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ADMIRALTY.

A New York corporation owned and operated steamships plying between that port and Brazil. A Pennsylvania company was in the habit of supplying these ships with coal as ordered, charging the New York company therefor upon its books, and as further security for the running indebtedness, filed specifications of lien against the vessels under a statute of New York. Subsequently the New York company began to employ in their business other steamers under time charter parties which required the charterers to provide and pay for all coals furnished them, and the Pennsylvania company supplied these ships also with coals, knowing that they were not owned by the New York company, and understanding, although not absolutely knowing, and not inquiring about it, that the charterers were required to provide and pay for all needed coals. None of such coals were supplied under orders of the master of a chartered vessel, but the bills therefor were rendered to the New York company, which, when the supplies were made owed nothing for the hire of the vessels. The coals were not required in the interest of the owners of the chartered vessels. Proceedings having been taken in admiralty to enforce liens for coal against the vessel, *Held*, (1) That as the libellant was chargeable with knowledge of the provisions of the charter party no lien could be asserted under maritime law for the value of the coal so supplied; (2) Without deciding whether the statute of New York would be unconstitutional if interpreted as claimed by the libellant, it gives no lien where supplies are furnished to a foreign vessel on the order of the charterer, the furnisher knowing that the charterer does not represent the owner, but, by contract with the owner, has undertaken to furnish such supplies at his own cost. *The Kate*, 458.

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CLAIMS AGAINST THE UNITED STATES.

1. In actions in the Court of Claims interest prior to the judgment cannot be allowed to claimants, against the United States; but the provisions of Rev. Stat. § 966 peremptorily require it to be allowed to the United States, against claimants, under all circumstances to which the statute applies, and without regard to equities which might be considered between private parties. *United States* v. *Verdier*, 213.
2. S. contracted with the United States, in 1888, to erect a custom-house at Galveston. H. was his surety on a bond to the United States for the faithful performance of that contract. The contract gave the government a right to retain a part of the price until the work should be finished. In consideration of advances made, and to be made, by a bank, S. gave it in 1890, written authority to receive from the United States the final contract payment so reserved. The Treasury declined to recognize this authority, but consented, on the request of the contractor, to forward, when due, a check for the final payment to the representative of the bank. Later S. defaulted in the performance of his contract, and H., as surety, without knowledge of what had taken place between the bank, the contractor and the Treasury, assumed performance of the contract obligations, and completed the work, disbursing, in so doing, without reimbursement, an amount in excess of the reserved final payment. The bank and H., each by a separate action sought to recover that reserved sum from the government. The cases being heard together it is *Held*, that, a claim against the government not being transferable, the rights of the parties are equitable only, and the equity, if any, of the bank in the reserved fund, being acquired in 1890, was subordinate to the equity of H. acquired in 1888. *Prairie State Bank* v. *United States*, 227.

See PUBLIC LAND, 5, 6.

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CONSTITUTIONAL LAW.

1. In a suit, brought in a Circuit Court of the United States by an alien against a citizen of the State in which the court sits, claiming that an

act about to be done therein by the defendant to the injury of the plaintiff, under authority of a statute of the State, will be in violation of the Constitution of the United States, and also in violation of the constitution of the State, the Federal courts have jurisdiction of both classes of questions; but, in exercising that jurisdiction as to questions arising under the state constitution, it is their duty to be guided by and follow the decisions of the highest court of the State; (1), as to the construction of the statute; and (2), as to whether, if so construed, it violates any provision of that constitution. *Loan Association* v. *Topeka*, 20 Wall. 655, shown to be in harmony with this decision. *Fallbrook Irrigation District* v. *Bradley*, 112.

2. The statute of California of March 7, 1887, to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, and the several acts amendatory thereof having been clearly and repeatedly decided by the highest court of that State not to be in violation of its constitution, this court will not hold to the contrary. *Ib.*

3. *Davidson* v. *New Orleans*, 96 U. S. 97, 104, cited and affirmed to the point that "whenever by the laws of a State or by state authority a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections." *Ib.*

4. There is no specific prohibition in the Federal Constitution which acts upon the State in regard to their taking private property for any but a public use. *Ib.*

5. What is a public use, for which private property may be taken by due process of law, depends upon the particular facts and circumstances connected with the particular subject-matter. *Ib.*

6. The irrigation of really arid lands is a public purpose, and the water thus used is put to a public use; and the statutes providing for such irrigation are valid exercises of legislative power. *Ib.*

7. The land which can be properly included in any irrigation district under the statutes of California is sufficiently limited to arid, unproductive land by the provisions of the acts. *Ib.*

8. Due process of law is furnished, and equal protection of the law given in such proceedings, when the course pursued for the assessment and collection of taxes is that customarily followed in the State, and when the party who may be charged in his property has an opportunity to be heard. *Ib.*

9. The irrigation acts make proper provisions for a hearing as to whether the petitioners are of the class mentioned or described in them; whether they have complied with the statutory provisions; and whether their lands will be benefited by the proposed improvement. They make it the duty of the board of supervisors, when landowners deny that the signers of a petition have fulfilled the requirements of law, to give a hearing or hearings on that point. They provide for due notice of the proposed presentation of a petition; and that the irrigation districts when created in the manner provided are to be public corporations with fixed boundaries. They provide for a general scheme of assessment upon the property included within each district, and they give an opportunity to the taxpayer to be heard upon the questions of benefit, valuation and assessment; and the question as to the mode of reaching the results, even if in some cases tne results are inequitable, does not reach to the level of a Federal constitutional problem. In all these respects the statutes furnish due process of law, within the meaning of that term as used in the Fourteenth Amendment to the Constitution of the United States. *Ib.*

10. The granting, by a trial court, of a nonsuit for want of sufficient evidence to warrant a verdict for the plaintiff is no infringement of the constitutional right of trial by jury. *Coughran* v. *Bigelow*, 301.

11. The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States. *Missouri Pacific Railway Co.* v. *Nebraska*, 403.

12. A statute of a State, by which, as construed by the Supreme Court of the State, a board of transportation is authorized to require a railroad corporation, which has permitted the erection of two elevators by private persons on its right of way at a station, to grant upon like terms and conditions a location upon that right of way to other private persons in the neighborhood, for the purpose of erecting thereon a third elevator, in which to store their grain from time to time, is a taking of private property of the railroad corporation for a private use, in violation of the Fourteenth Article of Amendment of the Constitution of the United States. *Ib.*

13. The legislature of Kentucky, by an act passed in 1834, created the Covington and Lexington Turnpike Road Company with authority to construct a turnpike from Covington to Lexington. One section prescribed the rates of tolls which might be exacted; another provided "that if at the expiration of five years after the said road has been completed, it shall appear that the annual net dividends for the two years next preceding of said company, upon the capital stock expended upon said road and its repairs, shall have exceeded the average of fourteen per cent per annum thereof, then in that case, the legislature reserves to itself the right, upon the fact being made known, to reduce

the rates of toll, so that it shall give that amount of dividends per annum, and no more." In 1851 two new corporations were created out of the one created by the act of 1834, one to own and control a part of the road, and the other the remaining part, and each of the new companies was to possess and retain "all the powers, rights and capacities in severalty granted by the act of incorporation, and the amendments thereto, to the original company." In 1865 an act was passed reducing the tolls to be collected on the Covington and Lexington turnpike. In 1890 another act was passed largely reducing still further the tolls which might be exacted. *Held*, (1) That the new corporations created out of the old one did not acquire the immunity and exemption granted by the act of 1834 to the original company from legislative control as to the extent of dividends it might earn; (2) That the statute of Kentucky passed February 14, 1856, reserving to the legislature the power to amend or repeal at will charters granted by it, had no application to charters granted prior to that date; (3) That an exemption or immunity from taxation is never sustained unless it has been given in language clearly and unmistakably evincing a purpose to grant such immunity or exemption; (4) That corporations are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law as well as a denial of the equal protection of the laws; (5) That the principle is reaffirmed that courts have the power to inquire whether a body of rates prescribed by a legislature is unjust and unreasonable and such as to work a practical destruction of rights of property, and if found so to be, to restrain its operation, because such legislation is not due process of law; (6) That the facts stated make a *prima facie* case invalidating the act of 1890, as depriving the turnpike company of its property without due process of law. Where a defence arises under an act of Congress or under the Constitution, the question whether the plea or answer sufficiently sets forth such a defence is a question of Federal law, the determination of which cannot be controlled by the judgment of the state court; (7) That when a question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered; and if the establishment of new lines of transportation should cause a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation operating the road should be allowed to maintain rates that would be unjust to those who must or do use its property, but that the public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends; (8) That the constitutional provision forbidding a denial of the equal protection of the laws, in its application to corporations operating public highways, does not require that all corporations exacting tolls should be placed upon the

same footing as to rates; but that justice to the public and to stockholders may require in respect to one road rates different from those prescribed for other roads; and that rates on one road may be reasonable and just to all concerned, while the same rates would be exorbitant on another road. *Covington & Lexington Turnpike Co.* v. *Sandford*, 578.

