INDEX.

BOUNDARY.

See TEXAS.

CASES AFFIRMED.

1. *Central Pacific Railroad Co.* v. *California*, 162 U. S. 91, affirmed and followed. *Southern Pacific Railroad Co.* v. *California*, 167.
2. *Bryan* v. *Brasius*, 162 U. S. 415, followed. *Byran* v. *Pinney*, 419.
3. *Oregon Short Line and Utah Northern Railway Co.* v. *Skottowe*, 162 U. S. 40, affirmed and followed. *Oregon Short Line & Utah Northern Railway Co.* v. *Conlin*, 498.

See CRIMINAL LAW, 3, 10, 20;
JURISDICTION, A, 3;
STATUTE, A, 3.

CENTRAL PACIFIC RAILROAD COMPANY.

1. The Central Pacific Railroad Company, being required by the laws of California to make returns of its property to the Board of Equalization for purposes of taxation, made a verified statement in which, among other things, it was said: "The value of the franchise and entire roadway, roadbed, and rails within this State is $12,273,785." The Board of Equalization determined that the actual value of the franchises, roadway, roadbed, rails and rolling stock of the company within the State at that time was $18,000,000. The company not having paid the taxes assessed on this valuation, this action was brought by the State to recover them. *Held*, (1) That the presumption was that the franchise included by the company in its return was a franchise which was not exempt under the laws of the United States, and that the board had acted upon property within its jurisdiction; (2) That if the Board of Equalization had included what it had no authority to assess, the company might seek the remedies given under the law, to correct the assessment so far as such property was concerned, or recover back the tax thereon, or, if those remedies were not held exclusive, might defend against the attempt to enforce it; (3) Where the property mentioned in the description could be assessed, and the assessment followed the return, the company ought

to be held estopped from saying that the description was ambiguous, and this notwithstanding the fact that the statement was made on printed blanks, prepared by the board. *Central Pacific Railroad Co.* v. *California*, 91.

2. The decision of the Supreme Court of the State that the findings of the trial court on the question of whether the franchises taxed covered franchises derived from the United States was conclusive, and is binding on this court. *Ib.*
3. The fact that a court, after giving its decision upon an issue, gives its opinion upon the manner in which it would have decided the issue under other circumstances, does not constitute an error to be reviewed in this court. *Ib.*
4. The Central Pacific company is a corporation of California, recognized as such by the acts of Congress granting it aid and conferring upon it Federal franchises, and it was not the object of those acts to sever its allegiance to the State or transfer the powers and privileges derived from it; nor did those consequences result from the acceptance of the grant by the corporation. *Ib.*
5. The property of a corporation of the United States may be taxed by a State, but not through its franchise. *Ib.*
6. Although a corporation may be an agent of the United States, a State may tax its property, subject to the limitation pointed out in *Railroad Co.* v. *Peniston*, 18 Wall. 5. *Ib.*
7. It is immaterial in this case whether the railroad company operates its road under the franchise derived from the United States, or under that derived from the State. *Ib.*
8. When it is considered that the Central Pacific company returned its franchise for assessment, declined to resort to the remedy afforded by the state laws for the correction of the assessment as made if dissatisfied therewith, or to pay its tax and bring suit to recover back the whole or any part of the tax which it claimed to be illegal, its position is not one entitled to favorable consideration; but, without regard to that, the court holds, for reasons given, that the state courts rightly decided that the company had no valid defence to the causes of action proceeded on. *Ib.*

CIRCUIT COURT COMMISSIONER.

See FEES.

CLAIMS AGAINST THE UNITED STATES.

See FRENCH SPOLIATION CLAIMS.

CONSTITUTIONAL LAW.

1. The levee board of Mississippi, being authorized by a statute of the State to borrow money and to issue their bonds therefor, to be negotiable as promissory notes or bills of exchange, issued and sold to the

amount of $500,000, principal bonds of $1000 each, payable "in gold coin of the United States of America," with semi-annual interest coupons, payable "in currency of the United States." In a suit to enforce a trust and lien upon certain lands in the State created in favor of the bondholders by an act of the legislature of the State, the Supreme Court of the State construed the bonds as obligations payable in gold coin, and held that the power to borrow money conferred by the statute upon the levee board did not authorize it to borrow gold coin or issue bonds acknowledging the receipt thereof and agreeing to pay therefor in the same medium, and that the bonds were void for want of power in that respect. *Held*, (1) That the inquiry as to the medium in which the bonds were payable, and, if in gold coin, the effect thereof, involved the right to enforce a contract according to the meaning of its terms as determined by the Constitution and laws of the United States, interpreted by the tribunal of last resort, and, therefore, raised questions of Federal right which justified the issue of the writ of error, and gave this court jurisdiction under it; (2) That the bonds were legally solvable in the money of the United States, whatever its description, and not in any particular kind of that money, and that it was impossible to hold that they were void because of want of power to issue them; (3) That as, by their terms these bonds were payable generally in money of the United States, the conclusion of the Supreme Court of Mississippi, that they were otherwise payable, was erroneous. *Woodruff* v. *Mississippi*, 291.

2. FIELD, J., concurring. No transaction of commerce or business, or obligation for the payment of money that is not immoral in its character and which is not, in its manifest purpose, detrimental to the peace, good order and general interest of society, can be declared or held to be invalid because enforced or made payable in gold coin or currency when that is established or recognized by the government; and any acts by state authority, impairing or lessening the validity or negotiability of obligations thus made payable in gold coin, are violative of the laws and Constitution of the United States. *Ib.*

3. The principle reaffirmed that while a State, consistently with the purposes for which the Fourteenth Amendment was adopted, may confine the selection of jurors to males, to freeholders, to citizens, to persons within certain ages or to persons having educational qualifications, and while a mixed jury in a particular case is not, within the meaning of the Constitution, always or absolutely necessary to the enjoyment of the equal protection of the laws, and therefore an accused, being of the colored race, cannot claim as matter of right that his race shall be represented on the jury; yet a denial to citizens of the African race, *because of their color*, of the right or privilege accorded to white citizens of participating as jurors in the administration of justice would be a discrimination against the former inconsistent with the amend-

ment and within the power of Congress, by appropriate legislation, to prevent. *Gibson* v. *Mississippi*, 565.

