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ACT OF GOD.

See ADMIRALTY, 12.

ADMIRALTY.

1. When a libel in admiralty is ordered to stand dismissed if not amended within a time named, the prosecution of an appeal within that time is a waiver of the right to amend, and the decree of dismissal takes effect immediately. *The Three Friends*, 1.
2. In admiralty cases, although the decree of the Circuit Court of Appeals is made final in that court, this court may require any such case to be certified for its review and determination, with the same power and authority as if it had been brought here, directly, from the District or Circuit Court; and although this power is not ordinarily to be exercised, the circumstances justified the allowance of the writ in this instance. *Ib.*
3. The forfeiture of a vessel proceeded against under Rev. Stat. § 5283, does not depend upon the conviction of the person or persons charged with doing the acts therein forbidden. *Ib.*
4. Demurrage is a proper element of damages, but it can only be allowed when profits have either actually been lost, or may be reasonably supposed to have been lost, and their amount is proven with reasonable certainty. *The Conqueror*, 110.
5. The best evidence of damage suffered by detention is the sum for which vessels of the same size and class can be chartered in the market; but in the absence of such market value, the value of her use to her owner in the business in which she was engaged at the time of the collision is a proper basis for estimating damages for detention, and the books of the owner showing her earnings about the time of her collision are competent evidence of her probable earnings during the time of her detention. *Ib.*
6. Testimony as to value may be properly received from witnesses who are duly qualified as experts, but the jury, even if such testimony be uncontradicted, may exercise their independent judgment; and there is no rule of law which requires them to surrender their judgment, or to give a controlling influence to the opinions of scientific witnesses. *Ib.*

7. The testimony in this case falls far short of establishing such a case of loss of profits as entitles the claimant to recover the large sum awarded to him for the detention of his yacht. *Ib.*

8. Whether the other charges were proper or not, was a matter for the courts below to determine, in the exercise of their best judgment; and, as the commissioner found that they were proper, and as both the District Court and the Court of Appeals affirmed his action in that regard, this court is not disposed to disturb their finding, although the amount seems large. *Ib.*

9. Torts originating within the waters of a foreign power may be the subjects of a suit in a domestic court. *Panama Railroad* v. *Napier Shipping Co.*, 280.

10. The facts in this case, as detailed in the statement of the case, do not show a negligence on the part of the railroad company and its agents, which makes it responsible to the shipping company for the damage caused by the accident to the Stroma. *Ib.*

11. By printed contract the Oceanic steamship company agreed with the libellants, in consideration of the passage money paid, to land them with their luggage in New York. The contract ticket had attached to it a "notice to passengers," printed in fine type, that the contract was made subject to "conditions," among which were the following: "3. Neither the Shipowner nor the Passage Broker or Agent is responsible for loss of or injury to the Passenger or his luggage or personal effects, or delay on the voyage, arising from steam, latent defects in the Steamer, her machinery, gear or fittings, or from act of God, Queen's enemies, perils of the sea or rivers, restraints of princes, rulers and peoples, barratry or negligence in navigation, of the Steamer or of any other vessel. 4. Neither the Shipowner nor the Passage Broker or Agent is in any case liable for loss of or injury to or delay in delivery of luggage or personal effects of the Passenger beyond the amount of £10, unless the value of the same in excess of that sum be declared at or before the issue of this Contract Ticket, and freight at current rates for every kind of property (except pictures, statuary and valuables of any description upon which one per cent will be charged) is paid." "7. All questions arising on this Ticket shall be decided according to English law, with reference to which this Contract is made." The ticket was purchased for libellants by their father, was not examined by him, was not examined by them, and neither he nor they knew of these conditions, nor was their attention called to them. On the voyage the luggage of libellants was flooded with water, which came in through a broken port-hole, from causes described by the court in its Statement of the Case and opinion, which are held not to be an "act of God," necessarily exempting the company from liability. *Held*, (1) That by the rule in England the "conditions" were notices, and nothing more; and that it could not be held as matter of law that, whether they were regulations for the conduct of business, or limitations upon common law obligations,

they constituted any part of the contract; (2) That the rule was not otherwise in this country; (3) That on the evidence the court cannot conclude that the libellants should be held bound, as a matter of fact, by any of the alleged conditions or limitations, as they were not included in the contract proper, in terms or by reference. *The Majestic*, 375.

