in a case of the conviction of a capital or otherwise infamous crime is not reviewable here except on writ of error; and the review is confined to questions of law, properly presented. *Bucklin* v. *United States*, (*No. 1*), 680.

20. The District Court of the United States for the Southern District of New York has monthly terms. The decree in this case was entered December 21, and an appeal allowed December 31, 1892. On the 17th of the following January, during a new term of the court, the assignment of errors was directed to be filed *nunc pro tunc* as of December 31, 1892. *Held*, that if that assignment could be treated as a certifi-

cate, it came too late, and, as there was nothing in the record prior to the expiration of the December term, to indicate any attempt or intention to file a certificate during that term, and there was no omission to enter anything which had actually been done at that term, the case did not come within the rule that permits an amendment of the record, *nunc pro tunc*. *The Bayonne*, 687.

21. The filing of an assignment of errors in a Circuit Court, by order of that court and the taking a general appeal and its allowance by that court, is not a compliance with the statutory provision in the judiciary act of March 3, 1891, c. 517, 26 Stat. 826, and is not equivalent to the certificate required by that act. *Ib.*

22. In so deciding the court must not be understood as intimating any opinion upon the question whether jurisdictional questions existed, within the meaning of § 5 of the act of March 3, 1891. *Ib.*

23. *In re Lehigh Mining & Manufacturing Co.*, 156 U. S. 322, and *Shields* v. *Coleman*, 157 U. S. 168, distinguished from this case. *Ib.*

24. An assignment of errors cannot be availed of to import questions into a cause which the record does not show were raised in the court below and rulings asked thereon, so as to give jurisdiction to this court under the fifth section of the act of March 3, 1891, c. 517, 26 Stat. 826. *Ansbro* v. *United States*, 695.

25. If the jurisdiction of a Circuit Court is questioned, in order that this court take jurisdiction it is necessary that there should be a certificate of such question to this court. *Ib.*

26. No appeal could be taken to this court from a decree in a Circuit Court made on the first of October, 1891 in a case like this. *Little Rock & Memphis Railroad* v. *East Tennessee, Virginia & Georgia Railroad*, 698.

See PUBLIC LAND, 26.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

A Circuit Court of the United States has "jurisdiction, in a general creditor's suit properly pending therein for the collection, administration, and distribution of the assets of an insolvent corporation, to hear and determine an ancillary suit instituted in the same cause by its receiver in accordance with its order, against debtors of such corporation, so far as in said suit, the receiver claims the right to recover from any one debtor a sum not exceeding $2000." *White* v. *Ewing*, 36.

See EQUITY, 6, 7, 8;
REMOVAL OF CAUSES.

LACHES.

The issues in this case were substantially decided in the suit between the same parties in the state courts of Illinois decided in the Circuit Court of Marion County August 9, 1883, and affirmed by the Supreme Court of the State, January 25, 1888; and, so far as the plaintiff sets up a

new claim here, it is, if not barred by the statute of limitations, too stale to receive favor from a court of equity. *Townsend* v. *St. Louis & Sandoval Coal and Mining Co.*, 21.

LICENSE.

See CONSTITUTIONAL LAW, 1, 2.

LOCAL LAW.

1. The law of Texas in regard to forgery considered. *White* v. *Van Horn*, 3.
2. When the defendant in an action of ejectment in Texas sets up that his title was founded on a warranty deed, and has the warrantor summoned in to defend, and the plaintiff recovers judgment, the defendant may have judgment against the warrantor for the amount of the purchase money, with interest from the day of the sale. *Ib.*
3. In Michigan a grant of land bounded by a stream, whether navigable in fact or not, carries with it the bed of the stream to the centre of the thread thereof. *Grand Rapids & Indiana Railroad Co.* v. *Butler*, 87.

South Carolina. *See* TOWNSHIP, 2.
Utah. *See* CRIMINAL LAW, 5.
Washington. *See* EQUITY, 4, 5, 6.

MEXICAN GRANT.

See PUBLIC LAND, 26.

