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ALIENS.

1. Detention or temporary confinement, as part of the means necessary to give effect to the exclusion or expulsion of Chinese aliens is valid. *Wong Wing* v. *United States*, 228.
2. The United States can forbid aliens from coming within their borders, and expel them from their territory, and can devolve the power and duty of identifying and arresting such persons upon executive or subordinate officials; but when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment at hard labor, or by confiscating their property, such legislation, to be valid, must provide for a judicial trial to establish the guilt of the accused. *Ib.*

ALIEN IMMIGRANT.

A contract made with an alien in a foreign country to come to this country as a chemist on a sugar plantation in Louisiana, in pursuance of which contract such alien does come to this country and is employed on a sugar plantation in Louisiana, and his expenses paid by the defendant, is not such a contract to perform labor or service as is prohibited in the act of Congress passed February 26, 1885. *United States* v. *Laws*, 258.

BANKRUPT.

R. obtained a judgment against B. on the law side of the Supreme Court of the District of Columbia. Shortly after he assigned the judgment to S. W., who subsequently became bankrupt, and as such surrendered all his property, including said judgment. G. was duly made his assignee. S. W. died and G. W. was made his executrix. The death of S. W. being suggested on the record, a writ of *scire facias* was issued to revive the judgment, and on return of *nihil* a second writ was issued on which a like return was made. When these proceedings came to the knowledge of B. he filed a bill to set them aside. A demurrer being sustained on the ground that the assignee was not a party the assignee was summoned in; and, upon his death, his successor was made a party on his own motion. After issues were made

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by the pleadings, the suit proceeded to a final decree in the Supreme Court of the District, from which an appeal was taken to the Court of Appeals. The latter court reversed the judgment of the court below. On appeal to this court it is *Held*, (1) That the proceedings to revive the judgment were regular; (2) That as the assignee was a party to the proceedings, with his official rights protected, the judgment debtor could not set up that it was not competent for G. W. to originate the proceedings; (3) That no substantial reason was shown why B. should be relieved from the judgment. *Brown* v. *Wygant and Leeds*, 618.

See JURISDICTION, A, 16.

BOUNDARY.

The report of the commissioners appointed October 21, 1895, 159 U. S. 275, to run the disputed boundary line between Indiana and Kentucky, is confirmed. *Indiana* v. *Kentucky*, 520.

CASES AFFIRMED OR FOLLOWED.

Singer Manufacturing Company v. *June Manufacturing Company*, 163 U. S. 169, followed. *Singer Manufacturing Co.* v. *Bent*, 205.

See COURT AND JURY, 5;
REMOVAL OF CAUSES.

CHINESE ALIENS.

See ALIENS.

CONSTITUTIONAL LAW.

1. A statute of a State, requiring a telegraph company to pay a tax upon its property within the State, valued at such a proportion of the whole value of its capital stock as the length of its lines within the State bears to the length of all its lines everywhere, deducting a sum equal to the value of its real estate and machinery subject to local taxation within the State, is constitutional and valid, notwithstanding that nothing is in terms directed to be deducted from the valuation, either for the value of its franchises from the United States, or for the value of its real estate and machinery situated and taxed in other States; unless there is something more showing that the system of taxation adopted is oppressive and unconstitutional. *Western Union Telegraph Co.* v. *Taggart*, 1.
2. The statute of Indiana of March 6, 1893, c. 171, which directs the state board of tax commissioners to take as the basis of valuation of the property within the State of every telegraph company, incorporated in Indiana or in any other State, the proportion of the value of its whole capital stock which the length of its lines within the

State bears to the whole length of all its lines, but, as construed by the Supreme Court of the State, makes it the duty of the tax commissioners to make such deductions, on account of a greater proportional value of the company's property outside the State, or for any other reason, so as to assess its property within the State at its true cash value; and, so construed, is constitutional. *Ib.*

3. A person upon whose oath a criminal information for a libel is filed, and who is found by the jury, as part of their verdict acquitting the defendant, to be the prosecuting witness, and to have instituted the prosecution without probable cause and with malicious motives, and is thereupon adjudged by the court to pay the costs, and to be committed until payment thereof, in accordance with the General Statutes of Kansas of 1889, c. 82, § 326, and who does not appear to have been denied at the trial the opportunity of offering arguments and evidence upon the motives and the cause of the prosecution, is not deprived of liberty or property without due process of law, or denied the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution of the United States. *Lowe* v. *Kansas*, 81.
4. A state statute which authorizes the redemption of property sold upon foreclosure of a mortgage, where no right of redemption previously existed, or which extends the period of redemption beyond the time formerly allowed, cannot constitutionally apply to a sale under a mortgage executed before its passage. *Barnitz* v. *Beverly*, 118.
5. The constitutional prohibition upon the passage of state laws impairing the obligation of contracts has reference only to the laws, that is, to the constitutional provisions or to the legislative enactments, of a State, and not to judicial decisions or the acts of state tribunals or officers under statutes in force at the time of the making of the contract, the obligation of which is alleged to have been impaired. *Hanford* v. *Davies*, 273.
6. The act of Congress of September 20, 1850, c. 61, granted a right of way, and sections of the public lands, to the State of Illinois, and to States south of the Ohio River, to aid in the construction of a railroad connecting the waters of the Great Lakes with those of the Gulf of Mexico, and over which the mails of the United States should be carried. The State of Illinois accepted the act, and incorporated the Illinois Central Railroad Company, for the purpose of constructing a railroad with a southern terminus described as "a point at the city of Cairo." The company accordingly constructed and maintained its railroad to a station in Cairo, very near the junction of the Ohio and Mississippi Rivers; but afterwards, in accordance with statutes of the United States and of the State of Illinois, connected its railroad with a railroad bridge built across the Ohio River opposite a part of Cairo farther from the mouth of that river; and put on a fast mail train carrying interstate passengers and the United States mails from Chicago to New Orleans, which ran through the city of Cairo, but

did not go to the station in that city, and could not have done so without leaving the through route at a point three and a half miles from the station and coming back to the same point; but the company made adequate accommodation by other trains for interstate passengers to and from Cairo. Cairo was a county seat. *Held*, that a statute of Illinois, requiring railroad companies to stop their trains at county seats long enough to receive and let off passengers with safety, and construed by the Supreme Court of the State to require the fast mail train of this company to be run to and stopped at the station in Cairo, was, to that extent, an unconstitutional hindrance and obstruction of interstate commerce, and of the passage of the mails of the United States. *Illinois Central Railroad Co.* v. *Illinois*, 142.