12. The "act of God," which would exempt from liability under such circumstances, is limited to causes in which no man has any agency whatever. *Ib.*
13. The Umbria, a passenger steamer carrying the mails, coming out from the harbor of New York at full speed about midday in a fog which was at times dense and at times intermittent, collided with the Iberia about eleven miles from the entrance to the harbor and sank her. *Held*, that the Umbria was gravely at fault in the matter of speed, and that this fault was not lessened by the fact that passenger steamers carrying the mails run at full speed in a fog in order to pass the foggy belt. *The Umbria*, 404.
14. Accepting, in the absence of other evidence, the testimony of the officers and crew of the Iberia as conclusive, the court, while of opinion that it would have been more prudent not to have changed her course in manner as set forth in the Statement of the Case, is unwilling to say that the doing so was necessarily a fault on her part. *Ib.*
15. The general consensus of opinion in this country is that in a fog a steamer is bound to use only such precautions as will enable her to stop in time to avoid a collision, after the approaching vessel comes in sight, provided such approaching vessel is herself going at the moderate speed required by law. *Ib.*
16. The damages should not have been divided by the court below. The majority of this court think that the Iberia was not in fault under the circumstances set forth in the Statement of the Case, and the other members of the court are of opinion that her fault, if any, did not contribute to the collision. *Ib.*
17. In cases of total loss estimated profits of a charter party not yet entered upon are always rejected; and there is nothing in the facts to take this case out of the general rule. *Ib.*

See NEUTRALITY.

BOND.

See SIGNAL SERVICE.

CASES AFFIRMED OR FOLLOWED.

Bank of Aberdeen v. *Chehalis County*, 166 U. S. 440, affirmed, followed and applied to the several facts in these respective cases. *Bank of Commerce* v. *Seattle*, 463.

The judgments in these cases are reversed on the authority of *American Publishing Co.* v. *Fisher*, 166 U. S. 464; *Springville* v. *Thomas*, 707.

See DECISIONS WITHOUT OPINIONS; HABEAS CORPUS, 2; PRACTICE; PROHIBITION; RAILROAD, 10; TAX AND TAXATION, 1, 3, 15.

CASES DISTINGUISHED.

The case of *Burgess* v. *Seligman*, 107 U. S. 20, distinguished from this case. *Forsyth* v. *Hammond*, 506.

CASES QUESTIONED.

Runkle v. *United States*, 122 U. S. 543, again questioned, as it has not been approved in subsequent decisions. *In re Chapman*, 661.

CERTIORARI.

1. So long as the transcript of the record in the Circuit Court is in the Circuit Court of Appeals, the fact that a mandate from it has gone down to the Circuit Court, affirming its decree, does not affect the right of this court to issue a writ of certiorari to the Court of Appeals, to bring the record here. *The Conqueror*, 110.
2. An application for a writ of certiorari to bring here for review a record and judgment entered after the final adjournment of this court, made at the next term and within a year after the original decree, is made within time. *Ib.*

See JURISDICTION, B, 2, 7, 8, 9.

CLAIMS AGAINST THE UNITED STATES.

See INTERNAL REVENUE TAXES; SIGNAL SERVICE.

COMMON CARRIER.

See RAILROAD, 8.

CONSTITUTIONAL LAW.

1. After a person had been convicted in a state court of murder, he sued out a writ of error from the Supreme Court of the State. On the day assigned for its hearing it appeared from affidavits that the accused had escaped from jail, and was at that time a fugitive from justice. The court thereupon ordered the writ of error dismissed, unless he should within sixty days surrender himself or be recaptured, and when that time passed without either happening, the writ was dismissed. He was afterwards recaptured, and resentenced to death,

whereupon he sued out this writ of error, assigning as error that the dismissal of his writ of error by the Supreme Court was a denial of due process of law. *Held*, that the dismissal of the writ of error by the Supreme Court of the State was justified by the abandonment of his case by the plaintiff in the writ. *Allen* v. *Georgia*, 138.

2. Act No. 225 of the legislature of Louisiana of March 15, 1855, exempting the hall of the Grand Lodge from state and parish taxation, "so long as it is occupied as a Grand Lodge of the F. & A. Masons," did not constitute a contract between the State and the complainant, but was a mere continuing gratuity which the legislature was at liberty to terminate or withdraw at any time. *Grand Lodge F. & A. Masons* v. *New Orleans*, 143.

3. If such a law be a mere offer of bounty it may be withdrawn at any time, although the recipients may have incurred expense on the faith of the offer. *Ib.*

4. The prohibitions of the Fourteenth Amendment refer to all the instrumentalities of the State, to its legislative, executive and judicial authorities, and, therefore, whoever by virtue of public position under a state government deprives another of any right protected by that amendment against deprivation by the State, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. *Chicago, Burlington & Quincy Railroad Co.* v. *Chicago*, 226.