14. The license tax imposed upon express companies doing business in Florida by § 9 of the statutes of that State, approved June 2, 1893, c. 4115, as construed by the Supreme Court of that State applies solely to business of the company within the State, and does not apply to or affect its business which is interstate in character; and being so construed, the statute does not, in any manner, violate the Federal Constitution. *Osborne* v. *Florida*, 650.

See NATIONAL BANK, 2.

CONTRACT.

The only error urged in the court below, or noticed in its opinion, and which, consequently, can be considered here, goes to the insufficiency of the proof of the contract set up in the complaint, in which this court finds no error. *Old Jordan Mining Co.* v. *Société Anonyme des Mines*, 261.

See FRAUDS, STATUTE OF, 2;
PRINCIPAL AND SURETY.

COPYRIGHT.

See JURISDICTION, A, 2.

CORPORATION.

A corporation organized under the laws of a State is a citizen of the United States within the meaning of that term as used in § 1 of the act of March 3, 1891, c. 538, providing for the adjudication and payment of claims arising from Indian depredations. *United States & Sioux Nation* v. *Northwestern Transportation Co.*, 686.

See CONSTITUTIONAL LAW, 11;
MUNICIPAL CORPORATION;
TAX AND TAXATION, 1, 2.

COSTS.

See JURISDICTION, A, 6; B, 3.

COURT OF CLAIMS.

See JURISDICTION, A, 11; C.

CRIMINAL LAW.

1. G., B., H., C., S. and J. were indicted April 16 for assault with intent to kill EM.; also, on the same day, for assault with intent to kill SM.; also, May 1, for arson of the dwelling house of EM.; and, on the same 16th of April, G., B. and H. were indicted for arson of the dwelling house of BM. The court ordered the four indictments consolidated. All the defendants except J. were then tried together, and the trials resulted in separate verdicts of conviction, and the prisoners so convicted were severally sentenced to terms of imprisonment. *Held*, that the several charges in the four indictments were for offences separate and distinct, complete in themselves, independent of each other, and not provable by the same evidence; and that their consolidation was not authorized by Rev. Stat. § 1024. *McElroy* v. *United States*, 76.
2. Such a joinder cannot be sustained where the parties are not the same, and where the offences are in nowise parts of the same transaction, and depend upon evidence of a different state of facts as to each or some of them. *Ib.*
3. The record showed an indictment, arraignment, plea, trial, conviction and the following recital: "This cause coming on to be heard upon the motion in arrest of judgment, and after being argued by counsel *pro* and *con*, and duly considered by the court, it is ordered that the said motion be, and the same is hereby denied. The defendant, Sandy White, having been convicted on a former day of this term, and he being now present in open court and being asked if he had anything further to say why the judgment of the court should not be pronounced upon him sayeth nothing, it is thereupon ordered by the court that the said defendant, Sandy White, be imprisoned in Kings county penitentiary, at Brooklyn, New York, for the period of one year and one day, and pay the costs of this prosecution, for which let execution issue." *Held*, that this was a sufficient judgment for all purposes. *Sandy White* v. *United States*, 100.
4. Entries made by a jailor of a public jail in Alabama, in a record book kept for that purpose, of the dates of the receiving and discharging of prisoners confined therein, made by him in the discharge of his public duty as such officer, are admissible in evidence in a criminal prosecution in the Federal courts, although no statute of the State requires them. *Ib.*
5. When a jury has been properly instructed in regard to the law on any given subject, the court is not bound to grant the request of counsel to charge again in the language prepared by counsel, or if the request be given before the charge is made, the court is not bound to use the language of counsel, but may use its own language so long as the correct rule upon the subject requested be given. *Ib.*
6. Section 5438 of the Revised Statutes (codified from the act of March 2, 1863, c. 67, 12 Stat. 696) is wider in its scope than section 4746, (codified from the act of March 3, 1873, c. 234, 17 Stat. 575,) and its

provisions were not repealed by the latter act. *Edgington* v. *United States*, 361.

7. On the trial of a person accused of the commission of crime, he may, without offering himself as a witness, call witnesses to show that his character was such as to make it unlikely that he would be guilty of the crime charged; and such evidence is proper for the consideration of the jury in determining whether there is a reasonable doubt of the guilt of the accused. *Ib.*
8. The exceptions to this charge are taken in the careless way which prevails in the Western District of Arkansas. *Acers* v. *United States*, 388.
9. In a trial for assault with intent to kill, a charge which distinguishes between the assault and the intent to kill, and charges specifically that each must be proved, that the intent can only be found from the circumstances of the transaction, pointing out things which tend to disclose the real intent, is not objectionable. *Ib.*
10. There is no error in defining a deadly weapon to be "a weapon with which death may be easily and readily produced; anything, no matter what it is, whether it is made for the purpose of destroying animal life, or whether it was not made by man at all, or whether it was made by him for some other purpose, if it is a weapon, or if it is a thing by which death can be easily and readily produced, the law recognizes it as a deadly weapon." *Ib.*
11. With reference to the matter of justifying injury done in self-defence by reason of the presence of danger, a charge which says that it must be a present danger, "of great injury to the person injured, that would maim him, or that would be permanent in its character, or that might produce death," is not an incorrect statement. *Ib.*
12. The same may be said of the instructions in reference to self-defence based on an apparent danger. *Ib.*
13. There is no error in an instruction that evidence recited by the court to the jury leaves them at liberty to infer not only wilfulness, but malice aforethought, if the evidence is as so recited. *Allen* v. *United States*, 492.
14. There is no error in an instruction on a trial for murder that the intent necessary to constitute malice aforethought need not have existed for any particular time before the act of killing, but that it may spring up at the instant, and may be inferred from the fact of killing. *Ib.*
15. The language objected to in the sixth assignment of error is nothing more than the statement, in another form, of the familiar proposition that every man is presumed to intend the natural and probable consequences of his own act. *Ib.*
16. Mere provocative words, however aggravating, are not sufficient to reduce a crime from murder to manslaughter. *Ib.*
17. To establish a case of justifiable homicide it must appear that the assault made upon the prisoner was such as would lead a reasonable person to believe that his life was in peril. *Ib.*

18. There was no error in the instruction that the prisoner was bound to retreat as far as he could before slaying his assailant. *Beard* v. *United States*, 150 U. S. 550, and *Alberty* v. *United States*, 162 U. S. 499, distinguished from this case. *Ib.*

19. Flight of the accused is competent evidence against him, as having a tendency to establish guilt; and an instruction to that effect in substance is not error, although inaccurate in some other respects which could not have misled the jury. *Ib.*

20. The refusal to charge that where there is a probability of innocence there is a reasonable doubt of guilt is not error, when the court has already charged that the jury could not find the defendant guilty unless they were satisfied from the testimony that the crime was established beyond a reasonable doubt. *Ib.*

21. The seventeenth and eighteenth assignments were taken to instructions given to the jury after the main charge was delivered, and when the jury had returned to the court, apparently for further instructions. These instructions were quite lengthy and were, in substance, that in a large proportion of cases absolute certainty could not be expected; that although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If, upon the other hand, the majority was for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority. *Held*, that there was no error. *Ib.*

22. On the trial of a person indicted for murder, the defence being that the act was done in self-defence, the evidence on both sides was to the effect that the deceased used language of a character offensive to the accused; that the accused thereupon kicked at or struck at the deceased, hitting him lightly, and then stepped back and leaned against a counter; that the deceased immediately attacked the accused with a knife, cutting his face; and that the accused then shot and killed his assailant. The trial court in its charge pressed upon the jury the proposition that a person who has slain another cannot urge in justification of the killing a necessity produced by his own unlawful acts. *Held*, that this principle had no application in this case; that the law did not require that the accused should stand still and permit himself to be cut to pieces, under the penalty that, if he met the unlawful attack upon him, and saved his own life by taking that of his assailant,

he would be guilty of manslaughter; that under the circumstances the jury might have found that the accused, although in the wrong when he kicked or kicked at the deceased, did not provoke the fierce attack made upon him by the latter with a knife in any sense that would deprive him of the right of self-defence against such attack; and that the accused was entitled, so far as his right to resist the attack was concerned, to remain where he was, and to do whatever was necessary, or what he had grounds to believe at the time was necessary, to save his life, or to protect him from great bodily harm. *Rowe* v. *United States*, 546.

23. If a person under the provocation of offensive language, assaults the speaker personally, but in such a way as to show that there is no intention to do him serious bodily harm, and then retires under such circumstances as show that he does not intend to do anything more, but in good faith withdraws from further contest, his right of self-defence is restored when the person assaulted, in violation of law pursues him with a deadly weapon and seeks to take his life, or to do him great bodily harm. *Ib.*

24. The objection that the warrant of arrest of the plaintiff in error purports to be issued by a "Commissioner U. S. Court, Western District of Arkansas," instead of a "Commissioner of the Circuit Court," as required by statute, is frivolous and without merit. *Starr* v. *United States*, 627.

25. The ruling in *Hickory* v. *United States*, 160 U. S. 408, and the ruling in *Alberty* v. *United States*, 162 U. S. 499, that it is misleading for a court to charge a jury that, from the fact of absconding they may 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 are reaffirmed, and such an instruction in this case is held to be fatally defective. *Ib.*

26. On the trial of a person accused of rape, the court, in charging the jury, said: "The fact is that all the force that need be exercised, if there is no consent, is the force incident to the commission of the act. If there is non-consent of the woman, the force, I say, incident to the commission of the crime, is all the force that is required to make out this element of the crime." *Held*, that this charge covered the case where no threats were made; where no active resistance was overcome; where the woman was not unconscious; where there was simply non-consent on her part, and no real resistance; and that such non-consent was not enough to constitute the crime of rape. *Mills* v. *United States*, 644.