4. The inhibition upon the passage of *ex post facto* laws does not give a criminal a right to be tried, in all respects, by the law in force when the crime charged was committed. The mode of trial is always under legislative control, subject only to the condition that the legislature may not, under the guise of establishing modes of procedure and prescribing remedies, violate the accepted principles that protect an accused person against *ex post facto* enactments. *Ib.*
5. The Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the General Government, or by the States, against any citizen because of his race. All citizens are equal before the law. The guarantees of life, liberty and property are for all persons, within the jurisdiction of the United States, or of any State, without discrimination against any because of their race. Those guarantees, when their violation is properly presented in the regular course of proceedings, must be enforced in the courts, both of the Nation and of the State, without reference to considerations based upon race. In the administration of criminal justice no rule can be applied to one class which is not applicable to all other classes. *Ib.*
6. The statute of the State of Georgia of October 22, 1887, requiring every telegraph company with a line of wires, wholly or partly within that State, to receive dispatches, and, on payment of the usual charges, to transmit and deliver them with due diligence, under a penalty of one hundred dollars, is a valid exercise of the power of the State in relation to messages by telegraph from points outside of and directed to some point within the State. *Western Union Telegraph Company* v. *James*, 650.

CONTRACT.

In a bill to compel specific performance of a contract for the sale and purchase of a tract of land, it is absolutely necessary for the plaintiff to tender performance and payment of the purchase money on his part; and this rule is still more stringent when applied to the case of an optional sale. *Kelsey* v. *Crowther*, 404.

See RECEIVER.

CORPORATION.

1. Upon a bill in equity by subscribers for shares in a corporation to compel it to issue shares to them, and to set aside as fraudulent a contract by which it had agreed to transfer all its shares to another person, a decree was entered, setting aside that contract, and ordering shares to be issued to the plaintiffs, and a new board of directors to be chosen. Upon a bill by other stockholders, afterwards filed by leave of court in

the same cause, and entitled a supplemental bill, alleging fraud and mismanagement of the new officers and insolvency of the company, and praying for the appointment of a receiver, the court, without notice to the plaintiffs in the original bill, appointed a receiver, and made an order for a call or assessment upon all stockholders of the company. *Held*, that this order, although conclusive evidence of the necessity of the assessment as against all stockholders, did not prevent a plaintiff in the original bill, when sued by the receiver, in the name of the corporation, for an assessment, from pleading the statute of limitations to his liability upon his subscription. *Great Western Telegraph Company* v. *Purdy*, 329.

2. In an action brought in a state court, by a corporation against a subscriber for shares, to recover an assessment thereon under an order of assessment made by a court of another State upon all the stockholders, in a proceeding of which he had no notice, a judgment of the highest court of the State for the defendant, upon the ground that, by its construction of a general statute of limitations of the State, the cause of action accrued against him at the date of his contract of subscription, and not at the date of the order of assessment, involves no Federal question, and is not reviewable by this court on writ of error. *Ib.*

See CENTRAL PACIFIC RAILROAD COMPANY.

COSTS.

See PRACTICE, 1;
UNITED STATES, 3, 4.

CRIMINAL LAW.

1. On the trial of a person indicted for murder, although the evidence may appear to the court to be simply overwhelming to show that the killing was in fact murder, and not manslaughter or an act performed in self defence, yet, so long as there is evidence relevant to the issue of manslaughter, its credibility and force are for the jury, and cannot be matter of law for the decision of the court. *Stevenson* v. *United States*, 313.
2. A review of the evidence at the trial of the defendant (plaintiff in error) in the court below shows that there was error in the refusal of the court of the request of the defendant's counsel to submit the question of manslaughter to the jury. *Ib.*
3. *Goode* v. *United States*, 159 U. S. 663, followed in holding that in the trial of an indictment against a letter carrier, charged with secreting, embezzling or destroying a letter containing money in United States currency, the fact that the letter was a decoy is no defence. *Montgomery* v. *United States*, 410.
4. On the trial of a person indicted for a violation of the provisions of Rev. Stat. § 3893, touching the mailing of obscene, lewd or lascivious

books, pamphlets, pictures, etc., it is competent for a detective officer of the Post Office Department, as a witness, to testify that correspondence was carried on with the accused by him through the mails for the sole purpose of obtaining evidence from him upon which to base the prosecution. *Andrews* v. *United States*, 420.

5. The mailing of a private sealed letter containing obscene matter in an envelope on which nothing appears but the name and address is an offence within that statute. *Ib.*

6. As the inspector testified that the signature was fictitious, and that the letter had been written in an assumed name, the opening by him of the sealed answer bearing the fictitious address was not an offence against that provision of the statute which forbids a person from opening any letter or sealed matter of the first class not addressed to himself. *Ib.*

7. W. lived on a tract of land next to one owned and occupied by his father in law, Z., concerning the boundary between which there was a dispute between them. While W. was ploughing his land, Z., being then under the influence of liquor, entered upon the disputed tract and brought a quantity of posts there, for the purpose of erecting a fence on the line which he claimed. W. ordered him off, and continued his ploughing. He did not leave, and W. after reaching his boundary with the plough, unhitched his horses and put them in the barn. In about half an hour he returned with a gun, and an altercation ensued, in the course of which W. was stabbed by a son of Z. and Z. was killed by a shot from W.'s gun. W. was indicted for murder. On the trial evidence was offered in defence, and excluded, of threats of Z. to kill W.; and W. himself was put upon the stand and, after stating that he did not feel safe without some protection against Z., and that Z. had made a hostile demonstration against him, was asked, from that demonstration what he believed Z. was about to do? This question was ruled out. *Held*, that if W. believed and had reasonable ground for the belief that he was in imminent danger of death or great bodily harm from Z. at the moment he fired, and would not have fired but for such belief, and if that belief, founded on reasonable ground, might in any view the jury could properly take of the circumstances surrounding the killing, have excused his act or reduced the crime from murder to manslaughter, then the evidence in respect of Z.'s threats was relevant and it was error to exclude it; and it was also error to refuse to allow the question to be put to W. as to his belief based on the demonstration on Z.'s part to which he testified. *Wallace* v. *United States*, 466.