7. The legislation of the State of Georgia, contained in §§ 4578 and 4310 of the Code of 1882, forbidding the running of freight trains on any railroad in the State on Sunday, and providing for the trial and punishment, on conviction, of the superintendent of a railroad company violating that provision, although it affects interstate commerce in a limited degree, is not, for that reason, a needless intrusion upon the domain of Federal jurisdiction, nor strictly a regulation of interstate commerce, but is an ordinary police regulation, designed to secure the well-being, and to promote the general welfare of the people within the State, and is not invalid by force alone of the Constitution of the United States; but is to be respected in the courts of the Union until superseded and displaced by some act of Congress, passed in execution of the power granted to it by the Constitution. *Hennington* v. *Georgia*, 299.

8. There is nothing in the legislation in question in this case that suggests that it was enacted with the purpose to regulate interstate commerce, or with any other purpose than to prescribe a rule of civil duty for all who, on the Sabbath day, are within the territorial jurisdiction of the State. *Ib.*

9. The appropriations of money by the act of March 2, 1895, c. 189, 28 Stat. 910, 933, to be paid to certain manufacturers and producers of sugar who had complied with the provisions of the act of October 1, 1890, c. 1244, 26 Stat. 567, were within the power of Congress to make, and were constitutional and valid. *United States* v. *Realty Company*, 427.

10. It is within the constitutional power of Congress to determine whether claims upon the public treasury are founded upon moral and honorable obligations, and upon principles of right and justice; and having decided such questions in the affirmative, and having appropriated public money for the payment of such claims, its decision can rarely, if ever, be the subject of review by the Judicial branch of the Government. *Ib.*

11. The statute of Louisiana, acts of 1890, No. 111, requiring railway companies carrying passengers in their coaches in that State, to pro-

vide equal, but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; and providing that no persons shall be permitted to occupy seats in coaches other than the ones assigned to them, on account of the race they belong to; and requiring the officers of the passenger trains to assign each passenger to the coach or compartment assigned for the race to which he or she belongs; and imposing fines or imprisonment upon passengers insisting on going into a coach or compartment other than the one set aside for the race to which he or she belongs; and conferring upon officers of the trains power to refuse to carry on the train passengers refusing to occupy the coach or compartment assigned to them, and exempting the railway company from liability for such refusal, are not in conflict with the provisions either of the Thirteenth Amendment or of the Fourteenth Amendment to the Constitution of the United States. *Plessy v. Ferguson*, 537.

See ALIENS;
INDIANS, 2, 3, 4, 5.

CONTRACT.

A., an alien, sold to B. in New Orleans thirteen bonds of the State of Louisiana, delivered them to him, and received from him payment for them in full. Both parties contemplated the purchase and delivery of valid and lawful obligations of the State, and both regarded the bonds so delivered as such valid and lawful obligations. It turned out that the bonds were absolutely void, having never been lawfully put into circulation. B. thereupon sued A. in the Circuit Court of the United States for the Eastern District of Louisiana, to recover the purchase money paid for them. *Held*, (1) That as the sale was a Louisiana contract, the rights and obligations of the parties must be determined by the laws of that State; (2) That by the civil law, which prevails in Louisiana, warranty, whilst not of the essence, is yet of the nature of the contract of sale, and is implied in every such contract, unless there be a stipulation to the contrary; (3) That by the rule of the common law, both in England and in the United States the doctrine is universally recognized that where commercial paper is sold without indorsement or without express assumption of liability on the paper itself, the contract of sale and the obligations which arise from it, as between vendor and vendee, are governed by the common law, relating to the sale of goods and chattels; and that the undoubted rule is that in such a sale the obligation of the vendor is not restricted to the mere question of forgery *vel non*, but depends upon whether he has delivered that which he contracted to sell, this rule being designated, in England, as a condition of the principal contract, as to the essence and substance of the thing agreed to be

sold, and in this country being generally termed an implied warranty of identity of the thing sold; (4) That whilst the civil law enforces in the contract of sale generally the broadest obligation of warranty, it has so narrowed it, when dealing with credits and incorporeal rights, as to confine it to the title of the seller and to the existence of the credit sold, and, *e converso*, the common law, which restricts warranty within a narrow compass, virtually imposes the same duty by broadening the warranty as regards personal property so as to impose the obligation on the vendor to deliver the thing sold as a condition of the principal contract or by implication of warranty as to the identity of the thing sold; and thus, by these processes of reasoning the two great systems, whilst apparently divergent in principle, practically work substantially to the same salutary conclusions; (5) That B. is entitled to recover the sum so paid by him, with interest from the time of judicial demand. *Meyer* v. *Richards*, 385.

See ALIEN IMMIGRANT;
LIFE INSURANCE;
RAILROAD, 10, 11, 13, 14, 15, 16.

CONTRIBUTORY NEGLIGENCE.

1. When, in an action by a railroad employé against the company to recover damages for injuries suffered while on duty, the inference to be drawn from the facts is not so plain as to make it a legal conclusion that the plaintiff was guilty of contributory negligence, the question whether he was or was not so guilty must be left to the jury. *Northern Pacific Railroad* v. *Egeland*, 93.

2. The defendant in error, plaintiff below, was a common laborer in the employ of the plaintiff in error. When returning from his work on a train, the conductor ordered him and others to jump off at a station when the train was moving about four miles an hour. The platform was about a foot lower than the car step. His fellow-laborers jumped and were landed safely. He jumped and was seriously injured. He sued to recover damages for those injuries. *Held*, that the court below rightly left it to the jury to determine whether he was guilty of contributory negligence. *Ib.*

See NEGLIGENCE;
TORT, 5.

CORPORATION.

See RAILROAD, 9, 10, 11, 14, 17.

COURT AND JURY.

1. It is no error to refuse to give an instruction when all its propositions are embraced in the charge to the jury. *Rio Grande Western Railway Co.* v. *Leake*, 280.

2. It is no error in an action like this to refuse an instruction which singles out particular circumstances, and omits all reference to others of importance. *Ib.*
3. This case was fairly submitted to the jury with no error of law to the prejudice of the defendant. *Ib.*
4. This case was one peculiarly for the jury, under appropriate instructions from the court as to the principles of law by which they were to be guided in reaching a conclusion as to the liability of the railroad company for the death of its employé; and the positions taken to the contrary have no merit. *Texas & Pacific Railway Co.* v. *Gentry*, 353.
5. The ruling in *Simmons* v. *United States*, 142 U. S. 148, that "the judge presiding at a trial, civil or criminal, in any court of the United States, may express his opinion to the jury upon the questions of fact which he submits to their determination" applied to statements by the court below in its charge in this case. *Wiborg* v. *United States*, 632.

See CONTRIBUTORY NEGLIGENCE; NEGLIGENCE.

CRIMINAL LAW.

