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ABATEMENT.

See Public Land, 1.

ADMIRALTY.

One furnishing supplies or making repairs on the order simply of a person acquiring the control and possession of a vessel under a charter party requiring him to provide and pay for all the coals, etc., cannot acquire a maritime lien if the circumstances attending the transaction put him on inquiry as to the existence and terms of such charter party, and he fails to make the inquiry, and chooses to act on a mere belief that the vessel will be liable for his claim. *The Valencia*, 264.

See Constitutional Law, 21, 22.

BANK.

1. As between a check holder and the bank upon which such check is drawn, it is settled that, unless the check be accepted by the bank, an action cannot be maintained by the holder against the bank. *Fourth Street Bank* v. *Yardley*, 634.
2. It is also settled that a check, drawn in the ordinary form, does not, as between the maker and payee, constitute an equitable assignment *pro tanto* of an indebtedness owing by the bank upon which the check has been drawn, and that the mere giving and receipt of the check does not entitle the holder to priority over general creditors in a fund received from such bank by an assignee under a general assignment made by the debtor for the benefit of his creditors. *Ib.*
3. That the owner of a chose in action or of property in the custody of another may assign a part of such rights, and that an assignment of this nature, if made, will be enforced in equity, is also settled doctrine of this court. *Ib.*
4. The Keystone Bank, through its president, solicited the Fourth Street Bank to give to the former $25,000 of gold certificates, for which the Keystone Bank was to give its check against its reserve account in the Tradesmen's National Bank of New York City. At the same time that this request was made the president of the Keystone Bank made the further statement that his bank owed a balance at the clearing-house which it could not meet "because its funds were in the city of

New York," and exhibited a memorandum showing the amount to its credit with the Tradesmen's Bank to be in the neighborhood of $27,000. In reliance upon such representations and the statements made supported by the memorandum exhibited, the Fourth Street Bank delivered to the Keystone Bank the certificates requested, and there was delivered a check for $25,000 upon the Tradesmen's National Bank of New York. The draft in question was at once forwarded to the city of New York, and was presented for payment at the Tradesmen's Bank on the following morning, when payment was refused. At the time of presentment the Tradesmen's Bank had to the credit of the Keystone Bank $19,725.62 in cash and collection items amounting to $7181.70, in all $26,907.32. Of this amount $18,056.21 had been remitted by the Keystone Bank on the day previous. *Held*, (1) That, it being established that it was the intention and agreement of the parties to the transaction that the check drawn generally should be paid out of a particular fund, such check, as between the parties, is to be treated as though an order for payment out of the specific, designated fund; (2) That as the Fourth Street Bank contracted and parted with its money on the faith of the representations of the Keystone Bank that there was to its credit, in the Tradesmen's Bank, a specific sum, and the fund which came into the hands of its voluntary assignee was the fund as to which the representations were made, the Keystone Bank and its assignee were in equity estopped from asserting, to the prejudice of the Fourth Street Bank, that the character and condition of the fund was otherwise than it was represented to be. *Ib.*

BANK CHEQUE.

See BANK.

BOUNDARY LINE.

The report of the commissioners appointed February 3, 1896, 160 U. S. 688, to find and re-mark the boundary line between the States of Missouri and Iowa, is confirmed; and it is ordered that that boundary line be as delineated and set forth in said report. *Missouri* v. *Iowa*, 118.

CASES AFFIRMED.

Adams Exp. Co. v. *Ohio*, 165 U. S. 194, followed and held to govern this case. *Adams Express Co.* v. *Indiana*, 255.

District of Columbia v. *Johnson*, 165 U. S. 330, approved and followed. *District of Columbia* v. *Hall*, 340; *Same* v. *Dickson*, 341.

See CONSTITUTIONAL LAW, 9, 13, 27;
CRIMINAL LAW, 15, 16.

CASES DISTINGUISHED.

See CONSTITUTIONAL LAW, 27;
PUBLIC LAND, 12.

CERTIORARI.

See JURISDICTION, A, 11.

CONSTITUTIONAL LAW.

1. A statute of a State, which enacts that every railroad corporation, owning or operating a railroad in the State, shall be responsible in damages to the owner of any property injured or destroyed by fire communicated, directly or indirectly, by locomotive engines in use upon its railroad; and which provides that it shall have an insurable interest in the property upon the route of its railroad, and may procure insurance thereon in its own behalf; does not violate the Constitution of the United States, as depriving the railroad company of its property without due process of law, or as denying to it the equal protection of the laws, or as impairing the obligation of the contract made between the State and the company by its incorporation under general laws imposing no such liability. *St. Louis & San Francisco Railway Co.* v. *Mathews*, 1.
2. Where a suit is brought against defendants who claim to act as officers of a State and under color of an unconstitutional statute commit acts of wrong and injury to the property of the plaintiff, to recover money or property in their hands unlawfully taken by them in behalf of the State, or for compensation for damages, such suit is not an action against the State within the meaning of the Eleventh Amendment to the Constitution of the United States. *Scott* v. *Donald*, 58.
3. The statute of South Carolina of January 2, 1895, entitled "an act to further declare the law in reference to, and further regulate the use, sale, consumption, transportation and disposition of alcoholic liquids or liquors within the State of South Carolina, and to police the same," recognizes liquors and wines as commodities which may be lawfully made, bought and sold, and which must therefore be deemed to be the subject of foreign and interstate commerce, and is an obstruction to and interference with that commerce, and must, as to those of its provisions which affect the plaintiffs, stand condemned. *Ib.*
4. That statute is not an inspection law, and is not within the scope of the act of August 8, 1890, c. 728. *Ib.*
5. Whether those provisions of the act which direct that so-called contraband liquors may be seized without warrant by any state constable, sheriff or policeman, while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent or private person, and which subject common carriers to fine and imprisonment for carrying liquors in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade, and which forbid the bringing of any suit for damages alleged to arise by seizing and detention of liquors would be lawful in an inspection law otherwise valid, is not decided. *Ib.*

6. So far as these actions are concerned, the damages recovered were for acts committed under the alleged authority of the act of 1895, and cannot be affected by the provisions of the subsequent act of 1896, even if the invalidities of the former act were thereby remedied — a matter on which no opinion is expressed. *Ib.*

7. Where a suit is brought against defendants who claim to act as officers of a State, and, under color of an unconstitutional statute, commit acts of wrong and injury to the property of the plaintiff, to recover money or property in their hands unlawfully taken by them in behalf of the State; or for compensation for damages; or, in a proper case, for an injunction to prevent such wrong and injury; or for a *mandamus* in a like case to enforce the performance of a plain legal duty, purely ministerial; such suit is not, within the meaning of the Eleventh Amendment to the Constitution, an action against the State. *Scott* v. *Donald*, 107.