8. Where a difficulty is intentionally brought on for the purpose of killing the deceased, the fact of imminent danger to the accused constitutes no defence; but where the accused embarks in a quarrel with no felonious intent, or malice, or premeditated purpose of doing bodily harm or killing, and under reasonable belief of imminent danger he inflicts a fatal wound, it is not murder. *Ib.*

9. A man who finds another, trying to obtain access to his wife's room in the night time, by opening a window, may not only remonstrate with him, but may employ such force as may be necessary to prevent his doing so; and if the other threatens to kill him, and makes a motion as if so to do, and puts him in fear of his life, or of great bodily harm, he is not bound to retreat, but may use such force as is necessary to repel the assault. *Alberty* v. *United States*, 499.
10. The weight which a jury is entitled to give to the flight of a prisoner, immediately after the commission of a homicide, was carefully considered in *Hickory* v. *United States*, 160 U. S. 408; and, without repeating what was there said, it was especially misleading for the court in this case to charge the jury that, from the fact of absconding they might infer the fact of guilt, and that flight is a silent admission by the defendant that he is unable to face the case against him. *Ib.*
11. Possession of the fruits of crime, recently after its commission, justifies the inference that the possession is guilty possession, and, though only *prima facie* evidence of guilt, may be of controlling weight, unless explained by the circumstances, or accounted for in some way consistent with innocence. *Wilson* v. *United States*, 613.
12. The existence of bloodstains at or near a place where violence has been inflicted is relevant and admissible in evidence, and, if not satisfactorily explained, may be regarded by the jury as a circumstance in determining whether or not a murder has been committed. *Ib.*
13. The testimony of the defendant in a criminal case is to be considered and weighed by the jury, taking all the evidence into consideration, and such weight is to be given to it as in their judgment it ought to have. *Ib.*
14. In the trial of a person accused of murder, the picture of the murdered man is admissible in evidence, on the question of identity, if for no other reason. *Ib.*
15. The true test of the admissibility in evidence of the confession of a person on trial for the commission of a crime is that it was made freely, voluntarily and without compulsion or inducement, and this rule applies to preliminary examinations before a magistrate or persons accused of crime. *Ib.*
16. When there is a conflict of evidence as to whether a confession is or is not voluntary, if the court decides that it is admissible, the question may be left to the jury, with the direction that they should reject it if, upon the whole evidence, they are satisfied that it was not the voluntary act of the defendant. *Ib.*
17. One count in an indictment may refer to matter in a previous count so as to avoid unnecessary repetition; and if the previous count be defective or is rejected, that circumstance will not vitiate the remaining counts, if the reference be sufficiently full to incorporate the matter going before with that in the count in which the reference is made. *Crain* v. *United States*, 625.

18. A count in an indictment which charges that the defendant did certain specified things, and each of them, the doing of which and of each of which was prohibited by statute, and also that he caused the doing of such things and of each of them, is not defective so as to require that judgment upon it be arrested; and there may be a verdict of guilty upon proof that the accused had done any one of the things constituting a substantial crime under the statute. *Ib.*

19. A record which sets forth an indictment against a person for the commission of an infamous crime; the appearance of the prosecuting attorney; the appearance of the accused in person and by his attorney; an order by the court that a jury come "to try the issue joined;" the selection of a named jury for the trial of the cause, who were "sworn to try the issue joined and a true verdict render;" the trial; the retirement of the jury; their verdict finding the prisoner guilty; and the judgment entered thereon in accordance therewith; does not show that the accused was ever formerly arraigned, or that he pleaded to the indictment, and the conviction must be set aside; as it is better that a prisoner should escape altogether than that a judgment of conviction of an infamous crime should be sustained, where the record does not clearly show that there was a valid trial. *Ib.*

20. *Coffin* v. *United States*, 156 U. S. 432, affirmed on the following points: (1) That the offence of aiding or abetting an officer of a national bank in committing one or more of the offences, set forth in Rev. Stat. § 5209, may be committed by persons who are not officers or agents of the bank, and, consequently, it is not necessary to aver in an indictment against such an aider or abettor that he was an officer of the bank, or occupied any specific relation to it when committing the offence; (2) That the plain and unmistakable statement of the indictment in that case and this, as a whole, is that the acts charged against Haughey were done by him as president of the bank, and that the aiding and abetting was also done by assisting him in the official capacity in which alone it is charged that he misapplied the funds. *Coffin* v. *United States*, 664.

21. Instructions requested may be properly refused when fully covered by the general charge of the court. *Ib.*

22. When the charge, as a whole, correctly conveys to the jury the rule by which they are to determine, from all the evidence, the question of intent, there is no error in refusing the request of the defendant to single out the absence of one of the several possible motives for the commission of the offence, and instruct the jury as to the weight to be given to this particular fact, independent of the other proof in the case. *Ib.*

23. The refusal to give, when requested, a correct legal proposition does not constitute error, unless there be evidence rendering the legal theory applicable to the case. *Ib.*

24. When it is impossible to determine whether there was evidence tending to show a state of facts adequate to make a refused instruction pertinent, and there is nothing else in the bill of exceptions to which the stated principle could apply, there is no error in refusing it. *Ib.*
25. Several other exceptions are examined and held to be without merit. *Ib.*
26. A bank president, not acting in good faith, has no right to permit overdrafts when he does not believe, and has no reasonable ground to believe, that the moneys can be repaid; and, if coupled with such wrongful act, the proof establishes that he intended by the transaction to injure and defraud the bank, the wrongful act becomes a crime. *Ib.*
27. When the principal offender in the commission of the offence made criminal by Rev. Stat. § 5209 and the aider and abettor were both actuated by the criminal intent specified in the statute, it is immaterial that the principal offender should be further charged in the indictment with having had other intents. *Ib.*
28. An indictment against its president for defrauding a national bank, described the bank as the "National Granite State Bank," "carrying on a national banking business at the city of Exeter." The evidence showed that the authorized name of the bank was, the "National Granite State Bank of Exeter." *Held*, that the variance was immaterial. *Putnam* v. *United States*, 687.
29. Conversations with a person took place in August, 1893. In December, 1893, he testified to them before the grand jury which found the indictment in this case. On the trial of this case his evidence before the grand jury was offered to refresh his memory as to those conversations. *Held*, that that evidence was not contemporaneous with the conversations, and would not support a reasonable probability that the memory of the witness, if impaired at the time of the trial, was not equally so when his testimony was committed to writing; and that the evidence was therefore inadmissible for the purpose offered. *Ib.*
30. On the trial of a national bank president for defrauding the bank, a witness for the government was asked, on cross-examination, as to the amount of stock held by the president. This being objected to, the question was ruled out, as not proper on cross-examination, the government "not having opened up affirmatively the ownership of the stock." *Held*, that as the order in which evidence shall be produced is within the discretion of the trial court, and as the matter sought to be elicited on the cross-examination for the accused was not offered by him at any subsequent stage of the trial, no prejudicial error was committed by the ruling. *Ib.*
31. The proof of guilt in this case was sufficient to warrant the court in leaving to the jury to decide the question of the guilt of the accused. *Ib.*

32. The sentence on the counts having been distinct as to each, the entire amount of punishment imposed will be undergone, although the conviction and sentence as to the second count are set aside. *Ib.*

See CONSTITUTIONAL LAW, 4.

DEED.