MORTGAGE.

1. When a junior mortgagee is a party defendant to a foreclosure bill in which there is a prayer that he be decreed to redeem, and when the priority of the plaintiff's mortgage is found or conceded, and a sale is ordered in default of payment, declaring the right of the debtor to redeem to be forever barred, a similar order as to right of redemption by the junior mortgagee is not substantially, or even formally, necessary. *Simmons* v. *Burlington, Cedar Rapids, & Northern Railway*, 278.
2. In such case a junior mortgagee, who stands by while the sale is made and confirmed, must be deemed, in equity, to have waived his right to redeem. *Ib.*
3. A decree in such a suit that the sale is to be made subject to the rights of the junior mortgagee and of intervening creditors, and reserving to the court the right to make further orders and directions, and providing that no sale shall be binding until reported to the court for its approval, and a subsequent order that the property shall be sold subject to the future adjudication as to such rights, and the property conveyed subject thereto, while it warrants a contention that the court intended to make a future disposition of the claims of such parties, does not

authorize the junior mortgagee to wait for a period of seven years before attempting to enforce his alleged rights; and such delay deprives him of the right to ask the aid of a court of equity in enforcing them. *Ib.*

MOTION FOR NEW TRIAL.

1. The overruling of a motion for a new trial is not assignable as error. *Wheeler* v. *United States*, 523.
2. A refusal to grant a new trial cannot be reviewed on writ of error. *Bucklin* v. *United States* (*No. 2*), 682.

MUNICIPAL BOND.

See TOWNSHIP, 2.

OFFICER OF THE UNITED STATES.

See DISTRICT JUDGE, 2.

PATENT FOR INVENTION.

1. With the exception of the third claim, viz., for "the incandescing conductor for an electric lamp, formed of carbonized paper, substantially as described," the claims in the letters patent No. 317,076 issued May 12, 1885, to the Electro-Dynamic Light Company, assignee of Sawyer and Man, for an electric light, are too indefinite to be the subject of a valid monopoly. *The Incandescent Lamp Patent*, 465.
2. The court, on application to file a petition for rehearing, adheres to its opinion, reported in 158 U. S. 299, that 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. *Richards* v. *Chase Elevator Co.*, 477.
3. While the omission of an element in a combination may constitute invention if the result of the new combination be the same as before; yet, if the omission of an element is attended by a corresponding omission of the function performed by that element, there is no invention if the elements retained perform the same function as before. *Ib.*
4. When the result of a combination of old elements is a mere aggregation of the several functions of the different elements of the combination, each performing its old function in the old way, there is nothing upon which a claim to invention can be based. *Ib.*

POST OFFICE.

See CRIMINAL LAW, 14, 15.

PRACTICE.

1. The action of the trial court upon an application for a continuance is purely a matter of discretion, not subject to review by this court, unless it clearly appears that the discretion has been abused. *Isaacs* v. *United States*, 487.

2. It is no ground for reversal that the court omitted to give instructions which were not requested by the defendant. *Ib.*
3. The order in which testimony shall be admitted is largely within the discretion of the trial court. *Thiede* v. *Utah Territory*, 510.
4. When the court rules correctly that certain matters are not proper subjects of cross-examination, and notifies the questioning party that he can recall the witness and examine him fully in reference to those matters, and he fails to recall him or introduce testimony thereon, he has no grounds of complaint. *Ib.*

See COURT AND JURY; EVIDENCE, 2;
CRIMINAL LAW, 13; EXCEPTION;
CUSTOMS DUTIES, 3; JURISDICTION, A, 24, 25, 26;
MOTION FOR NEW TRIAL.

PUBLIC LAND.