8. Circuit Courts of the United States will restrain a state officer from executing an unconstitutional statute of the State when to execute it would be to violate rights and privileges of the complainant that had been guaranteed by the Constitution and would do irreparable damage and injury to him. *Ib.*

9. *In re Tyler*, 149 U. S. 164, affirmed and followed on these points. *Ib.*

10. The act of the legislature of Texas of April 5, 1889, which provides that "any person in this State having a valid *bona fide* claim for personal services rendered or labor done, or for damages, or for overcharges on freight, or claims for stock killed or injured by the train of any railway company, provided that such claim for stock killed or injured shall be presented to the agent of the company nearest to the point where such stock was killed or injured, against any railway corporation operating a railroad in this State, and the amount of such claim does not exceed $50, may present the same, verified by his affidavit, for payment to such corporation by filing it with any station agent of such corporation in any county where suit may be instituted for the same, and if, at the expiration of thirty days after such presentation, such claim has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such corporation in such court, or any court to which the suit may have been appealed, he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto all reasonable attorney's fees, provided he has an attorney employed in his case, not to exceed $10, to be assessed and awarded by the court or jury trying the issue," operates to deprive the railroad companies of property without due process of law, and denies to them the equal protection of the law, in that it singles them out of all citizens and corporations, and requires them to pay in certain cases attorney's fees to the parties successfully suing them, while it gives to

them no like or corresponding benefit. *Gulf, Colorado & Santa Fé Railway* v. *Ellis*, 150.

11. The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and in all cases it must appear not merely that a classification has been made, but also that it is based upon some reasonable ground — something which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection. Tested by these principles the statute in controversy cannot be sustained. *Ib.*
12. Section 2087 of the Compiled Laws of Utah, which provides that "Any person who drives a herd of horses, mules, asses, cattle, sheep, goats or swine over a public highway, where such highway is constructed on a hillside, shall be liable for all damage done by such animals in destroying the banks or rolling rocks into or upon such highway," is not in conflict with the Constitution of the United States. *Jones* v. *Brim*, 180.
13. The decision of the Supreme Court of Ohio entertaining jurisdiction of this case, and delivering a considered opinion, *State* v. *Jones*, 51 Ohio St. 492, adjudging the Nichols law to be valid under the constitution of that State, will not be reviewed by this court. *Adams Express Co.* v. *Ohio State Auditor*, 194.
14. Although the transportation of the subjects of interstate commerce, or the receipts received therefrom, or the occupation or business of carrying it on, cannot be directly subjected to state taxation, yet property belonging to corporations or companies engaged in such commerce may be; and whatever the particular form of the exaction, if it is essentially only property taxation, it will not be considered as falling within the inhibition of the Constitution. *Ib.*
15. The property of corporations engaged in interstate commerce, situated in the several States through which their lines or business extend, may be valued as a unit for the purposes of taxation, taking into consideration the uses to which it is put and all the elements making up aggregate value; and a proportion of the whole fairly and properly ascertained may be taxed by the particular State, without violating any Federal restriction. *Ib.*
16. While there is an undoubted distinction between the property of railroad and telegraph companies and that of express companies, there is the same unity in the use of the entire property for the specific purposes, and there are the same elements of value, arising from such use. *Ib.*
17. The classification of express companies with railroad and telegraph companies, as subject to the unit rule, does not deny the equal protection of the laws; as that provision in the Fourteenth Amendment was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways, and was not intended to compel a State to adopt an iron rule of equal taxation. *Ib.*
18. The statute of the State of Ohio of April 27, 1893, 90 Laws Ohio, 330,

(amended May 10, 1894, 91 Laws Ohio, 220), created a board of appraisers and assessors, and required each telegraph, telephone and express company doing business within the State to make returns of the number of shares of its capital, the par value and market value thereof, its entire real and personal property, and where located and the value thereof as assessed for taxation, its gross receipts for the year of business wherever done and of the business done in the State of Ohio, giving the receipts of each office in the State, and the whole length of the line of rail and water routes over which it did business within and without the State. It required the board of assessors to "proceed to ascertain and assess the value of the property of said express, telegraph and telephone companies in Ohio, and in determining the value of the property of said companies in this State, to be taxed within the State and assessed as herein provided, said board shall be guided by the value of said property as determined by the value of the entire capital stock of said companies, and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said companies within the State of Ohio, in the proportion which the same bears to the entire property of said companies, as determined by the value of the capital stock thereof, and the other evidence and rules as aforesaid." *Held*, (1) That, assuming that the proportion of capital employed in each of the several States through which such a company conducts its operations has been fairly ascertained, while taxation thereon, or determined with reference thereto, may be said in some sense to fall on the business of the company, it does so only indirectly; and that the taxation is essentially a property tax, and, as such, not an interference with interstate commerce; (2) That the property so taxed has its actual situs in the State and is, therefore, subject to its jurisdiction; and that the distribution among the several counties is a matter of regulation by the state legislature; (3) That this was not taking of property without due process of law, either by reason of its assessment as within the jurisdiction of the taxing authorities, or of its classification as subject to the unit rule; (4) That the valuation by the assessors cannot be overthrown simply by showing that it was otherwise than as determined by them. *Ib.*

19. Section 4598 of the Revised Statutes is not unconstitutional by reason of its authorizing justices of the peace to issue warrants to apprehend deserting seamen, and deliver them up to the master of their vessel. *Robertson* v. *Baldwin*, 275.

20. The judicial power of the United States is defined by the Constitution, and does not prevent Congress from authorizing state officers to take affidavits, to arrest and commit for trial offenders against the laws of the United States, to naturalize aliens, and to perform such other duties as may be regarded as incidental to the judicial power, rather than a part of it. *Ib.*

21. Sections 4598 and 4599, in so far as they require seamen to carry out the contracts contained in their shipping articles, are not in conflict with the Thirteenth Amendment forbidding slavery and involuntary servitude; and it cannot be open to doubt that the provision against involuntary servitude was never intended to apply to such contracts. *Ib.*

22. The contract of a sailor has always been treated as an exceptional one, and involving to a certain extent the surrender of his personal liberty during the life of the contract. *Ib.*

23. The provision in § 11 of the act of March 6, 1893, c. 171, of the legislature of Indiana, that on the failure or refusal of a telegraph company "to pay any tax assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the prosecuting attorneys of the different judicial circuits of the State . . ., and the judgment in said action shall include a penalty of fifty per cent of the amount of taxes so assessed and unpaid," does not, as to the penalty clause, contravene the Constitution of the United States; and the question whether, in this case, that penalty was properly included in the judgment rendered against the telegraph company was for the determination of the state courts. *Western Union Telegraph Co.* v. *Indiana*, 304.

24. The provisions in §§ 4, 5 and 7 of the act of September 19, 1890, c. 907, conferring upon the Secretary of War authority concerning bridges over navigable water-ways, do not deprive the States of authority to bridge such streams, but simply create an additional and cumulative remedy to prevent such structures, although lawfully authorized, from interfering with commerce. *Lake Shore & Michigan Southern Railway Co.* v. *Ohio*, 365.

25. The act of August 2, 1886, c. 840, imposing a tax upon, and regulating the manufacture, sale, etc., of oleomargarine, required packages thereof to be marked and branded; prohibited the sale of packages that were not, and prescribed the punishment of sales in violation of its provisions. It authorized the Commissioner of Internal Revenue to make regulations describing the marks, stamps and brands to be used. *Held*, that such leaving the matter of designating the marks, brands and stamps to the Commissioner, with the approval of the Secretary, involved no unconstitutional delegation of power. *In re Kollock*, 526.