5. The contention that the defendant has been deprived of property without due process of law is not entirely met by the suggestion that he had due notice of the proceedings for condemnation, appeared, and was admitted to make defence. The judicial authorities of a State may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that their action would be inconsistent with that amendment. *Ib.*

6. A judgment of a state court, even if authorized by statute, whereby private property is taken for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States. *Ib.*

7. The clause of the Seventh Amendment of the Constitution of the United States declaring that "no fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of the common law" applies to cases coming to this court from the highest courts of the States in which facts have been found by a jury. *Ib.*

8. In a proceeding in a state court for the condemnation of private property for public use, the court having jurisdiction of the subject-matter and of the parties, the judgment ought not to be held in violation of the due process of law enjoined by the Fourteenth Amendment, un-

less some rule of law was prescribed for the jury that was in absolute disregard of the right to just compensation. *Ib.*

9. A statute of a State, requiring every railroad corporation to stop all regular passenger trains, running wholly within the State, at its stations at all county seats long enough to take on and discharge passengers with safety, is a reasonable exercise of the police power of the State, and does not take property of the company without due process of law; nor does it, as applied to a train connecting with a train of the same company running into another State, and carrying some interstate passengers and the United States mail, unconstitutionally interfere with interstate commerce, or with the transportation of the mails of the United States. *Gladson* v. *Minnesota*, 427.
10. The statute of the Territory of Utah (Compiled Laws of 1888, § 3371, as amended in 1892) providing that "in all civil cases a verdict may be rendered on the concurrence therein of nine or more members of the jury," if not invalid under the Seventh Amendment to the Constitution is so as violating the provision in the act of September 9, 1850, c. 51, admitting Utah as a Territory, that "the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provisions thereof may be applicable," and the act of April 7, 1874, c. 80, "concerning the practice in territorial courts, and appeals therefrom," which provided that no party "shall be deprived of the right of trial by jury in cases cognizable at common law." *American Publishing Co.* v. *Fisher*, 464.
11. Litigants in common law actions in the courts of that Territory, while it remained a Territory, had a right to trial by jury, which involved unanimity in the verdict, and this right could not be taken away by territorial legislation. *Ib.*
12. The power of a State to change the rule in respect of unanimity of juries is not before the court in this case. *Ib.*
13. The matter of the territorial boundaries of a municipal corporation is local in its nature, and, as a rule, is to be finally and absolutely determined by the authorities of the State. *Forsyth* v. *Hammond*, 506.
14. The construction of the constitution and laws of a State by its courts is, as a general rule, binding on Federal courts. *Ib.*
15. The legislation contained in sections 102 and 104 of the Revised Statutes was originally enacted "more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony"; and, when reasonably construed, is not open to the objection that it conflicts with the provisions of the Constitution. *In re Chapman*, 661.
16. Congress possesses the constitutional power to enact a statute to enforce the attendance of witnesses, and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legislative functions. *Ib.*

17. While Congress cannot divest itself or either of its Houses of the inherent power to punish for contempt, it may provide that contumacy in a witness called to testify in a matter properly under consideration by either House, and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United States. *Ib.*

18. A state statute providing that no dog shall be entitled to the protection of the law unless placed upon the assessment rolls, and that in a civil action for killing a dog the owner cannot recover beyond the value fixed by himself in the last assessment preceding the killing, is within the police power of the State. *Sentell* v. *New Orleans & Carrollton Railroad Co.*, 698.

See JURISDICTION, B, 10, 11; C, 5; MUNICIPAL CORPORATION; RAILROAD, 1 to 6, 9; TAX AND TAXATION, 1, 3, 5.

CONTRACT.

See ADMIRALTY, 11; RAILROAD, 9.

CONTRACTS IN RESTRAINT OF TRADE AND COMMERCE.

See INTERSTATE COMMERCE.

CONTUMACY.

See CONSTITUTIONAL LAW, 17.

CORPORATION.

See TAX AND TAXATION, 10, 11.

COURT AND JURY.

If the trial court gives the law fully and accurately, covering all the ground necessary to advise the jury of the rights of the parties, it is not necessary to instruct them in the very language of counsel. *Carter* v. *Ruddy*, 493.

CRIMINAL LAW.

See CONSTITUTIONAL LAW, 1; HABEAS CORPUS, 3.

CUSTOMS DUTIES.

1. A foreign built vessel, purchased by a citizen of the United States, and brought into the waters thereof, is not taxable under the tariff laws of the United States. *The Conqueror*, 110.