1. Rulings of the court below refusing writs of *subpœna duces tecum* held to work no injury to defendant. *Murray* v. *Louisiana*, 101.
2. The state court, on the trial of the plaintiff in error for murder, permitted to be read in evidence the evidence of a witness taken in the presence of the accused at a preliminary hearing, read to and signed by the witness, the prosecuting officer alleging that the witness was beyond the jurisdiction of the court, and his attendance could not be procured. The bill of exceptions to its allowance was not presented to the trial judge for signature until two weeks after sentence, after refusal of a new trial, and after appeal. The record does not disclose the nature or effect of the testimony so admitted. *Held*, that there is nothing in this record which would authorize this court to convict the Supreme Court of Louisiana of error in that behalf. *Ib.*
3. A person indicted for robbing a mail-carrier of a registered mail package, and of putting the carrier in jeopardy of his life in effecting it, is entitled under Rev. Stat. § 819 to ten peremptory challenges. *Harrison* v. *United States*, 140.
4. The defendant's name need not be correctly spelled in an indictment, if substantially the same sound is preserved. *Faust* v. *United States*, 452.
5. On the trial under an indictment against an assistant postmaster for embezzling money-order funds of the United States, it being proved that he was the son and assistant of the principal postmaster, and as such had the sole management and possession of the money-order business and money-order funds during the entire term, a certified transcript from the office of the Auditor of the Treasury at Wash-

ington, showing the account of the postmaster, is admissible in evidence. *Ib.*

6. It was no error on such trial to refuse to admit evidence tending to show that another person than the defendant, at a time anterior to the time of the commission of the offence charged, had committed another and different offence than the one herein charged, and that said other person had been indicted and convicted thereof. *Ib.*
7. It was within the discretion of the court below to permit a witness who had been examined and cross-examined to be recalled in order to make some change in the statements made by him on cross-examination. *Ib.*
8. The objection that the charge as a whole was misleading is without merit. *Ib.*
9. The sixth assignment is based on the refusal of the court to charge the jury that the embezzlement must be proved to have taken place without the consent of the defendant's principal or employer. It was claimed that as the indictment failed to charge that the defendant embezzled any money without the consent of his principal or employer, and as the postmaster employed the defendant, the defendant's responsibility was to the postmaster, and not to the government. *Held*, that it had no merit. *Ib.*
10. The remaining assignments are without merit. *Ib.*
11. A general verdict of acquittal, in a court having jurisdiction of the cause and of the defendant, upon the issue of not guilty to an indictment undertaking to charge murder, and not objected to before verdict as insufficient in that respect, is a bar to a subsequent indictment against him for the same killing. *United States* v. *Ball*, 662.
12. A verdict in a case submitted to the jury on Saturday may be received and the jury discharged on Sunday. *Ib.*
13. A defendant in a criminal case, who procures a verdict and judgment against him to be set aside by the court, may be tried anew upon the same or another indictment for the same offence of which he was convicted. *Ib.*
14. Whether defendants jointly indicted shall be tried together or separately rests in the sound discretion of the trial court. *Ib.*
15. After a witness in support of a prosecution has testified, on cross-examination, that he had, at his own expense, employed another attorney to assist the attorney for the government, the question "How much do you pay him?" may be excluded as immaterial. *Ib.*
16. Upon a trial for murder by shooting, in different parts of the body, with a gun loaded with buckshot, and after the introduction of conflicting evidence upon the question whether a gun found in the defendant's possession would scatter buckshot, it is within the discretion of the court to decline to permit the gun to be taken out and shot off, in the presence of the deputy marshal, in order to test how it threw such shot. *Ib.*

17. An indictment for murder, which alleges that A, at a certain time and place, by shooting with a loaded gun, inflicted upon the body of B "a mortal wound, of which mortal wound the said B did languish, and languishing did then and there instantly die," unequivocally alleges that B died of the mortal wound inflicted by A, and that B died at the time and place at which the mortal wound was inflicted. *Ib.*

18. The court is not bound, as a matter of law, to set aside a verdict of guilty in a capital case, because no special oath was administered to the officer in charge of the jury, if he was a deputy marshal who had previously taken the oath of office, and no objection to his taking charge of the jury without a new oath was made at any stage of the trial, and the jury were duly cautioned by the court not to separate or to allow any other person to talk with them about the case, and there is nothing tending to show that the jury were exposed to any influence that might interfere with the impartial performance of their duties or prejudice the defendant. *Ib.*

See NEUTRALITY LAWS.

DISTRICT ATTORNEY.

See FEES.

DOWER.

See MINERAL LAND.

DRAWBACK.

The right to a drawback on bituminous coal, imported into the United States and consumed as fuel on a steam vessel engaged in the coasting trade of the United States, which existed before the passage of the tariff act of October 1, 1890, c. 1244, 26 Stat. 567, was taken away by the passage of that bill. *United States* v. *Allen*, 499.

EQUITY.

1. This complaint being, in effect, a bill to quiet title as against an adverse claim, and the plaintiff having thus voluntarily invoked the equity jurisdiction of the court, he is in no position to urge, on appeal, that his complaint should have been dismissed because of adequacy of remedy at law, and such an objection comes too late in the appellate tribunal. *Perego* v. *Dodge*, 160.

2. Where a case is one of equitable jurisdiction only, the trial court is not bound to submit issues of fact to a jury; and, if it does so, is at liberty to disregard the verdict and findings of the jury. *Ib.*

3. By reason of his selection of this form of action, and his proceeding to a hearing and decree without objection, the contention of the appellant in respect of his deprivation of trial by jury comes too late. *Ib.*

4. The act of March 3, 1881, c. 140, 21 Stat. 505, was not intended to re-

quire and does not require all suits under Rev. Stat. § 2326, to be actions at law and to be tried by jury. *Ib.*

EVIDENCE.

See CRIMINAL LAW, 5, 7, 15, 16; RAILROAD, 3; INDIANS, 7; TORT, 2, 3, 4.

EXCEPTION.

A statement of facts by the court in a recapitulation of the evidence, based on uncontradicted testimony, no rule of law being incorrectly stated, and the facts being submitted to the determination of the jury, is not open to exception. *Wiborg* v. *United States*, 632.

See PRACTICE, 4.

FEES.

1. Fees allowed by the court to the district attorney for his services in defending *habeas corpus* cases, brought to release from the custody of masters of vessels Chinese emigrants, whom the collector of the port had ordered detained, should be accounted for by him in the returns made by him to the government of the fees and emoluments of his office. *Hilborn* v. *United States*, 342.
2. It would require a strong case to show that services, for which the district attorney is entitled to charge the government a fee, are not also services for the earnings of which he should make return to the government in his emolument account. *Ib.*

FINDING OF FACTS.

See JURISDICTION, A, 21; PRACTICE, 3, 4.

INDIANA.

See BOUNDARY.

INDIANS.