27. The plaintiffs in error were engaged in the management and conduct of two lotteries at Covington, Kentucky, opposite Cincinnati, Ohio, where there were drawings twice a day. They had agents in Cincinnati, each of whom, before drawing, sent a messenger to Covington with a paper showing the various numbers chosen, and the amounts bet, and the money less his commissions. After the drawing, what was termed

an "official print" was made, which consisted of a printed sheet showing the numbers in their consecutive order as they came out of the wheel, and on the line beneath, the numbers were arranged in their natural order. In addition to the "official print," these messengers, after the drawing has been had, brought back to the agents at Cincinnati what was known as "hit-slips." These were slips of paper with nothing but the winning numbers on them, together with a statement of a sum in dollars. The money to the amount named on the paper was brought over by the messenger to the agent in Cincinnati. Some of these messengers were arrested as they were coming from Covington, walking across the bridge, and just as they came to the Cincinnati side. They had with them in their pockets the official sheet and the hit-slips as above described, containing the result of the drawing, which had just been concluded at Covington. They had the money to pay the bets, and were on their way to the various agents in the city of Cincinnati. Procuring the carrying of these papers was the overt act towards the accomplishment of the conspiracy upon which the conviction of plaintiffs in error was based. There was nothing on any of the papers which showed that any particular person had any interest in or claim to any money which the messengers carried. The plaintiffs in error were indicted under Rev. Stat. § 5440, for conspiring to violate the act of March 2, 1895, c. 191, "for the suppression of lottery traffic through national and interstate commerce." *Held*, that the carrying of such books and papers from Kentucky to Ohio was not, within the meaning of the statute, a carrying of a paper certificate or instrument purporting to be or represent a ticket, chance, share or interest in or dependent upon the event of a lottery, so called gift-concert, or similar enterprise, offering prizes depending upon lot or chance, as provided for in such statute; as the lottery had already been drawn; as the papers carried by the messengers were not then dependent upon the event of any lottery; and as the language as used in the statute looks to the future. *France* v. *United States*, 676.

28. On a trial for murder, if the declarations of the deceased are offered, the fact that she had received extreme unction has a tendency to show that she must have known that she was in *articulo mortis*, and it is no error to admit evidence of it. *Carver* v. *United States*, 694.

29. Where the whole or a part of a conversation has been put in evidence by the government on the trial of a person accused of the commission of crime, the other party is entitled to explain, vary or contradict it. *Ib.*

30. When the dying declarations of the deceased are admitted on the trial of a person accused of the crime of murder, statements made by the deceased in apparent contradiction to those declarations are admissible. *Ib.*

CUSTOMS DUTIES.

In 1888, when the goods were imported to recover back the duties paid upon which this action was brought, a right of action accrued to an importer if he paid the duties complained of in order to get possession of his merchandise, and if he made his protest, in the form required, within ten days after the ascertainment and liquidation of the duties. *Saltonstall* v. *Birtwell*, 54.

DIRECT TAX REFUNDING ACT.

1. The last clause of section 4 of the act of March 2, 1891, c. 496, 26 Stat. 822, entitled "An act to credit and pay to the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by the act of Congress approved August 5, 1861," does not refer to or cover the cases of those owners who are mentioned in the first clause of the same section. *McKee* v. *United States*, 287.
2. *Brewer* v. *Blougher*, 14 Pet. 178, affirmed to the point that it is the duty of the court, in construing a statute, to ascertain the meaning of the legislature from the words used in it, and from the subject-matter to which it relates, and to restrain its meaning within narrower limits than its words import, if satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it. *Ib.*
3. A mortgage creditor, who was such at the time of the sale of real estate in South Carolina for non-payment of taxes to the United States under the tax acts of 1861, is not the legal owner contemplated by Congress in the act of March 3, 1891, c. 496, as entitled to receive the amount appropriated by that act in reimbursement of a part of the taxes collected; but the court, by this decision, must not be understood as expressing an opinion upon what construction might be justified under other facts and circumstances, and for other purposes. *Glover* v. *United States*, 294.
4. A tract of land in South Carolina was sold in 1863 under the direct tax acts for non-payment of the direct tax to the United States, and was bid in by the United States. It was then subdivided into two lots, A and B. Lot A, the most valuable, was resold at public auction to E who had a life estate in it, and it was conveyed to him. Lot B was also resold, but the present controversy relates only to Lot A. This lot was purchased by a person who had been a tenant for life of the whole tract before the tax sale. After the purchase and during his lifetime it was seized under execution and sold as his property. No part of the property has come into the possession of the remaindermen, claimants in this action, nor have they repurchased or redeemed any part of it from the United States, nor has any purchase been made on their account. Under the act of March 2, 1891, c. 496, 26 Stat. 822, they brought this suit in the Court of Claims to assert their claim as

owners in fee simple in remainder, and to recover one half of the assessed value of the tract. *Held*, that as they were admittedly owners, as they themselves neither purchased nor redeemed the land, and as they are not held by any necessary intendment of law to have been represented by the actual purchaser, they are entitled to the benefit of the remedial statute of 1891. *United States* v. *Elliott*, 373.

EQUITY.

See CLAIMS AGAINST THE UNITED STATES, 1, 2;
LACHES;
MUNICIPAL CORPORATION, 1;
PUBLIC MONEYS, 3;
RECEIVER.

ESTOPPEL.

See JURISDICTION, A, 8.

EVIDENCE.

Evidence of the reputation of a man for truth and veracity in the neighborhood of his home is equally competent to affect his credibility as a witness, whether it is founded upon dispassionate judgment, or upon warm admiration for constant truthfulness, or natural indignation at habitual falsehood; and whether his neighbors are virtuous or immoral in their own lives. Such considerations may affect the weight, but do not touch the competency, of the evidence offered to impeach or to support his testimony. *Brown* v. *United States*, 221.

See CRIMINAL LAW, 7, 19, 28, 29, 30;
FRAUD;
LOCAL LAW, 3, 4.

EXECUTIVE OFFICERS.

See PUBLIC MONEYS.

FEES.

1. A clerk of a Circuit Court who is directed by the court to keep a criminal final record book, in which are to be recorded indictments, informations, warrants, recognizances, judgments and other proceedings, in prosecutions for violating the criminal laws of the United States, is not entitled, in computing folios, to treat each document, judgment, etc., as a separate instrument, but should count the folios of the record as one instrument continuously from beginning to end. *United States* v. *Kurtz*, 49.
2. A clerk's right to a docket fee, as upon issue joined, attaches at the time such issue is in fact joined, and is not lost by the subsequent withdrawal of the plea which constituted the issue; and this rule

applies to cases in which, after issue joined, the case is discontinued on *nol. pros.* entered. *Ib.*

3. When a list of the jurors, with their residences, is required to be made by the order or practice of the court, and to be posted up in the clerk's office or preserved in the files, and no other mode of compensating the clerk is provided, it may be charged for by the folio. *Ib.*
4. The clerk is also entitled to a fee for entering an order of court directing him as to the disposition to be made of moneys received for fines, and for filing bank certificates of deposit for fines paid to the credit of the Treasurer of the United States. *Ib.*
5. The fees to which a marshal is entitled, under Rev. Stat. § 829, for attending criminal examinations in separate and distinct cases upon the same day and before the same commissioner, are five dollars a day; but when he attends such examinations before different commissioners on the same day he is entitled to a fee of two dollars for attendance before each commissioner. *United States* v. *McMahon*, 81.
6. A special deputy marshal, appointed under Rev. Stat. § 2021, to attend before commissioners and aid and assist supervisors of elections, is entitled to an allowance of five dollars per day in full compensation for all such services. *Ib.*
7. The marshal of the Southern District of New York, who transports convicts from New York City to the state penitentiary in Erie County in the Northern District of New York is entitled to fees at the rate of ten cents per mile for the transportation, instead of the actual expense thereof. *Ib.*
8. A marshal is not entitled to a fee of two dollars for serving temporary and final warrants of commitment.

FINDINGS OF FACT.

See MECHANIC'S LIEN.

FRAUD.

The rule that in all proceedings instituted to recover moneys or to set aside and annul deeds or contracts or other written instruments on the ground of alleged fraud practised by a defendant upon a plaintiff, the evidence tending to prove the fraud and upon which to found a verdict or decree must be clear and satisfactory extends to cases of alleged fraudulent representations, on the faith of which an officer of the government has done an official act upon which rights of the party making the representations may be founded; and in this case the evidence on the part of the plaintiff, when read in connection with that which was given on the part of the defendants, falls far short of the requirements of the rule. *Lalone* v. *United States*, 255.

FRAUDS, STATUTE OF.