1. In order to charge a purchaser with notice of a prior unrecorded conveyance of land, he or his agent in the purchase must either have knowledge of the conveyance, or, at least, of such circumstances as would, by the exercise of ordinary diligence and judgment, lead to that knowledge; vague rumor or suspicion is not sufficient; and notice of a sale does not imply knowledge of an unrecorded conveyance. *Stanley* v. *Schwalby*, 255.
2. A conveyance of land by a city to the United States, in consideration of the establishment of military headquarters thereon, to the benefit of the city, is for valuable consideration. *Ib.*
3. A purchaser of land, for valuable consideration, and without notice of a prior deed, takes a good title, although his grantor had notice of that deed. *Ib.*
4. Even where, as in Texas, a purchaser taking a quitclaim deed is held to be affected with notice of all defects in the title, a purchaser from him by deed of warranty is not so affected. *Ib.*
5. The United States, by warranty deed duly recorded, purchased land from a city for a military station, in consideration of the benefits to enure to the city from the establishment of the station there. The attorney employed by the United States to examine the title testified that the city acquired the land by quitclaim deed, describing it as "known as the McMillan lot;" that he had information of a sale to McMillan, but satisfied himself that he had not paid the purchase money; and searched the records, and ascertained that no deed to him was recorded; and advised the United States that the title was good. There was no evidence that the attorney had any other means of ascertaining whether a deed had been made to McMillan. *Held*, that the evidence was insufficient in law to warrant the conclusion that the United States took no title as against an unrecorded conveyance to McMillan. *Ib.*

DISTRICT OF COLUMBIA.

See WILL;
WRIT OF ERROR.

FEES.

1. The jurat attached to a deposition taken before a commissioner of a Circuit Court of the United States is not a certificate to the deposition in the ordinary sense of the term, but a certificate of the fact that the

witness appeared before the commissioner, and was sworn to the truth of what he had stated; and the commissioner is entitled to a separate fee therefor. *United States* v. *Julian*, 324.

FRENCH SPOLIATION CLAIMS.

1. The proviso in the act of March 3, 1891, c. 540, 26 Stat. 908, "That in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representative on whose behalf the award is made represents the next of kin, and the courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards," purposely brought the payments thus prescribed within the category of payments by way of gratuity and grace, and not as of right as against the government. *Blagge* v. *Balch*, 439.
2. Congress intended the next of kin to be beneficiaries in every case; and the express limitation to this effect excludes creditors, legatees, assignees and all strangers to the blood. *Ib.*
3. The words "next of kin," as used in the proviso, mean next of kin living at the date of the act, to be determined according to the statutes of distribution of the respective States of the domicil of the original sufferers. *Ib.*
4. This court is inclined to adopt the established rule of interpretation in England, which is that the phrase "next of kin," when found in ulterior limitations, must be understood to mean nearest of kin without regard to the statutes of distribution. *Ib.*

INDIAN RESERVATIONS.

1. The reservations granted by provision "First" in § 1 of the act of December 19, 1854, c. 7, 10 Stat. 598, "to provide for the extinguishment of the title of the Chippewa Indians to the lands owned and claimed by them," etc., are limited to the territory ceded by the Indians, both as applied to Indians of pure blood, and to Indians of mixed blood. *Fee* v. *Brown*, 602.
2. The scrip certificates, under which the defendant in error claims, were intended to be located only by half-breeds to whom they were issued, and patents were to be issued only to the persons named in those certificates; and, consequently, the right to alienate the lands was not given until after the issue of the patents. *Ib.*
3. The act of June 8, 1872, c. 357, 17 Stat. 340, "to perfect certain land titles," etc., was intended to permit a purchaser of such scrip certificates, who through them had acquired an invalid title to public land,

to perfect that title by compliance with the terms of that statute. *Ib.*

INDICTMENT.

See CRIMINAL LAW, 17, 18, 19, 28.

INTERSTATE COMMERCE.

1. When a state railroad company whose road lies within the limits of the State, enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but by an arrangement for the continuous carriage or shipment from one State to another; and thus becomes amenable to the Federal act in respect to such interstate commerce; and, having thus subjected itself to the control of the Interstate Commerce Commission, it cannot limit that control in respect to foreign traffic to certain points on its road to the exclusion of other points. *Cincinnati, New Orleans & Texas Pacific Railway Co.* v. *Interstate Commerce Commission*, 184.
2. When goods shipped under a through bill of lading, or in any other way indicating a common control, management or arrangement, from a point in one State to a point in another State are received in transit by a state common carrier, such carrier, if a railroad company, must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. *Ib.*
3. The Interstate Commerce Commission is not empowered either expressly, or by implication, to fix rates in advance; but, subject to the prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits. *Ib.*
4. The Interstate Commerce Commission is a body corporate, with legal capacity to be a party plaintiff or defendant in the Federal courts. *Texas & Pacific Railway Co.* v. *Interstate Commerce Commission*, 197.
5. In enacting the interstate commerce acts Congress had in view, and intended to make provision for commerce between States and Territories, commerce going to and coming from foreign countries, and the whole field of commerce except that wholly within a State; and it conferred upon the Commission the power of determining whether, in given cases, the services rendered were like and contemporaneous,

whether the respective traffic was of a like kind, and whether the transportation was under substantially similar circumstances and conditions. *Ib.*

6. If the Commission has power, of its own motion, to promulgate general decrees or orders, which thereby become rules of action to common carriers, such exertion of power must be confined to the obvious purposes and directions of the statute, since Congress has not granted it legislative powers. *Ib.*
7. The action of the defendant company in procuring from abroad, by steamship connections, through traffic for San Francisco which, except for the modified through rates, would not have reached the port of New Orleans, and in taking its *pro rata* share of such rates, was not of itself an act of "unjust discrimination" within the meaning of the interstate commerce act. *Ib.*
8. In enacting the statutes establishing the Interstate Commerce Commission, the purpose of Congress was to facilitate and promote commerce, and not to reinforce the provisions of the tariff laws; and the effort of the Commission to deprive inland consumers of the advantage of through rates, seems to create the mischief which it was one of the objects of the act to remedy. *Ib.*
9. The mere fact that in this case the disparity between through and local rates was considerable did not warrant the Circuit Court of Appeals in finding that such disparity constitutes an undue discrimination, especially as that disparity was not complained of by any one affected thereby. *Ib.*
10. The conclusions of the court, drawn from the history and language of the acts under consideration, and from the decisions of the American and the English courts, are: (1) That the purpose of the act is to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or discriminations; (2) That in passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment; (3) That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights

which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered; (4) That if the Commission, instead of confining its action to redressing on complaint made by some particular person, firm, corporation or locality, some specific disregard by common carriers of provisions of the act, proposes to promulgate general orders, which thereby become rules of action to the carrying companies, the spirit and letter of the act require that such orders should have in view the purpose of promoting and facilitating commerce, and the welfare of all to be affected, as well the carriers as the traders and consumers of the country. *Ib.*

JUDGMENT.