1. In this case the United States surveyors obviously surveyed the plaintiff's lot only to a bayou which they called the Indian River, leaving a tract between the bayou and that river unsurveyed; and the plaintiff has no right to challenge the correctness of their action, or to claim that the bayou was not the Indian River or a proper water line on which to bound the lots. *Horne* v. *Smith*, 40.
2. The land in controversy in this case is within the place limits of the road of the plaintiff in error, and was subject to the full control of Congress at the time of the grant made by § 3 of the act of May 5, 1854, c. 80, 13 Stat. 66, and it passed by operation of that grant, notwithstanding the fact that it was withdrawn by the Land Department in 1856 and 1859, in order to satisfy the grant made by the act of June 3, 1856, c. 43, 11 Stat. 20. *Wisconsin Central Railroad Co.* v. *Forsythe*, 46.
3. Every act of Congress making a grant of public land is to be treated both as a law and a grant, and the intent of Congress, when ascertained, is to control in the interpretation of the law. *Ib.*
4. When Congress makes a grant of a specific number of sections of public land in aid of any work of internal improvement, it must be assumed that it intends the beneficiary to receive such amount of land; and when it prescribes that those lands shall be alternate sections along the line of the improvement, it is equally clear that the intent is that, if possible, the beneficiary shall receive those particular sections. *Ib.*
5. The courts are not concluded by a decision of the Land Department on a question of law. *Ib.*
6. By the order of the Commissioner of the General Land Office of June 12, 1856, the land in controversy in this case was withdrawn from preëmption or sale; and the validity of that order was not affected by the fact that the order covered more land than was included in the grant by Congress which caused its issue. *Spencer* v. *McDougal*, 62.

7. When the receipt given by a local land office to a preëmptionist, acknowledging the payment of the preëmption money, is sufficient on its face to transfer the full equitable title to him and does not disclose when his rights to the land were initiated, his vendees are not chargeable, as matter of law, with knowledge of the fact that the land at the time was not subject to preëmption or homestead. *Texas & Pacific Railway Co.* v. *Smith*, 66.

8. While the rule is that this court, upon a writ of error to the highest court of a State, in an action at law, cannot review its judgment upon a question of fact, it is unnecessary to consider the extent of the power of the court in that particular in chancery cases, as this court concurs with the result reached by the state court that when the survey was made of the land in controversy, there was no reservation made of the island, and no act on the part of the government showing any intention to reserve it. *Grand Rapids & Indiana Railroad Company* v. *Butler*, 87.

9. The court has no doubt, upon the evidence, that the circumstances were such at the time of the survey as naturally induced the surveyor to decline to survey the tract in controversy as an island; that there is nothing to indicate mistake or fraud, and the government has taken no steps predicated on that theory; and that the judgment of the Supreme Court of the State of Michigan was right. *Ib.*

10. In an action in which the plaintiff claims title under the act of September 28, 1850, c. 84, 9 Stat. 519, granting to the several States the swamp and overflowed lands in each unfit for cultivation, and the defendant claims title under the act of May 15, 1856, c. 28, 11 Stat. 9, making a grant of lands to the State of Iowa to aid in the construction of railroads, parol evidence is inadmissible to show, in opposition to the concurrent action of Federal and state officers having authority in the premises, that the lands in controversy were, in fact, at the date of the act of 1850, swamp and overflowed ground. *McCormick* v. *Hayes*, 332.

11. The Sioux City & St. Paul Railroad Company having failed to complete the entire road from Sioux City to the Minnesota line, as contemplated by the act of Congress of May 12, 1864, c. 84, 13 Stat. 72, making a grant of public land in aid of its construction, and as required by the statutes of Iowa, has not only received as many acres of public land as it could rightfully claim under that act, but has also received 2004.89 acres in excess of what it could rightfully claim. *Sioux City & St. Paul Railroad Co.* v. *United States*, 349.