26. The provision in act No. 66 of the Louisiana laws of 1894 that any person, firm or corporation . . . who in any manner whatever does an act in that State to effect, for himself or for another, insurance on property then in that State, in any marine insurance company which has not complied in all respects with the laws of the State, shall be subject to a fine, etc., when applied to a contract of insurance made in the State of New York, with an insurance company of that State, where the premiums were paid, and where the losses were to be

paid, is a violation of the Constitution of the United States. *Allgeyer* v. *Louisiana*, 578.

27. *Hooper* v. *California*, 155 U. S. 648, distinguished from this case; and it is further held that, by the decision in this case it is not intended to throw any doubt upon, or in the least to shake the authority of that case. *Ib.*

28. When or how far the police power of the State may be legitimately exercised with regard to such subjects must be left for determination to each case as it arises. *Ib.*

29. The statutes of New York regulating the heating of steam passenger cars, and directing guards and guard-posts to be placed on railroad bridges and trestles and the approaches thereto (Laws of 1887, c. 16, Laws of 1888, c. 189), were passed in the exercise of powers resting in the State in the absence of action by Congress, and, when applied to interstate commerce, do not violate the Constitution of the United States. *N. Y., N. H. & Hartford Railroad* v. *New York*, 628.

See TAX AND TAXATION, 1, 2;
TERRITORY.

CONTRACT.

See CONSTITUTIONAL LAW, 20, 21.

CORPORATION.

See CONSTITUTIONAL LAW, 13, 14, 15, 16, 17.

COURT OF PRIVATE LAND CLAIMS.

See PUBLIC LAND, 16.

COURT-MARTIAL.

1. It is within the power of the President, as commander-in-chief, to convene a general court-martial, even when the commander of the accused officer to be tried is not the accuser. *Swaim* v. *United States*, 553.

2. A charge was made by letter against an officer in the army; the letter was referred to a court of inquiry to investigate; on the receipt of its report charges and specifications against him were prepared by order of the Secretary of War; and the President thereupon appointed a court-martial to pass upon the charges. *Held*, that such routine orders did not make the President his accuser or prosecutor. *Ib.*

3. In detailing officers to compose a court-martial the presumption is that the President acts in pursuance of law; and its sentence cannot be collaterally attacked by going into an inquiry, whether the trial by officers inferior in rank to the accused was or was not avoidable. *Ib.*

4. When a court-martial has jurisdiction of the person accused and of the

offence charged, and acts within the scope of its lawful powers, its proceedings and sentence cannot be set aside by the civil courts. *Ib.*

5. The action of the President in twice returning the proceedings of the court-martial, urging a more severe sentence, was authorized by law; and a sentence made after such action, and in consequence of it, was valid. *Ib.*
6. When an officer in the army is suspended from duty, he is not entitled to emoluments or allowances. *Ib.*

CRIMINAL LAW.

1. When a person is notified that his case is to be brought before a grand jury, he should proceed at once to take exception to its competency, and if he has had no opportunity of objecting before bill found then he may raise the objection by motion to quash or by plea in abatement; but in all cases he must take the first opportunity in his power to make the objection. In this case the venire issued November 18; a second venire December 2; the court opened December 3; the indictment was returned December 12; the plea in abatement was filed December 17. *Held*, that it was too late. *Agnew* v. *United States*, 36.
2. An exception was saved as to the taking of notes by a juryman; but, as the record does not show that any notes were taken, there is nothing for it to rest on. *Ib.*
3. On the trial of the president of a national bank, indicted for misapplication of its funds, its cashier testified in his favor as to his financial condition and standing. He was then asked — "do you know what his commercial rating was at that time?" The question being objected to was ruled out. *Held*, that the ruling was correct. *Ib.*
4. The same witness on cross-examination was asked why he had resigned his position as cashier at a date named, which was after the acts complained of and before the indictment. The question being objected to was admitted. *Held*, that there was no error in this. *Ib.*
5. The question at issue being what was the defendant's knowledge and opinion of his own financial condition evidence as to the opinion of others on that point was properly excluded. *Ib.*
6. The opinions of the financial world as to the rating or standing of the defendant when the acts complained of were committed were not admissible in evidence. *Ib.*
7. In criminal cases, the burden of establishing guilt rests on the prosecution from the beginning to the end of the trial; but when a *prima facie* case has been made out, the necessity of adducing evidence then devolves on the accused. *Ib.*
8. The instruction of the trial court to the jury in this case that "if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value and had that exaggerated value placed to his own personal account upon the books of the bank, from such finding of fact you must necessarily

infer that the intent with which he did that act was to injure or defraud the bank, but this inference or presumption is not necessarily conclusive," was not error. *Ib.*

9. The trial court is not bound to accept language which counsel employ in framing instructions, nor to repeat instructions already given in different language. *Ib.*

10. The court instructed the jury that "the crime of making false entries by an officer of a national bank with the intent to defraud, defined in the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist, with the intent either to deceive its officers or to defraud the association. The crime may be committed personally or by direction. Therefore the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, is a false entry. If the statement made upon the deposit slips is false, the entry of it in the bank and the books of the bank is false" and refused to give the following, asked for by defendant; "The making of a false entry is a concrete offence which is not committed where the transaction entered actually took place and is entered exactly as it occurred. . . . The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute." *Held*, that there was no error. *Ib.*

11. The evidence or want of evidence justified the refusals to give the instructions requested by defendant's counsel, and referred to in No. 10, in the opinion of this court; and in regard to those referred to in No. 11, the true view of this branch of the case was fairly covered by the charge of the trial court. *Ib.*

12. In the trial of a person for murder the court in substance instructed the jury that while manslaughter was the intentional taking of human life, the distinguishing trait between it and murder was the absence of malice; that manslaughter sprang from a gross provocation, which rendered the party temporarily incapable of the cool reflection which would otherwise make the act murder, and that while the law did not wholly excuse the offence in such case, it reduced it from murder to manslaughter. *Held*, that this, being for the benefit of the accused, was not error of which he could complain. *Addington* v. *United States*, 184.

13. An instruction in such case that if the circumstances were such as to produce upon the mind of the accused, as a reasonably prudent man, the impression that he could save his own life or protect himself from serious bodily harm only by taking the life of his assailant, he was justified by the law in resorting to such means, unless he went to where the deceased was for the purpose of provoking a difficulty in order that he might slay his adversary, is not error. *Ib.*

14. The indictment of a person employed in the postal service for secreting, embezzling or destroying a cheque or draft in a letter delivered

to him as such agent need not give a full description of the cheque or draft; but it is sufficient to say that, the instrument having been destroyed, the grand jury is unable to give any further description than is found in the indictment. *Rosencrans* v. *United States*, 257.