See JURISDICTION, A, 5.

JURISDICTION.

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

1. Where the judgment of the highest court of a State against the validity of an authority set up under the United States necessarily involves the decision of a question of law, it is reviewable by this court on writ of error, whether that question depends upon the Constitution, laws or treaties of the United States, or upon the local law, or upon principles of general jurisprudence. *Stanley* v. *Schwalby*, 255.

2. On the 31st day of August, 1826, the Seneca Nation by treaty and conveyance conveyed away the lands sued for in this action for a valuable consideration, the receipt of which was acknowledged, but the treaty was not ratified by the Senate or proclaimed by the President. On the 13th of October, 1885, this action was commenced in the Supreme Court of New York to recover a portion of the lands so conveyed. It was brought under the provisions of the act of May 8, 1845, c. 150, of the Laws of New York for that year, entitled "An act for the protection and improvement of the Seneca Indians," etc. The trial court gave judgment for defendant, which judgment was sustained by the Court of Appeals of the State on two grounds: (1) that the grant of August, 1826, was a valid transaction, not in contravention of the Constitution of the United States, or of the Indian Intercourse act of 1802; and, (2) that the right of recovery under the New York act of 1845 was barred by the statute of limitations. *Held*, that as the judgment could be maintained upon the second ground, which involved no Federal question, this court, under the well established rule, must be held to be without jurisdiction, and the writ of error must be dismissed. *Seneca Nation* v. *Christy*, 283.

3. The Circuit Court having made no certificate to this court of the question of its jurisdiction, the writ of error is dismissed on the authority of *Maynard* v. *Hecht*, 151 U. S. 324, and other cases cited. *Davis* v. *Geissler*, 290.

4. The jurisdiction of this court is to be determined by the amount directly involved in the decree appealed from, and not by any contingent demand which may be recovered, or any contingent loss which may be sustained by either party, through the probative effect of the decree, however direct its bearing upon such contingency. *Hollander* v. *Fechheimer*, 326.

5. A decree in favor of plaintiff, but remanding the case to the trial court for further proceedings to ascertain the amount of the indebtedness, is not a final decree from which appeal can be taken. *Ib.*

6. When the highest court of a State, upon a first appeal, decides a Federal question against the appellant, and remands the case for further proceedings according to law, and upon further hearing the inferior court of the State renders final judgment against him, he cannot have that judgment reviewed by this court by writ of error, without first appealing from it to the highest court of the State; although that court declines upon a second appeal to reconsider any question of law decided upon the first appeal. *Great Western Telegraph Company* v. *Burnham*, 339.

7. A Circuit Court of Appeals has no power under the Judiciary Act of 1891 to certify the whole case to this court; but can only certify distinct points or propositions of law, unmixed with questions of fact or of mixed law and fact. *Graves* v. *Faurot*, 435.

8. The question propounded in this case amounts to no more than an inquiry whether, in the opinion of this court, there is an irreconcilable conflict between two of its previous judgments, and a request, if that is held to be so, that an end be put to that conflict; and this is not a question or a proposition of law in a particular case, on which this court is required to give instructions. *Ib.*

9. This case comes within the established rule that on an application for removal from a state to a Federal court, the Federal question or the Federal character of the defendant company must appear from the complaint in the action, in order to justify a removal; and such Federal question or character does not appear in this case. *Oregon Short Line & Utah Northern Railway Co.* v. *Skottowe*, 490.

10. The conduct of a criminal trial in a state court cannot be reviewed by this court unless the trial is had under some statute repugnant to the Constitution of the United States, or was so conducted as to deprive the accused of some right or immunity secured to him by that instrument. Mere error in administering the criminal law of a State or in the conduct of a criminal trial — no Federal right being invaded or denied — is beyond the revisory power of this court under the statutes regulating its jurisdiction. Indeed, it would not be competent for Congress to confer such power upon this or any other court of the United States. *Gibson* v. *Mississippi*, 565.

See CONSTITUTIONAL LAW, 1;
CORPORATION, 2;
WRIT OF ERROR.

B. Jurisdiction of Circuit Courts of Appeals.
See Jurisdiction, A, 7.

C. Jurisdiction of Circuit Courts.

1. The Circuit Court for the Southern District of New York had jurisdiction of the acts complained of in this suit. *Texas & Pacific Railway Co.* v. *Interstate Commerce Commission*, 197.
2. Alberty, the accused, was a negro born in slavery, who became a citizen of the Cherokee Nation under the ninth article of the treaty of 1866. Duncan, the deceased, and alleged to have been murdered, was the illegitimate child of a Choctaw Indian, by a negro woman who was not his wife, but a slave in the Cherokee Nation. *Held*, that, for purposes of jurisdiction, Alberty must be treated as a member of the Cherokee Nation, but not an Indian, and Duncan as a colored citizen of the United States, and that, for the purposes of this case, the court below had jurisdiction. *Alberty* v. *United States*, 499.
3. When an offence against the provisions of Rev. Stat. § 5209 is begun in one State and completed in another, the United States court in the latter State has jurisdiction over the prosecution of the offender. *Putnam* v. *United States*, 687.

D. Jurisdiction of the Supreme Court of the District of Columbia.

Since the act of July 9, 1888, c. 597, as before that act, the Supreme Court of the District of Columbia has no power to admit a will or codicil to probate as a devise of real estate. *Campbell* v. *Porter*, 478.

E. Jurisdiction of State Courts.
See United States, 5.

LIMITATION, STATUTES OF.
See Corporation, 2.

LOCAL LAW.