1. The clause of the statute of frauds, which requires a memorandum in writing of "any agreement which is not to be performed within the space of one year from the making thereof," applies only to agreements which, according to the intention of the parties, as shown by the terms of their contract, cannot be fully performed within a year; and not to an agreement which may be fully performed within the year, although the time of performance is uncertain, and may probably extend, and may have been expected by the parties to extend, and does in fact extend, beyond the year. *Warner* v. *Texas & Pacific Railway Co.*, 418.
2. An oral agreement between a railroad company and the owner of a mill, by which it is agreed that, if he will furnish the ties and grade the ground for a switch opposite his mill, the company will put down the iron rails and maintain the switch for his benefit for shipping purposes as long as he needs it, is not within the statute of frauds, as an agreement not to be performed within a year. *Ib.*
3. *Packet Co.* v. *Sickles*, 5 Wall. 580, doubted. *Ib.*
4. The provisions of the statute of frauds of the State of Texas concerning sales or leases of real estate do not include grants of easements. *Ib.*

HABEAS CORPUS.

See JURISDICTION, A, 15, 16.

INDIAN DEPREDATIONS.

See CORPORATION.

INSOLVENCY.

See NATIONAL BANK, 1.

INTEREST.

See CLAIMS AGAINST THE UNITED STATES, 1.

JUDGMENT.

See CRIMINAL LAW, 3.

JUDICIAL QUESTION.

See JURISDICTION, A, 3.

JURY.

See CRIMINAL LAW, 21.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. Sections 651 and 697 of the Revised Statutes, relating to certificates of division in opinion in criminal cases, were repealed by the judiciary act of March 3, 1891, 26 Stat. 826, both as to the defendants in criminal prosecutions, and as to the United States; and certificates in such cases cannot be granted upon the request either of the defendants or of the prosecution. *Rider* v. *United States*, 163 U. S. 132, on this point adhered to. *United States* v. *Hewecker*, 46.
2. In an action between citizens of different States, brought in the Circuit Court of the United States, for the violation of an author's common law right in his unpublished manuscript, and in which the defendant relies on the Constitution and laws of the United States concerning copyrights, and, after judgment against him in the Circuit Court, takes the case by writ of error to the Circuit Court of Appeals, he is not entitled, as of right, to have its judgment reviewed by this court under the act of March 3, 1891, c. 517, § 6. *Press Publishing Co.* v. *Monroe*, 105.
3. The laws of California authorize the bringing of an action in its courts by the board of directors of an irrigation district, to secure a judicial determination as to the validity of the proceedings of the board concerning a proposed issue of bonds of the district, in advance of their issue. The Modesto District was duly organized under the laws of the State, and its directors, having defined the boundaries of the district, and having determined upon an issue of bonds for the purpose of carrying out the objects for which it was created, as defined by the laws of the State, commenced proceedings in a court of the State, seeking a judicial determination of the validity of the bonds which it proposed to issue. A resident of the district appeared and filed an answer. After a hearing, in which the defendant contended that the judgment asked for would be in violation of the Constitution of the United States, the proceedings resulted in a judgment in favor of the district. Appeal being taken to the Supreme Court of the State, it was there adjudged that the proceedings were regular, and the judgment, with some modifications, was sustained. The case being brought here by writ of error, it is *Held*, that a Federal question was presented by the record, but that the proceeding was only one to secure evidence; that in the securing of such evidence no right protected by the Constitution of the United States was invaded; that the State might determine for itself in what way it would secure evidence of the regularity of the proceedings of any of its municipal corporations; and that unless in the course of such proceedings some constitutional right was denied to the individual, this court could not interfere on the ground that the evidence might thereafter be used in some further action in which there might be adversary claims. *Tregea* v. *Modesto Irrigation District*, 179.

4. The complainant in this case sought to compel a number of stockholders in a corporation severally to pay their respective alleged unpaid subscriptions to the capital stock of a corporation, the amounts to be applied in satisfaction of a judgment in plaintiff's favor. Among the stockholders so proceeded against were K., C. and A. As to them the allegations were that each subscribed for fifty shares of the corporation, of the par value of one hundred dollars each; and that each was liable for five thousand dollars, for which recovery was sought. *Held*, that the amount involved for each subscription did not reach the amount necessary to give this court jurisdiction; that the subscriptions could not be united for that purpose; and that even if they could, there having been a cross bill in the case, the judgment upon which must affect rights of parties not before the court, the court could not take jurisdiction. *Wilson* v. *Kiesel*, 248.

5. The printed record in this case is so fragmentary in its nature as to leave no foundation for the court to even guess that there was a Federal question in the case, or that it was decided by the state court against the right set up here by the plaintiffs in error; and, under the well settled rule that where a case is brought to this court on error or appeal from a judgment of a state court, unless it appear in the record that a Federal question was raised in the state court before entry of final judgment in the case, this court is without jurisdiction, it must be dismissed. *Fowler* v. *Lamson*, 252.

6. Although, as a general rule, an appeal will not lie in a matter of costs alone, where an appeal is taken on other grounds as well, and not on the sole ground that costs were wrongfully awarded, this court can determine whether a Circuit Court, dismissing a suit for want of jurisdiction, can give a decree for costs, including a fee to the defendants' counsel in the nature of a penalty; and it decides that the decree in this case was erroneous in that particular. *Citizens' Bank* v. *Cannon*, 319.

7. In an action of ejectment in a state court by a plaintiff claiming real estate under a patent from the United States for a mining claim, a ruling by the state court that the statute of limitations did not begin to run against the claim until the patent had been issued presents no Federal question. *Carothers* v. *Mayer*, 325.

8. So, too, a ruling that matters alleged as an estoppel having taken place before the time when plaintiffs made their application for a patent, and notice of such application having been given, all adverse claimants were given an opportunity to contest the applicant's right to a patent, and that, the patent having been issued, it was too late to base a defence upon facts existing prior thereto, presents no Federal question. *Ib.*

9. The construction by the Supreme Court of Alabama of §§ 1205, 1206 and 1207 of the code of that State, regulating the subject of fire and marine insurance within the State by companies not incorporated

therein, is, under the circumstances presented by this case, binding on this court. *Noble* v. *Mitchell*, 367.

10. The decision below upon the question whether there was adequate proof that the policy in controversy in this case was issued by a foreign corporation is not subject to review here on writ of error. *Ib.*
11. The findings of the Court of Claims in an action at law determine all matters of fact, like the verdict of a jury; and when the finding does not disclose the testimony, but only describes its character, and, without questioning its competency, simply declares its insufficiency, this court is not at liberty to refer to the opinion for the purpose of eking out, controlling or modifying the scope of the findings. *Stone* v. *United States*, 380.
12. This court has no jurisdiction to review, on writ of error, a judgment of the Court of Appeals of the District of Columbia in a criminal case, under § 8 of the act of February 9, 1893, c. 74, 27 Stat. 434. *Chapman* v. *United States*, 436.
13. The controversy in this case being between the mother and the testamentary guardian of infant children, each claiming the right to their custody and care, the matter in dispute is of such a nature as to be incapable of being reduced to any pecuniary standard of value; and for this, and for the reasons given in *Chapman* v. *United States*, *ante*, 436, it is *held* that this court has no jurisdiction to review judgments of the Court of Appeals under such circumstances. *Perrine* v. *Slack*, 452.
14. As the plaintiff in error did not specially set up or claim in the state court any right, title, privilege or immunity under the Constitution of the United States, this court is without jurisdiction to review its final judgment. *Chicago & Northwestern Railway Co.* v. *Chicago*, 454.
15. An appeal lies to this court from a final order of the Supreme Court of the Territory of New Mexico, ordering a writ of *habeas corpus* to be discharged. *Gonzales* v. *Cunningham*, 612.
16. The cases deciding that there is a want of jurisdiction over a similar judgment rendered in the District of Columbia are reviewed, and it is *held* that the legislation in respect of the review of the final orders of the territorial Supreme Courts on *habeas corpus* so far differs from that in respect of the judgments of the courts of the District of Columbia, that a different rule applies. *Ib.*

See CONSTITUTIONAL LAW, 1;
PUBLIC LAND, 9.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Jurisdiction cannot be conferred on a Circuit Court of the United States, by joining in one bill against distinct defendants claims, no one of which reaches the jurisdictional amount. *Citizens' Bank* v. *Cannon*, 319.

2. In proceedings under a bill to enjoin the collection of taxes for a series of years, where the proof only shows the amount of the assessment for one year, which is below the jurisdictional amount, it cannot be assumed, in order to confer jurisdiction, that the assessment for each of the other years was for a like amount. *Ib.*

3. When a Circuit Court dismisses a bill for want of jurisdiction it is without power to decree the payment of costs and penalties. *Ib.*

4. In the absence of parties interested, and without their having an opportunity to be heard, a court is without jurisdiction to make an adjudication affecting them. *New Orleans Water Works Co.* v. *New Orleans*, 471.

5. The objection to the jurisdiction in the Circuit Court presented by filing the demurrer for the special and single purpose of raising it, would not be waived by answering to the merits upon the demurrer being overruled. *In re Atlantic City Railroad*, 633.

6. Since the act of July 13, 1888, c. 866, took effect, the jurisdiction of a Circuit Court of the United States over an action brought by a citizen of another State against a national bank established and doing business in a State within the circuit, depends upon citizenship alone, and, if that jurisdiction be invoked on that ground, the jurisdiction of the Court of Appeals of the circuit is final, even though another ground for jurisdiction in the Circuit Court be developed in the course of the proceedings. *Ex parte Jones*, 691.