2. Rev. Stat. § 970, which provides that "when, in any prosecution commenced on account of the seizure of any vessel, goods, wares or merchandise, made by any collector or other officer, under any act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution: *provided*, That the vessel, goods, wares or merchandise be, after judgment, forthwith returned to such claimant or his agent," only affords the collector immunity against a judgment for damages in cases where proceedings against the vessel were instituted upon information filed by the United States, for a fine or forfeiture incurred by the vessel itself. *Ib.*

3. A collector of customs who seizes a foreign built vessel purchased by a citizen of the United States and brought by him into their waters, and holds the same on the claim that it is taxable for duties under the tariff laws, is not protected against a judgment for damages, by a certificate of probable cause. *Ib.*

DAMAGES.

The errors alleged were frivolous, and the writ of error was sued out for delay, for which, in affirming the judgment, ten per cent damages are allowed under clause 2 of Rule 23. *Nelson* v. *Flint*, 276.

See RAILROAD, 11.

DECEASED PERSONS' ESTATES.

See DISTRICT OF COLUMBIA.

DEED.

See JURISDICTION, A, 1.

DEMURRAGE.

See ADMIRALTY, 4 to 7.

DISTRICT OF COLUMBIA.

1. In the District of Columbia a non-resident minor, having an interest in real estate situated therein, may, by the appointment of a guardian *ad litem* by the proper court, and without service of personal process upon him, be subjected to a decree providing for the sale of the land for the payment of the debts of the decedent owner, and partitioning the surplus, if any, after such payment. *Manson* v. *Duncanson*, 533.

2. Such a decree, if made by a court with full jurisdiction of the subject-matter and having the proper parties before it, cannot be attacked by one of those parties in a collateral proceeding. *Ib.*
3. Whether the decedent owner in such case had any interest in the land petitioned to be sold was a question to be decided by the court in which the cause was pending, and if error was committed in its disposition of that question, the remedy was by appeal, or by a bill of review, if duly filed. *Ib.*

EJECTMENT.

1. A single verdict and judgment in ejectment, when not conclusive under the laws and in the courts of a State, is no bar to a second action of ejectment in the courts of the United States. *Barber* v. *Pittsburgh, Fort Wayne & Chicago Railway Co.*, 83.
2. It is well settled that an action of ejectment cannot be maintained in the courts of the United States on a merely equitable title; and there is nothing in this case to exempt it from the rule that a patent is necessary to convey legal title. *Carter* v. *Ruddy*, 493.
3. When a tract of land is held as a separate and distinct tract, with boundaries designated so that they may be known, the possession by the owner or his tenants of a part operates as a possession of all; but if the tract is cut up into distinct lots, marked and treated as distinct tracts, the claimant to all must show possession of all. *Ib.*

EQUITY.

Equity will sometimes refuse relief where a shorter time than that prescribed by the statute of limitations has elapsed without suit. It ought always to do so where, as in this case, the delay in the assertion of rights is not adequately explained, and such circumstances have intervened in the condition of the adverse party as to render it unjust to him or to his estate that a court of equity should assist the plaintiff. In this case the plaintiff, seeking the aid of equity, forbore for an unreasonably long time to assert his rights, and made no demand upon his adversary until disease had so far deprived the latter of his reason and faculties that he could not comprehend any matter of business submitted to him. His right to ask the aid of a court of equity was held to have been lost under the peculiar circumstances of the case. *Whitney* v. *Fox*, 637.

ESTOPPEL.

See RAILROAD, 9.

EVIDENCE.

1. Conversations between two makers of a note, in the absence of the payee, and without his knowledge, are not binding upon him, and

are not admissible in evidence against him in an action to recover on the note. *Nelson* v. *Flint*, 276.

2. A party cannot, by merely filing with the clerk an affidavit not incorporated in any bill of exceptions, bring into the record evidence of what took place at the trial. *Ib.*

See ADMIRALTY, 5, 6, 7;
SIGNAL SERVICE, 7;
WILL, 6.

FINDINGS OF FACTS.

See PRACTICE.

GUARDIAN AND WARD.

See DISTRICT OF COLUMBIA.

HABEAS CORPUS.

1. Iasigi, Consul General of Turkey in Boston, was arrested in New York, February 14, 1897, on a warrant issued by a magistrate of the latter city, to await the warrant of the governor of New York on the requisition of the governor of Massachusetts for his surrender as a fugitive from justice in that State, where he was charged with having committed the crime of embezzlement. On the 18th of February he applied to the District Court of the United States for a writ of *habeas corpus*, on the ground that the proceedings before the city magistrate were without authority or jurisdiction, because of his consular office. The writ was issued and a hearing had March 12. The District Court dismissed the writ, and remanded the prisoner, from which judgment an appeal was taken. On the 19th of March the State Department was informed that Iasigi had been removed from his consular office by the Turkish government on the 9th of that month. *Held*, that the order of the District Court remanding him to custody was not erroneous. *Iasigi* v. *Van De Carr*, 391.