1. Under the provisions of the act of the State of Texas of July 14, 1879, amended March 11, 1881, and repealed January 22, 1883, in respect of the purchase of unappropriated lands, the applicant was obliged, in order to obtain the right to purchase, to cause the land desired to be surveyed, and the survey, field-notes and maps to be returned within a time prescribed; and no tract could be purchased containing more than six hundred and forty acres. R. and T. entered into an agreement consisting of two papers but constituting and declared on in this case as one contract, whereby R. agreed to transfer to T. his rights to purchase acquired under applications for the survey of 1,160,320

acres; to make all the surveys, field-notes and maps thereof, and file them in the office of the surveyor and in the General Land Office of the State within the time prescribed by law; and T. agreed to pay twenty-five cents per acre for such rights, and five cents per acre for the surveys, field-notes and maps and the filing thereof. T. failed to make any of the payments, and R. failed to file the surveys, field-notes and maps in the General Land Office within the stipulated time excepting those covering 15,360 acres. *Held*, (1) That the covenants of the contract were mutual and dependent and subject to the rule that the party who insists upon performance from the other side must show a performance on his own part, while he who wishes to rescind a contract need only show non-performance or inability to perform by the other party; (2) That as between applicants and the State, while it seems from the course of decision in Texas that an applicant could obtain more than a single tract at one time, yet the policy of the act was that each tract should be considered as independent of other tracts the purchase of which also might be sought, and as R. failed as to the larger number of tracts to file the surveys, field-notes and maps within the time prescribed, he lost the absolute right to demand patents from the State, on payment, for such tracts, and was therefore unable to perform his contract with T., for the whole number of acres, according to its terms; (3) That if upon application the applicant obtained any right which under the act was susceptible of transfer, it was not vested until the surveys, etc., were filed; (4) That the act contemplated that the surveys should be made upon the ground, and it not only did not appear in this case that such surveys had been made, but it would seem that they must have been made up from office documents and not from actual survey on the ground. *Telfener* v. *Russ*, 170.

2. The requirement of the Mississippi constitution of 1890 that no person should be a grand or petit juror unless he was a qualified elector and able to read and write did not prevent the legislature from providing, as was done in the Code of 1892, that persons selected for jury service should possess good intelligence, sound judgment and fair character. Such regulations are always within the power of a legislature to establish unless forbidden by the constitution. They tend to secure the proper administration of justice and are in the interest, equally, of the public and of persons accused of crime. *Gibson* v. *Mississippi*, 565.

3. The Mississippi Code of 1892, in force when the indictment was found, did not affect in any degree the substantial rights of those who had committed crime prior to its going into effect. It did not make criminal and punishable any act that was innocent when committed, nor aggravate any crime previously committed, nor inflict a greater punishment than the law annexed to such crime at the time of its commission, nor alter the legal rules of evidence in order to convict the offender. *Ib.*

MASTER AND SERVANT.

See RAILROAD.

MORTGAGE.

1. When a mortgagee is in possession of the mortgaged real estate, claiming under a foreclosure sale, one claiming under the mortgagor cannot, by setting up that the foreclosure proceedings were invalid, maintain ejectment to recover the premises, without first offering to redeem and tendering payment of the mortgage debt. *Bryan* v. *Kales*, 411.
2. A mortgagor of land cannot recover in ejectment against the mortgagee in possession, after breach of condition, or against persons holding under the mortgagee. *Bryan* v. *Brasius*, 415.
3. An irregular judicial sale, made at the suit of a mortgagee, even though no bar to the equity of redemption, passes all the mortgagee's rights to the purchaser. *Ib.*

NATIONAL BANK.

See CRIMINAL LAW, 28, 29, 30.

NEXT OF KIN.

See FRENCH SPOLIATION CLAIMS.

PARTIES.

The Southern Pacific Company, although a proper, was not a necessary party to this suit. *Texas & Pacific Railway Co.* v. *Interstate Commerce Commission*, 197.

PATENT FOR INVENTION.

The first claim in letters patent No. 425,584, issued April 15, 1890, to Samuel Seabury for an improvement in breech-loading cannon, viz.: for "The combination, with a breech-loading cannon and a breech-block for the same, which is withdrawn in a rearward direction, of a breech-block carrier hinged to the breech, and a breech-block retractor hinged to the breech separate from said carrier to move independently of said carrier to draw the breech-block thereinto and push it therefrom, but capable of moving the said carrier while the breech-block is therein, substantially as set forth;" must, in view of the state of the art at the time of the invention, be limited to the precise mechanism employed: and, being thus limited, it is not infringed by the device patented to Robert B. Dashiell by letters patent No. 468,331, dated February 9, 1892. *Dashiell* v. *Grosvenor*, 425.

PRACTICE.

1. Each party will pay its own costs. *United States* v. *Texas*, 1.
2. When the record does not contain the instructions given by the trial court, it is to be presumed that they covered defendant's requests, so far as those requests stated the laws correctly. *Andrews* v. *United States*, 420.

PUBLIC LAND.

A person who, without authority, cuts wood from public lands of the United States, not mineral, or purchases such wood so cut, and leaves it, when cut or purchased, upon such public lands near a railroad, has no right of possession of, or title to, or ownership in it, and cannot maintain an action against the corporation owning such railroad for its destruction by fire caused by sparks from locomotives of the company. *Northern Pacific Railroad Company* v. *Lewis*, 366.

See LOCAL LAW, 1;
TAX AND TAXATION.

RAILROAD.

1. H. was foreman of an extra gang of laborers for plaintiff in error on its road, and as such had charge of and superintended the gang in putting in ties and assisting in keeping in repair three sections of the road. He had power to hire and discharge the hands, (13 in number,) in the gang, and had exclusive charge of their direction and management in all matters connected with their employment. The defendant in error was one of that gang, hired by H., and subject, as a laborer, while on duty with the gang, to his authority. While on such duty the defendant in error suffered serious injury through the alleged negligence of H., acting as foreman in the course of his employment, and sued the railroad company to recover damages for those injuries. *Held*, that H. was not such a superintendent of a separate department, nor in control of such a distinct branch of the work of the company, as would be necessary to render it liable to a co-employé for his neglect; but that he was a fellow-workman, in fact as well as in law, whose negligence entailed no such liability on the company as was sought to be enforced in this action. *Northern Pacific Railroad Company* v. *Peterson*, 346.
2. The duties of a railroad company, as master, towards its employés, as servants, defined; and it is held that if the master, instead of personally performing these obligations, engages another to do them for him, he is liable for the neglect of that other, which, in such case, is not the neglect of a fellow-servant, but of the master. *Ib.*
3. The previous cases in this court on this subject examined, and found to determine the following points, as to the liability of a railroad company for injuries to an employé alleged to have been caused by

the negligence of another employé, while the injured person was in the performance of his ordinary duties: (1) That the mere superiority of the negligent employé in position and in the power to give orders to subordinates is not a ground for such liability; (2) That in order to form an exception to the general law of non liability, the person whose neglect caused the injury must be one who was clothed with the control and management of a distinct department, and not of a mere separate piece of work in one of the branches of service in a department; (3) That when the business of the master is of such great and diversified extent that it naturally and necessarily separates itself into departments of service, the persons placed by the master in charge of these separate branches and departments, and given control therein, may be considered, with reference to employés under them, vice-principals and representatives of the master as fully as if the entire business of the master were placed by him under one superintendent. *Ib.*

4. There is no proof of a separate contract of hiring, by which the railroad company assumed obligations towards the defendant in error in excess of those ordinarily assumed by a company towards those employed by it as laborers. *Ib.*

5. The general principles of the law of master and servant, as set forth in the opinion in *Northern Pacific Railroad* v. *Peterson*, 162 U. S. 346, are applicable to the facts in this case, and govern it. *Northern Pacific Railroad Company* v. *Charless*, 359.