See REMOVAL OF CAUSES.

C. JURISDICTION OF THE COURT OF CLAIMS.

It was the intention of Congress, by the language used in the act of August 23, 1894, c. 307, 28 Stat. 424, 487, to refer to the Court of Claims simply the ascertainment of the proper person to be paid the sum which it had already acknowledged to be due to the representatives of the original sufferers from the spoliation, and not that the decision which the Court of Claims might arrive at should be the subject of an appeal to this court; and that when such fact had been ascertained by the Court of Claims, upon evidence sufficient to satisfy that court, it was to be certified by the court to the Secretary of the Treasury, and such certificate was to be final and conclusive. *United States* v. *Gilliat*, 42.

See JURISDICTION, A, 11.

D. JURISDICTION OF TERRITORIAL SUPREME COURTS.

1. Section 1852 of the Compiled Laws of New Mexico of 1884 which provides that "when any justice of the Supreme Court shall be absent from his district, or shall be in any manner incapacitated from acting or performing any of his duties of judge or chancellor, in his district, or from holding court therein, any other justice of the Supreme Court

may perform all such duties, hear and determine all petitions, motions, demurrers, grant all rules and interlocutory orders and decrees, as also all extraordinary writs in said district," was within the legislative power of the assembly which enacted it, and is not inconsistent with the provision in the act of July 10, 1890, c. 665, 26 Stat. 226, for the assignment of judges to particular districts, and their residence therein; and while, for the convenience of the public, it was provided in the organic act, that a justice should be assigned to each district and reside therein, there was no express or implied prohibition upon any judge against exercising the power in any district other than the one to which he had been assigned, and there was nothing in the language of the provision requiring such a construction as would confine the exercise of the power to the particular justice assigned to a district when he might be otherwise incapacitated. *Gonzales* v. *Cunningham*, 612.

2. In that territory a trial judge may continue any special term he is holding until a pending case is concluded, even if the proceedings of the special term are thereby prolonged beyond the day fixed for the regular term. *Ib.*

E. Jurisdiction of State Courts.

1. When the enabling act, admitting a State into the Union, contains no exclusion of jurisdiction as to crimes committed on an Indian reservation by others than Indians or against Indians, the state courts are vested with jurisdiction to try and punish such crimes. *United States* v. *McBratney*, 140 U. S. 621, to this point affirmed and followed. *Draper* v. *United States*, 240.

2. The provision in the enabling act of Montana that the "Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States" does not affect the application of this general rule to the State of Montana. *Ib.*

F. Jurisdiction of Cherokee Nation Courts.

The deceased sought to become a citizen of the Cherokee Nation, took all the steps he supposed necessary therefor, considered himself a citizen, and the Nation in his lifetime recognized him as a citizen, and still asserts his citizenship. *Held*, that, under those circumstances, it must be adjudged that he was a citizen by adoption, and consequently that the jurisdiction over the offence charged is, by the laws of the United States and treaties with the Cherokee Nation, vested in the courts of that Nation. *Nofire* v. *United States*, 657.

LACHES.

1. Courts of equity withhold relief from those who have delayed the assertion of their claims for an unreasonable time; and this doctrine may

be applied in the discretion of the court, even though the laches are not pleaded or the bill demurred to. *Willard* v. *Wood*, 502.

2. Laches may arise from failure in diligent prosecution of a suit, which may have the same consequences as if no suit had been instituted. *Ib.*

3. In view of the laches disclosed by the record, that nearly sixteen years had elapsed since Bryan entered into the covenant with Wood, when, on March 10, 1890, over eight years after the issue of the first subpœna, alias process was issued against Bryan and service had; that for seven years of this period he had resided in the District; that for seven years he had been a citizen of Illinois as he still remained; that by the law of Illinois the mortgagee may sue at law a grantee, who, by the terms of an absolute conveyance from the mortgagor, assumes the payment of the mortgage debt; that Christmas did not bring a suit against Bryan in Illinois, nor was this bill filed during Bryan's residence in the District, and when filed it was allowed to sleep for years without issue of process to Bryan, and for five years after it had been dismissed as to Wood's representatives, Wood having been made defendant, by Christmas' ancillary administrator, as a necessary party; that in the meantime Dixon had been discharged in bankruptcy and had died; Palmer had also departed this life, leaving but little if any estate; Wood had deceased, his estate been distributed, and any claim against him had been barred; and the mortgaged property had diminished in value one half and had passed into the ownership of Christmas' heirs: *Held*, (1) That the equitable jurisdiction of the court ought not to be extended to enforce a covenant plainly not made for the benefit of Christmas, and in respect of which he possessed no superior equities; (2) That the changes which the lapse of time had wrought in the value of the property and in the situation of the parties were such as to render it inequitable to decree the relief sought as against Bryan; (3) That, without regard to whether the barring in this jurisdiction of the remedy merely as against Wood would or would not in itself defeat a decree against Bryan, the relief asked for was properly refused. *Ib.*

LIMITATION, STATUTES OF.

1. Remedies are determined by the law of the forum; and, in the District of Columbia the liability of a person by reason of his accepting a conveyance of real estate, subject to a mortgage which he is to assume and pay, is subject to the limitation prescribed as to simple contracts, and is barred by the application in equity, by analogy, of the bar of the statute at law. *Willard* v. *Wood*, 502.

2. The covenant attempted to be enforced in this suit was entered into in the District of Columbia, between residents thereof, and, although its performance was required elsewhere, the liability for non-performance

was governed by the law of the obligee's domicil, operating to bar the obligation, unless suspended by the absence of the obligor. *Ib.*

3. If a plaintiff mistakes his remedy, in the absence of any statutory provision saving his rights, or where from any cause a plaintiff becomes nonsuit, or the action abates or is dismissed, and during the pendency of the action the limitation runs, the remedy is barred. *Ib.*

See JURISDICTION, A, 7.

LOCAL LAW.

1. In Arkansas a conveyance of personal property of the grantor to the grantee in trust accompanied by delivery, conditioned that, as the grantor is indebted to several named persons in sums named, if he shall within a time named pay off and discharge all that indebtedness and interest, then the conveyance shall be void, otherwise the grantee is to sell the property at public sale, after advertisement, and apply the proceeds to the expenses of the trust, the payment of the debts named, in the order named, and the surplus, if any, to the grantor, is, under the decisions of the Supreme Court of that State, a deed of trust in the nature of a mortgage. *Grimes Dry Goods Co.* v. *Malcolm*, 483.
2. The submission of special questions to the jury under the statute of Arkansas is within the discretion of the court. *Ib.*
3. What the mortgagor in such an instrument said to a third party, after execution and delivery, respecting his intent in executing the instrument, is not admissible to affect the rights of the mortgagee. *Ib.*
4. All the evidence in the case being before this court, and it being clear from it that the trial court would have been warranted in peremptorily instructing the jury to find for the defendant, the plaintiff suffered no injury from the refusal of the court to permit the jury to retire a second time. *Ib.*

Arizona. *See* TAX AND TAXATION, 3 to 10.
District of Columbia. *See* LIMITATION, STATUTES OF.
New Mexico. *See* JURISDICTION, D.
Utah. *See* MECHANIC'S LIEN.

MAILS, TRANSPORTATION OF.

1. For several years in succession before the commencement of this action the Central Pacific Railroad Company transported the mails of the United States on its roads. During the same period post office inspectors, commissioned by the department, under regulations which required the railroads "to extend facilities of free travel" to them, were also transported by the company over its roads. During all this period the railroad company presented to the department its claim for the transportation of the mail without setting up any claim for the transportation of the inspectors, and the said claims for mail trans-

portation were, after such presentation, from time to time, and regularly, adjusted and paid on that basis. This action was then brought in the Court of Claims to recover for the transportation of the inspectors. Until it was commenced no claim for such transportation had ever been made on the United States. *Held*, that, without deciding whether the claim of the department that its inspectors were entitled to free transportation was or was not well founded, the silence of the company, and its acquiescence in the demand of the government for such free transportation operated as a waiver of any such right of action. *Central Pacific Railroad Co.* v. *United States*, 93.

2. The terms and conditions imposed on the grant under which the plaintiff in error holds embraced the condition that the mail should be carried at such rates as Congress might fix; and § 13 of the act of July 12, 1876, was applicable. *Wisconsin Central Railroad Co.* v. *United States*, 190.
3. The Postmaster General, in directing payment of compensation for mail transportation, does not act judicially. *Ib.*

MANDAMUS.

The general power of this court to issue a writ of *mandamus* to an inferior court is well settled; but, as a general rule, it only lies where there is no other adequate remedy, and cannot be availed of as a writ of error. *In re Atlantic City Railroad*, 633.

MARSHAL.

See FEES, 5, 6, 7, 8.

MECHANIC'S LIEN.