2. *Nishimura Ekiu* v. *United States*, 142 U. S. 651, followed to the point that the object of a writ of *habeas corpus* is to ascertain whether the prisoner applying for it can be legally detained in custody; and if sufficient ground for his detention be shown, he is not to be discharged for defects in the original arrest or commitment. *Ib.*

3. When a state court has jurisdiction of an indictment for murder, and the laws of the State divide that offence into three degrees, and make it the province of the jury to determine under which degree the case falls, the conviction of the accused of murder in the first degree and sentence accordingly, without a finding as to which degree he was guilty of, though erroneous, is not a jurisdictional defect, remediable by writ of *habeas corpus*. *In re Eckart*, 481.

INJUNCTION.

To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice. *In re Lennon*, 548.

INSURERS.

See INTERNAL REVENUE TAXES.

INTERNAL REVENUE TAXES.

The tobacco company purchased from an internal revenue officer of the United States revenue stamps to the amount of $4100.10, to be put upon its tobacco as manufactured. April 2, 1893, its factory in New York and all the contents were destroyed by fire. Among the contents were the stamps so purchased. Of these, stamps to the value of $1356.63 had not been used, and stamps to the value of $2743.47 had been put upon packages of tobacco which were still in the factory, unsold. The property was insured. In settling with the insurers the latter paid the tobacco company the value of the destroyed stamps, and it was understood that the insurers were entitled to whatever might be received or recovered from the Government under the provisions of the statute amending the laws relating to internal revenue. Act of March 1, 1879, c. 125. The company under the provisions of that act applied to the Treasury Department for the return of the destroyed stamps. The rules of the department required the applicant for such repayment to make oath that he had not theretofore presented a claim for the refunding of the amount asked for, and that its amount or any part thereof had not been received by him. Instead thereof the company filed an oath that the amount had not been claimed of the Government, and that no portion of it had been received from the Government. The department having refused payment, the company thereupon brought this action in the Court of Claims. *Held*, (1) That the action was properly brought in the name of the insured for the use of the insurers; (2) That payment by the insurer to the company did not bar the right of the latter to recover from the United States; (3) That by recovering from the United States the company would become the trustee of the insurers, who were its equitable assignees; (4) That upon the facts found by the Court of Claims the action could be maintained, as the payment by the insurers constituted no bar; (5) That there was a substantial compliance with the Treasury regulation concerning the oath when the oath was filed on the part of the company of the fact of the destruction, and that no claim for refunding had been presented to the Government, and no portion of the claim had been paid by it;

(6) That the company had an insurable interest in the stamps destroyed; (7) That it was too late to set up for the first time in this court that the Government had the election to reimburse the claimant by giving stamps instead of by payment in cash. *United States* v. *American Tobacco Company*, 468.

INTERSTATE COMMERCE.

1. The provisions respecting contracts, combinations and conspiracies in restraint of trade or commerce among the several States or with foreign countries, contained in the act of July 2, 1890, c. 647, "to protect trade and commerce against unlawful restraints and monopolies," apply to and cover common carriers by railroad; and a contract between them in restraint of such trade or commerce is prohibited, even though the contract is entered into between competing railroads, only for the purpose of thereby affecting traffic rates for the transportation of persons and property. *United States* v. *Trans-Missouri Freight Association*, 290.
2. The act of February 4, 1887, c. 104, "to regulate commerce," is not inconsistent with the act of July 2, 1890, as it does not confer upon competing railroad companies power to enter into a contract in restraint of trade and commerce, like the one which forms the subject of this suit. *Ib.*
3. The prohibitory provisions of the said act of July 2, 1890, apply to all contracts in restraint of interstate or foreign trade or commerce without exception or limitation; and are not confined to those in which the restraint is unreasonable. *Ib.*
4. In order to maintain this suit the Government is not obliged to show that the agreement in question was entered into for the purpose of restraining trade or commerce, if such restraint is its necessary effect. *Ib.*
5. This agreement, though legal when made, became illegal on the passage of the act of July 2, 1890, and acts done under it after that statute became operative were done in violation of it. *Ib.*
6. The fourth section of the act invests the Government with full power and authority to bring such a suit as this; and, if the facts alleged are proved, an injunction should issue. *Ib.*

See JURISDICTION, C, 5;
TAX AND TAXATION, 1, 8.

JURISDICTION.

A. GENERALLY.

1. When the construction of certain words in deeds or wills of real estate has become a settled rule of property in a State, that construction is to be followed by the courts of the United States in determining the

title to land within the State, whether between the same or between other parties. *Barber* v. *Pittsburgh, Fort Wayne & Chicago Railway Co.*, 83.