The plaintiff below was a day laborer, in the employ of the Northern Pacific Railroad. With the rest of his gang he started on a hand car under a foreman to go over a part of a section to inspect the road. While running rapidly round a curve they came in contact with a freight train, and he was seriously injured. The brake of the hand car was defective. The freight train gave no signals of its approach. He sued the company to recover damages for his injuries. *Held*, (1) That the railroad company was not liable for negligence of its servants on the freight train to give signals of its approach, as such negligence, if it existed, was the negligence of a co-servant of the plaintiff; (2) That any supposed negligence of the foreman in running the hand car at too high a rate of speed, was negligence of a co-employé of the company, and not of their common employer; (3) That if it should be assumed that the injury might have been avoided if the brake had not been defective, the jury should have been properly instructed on that point. *Ib.*

See TAX AND TAXATION.

RECEIVER.

A coal and railway company contracted with C. to construct a building for it in the Indian Territory. After the work was begun a receiver of the property of the company was appointed under foreclosure proceed-

ings. This building was not covered by the mortgage. C. was settled with for work up to that time, and all further work was stopped, except such as might be necessary for the protection of the building, which was to be done under order of court. An order was issued for roofing, which C. did, and then continued work on the building without further authority from the court. The receiver, on learning this, notified him to stop and make out his bill to date of notice; said that he would furnish designs for further work to be done; and asked C. to name a gross sum for doing it. C. stopped as directed, the designs were furnished, and C. named the desired gross sum. No further order of court was named, nor was any contract signed by the receiver; but the architect employed by the receiver drew up a contract and specification, and the work was done by C. in accordance therewith with the knowledge and approval of the receiver. The receiver having declined to sign the contract, or to make payments thereunder, C. filed a petition in the foreclosure proceedings for payment of the amount due him. Thereupon a reference was made to a master, who reported in favor of C. The court adjudged the claim to be a valid one, entitled to preference, and the receiver was ordered to pay the amount reported due; which decree was, on appeal, affirmed by the Circuit Court of Appeals. *Held*, that there was no error in the court's ordering C.'s bill to be paid as a preferred claim, as the work had been commenced before the receivership and was done in good faith for the benefit of the company and the receivers, and as the building must either have been finished or the work already done become a total loss to the company; that it appeared to have been constructed for the accommodation of the officers of the road, and in other respects in furtherance of the interests of the road, and was an asset in the hands of the receivers, which might be sold, and the money realized therefrom applied to the payment of the claim; and that the fact that it was not covered by the mortgage rendered it the more equitable that the proceeds of the sale should be applied to the payment of the cost of its construction. *Girard Insurance & Trust Co.* v. *Cooper*, 529.

REMOVAL OF CAUSES.

1. This case comes within the established rule that on an application of removal from a state to a Federal court, the Federal question or the Federal character of the defendant company must appear from the complaint in the action, in order to justify a removal; and such Federal question or character does not appear in this case. *Oregon Short Line & Utah Northern Railway Co.* v. *Skottowe*, 490.
2. Section 641 of the Revised Statutes, providing for the removal of civil suits and of criminal prosecutions from the state courts into the Circuit Courts of the United States, does not embrace a case in which a right is denied by judicial action during a trial, or in the sentence, or in the

mode of executing the sentence. For such denials arising from judicial action after a trial commenced, the remedy lies in the revisory power of the higher courts of the State, and ultimately in the power of review which this court may exercise over their judgments whenever rights, privileges or immunities claimed under the Constitution or laws of the United States are withheld or violated. The denial or inability to enforce in the judicial tribunals of the States rights secured by any law providing for the equal civil rights of citizens of the United States, to which section 641 refers, and on account of which a criminal prosecution may be removed from a state court, is primarily, if not exclusively, a denial of such rights or an inability to enforce them resulting from the constitution or laws of the State, rather than a denial first made manifest at or during the trial of the case. *Gibson* v. *Mississippi*, 565.

3. The fact that citizens of the African race had been excluded, because of their race, from service on previous grand juries as well as from the grand jury which returned the particular indictment in the case on trial, will not authorize a removal of the prosecution under section 641 of the Revised Statutes, but is competent evidence only on a motion to quash the indictment. *Ib.*

4. It is not every denial by a state enactment of rights secured by the Constitution or laws of the United States that is embraced by section 641 of the Revised Statutes. The right of removal given by that section exists only in the special cases mentioned in it. *Ib.*

5. An affidavit to a petition for removal filed under section 641 of the Revised Statutes, to the effect that the facts therein stated are true to the best of the knowledge and belief of the accused, is not evidence in support of a motion to quash the indictment, unless the prosecutor agrees that it may be so used, or unless by the order of the trial court it is treated as evidence. *Charley Smith* v. *Mississippi*, 592.

6. A motion to quash an indictment against a person of African descent upon the ground that it was found by a grand jury from which were excluded because of their race persons of the race to which the accused belongs can be sustained only by evidence independently of the facts stated in the motion to quash. *Ib.*

SPECIFIC PERFORMANCE.

See CONTRACT.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. In construing the terms of a statute, especially when the legislation is experimental, courts must take notice of the history of the legislation, and, out of different possible constructions, must select the one that best comports with the genius of our institutions. *Texas & Pacific Railway Co.* v. *Interstate Commerce Commission*, 197.

2. The act of March 21, 1895, classifying the counties of the Territory of Arizona, and fixing the compensation of the officers therein (Laws 1895, p. 68), purports on its face to be an act of that Territory, to have been approved on the 21st of March, 1895; and the original is filed with, and is in the custody of the Secretary of the Territory; is signed by the Governor as approved by him; is signed by the President of the Territorial Legislative Council as duly passed by that body; and is signed by the Speaker of the Territorial House of Representatives as duly passed by that body. *Held*, that, having been thus officially attested, and approved, and committed to the custody of the Secretary of the Territory as an act passed by the territorial legislature, that act is to be taken as having been enacted in the mode required by law, and to be unimpeachable by recitals or omissions of recitals in the journals of legislative proceedings which are not required by the fundamental law of the Territory to be so kept as to show everything done in both branches of the legislature while engaged in the consideration of bills presented for their action. *Harwood* v. *Wentworth*, 547.
3. *Field* v. *Clark*, 143 U. S. 649, considered, affirmed and applied to this case as decisive of it. *Ib.*
4. That act is not a local or special act, within the meaning of the act of Congress of July 30, 1886, c. 818, 24 Stat. 170. *Ib.*

B. Statutes of the United States.

See Criminal Law, 4, 5, 20, 27; French Spoliation Claims, 1; Indian Reservations, 1, 3; Interstate Commerce, 5, 8; Jurisdiction, A, 2, 7; C, 3; D; Removal of Causes, 2, 4, 5; Statute, A, 2, 4; Tax and Taxation, 1; Texas, 1.