1. The treaty of February 23, 1867, 15 Stat. 513, with the Ottawas and other Indians, introduced the limit of minority upon the inalienability of lands patented to a minor allottee, in that respect changing the provisions of the treaty of July 16, 1862, 12 Stat. 1237; and this limitation was applicable to lands then patented to minors under the treaty of 1867, and cut off the right of guardians to dispose of their real estate during their minority, even under direction of the court of the State in which the land was situated. *Wiggan* v. *Connolly*, 56.
2. The crime of murder committed by one Cherokee Indian upon the person of another within the jurisdiction of the Cherokee nation is not an offence against the United States, but an offence against the

local laws of the Cherokee nation; and the statutes of the United States which provide for an indictment by a grand jury, and the number of persons who shall constitute such a body, have no application. *Talton* v. *Mayes*, 376.

3. The Fifth Amendment to the Constitution does not apply to local legislation of the Cherokee nation, so as to require all prosecutions for offences committed against the laws of that nation to be initiated by a grand jury in accordance with the provisions of that amendment. *Ib.*

4. The question whether a statute of the Cherokee nation which was not repugnant to the Constitution of the United States or in conflict with any treaty or law of the United States had been repealed by another statute of that nation, and the determination of what was the existing law of the Cherokee nation as to the constitution of the grand jury, is solely a matter within the jurisdiction of the courts of that nation, and the decision of such a question in itself necessarily involves no infraction of the Constitution of the United States. *Ib.*

5. The provision in the treaty of February 24, 1869, with the Bannock Indians, whose reservation was within the limits of what is now the State of Wyoming, that "they shall have the right to hunt upon the unoccupied lands of the United States so long as game may be found thereon," etc., does not give them the right to exercise this privilege within the limits of that State in violation of its laws. *Ward* v. *Race Horse*, 504.

6. On the trial of a Choctaw Indian for the murder of a negro at the Choctaw Nation in the Indian country, the status of the deceased is a question of fact, to be determined by the evidence, and the burden of proof is on the government to sustain the jurisdiction of the court by evidence. *Lucas* v. *United States*, 612.

7. Statements alleged to have been made by the negro in his lifetime that he did not belong to the Indian country are not admissible for that purpose. *Ib.*

See RAILROAD, 7.

INTEREST.

The rule in cases of tort is to leave the question of interest as damages to the discretion of the jury; but as it is evident from the record that the jury did not allow interest, but based their verdict entirely upon the number of tons of hay destroyed at the market value per ton, this court acquiesces in the disposition made by the Circuit Court of Appeals of the question made in respect of the instruction of the trial court on the subject of interest. *Eddy* v. *Lafayette*, 456.

JUDGMENT.

A decree or judgment by the Circuit Court of Appeals, affirming a decree or judgment of a Circuit Court, without specifying the sum for which

it is rendered, is a final decree or judgment, from which an appeal or writ of error will lie to this court. *Texas & Pacific Railway Co.* v. *Gentry*, 353.

See BANKRUPT.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. In a suit in a state court to quiet title, two claims to title were set up by the plaintiff. The first was that his title had been acquired by adverse possession, sufficient under the local law. On this point the trial court found that, in 1862, the plaintiff's grantor entered into possession of the land in question, and that he and the plaintiff had since been continuously and then were in actual, notorious and adverse possession thereof, under color and claim of title. The second claim was under a deed from husband and wife, executed by the former under an alleged power of attorney from the latter which had been lost without having been recorded. On this point the trial court found that the existence and validity of the power of attorney was established. It entered a decree that the plaintiff was entitled to the possession of the land, that the defendant was not the owner of it, that the cloud be removed, and that the power of attorney be established. On appeal to the Supreme Court of the State this decree was affirmed. The case being brought here by writ of error the Chief Justice of the Supreme Court of the State certified that the question had been duly raised in the trial court whether the said power and the deed made under it, which, by the law at the time of its making were absolutely void, were made valid by the territorial act of February 2, 1888, and whether, if so made valid, it was not in violation of the Fourteenth Amendment to the Constitution. *Held*, that, as it was settled in the State that actual, uninterrupted and notorious possession, under claim of right, was sufficient without color of title, and that a void deed, accompanied with actual occupancy, was sufficient to set the statute of limitations in motion, the judgment could be sustained on the first point, which raised no Federal question, and that consequently this court was without jurisdiction. *Dibble* v. *Bellingham Bay Land Co.*, 63.

2. If the record discloses that a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution of the United States, and another question not Federal has also been raised and decided against such party, and the decision of the latter question is sufficient notwithstanding the Federal question to sustain the decision, this court will not review the judgment. *Ib.*

3. If it appears that the court did in fact base its judgment on such independent ground, or, where it does not appear on which of the two grounds the judgment was based, if the independent ground on which

it might have been based was a good and valid one, sufficient in itself to sustain the judgment, this court will not assume jurisdiction. *Ib.*

4. This result cannot be in any respect controlled by the certificate of the presiding judge, for the office of the certificate, as it respects the Federal question, is to make more certain and specific what is too general and indefinite in the record, but it is incompetent to originate the question. *Ib.*
5. If the conflict of a state law with the Constitution and the decision by the state court in favor of its validity are relied on, this must appear on the face of the record before the decision can be reëxamined in this court, and this is equally true where the denial of a title, right, privilege or immunity under the Constitution and laws of the United States, or the validity of an authority exercised under the United States, is urged as the ground of jurisdiction. *Ib.*
6. No rule is more firmly established than that this court will follow the construction given by the Supreme Court of a State to a statute of limitations of a State, and there is no reason for disregarding it in this instance. *Ib.*
7. In order to give this court appellate jurisdiction under the act of March 3, 1891, c. 517, § 5, upon the ground that the case "involves the construction or application of the Constitution of the United States," a construction or application of the Constitution must have been expressed or requested in the Circuit Court. *Cornell* v. *Green*, 75.
8. A decree of the Circuit Court, dismissing on general demurrer, for want of equity, a bill filed by a grantee of land, praying that proceedings for foreclosure, to which his grantor was made a party as executor and as guardian, but not individually, be set aside for the alleged reason that the grantor was not a party to or bound by those proceedings, does not "involve the construction or application of the Constitution of the United States," within the meaning of the act of March 3, 1891, c. 517, § 5. *Ib.*
9. The scheme of the judiciary act of March 3, 1891, c. 517, 26 Stat. 826, precludes the contention that certificates of division of opinion in criminal cases may still be had under Rev. Stat. §§ 651 and 697. *United States* v. *Rider*, 132.
10. Review by appeal, by writ of error or otherwise, must be as prescribed by that act, and review by certificate is limited by it to the certificate by the Circuit Courts, made after final judgment, of questions made as to their own jurisdiction; and to the certificate by the Circuit Courts of Appeal of questions of law in relation to which the advice of this court is sought as therein provided; and these certificates are governed by the same general rules as were formerly applied to certificates of division. *Ib.*
11. No appeal lies to this court from a decree of a Circuit Court of the

United States, ordering that the decree of the Circuit Court of Appeals in a suit for a perpetual injunction against infringement of a copyright be made a decree of the Circuit Court to which it was sent down with a mandate after hearing on appeal from the Circuit Court. *Webster* v. *Daly*, 155.