On the 16th of August, 1889, a statute was in force in the Territory of Utah providing for the creation of mechanic's liens for work done or materials furnished under contracts in making improvements upon land; but, in order to enforce his lien a contractor was required, within 60 days after completion of the contract, to file for record a claim stating his demand, and describing the property to be subjected to it; and no such lien was to be binding longer than 90 days after so filing, unless proper proceedings were commenced within that time to enforce it. On that day G. contracted with an irrigation company to construct a canal for it in Utah. He began work upon it at once, which was continued until completion, December 10, 1890. He claimed, (and it was so established,) that, after crediting the company with sundry payments, there was still due him over $80,000, for which amount he filed his statutory claim on the 23d day of the same December. On the 1st day of October, 1889, the company mortgaged its property then acquired, or to be subsequently acquired, to a trustee

to secure an issue of bonds to the amount of $2,000,000, the proceeds of which were used in the construction of the company's works, including the canal. On the 12th of March, 1890, the legislature of Utah repealed said statute, and substituted other statutory provisions in its place, and enacted that the repeal should not affect existing rights or remedies, and that no lien claimed under the new act should hold the property longer than a year after filing the statement, unless an action should be commenced within that time to enforce it. On the 1st day of May, 1890, C. contracted with the company to do work on its canal, and did the work so contracted for. The balance due G. not having been paid, he brought an action to recover it, making the company, the mortgage trustees, and C. defendants, which action was commenced more than 90 days after the filing of his claim. To this suit C. replied, setting up his mechanic's lien. The court below made many findings of fact, among which were, (29th,) that the right of way upon which the canal was constructed was obtained by the company under Rev. Stat. § 2339; and, (33d,) that the work done by G. and C. respectively had been done with the consent of the company after its entry into possession of the land. Exception was taken to the 29th finding as not supported by the proof. The court below gave judgment in favor of both G. and C., establishing their respective liens upon an equality prior and superior to the lien of the mortgage trustees. *Held*, (1) That this court will not go behind the findings of fact in the trial court, to inquire whether they are supported by the evidence; (2) That G.'s action was commenced within the time required by the statutes existing when it was brought; (3) That the judgment of the court below thus establishing the respective liens of G. and C. was correct. *Bear Lake & River Water Works &c. Co.* v. *Garland*, 1.

See MORTGAGE, 2, 3.

MOOT QUESTION.

See JURISDICTION, A, 3.

MORTGAGE.

1. A clause in a mortgage which subjects subsequently acquired property to its lien is valid, and extends to equitable as well as to legal titles to such property. *Bear Lake Irrigation Co.* v. *Garland*, 1.
2. Under Rev. Stat. §§ 2339, 2340, no right or title to land, or to a right of way over or through it, or to the use of water from a well thereafter to be dug, vests, as against the government, in the party entering upon possession, from the mere fact of such possession, unaccompanied by the performance of labor thereon; and, as the title in this case did not pass until the ditch was completed, the mortgage was not a valid incumbrance until after the liens of G. and of C. had attached, and will not be held to relate back for the purpose of effecting an injustice. *Ib.*

3. The act of March 12, 1890, is to be construed as a continuation of the act in force when the Garland contract was made, extending the time in which an action to foreclose its lien should be commenced; and, as this was done before the time came for taking proceedings to effect a sale under the lien, it was not an alteration of the right or the remedy, as those terms are used in the statute. *Ib.*

See LOCAL LAW, 1, 3.

MUNICIPAL CORPORATIONS.

1. A court of equity cannot properly interfere with, or in advance restrain the discretion of a municipal body while it is in the exercise of powers that are legislative in their character. *New Orleans Water Works Co.* v. *New Orleans*, 471.
2. Legislatures may delegate to municipal assemblies the power of enacting ordinances relating to local matters, and such ordinances, when legally enacted, have the force of legislative acts. *Ib.*

NATIONAL BANK.

1. The provisions of §§ 96 and 98 of c. 157 of the Public Statutes of Massachusetts, invalidating preferences made by insolvent debtors and assignments or transfers made in contemplation of insolvency, do not conflict with the provisions contained in Rev. Stat. §§ 5136 and 5137, relating to national banks and to mortgages of real estate made to them in good faith by way of security for debts previously contracted, and are valid when applied to claims of such banks against insolvent debtors. *McClellan* v. *Chipman*, 347.
2. *National Bank* v. *Commonwealth*, 9 Wall. 353, affirmed to the point that it is only when a state law incapacitates a national bank from discharging its duties to the government that it becomes unconstitutional: and *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, affirmed to the point that national banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States: and the two distinct propositions held to be harmonious. *Ib.*
3. The Comptroller of the Currency may appoint a receiver of a defaulting or insolvent national bank, or call for a ratable assessment upon the stockholders of such bank without a previous judicial ascertainment of the necessity for either. *Bushnell* v. *Leland*, 684.

PATENT FOR INVENTION.

Letters patent No. 331,920, issued to George W. Taft, December 8, 1885, for a machine for making, repairing and cleaning roads, are void, if not for anticipation, for want of invention in the patented machine. *American Road Machine Co.* v. *Pennock & Sharp Co.*, 26.

PENSION.

See CRIMINAL LAW, 6.

PLEADING.

See RAILROAD, 1.

PRACTICE.

See JURISDICTION, B, 5; LOCAL LAW, 2, 4; PUBLIC MONEYS, 4; RECEIVER, 1.

PRESUMPTION.

1. The fact that a marriage license has been issued carries with it a presumption that all statutory prerequisites thereto have been complied with, and one who claims to the contrary must affirmatively show the fact. *Nofire* v. *United States*, 657.
2. Persons coming to a public office to transact business who find a person in charge of it and transacting its business in a regular way, are not bound to ascertain his authority to so act; but to them he is an officer *de facto*, to whose acts the same validity and the same presumptions attach as to those of an officer *de jure*. *Ib.*

PRINCIPAL AND SURETY.

A surety on a bond, conditioned for the faithful performance by the principal obligor of his agreement to convey land to the obligee on a day named on receiving the agreed price, is released from his liability if the vendee fails to perform the precedent act of payment at the time provided in the contract, and if the vendor, having then a right to rescind and declare a forfeiture in consequence, waives that right. *Coughran* v. *Bigelow*, 301.

PUBLIC LAND.

1. The action of local land officers on charges of fraud in the final proof of a preëmption claim does not conclude the government, as the General Land Office has jurisdiction to supervise such action, or correct any wrongs done in the entry. *Orchard* v. *Alexander*, 157 U. S. 372, affirmed and followed to this point. *Parsons* v. *Venzke*, 89.
2. The jurisdiction of the General Land Office in this respect is not arbitrary or unlimited, or to be exercised without notice to the parties interested; nor is it one beyond judicial review, under the same conditions as other orders and rulings of the land department. *Ib.*
3. The seventh section of the act of March 3, 1891, c. 561, 26 Stat. 1098, providing that "all entries made under the preëmption, homestead, desert-land or timber culture laws, in which final proof and payment

may have been made and certificates issued, and to which there are no adverse claims originating prior to final entry and which have been sold or incumbered prior to the first day of March, eighteen hundred and eighty-eight, and after final entry, to *bona fide* purchasers, or incumbrancers for a valuable consideration, shall, unless upon an investigation by a government agent, fraud on the part of the purchaser has been found, be confirmed and patented upon presentation of satisfactory proof to the land department of such sale or incumbrance," refers only to existing entries, and does not reach a case like the present, where the action of the land department in cancelling the entry and restoring the land to the public domain took place before the passage of the act. *Ib.*

4. The changes made in the grants to Wisconsin in the act of May 5, 1864, to aid in the construction of railroads from those made to that State by the act of June 3, 1856, rendered necessary some modifications of provisos 1 and 3 of § 1, and of §§ 2, 3 and 4 of the latter act, and they were accordingly reënacted in homologous provisos and sections of the act of 1864; but as the second proviso of § 1 and § 5 of the act of 1856 required no modification, they were not reënacted, but the terms and conditions contained therein were carried forward by reference, as explained in detail in the opinion of the court. *Wisconsin Central Railroad Co.* v. *United States*, 190.

5. Doing that which it is necessary to do, in order that a newly created land office may be in a proper and fit condition at the time appointed for opening it for public business, is a part of the official duties of the person who is appointed its register and receiver. *United States* v. *Delaney*, 282.

6. The claimant having entered on the performance of such duties at a new office in Oklahoma on the 18th of July, 1890, and having been engaged in performing them, in the manner described by the court in its opinion, from thence to the 1st of September following, when the office was opened for the transaction of public business, is entitled to compensation as register and receiver during that period. *Ib.*

7. As the claim of the plaintiff in error, claiming under an alleged preëmption, was passed upon by the proper officers of the land department, originally and on appeal, and as the result of the contest was the granting of a patent to the contestant, in order to maintain her title she must show, either that the land department erred in the construction of the law applicable to the case, or that fraud was practised upon its officers, or that they themselves were chargeable with fraudulent practices, which she has failed to do. *Gonzales* v. *French*, 338.

8. The claim of the plaintiff in error to a right of preëmption is fatally defective because her vendors and predecessors in title had failed to make or file an actual entry in the proper land office. *Ib.*

9. The Supreme Court of the State of Montana having decided adversely

to the plaintiff in error a claim of title to land under an act of Congress, a Federal question was thereby raised. *Northern Pacific Railroad Co.* v. *Colburn*, 383.