C. Statutes of States and Territories.

Arizona Territory. *See* Statute, A, 2, 4.
California. *See* Central Pacific Railroad Company.
Georgia. *See* Constitutional Law, 6.
Mississippi. *See* Constitutional Law, 1; Local Law, 2, 3.
New York. *See* Jurisdiction, A, 2; United States, 5.
Texas. *See* Local Law, 1; Texas.

TAX AND TAXATION.

1. Since the passage of the act of July 10, 1886, c. 764, 24 Stat. 143, surveyed but unpatented lands, on which the costs of survey have not been paid, included within a railroad land grant, are subject to taxation by the State in which they are situated. *Central Pacific Railroad Co.* v. *Nevada*, 512.
2. The nature of the taxable interest of a railroad company on such lands

so subjected to taxation, with the assent of Congress, does not present a Federal question. *Ib.*

3. The possessory claim of the railroad company to such lands is taxable under the laws of Nevada without reference to the fact that they may be hereafter determined to be mineral lands, and so be excluded from the operation of the grant. *Ib.*

See CENTRAL PACIFIC RAILROAD COMPANY.

TEXAS.

1. The treaty between the United States and Spain, made in 1819, and ratified in 1821, provided that "the boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of the river to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then following the course of the Rio Roxo, westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818." *Held*, (1) That the intention of the two governments, as gathered from the words of the treaty, must control, and that the map to which the contracting parties referred is to be given the same effect as if it had been expressly made a part of the treaty; (2) But, looking at the entire instrument, it is clear that, while the parties took the Melish map, improved to 1818, as a basis for the final settlement of the question of boundary, they contemplated, as shown by the fourth article of the treaty, that the line was subsequently to be fixed with more precision by commissioners and surveyors representing the respective countries; (3) That the reference in the treaty to the 100th meridian was to that meridian astronomically located, and not necessarily to the 100th meridian as located on the Melish map; (4) That the Melish map located the 100th meridian far east of where the true 100th meridian is, when properly delineated; (5) That the Compromise Act of September 9, 1850, and the acceptance of its provisions by Texas, together with the action of the two governments, require that, in the determination of the present question of boundary between the United States and Texas, the direction in the treaty, "following the course of the Rio Roxo westward to the degree of longitude 100 west from London," must be interpreted as referring to the true 100th meridian, and, consequently, the line "westward" must go to that meridian, and not stop at the Melish 100th meridian;

(6) That Prairie Dog Town Fork of Red River is the continuation, going from east to west, of the Red River of the treaty, and the line, going from east to west, extends up Red River and along the Prairie Dog Town Fork of Red River to the 100th meridian, and not up the North Fork of Red River; (7) That the act of Congress of February 24, 1879, c. 97, creating the Northern Judicial District of Texas, is to be construed as placing Greer County in that district for judicial purposes only, and not as ceding to Texas the territory embraced by that county. *United States* v. *Texas*, 1.

2. The territory east of the 100th meridian of longitude, west and south of the river now known as the North Fork of Red River, and north of a line following westward, as prescribed by the treaty of 1819 between the United States and Spain, the course, and along the south bank, both of Red River and the river now known as the Prairie Dog Town Fork or South Fork of Red River until such line meets the 100th meridian of longitude — which territory is sometimes called Greer County — constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America. *Ib.*

See DEED 4;
LOCAL LAW, 1;
UNITED STATES, 2.

TRESPASS.

See UNITED STATES, 2.

UNITED STATES.

1. Neither the Secretary of War, nor the Attorney General, nor any subordinate of either, is authorized to waive the exemption of the United States from judicial process, or to submit the United States, or their property, to the jurisdiction of the court in a suit brought against their officers. *Stanley* v. *Schwalby*, 255.

2. In an action of trespass to try title, under the statutes of Texas, brought by one claiming title in an undivided third part of a parcel of land, and possession of the whole, against officers of the United States, occupying the land as a military station, and setting up title in the United States, a judgment that the plaintiff recover the title in the third part, and possession of the whole jointly with the defendants, is a judgment against the United States and against their property. *Ib.*

3. The United States are not liable to judgment for costs. *Ib.*

4. An action to recover the title and possession of land against officers of the United States setting up title in the United States, and defended by the District Attorney of the United States, was dismissed by the

highest court of the State as against the United States; but judgment was rendered against the officers, upon the ground that they could not avail themselves of the statute of limitations. This court, on writ of error, reversed that judgment, and remanded the case for further proceedings. The highest court of the State thereupon held that the United States were a party to the action, and decided, upon evidence insufficient in law, that the United States had no valid title, because they took with notice of a prior conveyance; and gave judgment against the officers for title and possession, and against the United States for costs. This court, upon a second writ of error, reverses the judgment, and remands the case with instructions to dismiss the action against the United States, and to enter judgment for the individual defendants, with costs. *Ib.*

5. In view of the reservation of jurisdiction made by the State of New York in the act of June 17, 1853, c. 355, ceding to the United States jurisdiction over certain lands adjacent to the navy yard and hospital in Brooklyn, the exclusive authority of the United States over the land covered by the lease, the ouster from possession under which is the subject of controversy in this action, was suspended while the lease remained in force. *Palmer* v. *Barrett*, 399.

See DEED, 2, 4, 5;
TEXAS.

WILL.

On the trial of this case in the Supreme Court of the District of Columbia, that court, after examination of the facts, held that: "(1) Where a will relates only to personalty, and is in the handwriting of the testator and signed by him, no other formality is required to render it valid" in the District; and that "(2) Immaterial alterations in a will, though made after the testator's death by one of the beneficiaries under it, will not invalidate it" in the courts of the District, "when not fraudulently made." This court, after passing upon the facts in detail, arrives at substantially the same conclusions touching them as did the Supreme Court of the District, and affirms its judgment. *McIntire* v. *McIntire*, 383.

WRIT OF ERROR.

A writ of error is the proper form of bringing up to this court an order of the Supreme Court of the District of Columbia admitting a will to probate. *Campbell* v. *Porter*, 478.