12. In this case application was made by the defendants below, after judgment, to the Supreme Court of Texas for a writ of error to the Court of Civil Appeals for the second district for the purpose of reviewing the judgment of that court, and the application was denied. *Held*, that this court has jurisdiction to reëxamine the judgment on writ of error to the Court of Civil Appeals. *Bacon* v. *Texas*, 207.
13. In case of a change of phraseology in an article in a state constitution, it is for the state courts to determine whether the change calls for a change of construction. *Ib.*
14. Where there are two grounds for the judgment of a state court, one only of which involves a Federal question, and the other is broad enough to maintain a judgment sought to be reviewed, this court will not look into the Federal question. *Ib.*
15. When a state court has based its decision on a local or state question, and this court in consequence finds it unnecessary to decide a Federal question raised by the record, the logical course is to dismiss the writ of error. *Ib.*
16. The objections of a creditor to the discharge of a bankrupt being dismissed for want of prosecution, the creditor filed his petition for revision in the Circuit Court of the United States. Issues were made up and the case heard. The Circuit Court held that the petition must be dismissed and an order to that effect was entered. Thereupon the creditor appealed to the Circuit Court of Appeals, which court dismissed the appeal for want of jurisdiction. Appeal was taken to this court. *Held*, that this court had jurisdiction of such an appeal, when it appeared affirmatively that the amount in controversy exceeded $1000, besides costs, which did not appear in this case. *Huntington* v. *Saunders*, 319.
17. The ruling of the Supreme Court of Illinois, on the issues in this case that the statutes of Illinois contain both a prohibition and a penalty, that the prohibition makes void *pro tanto* every contract in violation thereof, and that while section 11, prohibiting corporations from pleading the defence of usury, may prevent any claim to the benefits of the penalty, it does not give to the other party a right to enforce a contract made in violation of the prohibition, brings the case within the settled law that, where the record discloses that a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, and another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judg-

ment, this court will not review the judgment. *Union National Bank* v. *Louisville, New Albany & Chicago Railway Co.*, 325.

18. In cases brought by appeal from the Supreme Courts of the Territories, this court cannot consider the weight or the sufficiency of the evidence, but only whether the facts found by the court below support the judgment, and whether there was any error in rulings, duly excepted to, upon the admission or rejection of evidence. *Grayson* v. *Lynch*, 468.
19. The statute of the Territory of New Mexico requiring its Supreme Court to review causes in which a jury has been waived in the same manner and to the same extent as if it had been tried by a jury makes no essential change in the previous practice, and cannot affect the power of this court under the act of April 7, 1874, c. 80, 18 Stat. 27. *Ib.*
20. If a court can only review cases tried without a jury as it would review cases tried by a jury, it can only review them for errors apparent upon the record, or incorporated in a bill of exceptions. *Ib.*
21. Where a jury is waived the findings of fact by the court have the same force and effect as the verdict of a jury, and the appellate court will not set aside the findings and order a new trial for the admission of incompetent evidence, if there be other competent evidence to support the conclusion. *Ib.* .

See JUDGMENT.

B. JURISDICTION OF CIRCUIT COURTS OF APPEALS.

The District Court of Alaska is to be regarded as the Supreme Court of that Territory, within the meaning of the 15th section of the act of March 3, 1891, c. 517, 26 Stat. 826, and of the order of this court assigning Alaska to the Ninth Circuit; and the decree of the District Court of Alaska is subject to review by the Circuit Court of Appeals of that circuit. *Steamer Coquitlam* v. *United States*, 346.

C. JURISDICTION OF CIRCUIT COURTS.

1. In determining the jurisdictional amount in an action in a Circuit Court of the United States to recover on a municipal bond, the matured coupons are to be treated as separable independent promises, and not as interest due upon the bond. *Edwards* v. *Bates County*, 269.
2. When it is the purpose to present a case under the clause of the Constitution relating to due process of law, and both parties are citizens of the same State, the grounds upon which a Federal court can take cognizance of a suit of that character and between such parties must be clearly and distinctly stated in the bill. *Hanford* v. *Davies*, 273.

3. Jurisdiction in such case cannot be inferred argumentatively from averments in the pleadings, but the averments must be positive. *Ib.*

D. JURISDICTION OF THE COURT OF CLAIMS.

The Court of Claims had no jurisdiction over this case, as the claim of the defendant in error is a "War Claim," growing out of the appropriation of property by the army while engaged in the suppression of the rebellion. *United States* v. *Winchester & Potomac Railroad Co.*, 244.

KENTUCKY.

See BOUNDARY.

LIFE INSURANCE.

1. A society extending throughout the country, which was divided into lodges, whose members were subject to an annual lodge assessment and had also the right to become members of a separate assessable organization, within the society, called the endowment fund, having had some differences with a member who had paid all his endowment assessments but was in arrear for his dues to his lodge, the supreme head, (called the board of control,) after careful consideration, decided that in view of the fact that the keeper of records and seals of the lodge to which he belonged failed to notify the section of which he was a member of the fact that he was in arrears for dues to his lodge and that the lodge had failed to suspend him in accordance with the law, and that his section of the endowment rank had received his monthly assessments up to the date of his death, the endowment rank was liable for the full amount of the endowment. *Held*, that while the courts are not bound by this construction of the organization, the association has no right to complain if its certificate holders act upon such interpretation, and is not in a position to claim that the ruling was more liberal than the facts of the case or a proper construction of the rules would warrant; and that whether the ruling was right or wrong it established a course of business on the part of the society, upon which its certificate holders had a right to rely. *Knights of Pythias* v. *Kalinski*, 289.
2. The continued receipt of assessments upon an endowment certificate up to the day of the holder's death is, under the circumstances of this case, a waiver of any technical forfeiture by reason of non-payment of lodge dues. *Ib.*

LOCAL LAW.

1. In this case, while there was in form a separate judgment, in favor of each of the persons for whose benefit the action was brought, the statute of Texas creates a single liability on the part of the defendant,

and contemplates but one action for the sole and exclusive benefit of the surviving husband, wife, children and parents of the persons whose death was caused in any of the specified modes. *Texas & Pacific Railway Co.* v. *Gentry*, 353.