2. A single decision of the highest court of a State upon the construction of the words of a particular devise is not conclusive evidence of the law of the State, in a case in a court of the United States, involving the construction of the same or like words, between other parties, or even between the same parties or their privies, unless presented under such circumstances as to be an adjudication of their rights. *Ib.*
3. Parties to collateral proceedings are bound by the jurisdictional averments in the record, and will not be permitted to dispute them except so far as they may have contained a false recital with respect to such parties. *In re Lennon*, 548.
4. Where the requisite citizenship appears on the face of a bill, the jurisdiction of the court cannot be attacked by evidence *dehors* the record, in a collateral proceeding by one who was not a party to the bill. *Ib.*

B. Jurisdiction of the Supreme Court.

1. This court has authority to reëxamine the final judgment of the highest court of a State, rendered in a proceeding to condemn private property for public use, in which after verdict a defendant assigned as a ground for new trial that the statute under which the case was instituted and the proceedings under it were in violation of the clause of the Fourteenth Amendment, forbidding a State to deprive any person of property without due process of law, and which ground of objection was repeated in the highest court of the State; provided the judgment of the court by its necessary operation was adverse to the claim of Federal right and could not rest upon any independent ground of local law. *Chicago, Burlington & Quincy Railroad Co.* v. *Chicago*, 226.
2. The libel in this case was dismissed by the trial court. The judgment of that court was reversed by the Court of Appeals, and the case was remanded for assessment of damages. After assessment and decree it was again taken to the Court of Appeals, where the decree of assessment was affirmed, whereupon a writ of certiorari from this court was granted. *Held*, that, upon such writ, the entire case was before this court for examination. *Panama Railroad* v. *Napier Shipping Co.*, 280.
3. The dissolution of the freight association does not prevent this court from taking cognizance of the appeal and deciding the case on its merits; as, where parties have entered into an illegal agreement and are acting under it, and there is no adequate remedy at law, and the jurisdiction of the court has attached by the filing of a bill to restrain such or like action under a similar agreement, and a trial has been had and judgment entered, the appellate jurisdiction of this court is not ousted by a simple dissolution of the association, effected subsequently to the entry of judgment in the suit. *United States* v. *Trans-Missouri Freight Association*, 290.

4. While the statutory amount must as a matter of fact be in controversy, yet the fact that it is so need not appear in the bill, but may be shown to the satisfaction of the court. *Ib.*

5. There was printed in the record, as filed in this court what purported to be an extract from the closing brief of counsel presented to the Supreme Court of the State, in which a Federal question was discussed, and it was asserted orally at the bar here, that in the argument made in the Supreme Court of the State a claim under the Federal Constitution was presented. *Held*, that such matters formed no part of the record, and were not adequate to create a Federal question, when no such question was decided below, and the record does not disclose that such issues were set up or claimed in any proper manner in the courts of the State. *Zadig* v. *Baldwin*, 485.

6. The verdict of a jury determines questions of fact at issue and this court cannot review such determination, or examine the testimony further than to see that there was sufficient to justify the conclusions reached. *Carter* v. *Ruddy*, 493.

7. Under the judiciary act of March 3, 1891, c. 517, the power of this court in certiorari extends to every case pending in the Circuit Courts of Appeals and may be exercised at any time during such pendency, provided the case is one which, but for this provision of the statute, would be finally determined in that court. *Forsyth* v. *Hammond*, 506.

8. While this power is coextensive with all possible necessities, and sufficient to secure to this court a final control over the litigation in all the courts of appeal, it is a power which will be sparingly exercised, and only when the circumstances of the case satisfy this court that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a State, or some matter affecting the interests of the Nation, in its internal or external relations, demands such exercise. *Ib.*

9. As, in the contests between the parties to this suit, the Circuit Court of Appeals for the Seventh Circuit and the Supreme Court of the State of Indiana had reached opposite conclusions as to their respective rights, and as all the unfortunate possibilities of conflict and collision which might arise from these adverse decisions were suggested when this application for certiorari was made, it seemed to this court that, although no final decree had been entered, it was its duty to bring the case and the questions here for examination at the earliest possible moment. *Ib.*

10. This court cannot review the final judgment of the highest court of a State even if it denied some title, right, privilege or immunity of the unsuccessful party, unless it appear from the record that such title, right, privilege or immunity was "specially set up or claimed" in the state court as belonging to such party under the Constitution or some treaty, statute, commission or authority of the United States. Rev. Stat. § 709. *Oxley Stave Co.* v. *Butler County*, 648.