15. The indictment in this case is sufficient because it does, in fact, contain a charge that the book was obscene to the knowledge of the defendant who knowingly and wilfully, with such knowledge, deposited it in the mail, and thus violated Rev. Stat. § 3893. *Rosen* v. *United States*, 161 U. S. 29, followed. *Price* v. *United States*, 311.
16. *Andrews* v. *United States*, 162 U. S. 420, followed to the point that, on the trial of a person indicted for a violation of the provisions of Rev. Stat. § 3893, touching the mailing of obscene, lewd or lascivious books, etc., it is competent for a detective officer of the Post Office Department, as a witness, to testify that correspondence was carried on with the accused by him through the mails for the sole purpose of obtaining evidence from him upon which to base the accusation. *Ib.*
17. Although there is no appearance for the plaintiff in error, yet, as this is a criminal case, involving the punishment of death, the court has carefully examined the record, to see that no injustice has been done the accused. *Davis* v. *United States*, 373.
18. After a witness, qualified as an expert, has given his professional opinion in reference to that which he has seen or heard, or upon hypothetical questions, it is ordinarily opening the door to too wide an inquiry to interrogate him as to what other scientific men have said upon such matters, or in respect to the general teachings of science thereon, or to permit books of science to be offered in evidence. *Ib.*
19. An expert on behalf of the defence in cross examination was asked: "You think from your experience with him, from your conversation with him, that he killed the man because he threatened his life?" An objection to the question being overruled he answered: "Well, in part; and because he thought his own life was in danger, and because he thought he had the right to destroy this menace to his own life." *Held*, that the objection was properly overruled. *Ib.*
20. The trial court charged: "The term 'insanity' as used in this defence means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he is committing, or where, though conscious of it and able to distinguish between right and wrong and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control." *Held*, that this was not prejudicial to the defendant. *Ib.*
21. Under the circumstances the court did right to refuse the instruction asked for with reference to manslaughter. *Ib.*
22. There was no error in overruling the motion of the defendant, made

prior to the trial, to require the District Attorney to file the printed matter alleged in the indictment to be obscene, lewd, lascivious and indecent. *Dunlop* v. *United States*, 486.

23. There was no error in the admission of the advertisements of proprietorship of the Dispatch as it is difficult to see how the identity of the paper, which the indictment averred that the defendant deposited in the post office for mailing, could have been more conclusively proved than by the production of a newspaper called the Dispatch, and purporting to be the official paper of the city of Chicago. *Ib.*
24. There was no error in permitting government officers in the Post Office Department to testify as to the course of business in the respective offices with which they were connected, with a view of proving the customs of the post office, the course of business therein, and the duties of the employés connected with it. *Ib.*
25. Where a question is made whether a certain paper or other document has reached the hand of the person for whom it is intended, proof of a usage to deliver such papers at the house, or of the duty of a certain messenger to deliver such papers, creates a presumption that the paper in question was actually so delivered. *Ib.*
26. There was no error in permitting the government to prove that during the three years preceding the trial, and also during the period covered by the dates of the papers, admitted in evidence, namely, July 6 to October 19, 1895, a newspaper, purporting to be the Chicago Dispatch, was regularly on each day, except Sunday, received in great quantities at the Chicago post office for mailing and delivery. *Ib.*
27. Whether the matter is too obscene to be set forth in the record is a matter primarily to be considered by the District Attorney in preparing the indictment; and, in any event, it is within the discretion of the court to say whether it is fit to be spread upon the records or not; and error will not lie to the action of the court in this particular. *Ib.*
28. There is no merit in the assignment of error taken to the action of the court, in refusing to direct a verdict of not guilty at the close of the testimony. *Ib.*
29. In his argument to the jury the District Attorney said: "I do not believe that there are twelve men that could be gathered by the venire of this court within the confines of the State of Illinois, except where they were bought and perjured in advance, whose verdict I would not be willing to take upon the question of the indecency, lewdness, lasciviousness, licentiousness and wrong of these publications." To this language counsel for the defendant excepted. The court held that it was improper, and the District Attorney immediately withdrew it. *Held*, that the action of the court was commendable in this particular, and that this ruling, and the immediate withdrawal of the remark by the District Attorney, condoned his error in making it, if his remark could be deemed a prejudicial error. *Ib.*

30. There was no error in the remarks of the District Attorney as to massage treatment. *Ib.*

31. There was no error in instructing the jury that: "It is your duty to come to a conclusion upon all those facts, and the effect of all those facts, the same as you would conscientiously come to a conclusion upon any other set of facts that would come before you in life." "There is no technical rule; there is no limitation in courts of justice, that prevents you from applying to them (the facts and circumstances in evidence) just the same rules of good, common sense, subject always, of course, to a conscientious exercise of that common sense, that you would apply to any other subject that came under your consideration and that demanded your judgment." *Ib.*

32. There was no error in the following instructions as to obscene publications: "Now, what is (are) obscene, lascivious, lewd or indecent publications is largely a question of your own conscience and your own opinion; but it must come — before it can be said of such literature or publication — it must come up to this point: that it must be calculated with the ordinary reader to deprave him, deprave his morals, or lead to impure purposes. . . . It is your duty to ascertain in the first place if they are calculated to deprave the morals; if they are calculated to lower that standard which we regard as essential to civilization; if they are calculated to excite those feelings which, in their proper field, are all right, but which, transcending the limits of that proper field, play most of the mischief in the world." *Ib.*

33. In view of the previous instructions of the court, there was no error in refusing to instruct the jury that the presumption of innocence was stronger than the presumption that the government employés who delivered the newspapers to Mr. Montgomery in the Chicago post office building obtained such papers from the mails; or than the presumption that the person who deposited them in the box in the St. Louis post office building from which box the witness McAfee took the papers obtained them from the mails. *Ib.*

See NATIONAL BANK, 1.

DAMAGES.

1. Damages are the compensation which the law awards for an injury done; and exemplary damages are allowable, in excess of the actual loss, where a tort is aggravated by evil motive, actual malice, deliberate violence or oppression. *Scott* v. *Donald*, 58.

2. The intentional, malicious and repeated interference by the defendants with the exercise of personal rights and privileges secured to the plaintiffs by the Constitution of the United States, as alleged in the complaint, constitutes a wrong and injury not the subject of compensation by a mere money standard, but fairly within the doctrine of

the cases wherein exemplary damages have been allowed, as those allegations of the complaints, though denied in the answers, have been sustained. *Ib.*

DESCENT.

See WILL.

DISTRICT OF COLUMBIA.

1. The act of February 13, 1895, c. 87, 28 Stat. 664, providing that in the adjudication of the claims against the District of Columbia therein referred to, the Court of Claims should allow the rates established and paid by the board of public works, simply conferred a gratuity upon the persons covered by its provisions, which became "due and payable" only from the time when the act which gave it was passed. *District of Columbia* v. *Johnson*, 330.
2. The claim of the District of Columbia to offset against any recovery here, the amount of the interest from June 1, 1874, on its counterclaim found due in its favor against the claimants, cannot be admitted. *Ib.*

See WILL.

EQUITABLE ASSIGNMENT.

See BANK, 2, 3, 4.

EQUITABLE LIEN.