12. Grants of odd-numbered sections of public lands to aid in the construction of railways imply no guaranty that each section shall consist of 640 acres, nor any obligation on the part of the United States to give other public lands to supply deficiencies in reaching that amount. *Ib.*

13. Under the said act of 1864, the grant was made to the State as trustee,

and not to the railroad company, and the title under the patent, when issued, vested in the State as trustee. *Ib.*

14. When lands are granted by acts of Congress of the same date, or by the same act, to aid in the construction of two railroads that must necessarily intersect, or which are required to intersect, each grantee, when the maps of definite location are filed and accepted, takes, as of the date of the grant, an equal undivided moiety of the lands within the conflicting place limits, without regard to the time of the location of the respective lines. *Ib.*
15. Congress, in the grant made by the act of May 12, 1864, 13 Stat. 72, had in view two railroads, one extending from Sioux City to the Minnesota line, the other from South McGregor by a named route to a point of intersection with the Sioux City road; and the Chicago, Milwaukee & St. Paul Railway Company, as the successor in right of the McGregor Company, is in no position to question the decree just affirmed in *Sioux City & St. Paul Railroad Company* v. *United States*, establishing the title of the United States as against the Sioux City Company, and is estopped by the decree in *Sioux City & St. Paul Railroad* v. *Chicago, Milwaukee & St. Paul Railway*, 117 U. S. 406, from making any claim whatever to the lands in controversy in this suit. *Chicago, Milwaukee & St. Paul Railway Co.* v. *United States*, 372.
16. Neither of the railroad companies named in said act of May 12, 1864, could get the benefit of the moiety of lands granted for the building of the other, in the overlapping limits of the two roads, by reason of the failure of the other to construct its road. *Ib.*
17. At the time when the United States instituted the suit against the plaintiff in error which has just been decided, the plaintiff in error had no interest whatever in the 26,017.33 acres of land certified back to the United States by the governor of Iowa, pursuant to a statute of that State, and all such land was then subject to entry under the preemption and homestead laws. *Sioux City & St. Paul Railroad Co.* v. *Countryman*, 377.
18. It is the usage of the civilized nations of the world, when territory is ceded, to stipulate for the property of its inhabitants. *United States* v. *Chaves*, 452.
19. The courts of the United States are bound to take judicial notice of the laws and regulations of Mexico prior to the cessions under the treaty of Guadalupe Hidalgo, and the treaty of December 30, 1853. *Ib.*
20. It is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive, and uninterrupted possession for twenty years, and such rule will be applied as a *presumptio juris et de jure* whenever, by possibility, a right may be acquired in any manner known to the law, including occupations of claimants under alleged Mexican grants prior to the said treaties. *Ib.*
21. On the facts the court decides that the land in controversy in this case

was the property of the claimants before the treaties with Mexico, and consequently that its protection is guaranteed as well by those treaties as by the law of nations. *Ib.*

22. Land, duly and properly entered for a homestead, under the homestead laws of the United States, is not, from the time of entry, and pending proceedings before the land department, and until final disposition by that department, so appropriated for special purposes, and so segregated from the public domain as to be no longer lands of the United States within the purview and meaning of section 2461 of the Revised Statutes of the United States; but, on the contrary, it continues to be the property of the United States for five years following the entry, and until a patent is issued. *Shiver* v. *United States*, 491.

23. Where a citizen of the United States has made an entry upon the public lands of the United States under and in accordance with the homestead laws of the United States, which entry is in all respects regular, he may cut such timber as is necessary to clear the land for cultivation, or to build him a house, outbuildings, and fences, and perhaps may exchange such timber for lumber to be devoted to the same purposes; but he cannot sell the timber for money, except so far as it may have been cut for the purpose of cultivation; and in case he exceeds his rights in this respect, he may be held liable in a criminal prosecution under section 2461 or section 5388 of the Revised Statutes of the United States, or either of said sections, for cutting and removing, after such homestead entry, and while the same is in full force, the standing trees and timber found and being on the land so entered as a homestead. *Ib.*

24. In holding that, as between the United States and a homestead settler, the land is to be deemed the property of the former, at least so far as is necessary to protect it from waste, the court is not to be understood as expressing an opinion whether, as between the settler and the State, it may not be deemed to be the property of the settler, and therefore subject to taxation. *Ib.*