10. No preëmption or homestead claim attaches to a tract of public land until an entry in the local land office; and the ruling by the state court that occupation and cultivation by the claimant created a claim exempting the occupied land from passing to the railroad company under its land grant, is a decision on a matter of law open to review in this court. *Ib.*
11. The facts found below were not of themselves sufficient to disturb the title of the railroad company under the grant from Congress. *Ib.*
12. The grant of public land made to the Oregon Central Railroad Company by the act of May 4, 1870, c. 69, 16 Stat. 94, "for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of junction near Forest Grove to the Yamhill River near McMinnville in the State of Oregon," contemplated a main line from Portland to Astoria opening up to settlement unoccupied and inaccessible territory and establishing railroad communication between the two termini, and also the construction of a branch road from Forrestville to McMinnville, twenty-one miles in length, running through the heart of the Willamette Valley, and it devoted the lands north of the junction, not absorbed by the road from Portland to that point, to the building of the road to the north. *United States* v. *Oregon & California Railroad Co.*, 526.
13. The construction of the branch road, though included in the act, was subordinate and subsidiary, and this court cannot assume that if the promoters had sought aid merely for the subordinate road, their application would have been granted. *Ib.*
14. The facts that the act of 1870 grants land for the purpose of aiding in the construction of a railroad — in the singular number — and that the act of January 31, 1885, c. 46, 23 Stat. 296, does the same, do not affect these conclusions. *Ib.*
15. In a suit by the American Emigrant Company to obtain a decree quieting its title to certain lands in Calhoun County, Iowa, of which the defendants have possession, the plaintiff asserted title under the act of Congress known as the Swamp Land act of 1850, 9 Stat. 519, c. 84; the defendants under the act of Congress of May 15, 1856, 11 Stat. 9, c. 28, granting land to Iowa to aid in the construction of railroads in that State, including one from Dubuque to Sioux City. The principal contention of the plaintiff was that the lands passed to the State under the act of 1850, and were not embraced by the railroad act of 1856. By an act passed January 13, 1853, the State of Iowa granted to the counties respectively in which the same were situated the swamp and overflowed lands granted to the State by the Swamp Land act of 1850. Congress, by an act approved May 15, 1856,

granted lands to Iowa to aid in the construction of certain railroads in that State, among others a railroad from Dubuque to Sioux City. That act excepted from its operation all lands previously reserved to the United States by any act of Congress, or in any other manner, for any purpose whatsoever. The lands, interests, rights, powers and privileges granted by the last-named act, so far as they related to the proposed road from Dubuque to Sioux City, were transferred by the State in 1856 to the Dubuque and Pacific Railroad Company. In the same year, the county court of Calhoun County, Iowa, appointed an agent to select and certify the swamp lands in that county, in accordance with the above act of 1853. The lands in controversy are within the limits of the railroad grant of May 15, 1856, and were earned by the building of the road from Dubuque to Sioux City, if they were subject at all to that grant. The several defendants hold by sufficient conveyance all the title and interest which passed under the railroad grant, if any title or interest thereby passed. Under date of December 25, 1858, these with other lands were certified to the State by the General Land Office of the United States as lands within the place limits defined by the railroad act of 1856 of the Dubuque and Pacific Railroad. A list of the tracts so certified to the State was approved by the Secretary of the Interior, subject to the conditions of the act of 1856 and to any valid interfering rights existing in any of the tracts embraced in the list. The selection of these lands as swamp lands by the agent of Calhoun County was reported to the county court of that county September 30, 1858. March 27, 1860, the surveyor general for the State certified these lands as swamp and overflowed lands, and this certificate was received in the General Land Office March 27, 1860, and at the local land office at Des Moines, Iowa, February 18, 1874. It did not appear that the Secretary of the Interior ever took any action in respect to the lists made by the agent of Calhoun County of lands selected by him as swamp lands, nor that the State or the county, or any one claiming under the county, ever directly sought any action by the General Land Office or by the Secretary of the Interior in respect to such selection. December 12, 1861, a written contract was made between the county of Calhoun, Iowa, and the American Emigrant Company in relation to the swamp and overflowed lands in that county. Subsequently, in 1863, the county, although no patent had ever been issued to the State, conveyed to that company the lands in controversy. *Held*, (1) That the Secretary of the Interior had no authority to certify lands under the railroad act of 1856 which had been previously granted to the State by the Swamp Land act of 1850; (2) That whether the lands in controversy were swamp and overflowed lands within the meaning of the act of 1850 was to be determined, in the first instance, by the Secretary of the Interior; and that when he identified lands as embraced by that act, and not before, the State was entitled to a patent, and on

such patent the fee simple title vested in the State, and what was before an inchoate title then became perfect as of the date of the act; (3) That when the Secretary of the Interior certified in 1858 that the lands in controversy inured to the State under the railroad act of 1856, he, in effect, decided that they were not embraced by the Swamp Land act of 1850; that it was open to the State, before accepting the lands under the railroad act, to insist that they passed under the act of 1850 as swamp and overflowed lands; that if the State considered the lands to be covered by the Swamp Land act, its duty was to surrender the certificate issued to it under the railroad act; and that it could not take them under one act, and, while holding them under that act, pass to one of its counties the right to assert an interest in them under another and different act; (4) That the county of Calhoun, being a mere political division of the State, could have no will contrary to the will of the State; that its relation to the State is such that the action of the latter in 1858 in accepting the lands under the railroad act was binding upon it as one of the governmental agencies of the State; that the county could not, after such acceptance, claim these lands as swamp and overflowed lands, or, by assuming to dispose of them as lands of that character, pass to the purchaser the right to raise a question which it was itself estopped from raising; that the Emigrant Company could not, by any agreement made with the county in 1861 or afterwards, acquire any greater rights or better position in respect to these lands than the county itself had after the certification of them to the State in 1858 as lands inuring under the railroad act of 1856; and that the plaintiff claiming under the county and State was concluded by the act of the State in accepting and retaining the lands under that statute. *Rogers Locomotive Machine Works* v. *American Emigrant Company*, 559.

See JURISDICTION, A, 7, 8;
MORTGAGE, 2, 3;
TAX AND TAXATION, 8.

PUBLIC MONEYS.

1. The action of executive officers in matters of account and payment cannot be regarded as a conclusive determination, when brought in question in a court of justice. *Wisconsin Central Railroad Co.* v. *United States*, 190.
2. The government is not bound by the act of its officers, making an unauthorized payment, under misconstruction of the law. *Ib.*
3. Parties receiving moneys, illegally paid by a public officer, are liable *ex æquo et bono* to refund them; and there is nothing in this record to take the case out of the scope of that principle. *Ib.*
4. The forms of pleading in the Court of Claims do not require the right to recover back moneys so illegally paid to be set up as a counter-

claim in an action brought by the party receiving them to recover further sums from the government. *Ib.*

RAILROAD.

The complainant in this case charged that the Atchison, Topeka and Santa Fé Company and the plaintiff in error, corporations of the State of Massachusetts, were, at the time of the injury complained of, jointly operating a railroad; that the defendant was travelling upon it with a first class ticket; and that by reason of negligence of the defendants an accident took place which caused the injuries to the plaintiff for which recovery was sought. The answers denied joint negligence, or joint operation of the road, and admitted that the plaintiff in error was operating it at the time. A trial resulted in a verdict in favor of the Atchison Company and against the plaintiff in error. On the trial the complaint was amended by substituting "second class" for "first class" ticket, and that the charters were by acts of Congress, and to the complaint so amended the statutes of limitations was pleaded. A judgment on the verdict was set aside and an amended complaint was filed in which the plaintiff in error was charged to have done the negligent acts complained of, and recovery was sought against it. A second trial resulted in a verdict against the company. *Held*, (1) That the action was *ex delicto;* that the defendants might have been sued either separately or jointly; that recovery might have been had, if proof warranted against a single party; and that the amendment, dismissing one of two joint tort feasors, and alleging that the injury complained of was occasioned solely by the remaining defendant, did not introduce a new cause of action; (2) That the amendment stating that the plaintiff was travelling upon a second class ticket instead of a first class ticket, and that the plaintiff in error was chartered by an act of Congress instead of by a statute of Massachusetts, as originally averred, did not state a new cause of action. *Atlantic & Pacific Railroad Co.* v. *Laird*, 393.

See PUBLIC LAND, 12, 13, 14;
RECEIVER, 5.

RECEIVER.