1. Every express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some particular property, real or personal, or fund, therein described or identified, a security for a debt or other obligation, or whereby the party promises to convey or assign or transfer the property as security, creates an equitable lien upon the property so indicated, which is enforceable against the property in the hands not only of the original contractor, but of his heirs, administrators, executors, voluntary assignees and purchasers or encumbrancers with notice. *Walker* v. *Brown*, 654.
2. On the facts stated in the opinion of the court, which can with difficulty be condensed without omitting something which might be deemed essential, and applying to those facts the principle of law stated in the preceding paragraph, *Held*, that Walker & Co. had an equitable lien upon the bonds of Brown pledged to the Union National Bank, and that those bonds had been returned to Brown under such circumstances as to continue the lien against them in the hands of Mrs. Brown, to whom they had been given by him. *Ib.*
3. To dedicate property to a particular purpose, to provide that a specified creditor, and that creditor alone, shall be authorized to seek payment from it or its value, is to create an equitable lien upon it. *Ib.*

EQUITY.

1. When, while disputed matters of fact concerning a tract of public land, or the priority of right of claimants thereto, are pending unsettled in the land department, a patent wrongfully issues for the tract through inadvertence or mistake, by which the jurisdiction conferred by law upon the land department over these disputed questions of fact is lost, a court of equity may rightfully interfere, and restore such lost jurisdiction by cancelling the patent. *Germania Iron Company* v. *United States*, 379.

2. The plaintiff's contention in this case was that, notwithstanding the action of the Department of the Interior in certifying the land in controversy to the State of Nebraska and the subsequent conveyances in the claim of title from that State to the appellees, such apparent legal title was absolutely void, because, by the acts of Congress the land was not subject to selection by the State, it being within the limits of the land grant to the Burlington & Missouri River Railroad Company, and reserved for homestead and preëmption, but not for private entry. All the facts upon which that contention rested were matters of statute and record, and any defence to the apparent legal title created by them was available in an action at law to recover possession. *Held*, that, without deciding whether the selection and certification of these lands were absolutely void or simply voidable at the election of the Government, or were valid and beyond any right of challenge of the Government, or any one else, a case was not presented for the interference of a court of equity. *Deweese* v. *Reinhard*, 386.

See Bank, 3, 4; Infant, 3;
Equitable Lien; Public Land, 1, 9;
Trust.

EVIDENCE.

Notwithstanding the provisions of the acts of July 2, 1864, cc. 210, 222 (reënacted in Rev. Stat. § 858, and Rev. Stat. D. C. §§ 876, 877), a widow is incompetent to testify, in a suit which she is neither a party to, nor interested in, to a private conversation between her husband and herself in his lifetime; and a conversation between them in their own home, in the presence of no one but a young daughter, who does not appear to have taken any part in it, is a private conversation, within the rule. *Hopkins* v. *Grimshaw*, 342.

See Criminal Law, 3 to 8, 11;
Infant, 6, 7.

EXPRESS COMPANIES.

See Constitutional Law, 13, 14, 15, 16, 17, 18.

FEES.

1. The clerk of a district court of a Territory is bound to account to the United States for fees received by him from private parties in civil actions, and from the Territory, on account of territorial business. *United States* v. *McMillan*, 504.
2. The clerk of a district court of a Territory is not bound to account to the United States for sums received for his services in naturalization proceedings. *Ib.*

HUSBAND AND WIFE.

See Evidence.

INDIANS.

See Public Land, 6, 7.

INDIAN DEPREDATIONS.

Under the Indian depredation act of March 3, 1891, c. 538, 26 Stat. 851, judgment may be rendered against the United States alone, when the tribe of Indians to which the depredators belong cannot be identified, and such inability is stated. *United States* v. *Gorham*, 316.

INFANT.

1. An infant may affirm a contract or settlement made for her benefit, like the one here in controversy, and may sue upon it as if she were originally a party to it. *Glover* v. *Patten*, 394.
2. In a suit by children to establish their rights as creditors of the estate of their deceased mother other creditors are not necessary parties, as the executors or administrators represent them and guard their interests. *Ib.*
3. The bill in this case, filed by direction of the orphans' court to obtain the advice of a court of chancery upon the rights of the respective parties, discloses on its face a good cause of action in equity. *Ib.*
4. That cause of action is not barred by the Maryland statute of limitations, still in force in the District of Columbia. *Ib.*
5. Where a parent, being a debtor to his child, makes an advancement to the child, it is presumed to be a satisfaction *pro tanto* of the debt. *Ib.*
6. In a suit between devisees under a will, statements made by the deceased to counsel respecting the execution of the will, or other similar document, are not privileged. *Ib.*
7. The objection that the complainants were incompetent to testify as to their mother's statements, and as to transactions in which she took part is entitled to some weight and is not free from doubt; but such testimony is not indispensable to the maintenance of the complainants' bill. *Ib.*

8. The general bequest to her daughters in the mother's will was not an extinguishment of her debt to them. *Ib.*

9. No interest should be allowed prior to the mother's death. *Ib.*

INTEREST.

For reasons stated in the opinion interest is to be computed at the rate of six per cent, not at the rate of ten per cent. *Walker* v. *Brown*, 651.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 13, 14, 15, 16, 17, 29.

IOWA.

See BOUNDARY LINE.

JURISDICTION.

GENERALLY.

1. Where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. *In re Chetwood*, 443.

2. Where property is in the possession of a court of competent jurisdiction, that possession cannot be disturbed by process out of another court of concurrent jurisdiction. *Ib.*

A. JURISDICTION OF THE SUPREME COURT.

1. Although the question of the jurisdiction of the court below has not been certified to this court in the manner provided by the fifth section of the judiciary act of March 3, 1891, yet, as the case is before it in a case in which the law of a State is claimed to be in contravention of the Constitution of the United States under another clause of that statute it has jurisdiction of the entire case and of all questions involved in it. *Scott* v. *Donald*, 58.

2. A general statement that the decision of a state court is against the constitutional rights of the objecting party, or against the Fourteenth Amendment, or that it is without due process of law, particularly when these objections appear only in specifications of error, so called, will not raise a Federal question, even where the judgment is a final one within Rev. Stat. § 709. *Clarke* v. *McDade*, 168.

3. In these cases there was no final judgment, such as is provided for in Rev. Stat. § 709, and there does not appear to have arisen any Federal question whatever. *Ib.*

4. The refusal of the trial court to grant a new trial cannot be assigned for error in this court. *Addington* v. *United States*, 184.

5. On error to a state court in a chancery case (as also in a case at law),

when the facts are found by the court below this court is concluded by such findings. *Egan* v. *Hart*, 188.

6. On error to a state court the opinion of that court is to be treated as part of the record, and it may be examined in order to ascertain the questions presented, as may also be the entire record, if necessary to throw light on the findings. *Ib.*
7. The finding by the trial court, sustained by the Supreme Court of the State that the stream across which the dam complained of was erected was a non-navigable stream, was a finding of fact which is conclusive here, and affords ground broad enough on which to maintain the judgment below, independent of any Federal question; and this court is consequently without jurisdiction. *Ib.*
8. No Federal right was set up in this case until after the final decision of the case by the Supreme Court of Missouri; and then by a petition for rehearing. *Held*, that the claim of a Federal right came too late, so far as the revisory power of this court is concerned. *Pim* v. *St. Louis*, 273.
9. The judiciary act of 1891 does not give the defeated party in a Circuit Court the right to have his case finally determined on the merits both in this court and in the Circuit Court of Appeals. *Robinson* v. *Caldwell*, 359.
10. A writ of error from this court removes a cause from a Circuit Court to this court, and it is then for this court to determine whether it may entertain jurisdiction of the cause removed, and to dispose of controversies in respect of the form of the writ, the parties, and the citation and service, without interference from any other court. *In re Chetwood*, 443.
11. This court may issue writs of certiorari in all proper cases, and will do so when the circumstances imperatively demand that form of interposition, to correct excesses of jurisdiction, and in furtherance of justice. *Ib.*
12. Where a suit is brought on a contract of which a patent is the subject-matter, either to enforce such contract, or to annul it, the case arises on the contract, or out of the contract, and not under the patent laws; and, if brought in a state court, this court is without appellate jurisdiction to review the judgment unless it appears that a right under the laws of the United States was properly set up and claimed which was denied by the state court. *Wade* v. *Lawder*, 624.