11. The words "specially set up or claimed" in that section imply that if

a party in a suit in a state court intends to invoke for the protection of his rights the Constitution of the United States or some treaty, statute, commission or authority of the United States, he must so declare; and unless he does so declare, "specially," that is, unmistakably, this court is without authority to reëxamine the final judgment of the state court. This statutory requirement is not met if such declaration is so general in its character that the purpose of the party to assert a Federal right is left to mere inference. *Ib.*

12. In cases brought here from state courts their decisions are final, in matters of procedure, and on alleged conflicts between the statutes of the State and its constitution. *Long Island Water Supply Co.* v. *Brooklyn*, 685.

13. After the trial court and the Superior Court had disposed of this case without any Federal question having been raised, the railroad company moved to set the judgment aside and transfer the case to the Court of Appeals on the ground that the statutes, as construed by the state court in its opinion, were invalid and in violation of the Constitution. This motion being denied an appeal was granted to the Court of Appeals where it was claimed in argument that the state statute as construed impaired the obligation created by the charter of the company, and denied the equal protection of the laws, in contravention of the Fourteenth Amendment. *Held*, that the record did not show that a Federal question had been raised below in time and in a way to give this court jurisdiction. *Louisville & Nashville Railroad Co.* v. *Louisville*, 709.

See ADMIRALTY, 2; JURISDICTION, C, 3;
CERTIORARI, 1, 2; PRACTICE;
TAX AND TAXATION, 15.

C. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. When a decree of the Circuit Court, at a hearing upon pleadings and proofs, dismissing a bill in equity for the infringement of a patent, has been reversed by this court on appeal, upon the grounds that the patent was valid and had been infringed by the defendant, and the cause remanded for further proceedings in conformity with the opinion of this court, the Circuit Court has no authority to grant or entertain a petition filed, without leave of this court, for a rehearing for newly discovered evidence; and, if it does so, will be compelled by writ of mandamus to set aside its orders, and to execute the mandate of this court. *In re Potts*, 263.

2. A citizen of the District of Columbia cannot maintain an action against a citizen of Wisconsin, on the ground of diverse citizenship, in a Circuit Court of the United States in that State, even though a competent person be joined with him as co-plaintiff. *Hooe* v. *Jamieson*, 395.

3. A writ of *scire facias* upon a recognizance to answer to a charge of crime in a District Court of the United States is a "case arising under

the criminal laws of the United States," in which the judgment of the Circuit Court of Appeals is made final by the act of March 3, 1891, c. 517, § 6. *Hunt* v. *United States*, 424.

4. The statute of New Hampshire providing for proceedings against mill-owners to recover damages resulting from overflows of land caused by dams erected by them, contained, among other things, a provision that "if either party shall so elect, said court shall direct an issue to the jury to try the facts alleged in the said petition and assess the damages; and judgment rendered on the verdict of such jury, with fifty per cent added, shall be final, and said court may award costs to either party at its discretion." In this case both parties elected trial by jury, which resulted in a verdict for damages for the defendant in error. *Held*, that the plaintiff in error, by availing itself of the power conferred by the statute, and joining in the trial for the assessment of damages, was precluded from denying the validity of that provision which prescribes that fifty per cent shall be added to the amount of the verdict, as the plaintiff in error was at liberty to exercise the privilege or not, as it thought fit. *Electric Company* v. *Dow*, 489.

5. A bill brought solely to enforce compliance with the Interstate Commerce Act, and to compel railroad companies to comply with such act by offering proper and reasonable facilities for interchange of traffic with the company, complainant, and enjoining them from refusing to receive from complainant, for transportation over their lines, any cars which might be tendered them, exhibits a case arising under the Constitution and laws of the United States of which a Circuit Court has jurisdiction. *In re Lennon*, 548.

6. The plaintiff in his declaration described himself as a resident in Texas, and the defendant as a railway company created and existing under the laws of Texas. The railroad company was in fact a corporation organized under and by virtue of acts of Congress, and in a petition for the removal of the action from a state court of Texas to the Federal court, set that forth as a ground for removal, and the petition was granted, and the case was removed to the Circuit Court of the United States, and tried and decided there. *Held*, that the Circuit Court properly entertained jurisdiction. *Texas & Pacific Railway Co.* v. *Cody*, 606.

See RAILROAD, 9.

D. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

See ADMIRALTY, 9.

E. JURISDICTION OF THE COURT OF CLAIMS.

The act of March 3, 1887, 24 Stat. 505, c. 359, providing for the bringing of suits against the Government, known as the Tucker act, did not repeal so much of section 1069 of the Revised Statutes as provides

"that the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively." *United States* v. *Greathouse*, 601.

See INTERNAL REVENUE TAXES;
RIPARIAN OWNERSHIP.