2. In an action under Title 36 of the Revised Statutes of the Territory of Arizona to recover for injuries causing death, brought in the name of the widow of the deceased, for the benefit of herself and of his children and parents, she has no authority to lessen or alter the shares awarded by the jury to the other beneficiaries; and if the jury return a verdict for excessive damages, and she files a remittitur of a large part of the whole verdict, lessening the share awarded to each beneficiary, and reducing to nominal damages the shares of the parents of the deceased, and the court thereupon renders judgment according to the verdict, as reduced by the remittitur, the defendant, upon writ of error, is entitled to have the judgment reversed and the verdict set aside. *Southern Pacific Company* v. *Tomlinson*, 369.

Louisiana. *See* CONTRACT.

MINERAL LAND.

A locator of an unpatented mining claim under the laws of the United States, having only the possessory rights conferred by those laws, has not such an interest in the property as will sustain a claim for dower therein, against the grantee of the husband. *Black* v. *Elkhorn Mining Co.*, 445.

MORTGAGE.

See CONSTITUTIONAL LAW, 4.

MUNICIPAL BOND.

See JURISDICTION, C, 1.

NEGLIGENCE.

It is only when facts are such that all reasonable men must draw the same conclusion from them, that the question of negligence is ever considered as one of law for the court. *Texas & Pacific Railway Co.* v. *Gentry*, 353.

See CONTRIBUTORY NEGLIGENCE.

NEGOTIABLE PAPER.

See CONTRACT.

NEUTRALITY LAWS.

1. The several acts described in and made punishable by Rev. Stat. § 5286, are stated therein separately and disjunctively, connected by

the conjunction "or." The indictment in this case, charging that the defendants committed some of those acts, connects them by the conjunction "and." No question of duplicity was raised by the defendants' counsel. The trial judge instructed the jury that the evidence would not justify a conviction of anything more than providing the means for, or aiding the military expeditions set forth in the indictment, by furnishing transportation for their men, etc. *Held*, that the verdict could not be disturbed on the ground that more than one offence was included in the same count of the indictment. *Wiborg* v. *United States*, 632.

2. Providing, or preparing the means of transportation for such a military expedition or enterprise as is referred to in Rev. Stat. § 5286, is one of the forms of provision or preparation therein denounced. *Ib.*
3. A hostile expedition, dispatched from a port of the United States, is within the words "carried on from thence." *Ib.*
4. A body of men went on board a tug in a port of the United States, loaded with arms; were taken by it thirty or forty miles and out to sea; met a steamer outside the three line limit by prior arrangement; boarded her with the arms, opened the boxes and distributed the arms among themselves; drilled to some extent; were apparently officered; and then, as preconcerted, disembarked to effect an armed landing on the coast of Cuba, when the United States were at peace with Spain. *Held*, that this constituted a military expedition or enterprise within the provisions of the Revised Statutes. *Ib.*
5. On the question whether the defendants aided the expedition with knowledge of the facts, the jury were instructed that they must acquit unless they were satisfied beyond reasonable doubt that defendants, when they left Philadelphia, had knowledge of the expedition and its objects, and had arranged and provided for its transportation. *Held*, that the defendants had no adequate ground of complaint on this branch of the case. *Ib.*
6. Assuming that a secret combination between the party and the captain or officers of the Horsa had been proven, then, on the question whether such combination was lawful or not, the declarations of those engaged in it explanatory of acts done in furtherance of its object were competent. *Ib.*

PATENT FOR INVENTION.

1. If, under any circumstances, a patentee can sue to recover for the use of a patented article, made before the letters-patent were granted, he cannot do so when he was not the inventor of the thing patented; when the device had been in public use for more than two years before the patent was applied for; when the alleged use was by the United States; and when the government, so far from agreeing to

pay a royalty for it, had protested against any patent being issued for it. *Kirk* v. *United States*, 49.

2. The Singer machines were covered by patents, some fundamental, some accessory, whereby there was given to them a distinctive character and form which caused them to be known as the Singer machines, as deviating and separable from the form and character of machines made by other manufacturers. *Singer Manufacturing Co.* v. *June Manufacturing Co.*, 169.
3. The word "Singer" was adopted by Singer & Co. or the Singer Manufacturing Company as designative of their distinctive style of machines, rather than as solely indicating the origin of manufacture. *Ib.*
4. The patents which covered them gave to the manufacturers of the Singer sewing machines a substantial monopoly whereby the name "Singer" came to indicate the class and type of machines made by that company or corporation, and constituted their generic description, and conveyed to the public mind the machines made by them. *Ib.*
5. On the expiration of the patent the right to make the patented article and to use the generic name passed to the public with the dedication resulting from the expiration of the patent. *Ib.*
6. On the expiration of a patent one who uses a generic name, by which articles manufactured under it are known, may be compelled to indicate that the articles made by him are made by him and not by the proprietors of the extinct patent. *Ib.*
7. Where, during the life of a monopoly created by a patent, a name, whether it be arbitrary or be that of the inventor, has become, by his consent, either express or tacit, the identifying and generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created; and where another avails himself of this public dedication to make the machine and use the generic designation, he can do so in all forms, with the fullest liberty, by affixing such name to the machines, by referring to it in advertisements and by other means; subject, however, to the condition that the name must be so used as not to deprive others of their rights or to deceive the public, and, therefore, that the name must be accompanied with such indications that the thing manufactured is the work of the one making it, as will unmistakably inform the public of that fact. *Ib.*

PRACTICE.

1. Without denying its power to pass upon a judgment of the Supreme Court of a Territory on a question of practice, in an equity case, this court is not inclined to do so unless it can perceive that injustice has been done. *Salina Stock Co.* v. *Salina Creek Irrigation Co.*, 109.
2. When the assignments of error are very numerous, it is practically found necessary to consider but a few of them. *Grayson* v. *Lynch*, 468.

3. A special finding of facts referred to in acts allowing parties to submit issues of fact in civil cases to be tried and determined by the court is not a mere report of the evidence, but a finding of those ultimate facts upon which the law must determine the rights of the parties. *Ib.*
4. If the findings of fact in such case be general, only such rulings of the court in the progress of the trial can be reversed as are presented by a bill of exceptions, which bill cannot be used to bring up the whole testimony for review. *Ib.*
5. Where a plain error has been committed in a matter vital to defendants, this court is at liberty to correct it, although the question may not be properly raised; and being of opinion that adequate proof of guilty knowledge or participation on the part of the mates is not shown by the record, it reverses the judgment as to them, although no exception was taken. *Wiborg* v. *United States*, 632.

See JURISDICTION, A, 15; LOCAL LAW, 2; RAILROAD, 4.

PRESUMPTION.

See RAILROAD, 3.

PUBLIC LAND.