See NATIONAL BANK, 4;
WILL, 1.

B. JURISDICTION OF CIRCUIT COURTS OF APPEAL.

Under the act of March 3, 1891, c. 517, § 7, an appeal to the Circuit Court of Appeals from an interlocutory order or decree of the Circuit Court, granting an injunction and ordering an account, in a patent case, may

be from the whole order or decree; and upon such an appeal the Circuit Court of Appeals may consider and decide the case on its merits, and thereupon render or direct a final decree dismissing the bill. *Smith* v. *Vulcan Iron Works*, 518.

C. Jurisdiction of Circuit Courts of the United States.

1. It was alleged in the bill, and there was evidence to show, that the complainant intended to import for his own use, from time to time as he might need the same, ales, wines and liquors, the products of other States, of the value exceeding two thousand dollars, which were threatened to be seized by the state constables, claiming to act under the dispensary law; and the agreed statement of facts contained the following statements: "Previous to filing of bill and temporary injunction granted in this case the state constables seized, intended and threatened to seize in future, all intoxicating liquors whatsoever coming into the State from other States and foreign countries, and to carry out in full all the provisions of the dispensary law of January 2, 1895; and the value of the right of importation of ales, wines and other liquors, products of other States and countries, is of the value of two thousand dollars and upwards; and the difference in the price to the consumer, like the plaintiff, of such liquor bought at the state dispensary of South Carolina and bought out of the State is about fifty to seventy-five per cent in favor of imported liquors." *Held*, that such statements sufficiently concede that the pecuniary value of plaintiff's rights in controversy exceed the value of two thousand dollars; and that it cannot be reasonably claimed that the plaintiff must postpone his application to the Circuit Court, as a court of equity, until his property to an amount exceeding in value two thousand dollars has been actually seized and confiscated, and when the preventive remedy by injunction would be of no avail. *Scott* v. *Donald*, 107.
2. Under the circumstances set forth in the statement of the case, and in the opinion of the court, it is clear that the Circuit Court of the United States for the Northern District of California could not restrain the prosecution of his suit in the state courts by the petitioner, and, if Federal questions arose, it could not prevent this court, or a justice thereof, or the presiding judge of the state court, from granting writs of error, by restraining the parties from applying therefor; nor could it properly direct their dismissal, having been granted. *In re Chetwood*, 443.

D. Jurisdiction of District Courts of the United States.

Under the act of July 20, 1892, c. 208, the grand jury in the southern division of the District of Montana had jurisdiction to find the indictment which forms the subject of discussion in this case; and, after such indictment had been found, the court had authority to remit it to the other division for trial. *Rosencrans* v. *United States*, 257.

E. Jurisdiction of State Courts.

The doctrine of the civil law and that of the common law, touching the respective rights and duties of proprietors of upper and lower land as to the flow of surface-water are conflicting; and it is the duty of this court, in cases involving such rights and duties, to follow the decisions of the local state courts, although it may involve apparently contradictory decisions. *Walker* v. *New Mexico & Southern Pacific Railroad*, 593.

LEASE.

See National Bank, 4.

LIMITATION, STATUTES OF.

See Infant, 4.

LOCAL LAW.

District of Columbia. *See* Will.
Maryland. *See* Infant, 4.

MISSOURI.

See Boundary Line.

MUNICIPAL CORPORATION.

The use of the land, the subject of this controversy, being a public use, and within the authority granted by the original reservation, the extent of that use is a matter for determination by the public authorities of Burlington, and cannot be restrained by an adjoining lot owner, without reference to his right to compensation for the injury to his lots. *Burlington Gas Light Co.* v. *Burlington, Cedar Rapids & Northern Railway Co.*, 370.

NATIONAL BANK.

1. When the managers of a national bank make arrangements with depositors in the bank to give them credit at the bank for larger sums than appear upon the credit side of their accounts up to specified amounts and for a fixed time, and the proper officers of the bank make entries thereof in the books of the bank in good faith and in the belief that they have a right so to do, such an entry is not a false entry within the meaning of that term as used in Rev. Stat. § 5209, and the person so making it is not guilty of a violation of that statute in so doing. *Graves* v. *United States*, 323.
2. A receiver of a national bank, appointed by the Comptroller of the Currency in pursuance of law, acts under the control of the officer appointing him, and does not, by application to the proper court touching a sale of personal property of the bank, become an officer of that court, or place the assets of the bank within its control. *In re Chetwood*, 443.

3. When a state court has acquired jurisdiction of an action or suit to recover moneys alleged to be due a national bank, in the hands of a receiver, the receiver's subsequent discharge and the substitution of an agent in his place by the act of the stockholders does not oust it. *Ib.*

4. In an action against a national bank upon a contract, each party relied on section 5136 of the Revised Statutes, by which a national bank, upon filing its articles of association and organization certificate with the Comptroller of the Currency, becomes a corporation, with power "to make contracts" and other corporate powers, but is prohibited to "transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking." The defendant relied on the prohibition. The plaintiff relied on the exception to the prohibition, and also contended that under the general power to make contracts, the contract sued on was valid as between the parties, even if contrary to the prohibition. *Held*, that a judgment for the defendant in the highest court of the State might be reviewed by this court on writ of error. *McCormick* v. *Market Bank*, 538.

5. By section 5136 of the Revised Statutes, a contract of lease, at a large rent, of an office to be occupied "as a banking office, and for no other purpose," for the term of five years, determinable at the end of any year by either party, executed by a national bank as lessee, after having duly filed its articles of association and organization certificate with the Comptroller of the Currency, but not having been authorized by him to commence the business of banking, is void, cannot be made good by estoppel, and will not support an action against the bank to recover anything beyond the value of what it has actually received and enjoyed. *Ib.*

6. A creditor who receives from his debtor a transfer of shares in a national bank as security for his debt, and who surrenders the certificates to the bank, and takes out new ones in his own name, in which he is described as pledgee, and holds them afterwards in good faith as such pledgee and as collateral security for the payment of his debt, is not a shareholder, subject to the personal liability imposed upon shareholders by Rev. Stat. § 5151. *Pauly* v. *State Loan & Trust Co.*, 606.