25. In 1857 B., a mail contractor, applied to file a preëmption declaratory statement for public land under the act of March 3, 1855, c. 201, 10 Stat. 683. His application being rejected he appealed to the Commissioner of the General Land Office, by whom the decision below was sustained. He then appealed to the Secretary of the Interior, who in 1861 reversed the Land Commissioner's decision. Meanwhile, in 1860, Congress passed an act for his relief, (12 Stat. 843, c. 63,) and under that act he paid for the land, and in 1871 received a patent in which it was stated that the land had been certified to the State of Minnesota for railroad purposes by mistake. This certification was made in 1864. *Held*, as between the grantee of B. and the grantee of a railroad company to which the land had been conveyed by the State, that the title derived from B. must prevail. *Weeks* v. *Bridgman*, 541.

26. In March, 1876, S. went into actual possession and occupation of a tract of public land in California, which was then reserved from settlement on account of unsettled Spanish and Mexican land grants, and which continued so reserved until April, 1883. On the 2d of October, 1882, the wife of S., being then the owner of an adjoining tract, on which she and S. resided, conveyed that tract to her husband. On the 10th of December, 1883, S. appeared in person at the United States land office in San Francisco and represented that he was a naturalized citizen of the United States, the head of a family, that he was 49 years of age, and that since October 2, 1882, he had been the owner of and in actual and peaceable possession of the tract conveyed to him by his wife, and he applied to enter, as an adjoining farm homestead, under Rev. Stat. §§ 2289 and 2290, the tract so taken possession of by him in March, 1876. After payment of the fees and commissions required by law, he was permitted to enter that tract as an adjoining farm homestead. On the 13th of December, 1883, M. filed a preëmptive declaratory statement in the same land office, which statement included the tract so occupied and entered by S., and alleged a settlement thereon by himself on the 19th of January, 1876. Thereupon a contest took place between S. and M., first before the register and receiver of the local land office; then, on appeal, before the Commissioner of the General Land Office; and, finally, on appeal, before the Secretary of the Interior. In these proceedings it appeared that S. had not resided continuously on the original farm, but had leased it to a tenant for a number of years, including the period of his adjoining farm entry; and S., in reply, claimed that he did not reside there because of danger of violence and injury at the hands of M. The Secretary of the Interior, while intimating that the proof failed to show the required residence on the part of S., decided that the excuse set up by him for non-residence was not sustained by the evidence. *Held*, that the ownership and title shown by S. were sufficient to entitle him to an additional farm homestead; but that the question of his residence on the land conveyed to him by his wife was one of fact, which the courts had no jurisdiction to reëxamine, in the absence of a clear showing that the decision was procured by fraud or imposition. *Stewart* v. *McHarry*, 643.

See TAXATION, 1, 3.

RAILROAD.

In an action against a railway company to recover damages for injuries caused by one of its trains striking a wagon in which the plaintiff and another woman were seated as it was crossing the track on a public highway at grade, the negligence of the defendant having been established, there was further evidence tending to show that the women were driving slowly and with a safe horse; that the train was several

minutes behind time; that as they approached the low place at which a train could be seen if one were there, they stopped to look and listen, but neither saw nor heard anything; that after stopping they started driving slowly up the hill to a point at the top between forty and fifty yards from the track, where the slope commenced, and there they stopped again and listened, but heard nothing; they then drove slowly down the hill, both listening all the time, without talking, and heard nothing; and that just as they got to a cut and the horse had his feet on the nearest rail, the train came around a curve and the collision occurred. *Held*, that the question whether there was contributory negligence on the part of the plaintiff was properly submitted to the jury for determination. *Baltimore & Ohio Railroad Co.* v. *Griffith*, 603.

See MORTGAGE;
PUBLIC LAND, 2, 10 to 17;
TOWNSHIP, 2.

REMOVAL OF CAUSES.

The case having been removed to the Federal court upon the defendant's petition, it does not lie in its mouth to claim that that court had no jurisdiction of the case, unless the court from which it was removed had no jurisdiction. *Cowley* v. *Northern Pacific Railroad Co.*, 569.