1. After the death of the receiver, this case was properly revived in the name of his executrix. *Cake* v. *Mohun*, 311.
2. While, as a general rule, a receiver has no authority, as such, to continue and carry on the business of which he is appointed receiver, there is a discretion on the part of the court to permit this to be done when the interests of the parties seem to require it; and in such case his power to incur obligations for supplies and materials incidental to the business follows as a necessary incident to the office. *Ib.*
3. A purchaser of property at a receiver's sale who, under order of court,

in order to get possession of the property gives an undertaking, with surety, conditioned for the payment to the receiver of such amounts as should be found due him on account of expenditures or indebtedness as well as compensation, thereby becomes liable for such expenditures and indebtedness. *Ib.*

4. In determining what allowances shall be made to a receiver and to his counsel this court gives great consideration to the concurring views of the auditor or master and the courts below; and it is not disposed to disturb the allowance in this case, although, if the question were an original one it might have fixed the receiver's compensation at a less amount. *Ib.*

5. A passenger on the road of the Texas Pacific Railway Company sued that company and its receiver in a Texas court in an action at law to recover for injuries received when travelling on its road while it was in the hands of the receiver. The case was removed to the Circuit Court of the United States, where a trial was had. The receivership had been terminated before the commencement of the action, and the property had, by order of the court, been transferred to the company under the circumstances and on the conditions described in *Texas & Pacific Railway* v. *Johnson*, 151 U. S. 81, and in this case the company contended that it was not liable, or if liable, that the claim could only be enforced in equity. The trial resulted in a verdict and judgment for the plaintiff. *Held*, that under the circumstances the company was liable to the plaintiff in an action at law, for the damages found by the jury; that the conduct of the railway company in procuring, or, at least, in acquiescing in the withdrawal of the receivership and the discharge of the receiver and the cancellation of his bond and in accepting the restoration of its road, largely increased in value by the betterments, affords ground to charge an assumption of such valid claims against the receiver as were not satisfied by him, or by the court which discharged him. *Texas & Pacific Railway Company* v. *Bloom's Administrator*, 636.

REMOVAL OF CAUSES.

1. The filing by the defendant in an action in a state court of a petition for its removal to the proper Circuit Court of the United States does not prevent the defendant, after the case is removed, from moving in the Federal court to dismiss it for want of jurisdiction of the person of the defendant in the state court or in the Federal court. *Wabash Western Railway* v. *Brow*, 271.

2. A defendant, by filing a petition in a state court for removal of the cause to the United States court, in general terms, unaccompanied by a plea in abatement, and without specifying or restricting the purpose of his appearance, does not thereby waive objection to the jurisdiction of the court for want of sufficient service of the summons. *National Accident Society* v. *Spiro*, 281.

STATUTE.

A. Construction of Statutes.

1. Statutes granting privileges or relinquishing rights of the public are to be strictly construed against the grantee. *Wisconsin Central Railroad Co.* v. *United States*, 190.
2. An intention to surrender the right to demand the carriage of mails over subsidized railroads at reasonable rates, assumed in construing a statute of the United States, is opposed to the established policy of Congress. *Ib.*
3. The punctuation of a statute is not decisive of its meaning. *Ford* v. *Delta & Pine Land Co.*, 662.

See Direct Tax Refunding Act, 2.

B. Statutes of the United States.

See Claims Against the United States, 1;
Corporation;
Criminal Law, 1, 6, 27;
Direct Tax Refunding Act, 1, 3, 4;
Fees, 5, 6;
Jurisdiction, A, 1, 2, 12; B, 6; C; D; E, 1;
Mails, Transportation of, 2;
Mortgage, 2, 3;
National Bank, 1;
Public Land, 3, 4, 12, 14, 15.

C. Statutes of States and Territories.

Alabama. *See* Jurisdiction, A, 9.
Arizona. *See* Tax and Taxation, 3 to 10.
Arkansas. *See* Local Law, 1.
California. *See* Constitutional Law, 2, 7, 9; Jurisdiction, A, 3.
Florida. *See* Constitutional Law, 14.
Georgia. *See* Tax and Taxation, 1.
Iowa. *See* Public Land, 15.
Kentucky. *See* Constitutional Law, 13.
Massachusetts. *See* National Bank, 1.
Mississippi. *See* Tax and Taxation, 12, 13, 15, 16.
Montana. *See* Jurisdiction, E, 2.
New Mexico. *See* Jurisdiction, D.
New York. *See* Admiralty.
Texas. *See* Frauds, Statute of.

STATUTE OF FRAUDS.

See Frauds, Statute of.

SURETY.

See Principal and Surety.

TAX AND TAXATION.

1. Section eighteen of the act of the legislature of Georgia of December 14, 1835, providing that no municipal or other corporation shall have power to tax the stock of the Central Railroad and Banking Company of Georgia, but may tax any property, real or personal, of said company within the jurisdiction of said corporation in the ratio of taxation of like property, when construed in connection with other legislation on that subject, permits municipal corporations to tax such property within their respective jurisdictions in the ratio of taxation of like property. *Central Railroad & Banking Co.* v. *Wright*, 327.
2. While, in the absence of any words showing a different intent, an exemption of the stock or capital stock of a corporation may imply, and carry with it, an exemption of the property in which such stock is invested, yet, if the legislature uses language at variance with such intention, the courts, which will never presume a purpose to exempt any property from its just share of the public burdens, will construe any doubts which may arise as to the proper interpretation of the charter against the exemption. *Ib.*
3. In proceedings in Arizona to enforce the collection of taxes assessed upon real estate, a printed copy of the delinquent list, instead of the original filed in the office of the county treasurer, was offered in evidence. To the introduction of this objection was made, but not upon the ground that the original was the best evidence, or that the copy offered was not an exact copy. In this court it was for the first time objected that the list, as filed in this case, was not a copy of the original. *Held*, that this court would not disturb the judgment of the court below on such technical grounds, apparently an afterthought. *Maish* v. *Arizona*, 599.
4. For the hearing of the objections of the appellants against the assessment of the tax the court convened on the 14th of March. The notice published by the tax collector was that the sale would begin on the 20th of March. On March 15 a judgment was entered directing the sale on the 20th of all the property, to which no objection had been filed. As to those parties making objections (and included among them were the present appellants) the case was set down for hearing at a subsequent day, and a trial then had; but the judgment was not entered until the 7th day of May, 1892, and the order was to sell on the 13th day of June. *Held*, that the purpose and intention of the act being the collection of taxes, but only of such taxes as ought to be collected, and judicial determination having been invoked to determine what taxes were justly due, the fact that the court took time for the examination and consideration of this question did not oust it of jurisdiction. *Ib.*
5. In Arizona the delinquent tax list is made by law *prima facie* evidence that the taxes charged therein are due against the property, as well the unpaid taxes for past years as those for the current year. *Ib.*

6. It was the intention of the legislature of Arizona, and a just intention, that no property should escape its proper share of the burden of taxation by means of any defect in the tax proceedings, and that, if there should happen to be such defect, preventing for the time being the collection of the taxes, steps might be taken in a subsequent year to place them again upon the tax roll and collect them. *Ib.*
7. The testimony does not sustain the contention that the board of equalization raised the value of appellants' property arbitrarily and without notice or evidence. *Ib.*
8. A party in possession under a perfect Mexican grant, that is, a grant absolute and unconditional in form specific in description of the land, passing a certain definite and unconditional title from the Mexican government to the grantee, has a possessory and equitable right sufficient to sustain taxation, although the grant may not have been confirmed. *Ib.*
9. A court cannot strike down a levy of taxes said to be for the payment of interest on bonds illegally issued in violation of statutory law, without a full disclosure of all the indebtedness, the time when it arose, and the circumstances under which it was created. *Ib.*
10. To warrant the setting aside of an assessment as unfair and partial, something more than an error of judgment must be shown, something indicating fraud or misconduct; as matters of that kind are left largely to the discretion and judgment of the assessing and equalizing board, and if it has acted in good faith its judgment cannot be overthrown. *Ib.*
11. Exemptions from taxation are to be strictly construed, and no claims for them can be sustained unless within the express letter or the necessary scope of the exempting clause; and a general exemption is to be construed as referring only to the property held for the business of the party exempted. *Ford* v. *Delta & Pine Land Company*, 662.
12. The exemption from taxation conferred by the 19th section of the act of the legislature of Mississippi of November 23, 1859, c. 14, upon the railroad company chartered by that act, does not extend to property other than that used in the business of the company, acquired under the authority of a subsequent act of the legislature in which there was no exemption clause. *Ib.*
13. A clause in a statute exempting property from taxation does not release it from liability for assessments for local improvements. *Ib.*
14. It has been held in Mississippi not only that special assessments for local improvements do not come within a constitutional limitation as to taxation, but also that the construction and repair of levees are to be regarded as local improvements for which the property specially benefited may be assessed; and this rule is in harmony with that recognized generally elsewhere to the effect that special assessments for local improvements are not within the purview of either con-

stitutional limitations in respect of taxation, or general exemptions from taxation. *Ib.*

15. Under authority granted by the act of March 16, 1872, c. 75, of the legislature of Mississippi, the auditor conveyed to the Selma, Marion and Memphis Railroad Company the lands in question here, by deeds which recited that they had been "sold to the State of Mississippi for taxes due to the said State," and that the company had paid into the state treasury two cents per acre "in full of all state and county taxes due thereon to present date." No reference was made in those deeds to levy taxes on assessments. *Held*, that those deeds were no evidence of the prior payment and discharge of such levy taxes and assessments. *Ib.*

16. The decision of the Supreme Court of Mississippi in *Green* v. *Gibbs*, 151 Mississippi, 592, followed as it was by subsequent decisions of that court, is not only binding upon this court, but commends itself to the judgment of this court as a just recognition of the force of legislative contracts. *Ib.*

See CONSTITUTIONAL LAW, 8;
DIRECT TAX REFUNDING ACT.

WAIVER.

See JURISDICTION, B, 5;
MAILS, TRANSPORTATION OF, 1.