1. While it is well settled that, in the administration of the public land system of the United States, questions of fact are for the consideration and judgment of the Land Department, and its judgment thereon is final, it is equally true that when, by act of Congress, a tract of land has been reserved from homestead and preëmption, or dedicated to any special purpose, proceedings in the Land Department in defiance of such reservation or dedication, although culminating in a patent, transfer no title; and the patent questioned in this case comes within that general rule of invalidity. *Burfenning* v. *Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 321.
2. Persons entitled under Rev. Stat. § 2304 to enter a homestead, in case the entry be made for less than 160 acres, may, under § 2306, make an additional entry for the deficiency, which right is transferable. *Webster* v. *Luther*, 331.
3. The instrument executed by Mrs. Robertson through which the defendants in error claim was not forbidden by any act of Congress, and was valid. *Ib.*
4. By the filing of the map of the line surveyed prior to December 24, 1867, for the route of the railroad now known as the Missouri, Kansas and Texas Railway, the route of the road was definitely fixed within the intent and meaning of the act of July 26, 1866, c. 270, 14 Stat. 289, granting lands to aid in its construction; and while the principal object in filing the map was to secure the withdrawal of the lands

granted, it also operated to definitely locate the line and limits of the right of way. *Missouri, Kansas & Texas Railway Co.* v. *Cook*, 491.

5. The grant of the lands and the grant of the right of way were alike grants *in præsenti*, and stood on the same footing; so that, before definite location, all persons acquiring any portion of the public lands after the passage of the act took the same subject to the right of way for the proposed road. *Ib.*

6. The rights of the settler in this case were acquired after the line had been located, and were not affected by the subsequent act of the company in changing the location. *Ib.*

See MINERAL LAND.

RAILROAD.

1. The wrongs specifically charged in the bill in this case are those which were set forth in the suit of *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway Company*, 151 U. S. 1; but there is this difference between the two cases, that in that case the Omaha Company demurred, and on the demurrer a decree was entered against it, whereas, in this case the Omaha Company took issue upon the charge of having committed such wrongs, and the testimony shows that it did not commit them. *Farmers' Loan & Trust Co.* v. *Chicago, Portage & Superior Railway Co.*, 31.

2. The act of the legislature of Wisconsin of 1882, revoking the grant of land to the Portage Company and bestowing it upon the Omaha Company, neither in terms nor by implication burdened the transfer with a continuing obligation for the debts of the Portage Company; and no creditor of the Portage Company had any legal or equitable right to any portion of those lands. *Ib.*

3. The law presumes in the entire absence of evidence, that a railroad employé, in crossing the track of the railroad on foot at night to go to his duty, looks and listens for coming trains before crossing. *Texas & Pacific Railway Co.* v. *Gentry*, 353.

4. It appears by the affidavit of the agent of the plaintiffs in error that he was their agent when service of process was made upon him, and that their allegation that he was not then their agent was therefore untrue. *Eddy* v. *Lafayette*, 456.

5. The second section of the act of March 3, 1887, c. 373, was intended to place receivers of railroads on the same plane with railroad companies, both as respects their liability to be sued for acts done while operating a railroad, and as respects the mode of service; and the service in the present case on an agent of the receivers was sufficient to bring them into court in a suit arising within the Indian Territory. *Ib.*

6. The terms of the summons were in accordance with the provisions of § 4868, Mansfield's Digest of Statutes of Arkansas, under which the summons was issued. *Ib.*

7. This action was brought by the defendants in error to recover the value of a large quantity of hay which it was alleged had been destroyed by a fire caused by sparks escaping from a locomotive through negligence, and falling on a quantity of dry grass and leaves that had been negligently allowed to accumulate on the railroad operated by the plaintiffs in error as receivers. The hay was cut from lands of the Creek nation under direction of Sallie M. Hailey, an Indian, one of the defendants in error, by Lafayette, a white man who was to receive an agreed part of the hay for cutting and curing it. *Held*, (1) That, in the absence of proof to the contrary it must be assumed that Mrs. Hailey was entitled to cut hay upon the land which she occupied in common with other members of the Creek nation; (2) That Lafayette, under his agreement with Mrs. Hailey and his performance of it, acquired an interest in the hay; (3) That an instruction to the jury "that evidence of a railroad company allowing combustible material to accumulate upon its track and right of way which is liable to take fire from sparks escaping from passing engines and communicate it to adjacent property, is sufficient to warrant the jury in imputing negligence to the company" was correct; (4) That there was no error in the treatment given by the Circuit Court of Appeals to the several assignments respecting the trial court's instructions on the subject of the respective duties of the railroad company and of the plaintiffs. *Ib.*

8. The plaintiff, an employé of the railway company, sued to recover for injuries caused to him by the unblocking of a frog, in consequence of which he was thrown down, and an engine passed over him before he could recover himself. There was contradictory testimony as to the condition of the frog before and after the accident. On the trial below the only issue presented was — the condition of the frog at the time of the accident: but the court in substance instructed the jury that if the company had once properly blocked the frog it incurred no liability to its employés by reason of the subsequent displacement of the blocking, unless such displacement was made with its knowledge or had continued for such length of time as to impute notice to it. The same point having been taken in this court, *Held*, (1) That there being a conflict of testimony as to the condition of the frog, that question of fact was properly submitted to the jury; (2) That while the position of law taken by the company in this court cannot be disputed, it was not taken or considered on the trial, and is not open for consideration here; (3) That although the case is not entirely clear, this court is not prepared to hold, on the record, that there was such error as would justify it in disturbing the judgment. *Union Pacific Railway Co.* v. *James*, 485.

9. Railroad corporations possess the powers which are expressly conferred by their charters, together with such powers as are fairly incidental thereto; and they cannot, except with the consent of the State, disable

themselves from the discharge of the functions, duties and obligations which they have assumed. *Union Pacific Railway Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 564.

10. The general rule is that a contract by which a railroad company renders itself incapable of performing its duties to the public or attempts to absolve itself from those obligations without the consent of the State, or a contract made by a corporation beyond the scope of its powers, express or implied, on a proper construction of its charter, cannot be enforced, or rendered enforceable by the application of the doctrine of estoppel; but where the subject-matter of the contract is not foreign to the purposes for which the corporation is created, a contract embracing whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorized, ought not, unless expressly prohibited, to be held by judicial construction to be *ultra vires*. *Ib.*
11. The contract with the Rock Island Company on the part of the Union Pacific Company which forms one subject of this controversy was one entirely within the corporate powers of the latter company, and, throughout the whole of it there is nothing which looks to any actual possession by the Rock Island Company of any of the Union Pacific property beyond that which was involved in its trains being run over the tracks under the direction of the other company; and this was an arrangement entirely within the corporate powers of the Union Pacific Company to make, and which was in no respect *ultra vires*. *Ib.*
12. The common object of the act of February 24, 1871, c. 67, regarding the construction of a bridge across the Missouri at Omaha, and the act of July 25, 1866, c. 246, touching the construction of several bridges across the Mississippi, was the more perfect connection of the roads running to the respective bridges on either side; and being construed liberally, as they should be, the scheme of Congress in the act of 1871 was to accomplish a more perfect connection at or near Council Bluffs, Iowa, and Omaha, Nebraska. *Ib.*
13. It being within the power of the Union Pacific Company to enter into contracts for running arrangements, including the use of its track and the connections and accommodations provided for by the contract in controversy, and that contract not being open to the objection that it disables the Union Pacific Company from discharging its duties to the public, it will not do to hold it void, and to allow the Union Pacific Company to escape from the obligations which it has assumed, on the mere suggestion that at some time in the remote future a contingency may arise which will prevent it from performing its undertakings in the contract. *Ib.*
14. Other objections made on behalf of the Union Pacific Company disposed of as follows: (1) The provision in the contract respecting reference does not take from the company the full control of its road; (2) Its acts in constructing its road in Nebraska, not having been