7. The previous cases relating to the liability of such shareholders examined and *held* to establish: (1) That the real owner of the shares of the capital stock of a national banking association may, in every case, be treated as a shareholder within the meaning of section 5151; (2) That if the owner transfers his shares to another person as collateral security for a debt due to the latter from such owner, and if, by the direction or with the knowledge of the pledgee, the shares are placed on the books of the association in such way as to imply that the pledgee is the real owner, then the pledgee may be treated as a shareholder within the meaning of section 5151 of the Revised Statutes of the United States, and therefore liable upon the basis prescribed by that

section for the contracts, debts and engagements of the association; (3) That if the real owner of the shares transfers them to another person, or causes them to be placed on the books of the association in the name of another person, with the intent simply to evade the responsibility imposed by section 5151 on shareholders of national banking associations, such owner may be treated, for the purposes of that section, as a shareholder, and liable as therein prescribed; (4) That if one receives shares of the stock of a national banking association as collateral security to him for a debt due from the owner, with power of attorney authorizing him to transfer the same on the books of the association, and being unwilling to incur the responsibilities of a shareholder as prescribed by the statute, causes the shares to be transferred on such books to another, under an agreement that they are to be held as security for the debt due from the real owner to his creditor — the latter acting in good faith and for the purpose only of securing the payment of that debt without incurring the responsibility of a shareholder — he, the creditor, will not, although the real owner may, be treated as a shareholder within the meaning of section 5151; and, (5) That the pledgee of personal property occupies towards the pledgor somewhat of a fiduciary relation, by virtue of which, he being a trustee to sell, it becomes his duty to exercise his right of sale for the benefit of the pledgor. *Ib.*

See Bank;
Criminal Law, 3, 4, 5, 6, 8, 10, 11.

NAVIGABLE WATERS.

See Constitutional Law, 24.

OFFICER IN THE ARMY.

See Court-Martial.

OFFICER IN THE NAVY.

A lieutenant in the Navy, assigned by order of the Secretary of the Navy to duty as executive officer of a vessel of the United States, furnished by the Secretary of the Navy to the State of New York as a school ship, is entitled to sea pay, as well while the vessel is attached to a wharf in the harbor of New York, as while she is on a cruise, and although this service is called, in the Secretary's order for his detail, "employment on shore duty," and notwithstanding he is receiving pay from the State as instructor in its nautical school upon the vessel. *United States* v. *Barnette*, 174.

OLEOMARGARINE.

See Constitutional Law, 25.

PARTIES.

1. The interest that will allow parties to join in a bill of complaint, or that will enable the court to dispense with the presence of all the parties, when numerous, except a determinate number, is not only an interest in the question, but one in common in the subject-matter of the suit — a community of interest growing out of the nature and condition of the right in dispute. *Scott* v. *Donald*, 107.
2. The decree is also objectionable because it enjoins persons not parties to the suit; as this is not a case where the defendants named represent those not named; and there is not alleged any conspiracy between the parties defendant and other unknown parties; but the acts complained of are tortious, and do not grow out of any common action or agreement between constables and sheriffs of the State of South Carolina. *Ib.*

See Infant, 1, 2, 3.

PATENT FOR INVENTION.

See Jurisdiction, A, 12; B.

PERPETUITIES.

See Trust, 1.

PLEADING.

See Criminal Law, 1.

POLICE POWER.

See Constitutional Law, 28.

PRACTICE.

See Criminal Law, 2, 7;
Jurisdiction, A, 4, 5, 6, 7.

PUBLIC LAND.

1. A bill in equity against the Secretary of the Interior and the Commissioner of the General Land Office, to restrain them from exercising further jurisdiction with respect to the disposition of certain public lands, and from further trespassing upon the plaintiff's right of quiet possession thereof, and to compel the Secretary to prepare patents therefor, to be issued to the plaintiff, in accordance with law, and to the end that the plaintiff's title may be quieted and freed from cloud, and for further relief, abates, as to the Secretary, upon his resignation of his office, and cannot afterwards be maintained against the Commissioner alone. *Warner Valley Stock Co.* v. *Smith*, 28.

2. In 1858, C. located a bounty land warrant issued to L. under the act of March 3, 1855, c. 207, taking a certificate of location, which was recorded in the office of the recorder in the county in which the land was situated. No patent was issued. In 1884, under authority of the act of June 23, 1860, c. 203, but without notice to C., the Secretary of the Interior cancelled that warrant. It was admitted that the assignment upon it, purporting to be that of L., was a forgery. On the records of the land department up to 1886 it appeared that a full and equitable title to the land had passed to C., and in that year D. having obtained conveyances from C., applied to the land department for leave to purchase on payment of the regular price and his application was granted. Meanwhile the land had been sold for non-payment of state taxes, and the tax title had passed into H. D. commenced suit against H. to quiet title, and the Supreme Court of Iowa sustained the decree of the trial court in his favor. *Held*, (1) That as the Supreme Court of the State held that the equitable title apparently conveyed by the proceedings in the United States Land Office in 1858 was of no effect, and the tax titles based thereon of no validity, it was apparent that a right claimed under the authority of the United States was denied, and, therefore, this court had jurisdiction; (2) That, though a formal certificate of location was issued in 1858, there was then in fact no payment for the land and the government received nothing until 1888; that during these intervening years whatever might have appeared upon the face of the record the legal and the equitable title both remained in the government; that the land was, therefore, not subject to state taxation; that tax sales and tax deeds issued during that time were void; that the defendant took nothing by such deeds; that no estoppel can be invoked against the plaintiff; that his title dates from the time of payment in 1888; that the defendant does not hold under him and has no tax title arising subsequently thereto; and that there was no error in the decision of the Supreme Court of the State. *Hussman* v. *Durham*, 144.

3. Congress did not intend by the statutes under which the Atlantic and Pacific Railroad Company received its grants of public land, to vest the lands absolutely in the company, without a right to the Government to reacquire them on failure of the company to comply with the conditions of the grant; and no express provision for a forfeiture was necessary in order to fix the rights of the Government, and to authorize reëntry in case of breach of condition. *Atlantic & Pacific Railroad Co.* v. *Mingus*, 413.

4. The act of April 20, 1871, c. 33, 17 Stat. 19, did not alter, amend, or repeal the act of July 27, 1866, c. 278, 14 Stat. 292, in these respects, except so far as it permitted a foreclosure of any mortgage which might be put upon the lands by the company to operate upon lands opposite and appurtenant to the then completed part of the road, and so far as it gave assurance that no forfeiture would be insisted upon for conditions then broken. *Ib.*

5. When the United States grant public lands upon condition subsequent, they have the same right to reënter upon breach of the condition which a private grantor would have under the same circumstances, which right is to be exercised by legislation. *Ib.*

6. Lands in the Indian Territory belonging to the Indians did not pass under the grant to the railroad company; and the United States were not required by the statutes to extinguish the Indian title for the benefit of the railroad company, nor could they be reasonably expected to do so. *Ib.*

7. As to Indian grants made subsequent to the grant to the railroad company, there was no restriction upon the right of the government to dispose of public lands in any way it saw fit prior to the filing of the map of definite location; and if it assumed to dispose of lands within the grant, after the rights of the railroad company had attached, such action would be void, but it would be no answer to the obligation of the company to complete its road within the stipulated time. *Ib.*

8. Congress did not exceed its powers in forfeiting this grant. *Ib.*

9. In view of the fact that many years have passed since the certification of the lands in controversy, and since the railroad company, in reliance upon the title which it believed it had acquired, disposed of them, and that other parties have become interested in them, and have dealt with them as private property, the appellees are justified in saying that they have large claims upon the equitable consideration of the courts. *United States* v. *Winona & St. Peter Railroad Co.*, 463.