SPIRITUOUS LIQUORS.

See CONSTITUTIONAL LAW, 2.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See CRIMINAL LAW, 4, 11, 12; HABEAS CORPUS, 1;
CUSTOMS DUTIES, 1, 2, 4, 7, 9; JURISDICTION, A, 21; 24;
EQUITY, 3; PUBLIC LAND, 2, 10, 11, 13, 15, 22, 23, 25.

B. STATUTES OF STATES AND TERRITORIES.

Connecticut. *See* CONSTITUTIONAL LAW, 2.
Massachusetts. *See* CONSTITUTIONAL LAW, 4.
Minnesota. *See* TAXATION, 1, 3,
Missouri. *See* CONSTITUTIONAL LAW, 6.
South Carolina. *See* TOWNSHIP, 2.
Utah. *See* CRIMINAL LAW, 3.
Vermont. *See* JURISDICTION, A, 11.
Washington. *See* EQUITY, 6.

TAXATION.

1. The provisions in the statutes of Minnesota exempting from taxation the lands granted by the State to the Winona & St. Peter Railroad

Company to aid in the construction of its railroad, until the land should be sold and conveyed by the company, ceased to be operative when the full equitable title was transferred by the company, and the railroad company could not, thereafter, by neglecting to convey the legal title, indefinitely postpone the exemption. *State* v. *Winona & St. Peter Railroad Co.*, 21 Minnesota, 472, followed. *Winona & St. Peter Land Co.* v. *Minnesota*, 526.

2. Statutes exempting property from taxation are to be strictly construed. *Ib.*
3. Chapter 5 of the laws of Minnesota of 1881, providing generally for the assessment and taxation of any real or personal property which had been omitted from the tax roll of any preceding year or years, does not, when applied to the land granted by that State to the Winona & St. Peter Railroad Company, deprive the owners of that land of their property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States. *Ib.*
4. A legislature can provide for collecting back taxes on real property without making a like provision respecting back taxes on personal property. *Ib.*

See PUBLIC LAND, 24.

TOWNSHIP.

1. When a township has been created by law as a territorial division of a State, with no express grant of corporate powers, and with no definition or restriction of the purposes for which it is created, it is within the power of the legislature, at any time, to declare it to be a corporation, and to confer upon it such corporate powers, appropriate to be vested in a territorial corporation for the benefit of its inhabitants, as the legislature may think fit. *Folsom* v. *Ninety Six*, 611.
2. Notwithstanding the decision of the Supreme Court of South Carolina in *Floyd* v. *Perrin*, 30 So. Car. 1, the statute of South Carolina of December 24, 1885, which authorized townships (already defined by names and boundaries) to subscribe for stock in a railroad company, and county officials to issue bonds accordingly in their behalf, and to assess and levy taxes upon the property in the township for the payment thereof, and declared the townships to be bodies politic and corporate for the purposes of this act, with the necessary powers to carry out its provisions, and with rights and liabilities in respect to any causes of action growing out of its provisions, must be held by the courts of the United States, as to bonds issued and purchased in good faith before that decision, to be consistent with art. 9, sect. 8, of the constitution of South Carolina, authorizing the corporate authorities of townships to be vested with power to assess and collect taxes "for corporate purposes." *Ib.*

TRADE-MARK.

1. The fact that a trade-mark bears the name and portrait of the person in whose name it is registered does not render it unassignable to another. *Richmond Nervine Co.* v. *Richmond*, 293.
2. On the facts this court reverses the decree of the court below. *Ib.*

TRUST.

1. Where money is placed in the hands of one person to be delivered to another, a trust arises in favor of the latter, which may be enforced by bill in equity, if not by action at law. *McKee* v. *Lamon*, 317.
2. The acceptance of money, with notice of its ultimate destination, is sufficient to create a duty on the part of the bailee to devote it to the purpose intended by the bailor. *Ib.*
3. In enforcing such a trust a court of equity may make such incidental orders as may be necessary for the proper distribution of the fund. *Ib.*