objected to by the State, must, in the absence of proof to the contrary, be deemed valid; (3) The contract is not to be deemed invalid because, during its term, the charter of the Rock Island Company will expire; (4) The Republican Valley Company, being a creation of the Pacific Company, is bound by the contract; (5) The Pacific Company has power, under its charter, to operate the lines contemplated by these contracts, it being a general principle that where a corporate contract is forbidden by a statute or is obviously hostile to the public advantage or convenience, the courts disapprove of it, but when there is no express prohibition and it is obvious that the contract is one of advantage to the public, the rule is otherwise. *Ib.*

15. The contracts in question were in proper form; signed and executed by the proper executive officers; attested by the corporate seal of the Union Pacific Company; approved and authorized by the executive committee, which had all the powers of the board; and ratified, approved and confirmed by the stockholders at their next annual meeting: and this was sufficient to bind the Union Pacific Company, although no action by the board was had. *Ib.*

16. These contracts were such contracts as a court of equity can specifically enforce and thereby prevent the intolerable travesty of justice involved in permitting parties to refuse performance of their contracts at pleasure, by electing to pay damages for the breach. *Ib.*

17. The public interests involved in these contracts demand that they should be upheld and enforced. It is to the higher interest of all, corporations and public alike, that it be understood that there is a binding force in all contract obligations; that no change of interest or change of management can disturb their sanctity or break their force; but that the law which gives to corporations their rights, their capacities for large accumulations, and all their faculties, is potent to hold them to all their obligations, and so make right and justice the measure of all corporate as well as individual action. *Ib.*

See CONSTITUTIONAL LAW, 6; LOCAL LAW, 2, 3; CONTRIBUTORY NEGLIGENCE; NEGLIGENCE.

REHEARING.

Petitions for rehearing of a case decided March 30, 1896, 162 U. S. 170, are denied. *Telfener* v. *Russ*, 101.

REMITTITUR.

See LOCAL LAW, 2.

REMOVAL OF CAUSES.

Congress has not, by Rev. Stat. § 641, authorized a removal of a prosecution from a state court upon an allegation that jury commissioners or other subordinate officers had, without authority derived from the constitution and laws of the State, excluded colored citizens from

juries because of their race. Said section 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 of or inability to enforce in the judicial tribunals of a State, rights secured by any law providing for the equal civil rights of citizens of the United States, to which § 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 and during the trial of a case. *Neal* v. *Delaware*, 103 U. S. 370, and *Gibson* v. *Mississippi*, 162 U. S. 565, affirmed to the above points. *Murray* v. *Louisiana*, 101.

SCIRE FACIAS.

See BANKRUPT.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See ALIEN IMMIGRANT;
CONSTITUTIONAL LAW, 6, 9;
CRIMINAL LAW, 3;
DRAWBACK;
EQUITY, 4;
INDIANS, 1;
JURISDICTION, A, 7, 8, 9, 10, 19; B;
NEUTRALITY LAWS, 1, 2, 3;
PUBLIC LAND, 2, 4;
RAILROAD, 5, 12;
REMOVAL OF CAUSES.

B. STATUTES OF STATES AND TERRITORIES.

Arizona. *See* LOCAL LAW, 2.
Arkansas. *See* RAILROAD, 6.
Georgia. *See* CONSTITUTIONAL LAW, 7.
Illinois. *See* CONSTITUTIONAL LAW, 6; JURISDICTION, A, 17.
Indiana. *See* CONSTITUTIONAL LAW, 2.
Kansas. *See* CONSTITUTIONAL LAW, 3, 4.
Louisiana. *See* CONSTITUTIONAL LAW, 11.
New Mexico. *See* JURISDICTION, A, 19.
New York. *See* TAX AND TAXATION, 3.
Texas. *See* LOCAL LAW, 1.
Washington. *See* JURISDICTION, A, 1.
Wisconsin. *See* RAILROAD, 2.

TAX AND TAXATION.

1. The mandates in these cases, (161 U. S. 134,) are recalled, and so much of the judgment of the state court as permits a recovery against the holders of the old stock in the bank is reversed; and the judgment, so far as it permits a recovery for taxes assessed against the holders of the new shares in the bank, is affirmed. *Bank of Commerce* v. *Tennessee*, 416.
2. Personal property, bequeathed by will to the United States, is subject to an inheritance tax under state law. *United States* v. *Perkins*, 625.
3. Under the Statutes of New York the United States are not a corporation, exempted from such inheritance tax. *Ib.*

See CONSTITUTIONAL LAW, 1, 2.

TRADE MARK.

See PATENT FOR INVENTION, 2 to 7.

TORT.

1. In an action to recover for injuries suffered by reason of disease being communicated to herds of plaintiffs' cattle through negligence of the defendants in handling and managing their herds of cattle, allegations concerning the particular spot where the disease was communicated are not material and may be disregarded — especially if never called to the attention of the trial court. *Grayson* v. *Lynch*, 468.
2. Witnesses not experts may testify as to symptoms observed by them in the progress of the disease. *Ib.*
3. The plaintiff being in uncontroverted possession of the land on which his cattle were grazing, it is immaterial in this action whether his possession was lawful. *Ib.*
4. The objections to the admissibility of the testimony of the chief of the veterinary division of the Department of Agriculture, and of others, as experts have no merit. *Ib.*
5. The court was not bound to find, upon the facts, that the plaintiffs were guilty of contributory negligence: what care it was necessary for the plaintiffs to take, and was a proper question for the court. *Ib.*

See INTEREST.

ULTRA VIRES.

See RAILROAD, 10, 11.

VARIANCE.

No variance between the allegations of a pleading and the proofs offered to sustain it is material unless it be of a character to mislead the opposite party. This rule is applied to sundry assignments of error. *Grayson* v. *Lynch*, 468.

WAR CLAIM.

See JURISDICTION, D.

WARRANTY.

See CONTRACT.