10. The act of March 3, 1887, 24 Stat. 556, providing for the adjustment of land grants made by Congress to aid in the construction of railroads, and the act of March 2, 1896, 29 Stat. 42, operated to confirm the title to purchasers from a railroad company of lands certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceedings of the land department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the limits of the grants, excepted from their operation; provided that they purchased in good faith, and paid value for the lands; and provided, also, that the lands were public lands in the statutory sense of the term, and free from individual or other claims. *Ib.*

11. Anterior to any claim of right under its grant by the Winona and St. Peter Railroad Company, by virtue either of filing its map of definite location or of surveying and staking its line upon the ground, a preëmption filing was placed upon the land. This filing was never cancelled. The claimant entered into possession and continued so either personally or through a tenant until after the construction of the railroad, and until after the railroad company had conveyed the land to a land company, and until an action of ejectment was brought by the land company. The court below was of opinion, in which this court concurs, that the land company could not be considered a

purchaser in good faith from the railroad company; that it took its conveyance with notice, from possession, of all the rights and the claims of the party so in possession; that it therefore did not bring itself within the protecting clauses of the act of March 3, 1887, c. 376, 24 Stat. 556; and that there was nothing to stay the right of the Government to have the certification, so erroneously issued, cancelled. *Winona & St. Peter Railroad Co.* v. *United States*, 483.

12. This case distinguished from *United States* v. *Winona & St. Peter Railroad Company*, *ante*, 463. *Ib.*
13. The Spanish law did not, *proprio vigore*, confer upon every Spanish villa or town, a grant of four square leagues of land, to be measured from the centre of the plaza of such town. *United States* v. *Santa Fé*, 675.
14. Although, under that law, all towns were not, on their organization, entitled by operation of law, to four square leagues, yet, at a time subsequent to the organization of Santa Fé, Spanish officials adopted the theory that the normal quantity which might be designated as the limits of new pueblos, to be thereafter created, was four square leagues. *Ib.*
15. The rights of Santa Fé depend upon Spanish law as it existed prior to the adoption of that theory. *Ib.*
16. An inchoate claim, which could not have been asserted as an absolute right against the government of either Spain or Mexico, and which was subject to the uncontrolled discretion of Congress, is clearly not within the purview of the act of March 3, 1891, c. 539, creating the Court of Private Land Claims; but the duty of protecting such imperfect rights of property rests upon the political department of the government. *Ib.*

See EQUITY, 1, 2.

RAILROAD.

It is settled law in this court that the relation of fellow-servants exists between an engineer operating a locomotive on one train and the conductor on another train on the same road. *Oakes* v. *Mase*, 363.

See CONSTITUTIONAL LAW, 1.

RECEIVER.

See NATIONAL BANK.

SECRETARY OF THE INTERIOR.

See PUBLIC LAND, 1.

SPANISH LAND GRANTS.

See PUBLIC LAND, 13, 14, 15, 16.

STATUTE.

A. Construction of Statutes.

Where Congress has expressly legislated in respect to a given matter, that express legislation must control, in the absence of subsequent legislation equally express, and is not overthrown by any mere inferences or implications to be found in such subsequent legislation. *Rosencrans* v. *United States*, 257.

B. Statutes of the United States.

See Constitutional Law, 19, 21, 23, 24, 25;
Criminal Law, 10, 15, 16;
District of Columbia 1;
Evidence;
Indian Depredations;
Jurisdiction, A, 1, 2, 3, 9; B; D;
National Bank, 1, 4, 5, 6, 7;
Public Land, 2, 3, 4, 10, 11, 16;
Territory, 1.

C. Statutes of States and Territories.

Indiana. *See* Constitutional Law, 23.
Louisiana. *See* Constitutional Law, 26.
Maryland. *See* Will, 1.
New York. *See* Constitutional Law, 29.
Ohio. *See* Constitutional Law, 13, 18.
South Carolina. *See* Constitutional Law, 3, 4, 5, 6; Jurisdiction, C, 1.
Texas. *See* Constitutional Law, 10.

SURFACE-WATER.

See Jurisdiction, E.

TAX AND TAXATION.

1. In enforcing the collection of taxes one rule may be adopted in respect of the admitted use of one kind of property, and another rule in respect of the admitted use of another, in order that all may be compelled to contribute their proper share to the burdens of government. *Western Union Telegraph Co.* v. *Indiana*, 304.
2. The amount of penalty to be enforced for non-payment of taxes is a matter within legislative discretion. *Ib.*

See Constitutional Law, 14 to 18, 23, 25.

TERRITORY.

1. The act of April 4, 1874, c. 80, legislating for all the Territories, secures to their inhabitants all the rights of trial by jury, as they existed at

the common law. *Walker* v. *New Mexico & Southern Pacific Railroad*, 593.

2. It is within the power of a legislature of a Territory to provide that, on a trial of a common law action, the court may, in addition to the general verdict, require specific answers to special interrogatories, and, when a conflict is found between the two, render such judgment as the answers to the special questions compel. *Ib.*
3. A territorial legislature has all the legislative power of a state legislature, except as limited by the Constitution, and by act of Congress; and, the legislature of New Mexico, having adopted the common law as the rule of practice and decision, this court is bound by it. *Ib.*

TRUST.

1. The rule against perpetuities is inapplicable to a trust resulting to the heirs of a grantor upon the failure of an express trust declared in his deed. *Hopkins* v. *Grimshaw*, 342.
2. By a deed of land from a private person to three others as trustees for a particular society, not incorporated, but formed for the mutual aid of its members when sick and for their burial when dead, to have and to hold to the trustees, "and their successors in office forever, for the sole use and benefit of the society aforesaid, for a burial ground, and for no other purpose whatever," the trustees take the legal estate in fee; and, when the land has ceased to be used for a burial ground, and all the bodies there interred have been removed to other cemeteries, by order of the municipal authorities, and the society has been dissolved and become extinct, the grantor's heirs are entitled to the land by way of resulting trust; and, after one of those heirs and the heirs of the trustees have conveyed their interests in the land to another person, the other heirs of the grantor may maintain a bill in equity against him to enforce the resulting trust, and for partition of the land, and for complete relief between the parties. *Ib.*

WILL.

1. This court looks to the law of the State in which land is situated for the rules which govern its descent, alienation and transfer, and for the effect and construction of wills and other conveyances; and in the District of Columbia those rules are the rules which governed in Maryland at the time when the District was separated from it. *De Vaughn* v. *Hutchinson*, 566.
2. Under a will devising real estate in the District of Columbia to M. A. M. during her natural life, and after her death to be equally divided among the heirs of her body begotten, share and share alike, and to their heirs and assigns forever, M. A. M. takes a life estate only, and her children take an estate in fee. *Ib.*

See Infant, 6 to 9.