F. JURISDICTION OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

The Court of Appeals of the District of Columbia was duly authorized by § 6 of the act creating the court, as well as by § 6 as amended by the act of July 30, 1894, to make rules limiting the time of taking appeals to the court from the decisions of the Commissioner of Patents; and there was no restriction on this power by reason of Rev. Stat. § 4894. *In re Hien*, 432.

JURY.

See CONSTITUTIONAL LAW, 10, 11, 12.

LACHES.

See EQUITY.

LOCAL LAW.

District of Columbia. *See* DISTRICT OF COLUMBIA.
Illinois. *See* RAILROAD, 1 to 6.
Pennsylvania. *See* WILL.

MANDAMUS.

See JURISDICTION, C, 1.

MASTER AND SERVANT.

See RAILROAD, 7, 8.

MUNICIPAL CORPORATION.

1. The direction of the municipal authorities of Baltimore to the street railroad company to maintain but one track through Lexington street from and to the points named, instead of a double track as originally

granted to the company, did not substantially change the terms of the contract (if there was one), between the city and the railroad as expressed in the original grant and was no more than the exercise by the city of its acknowledged power to make a reasonable regulation concerning the use of the street by the railroad company. *Baltimore* v. *Baltimore Trust & Guarantee Co.*, 673.

2. An existing system of water supply in a municipality which is the property of private individuals and is operated under a contract with the municipal corporation for furnishing it with a portion of its needed supply of water under rates fixed by the contract, is private property which may be acquired by the public, in the exercise of the power of eminent domain, on the payment of a just compensation, including compensation for the termination of the contract. *Long Island Water Supply Co.* v. *Brooklyn*, 685.
3. In condemnation proceedings for that purpose, the assessment of damages may be made by commissioners where the statutes so provide, and there is no denial of due process of law in making their findings final as to the facts, leaving open to the courts the inquiry whether there was any erroneous basis adopted by the commissioners in their appraisal, or other errors in their proceedings. *Ib.*
4. There was nothing in the statute under which the Long Island Water Supply Company was organized, nor in its contract with the town of New Lots for the supply of water, nor in the act of annexation to Brooklyn, which gave to that company rights exclusive and beyond the reach of such legislative action. *Ib.*

See CONSTITUTIONAL LAW, 13.

NAVIGABLE WATERS.

See RIPARIAN OWNERSHIP.

NEUTRALITY.

1. Neutrality, strictly speaking, consists in abstinence from any participation in a public, private or civil war, and in impartiality of conduct toward both parties: but the maintenance unbroken of peaceful relations between two powers when the domestic peace of one of them is disturbed is not neutrality in the sense in which the word is used when the disturbance has acquired such head as to have demanded the recognition of belligerency; and, as mere matter of municipal administration, no nation can permit unauthorized acts of war within its territory in infraction of its sovereignty, while good faith towards friendly nations requires their prevention. *The Three Friends*, 1.
2. The word "people," as used in Rev. Stat. § 5283, forbidding the fitting out or arming of vessels with intent that they shall be employed in the service of any foreign people, or to cruise or commit hostilities against

the subjects, citizens or property of any foreign people with whom the United States are at peace, covers any insurgent or insurrectionary body conducting hostilities, although its belligerency has not been recognized. *Ib.*

3. Although the political department of the government has not recognized the existence of a *de facto* belligerent power, engaged in hostility with Spain, it has recognized the existence of insurrectionary warfare, prevailing before, at the time, and since the forfeiture sought to be enforced in this case was incurred; and the case sharply illustrates the distinction between recognition of belligerency, and recognition of a condition of political revolt; between recognition of the existence of war in a material sense, and of war in a legal sense. *Ib.*
4. The courts of the United States having been informed by the political department of the existence of an actual conflict of arms, in resistance of the authority of a government with which the United States are on terms of peace and amity, although acknowledgment of the insurgents as belligerents has not taken place, the statute is applicable to the case. *Ib.*
5. The order for the release of the vessel was improvidently made, as it should not have been released. *Ib.*

NORTHERN PACIFIC RAILROAD COMPANY.

See PUBLIC LAND, 2.

PATENT FOR INVENTION.

1. When letters patent are surrendered for the purpose of reissue, they continue valid until the reissue takes place, and if the reissue is refused they stand as if no application had been made. *Allen* v. *Culp*, 501.
2. Whether, if the reissue be void, the patentee may fall back on his original patent, is not decided. *Ib.*

See JURISDICTION, C, 1.

PRACTICE.

Grayson v. *Lynch*, 163 U. S. 468, followed to the point that the special finding of facts referred to in the acts allowing parties to submit issues of fact in civil cases to be tried and determined by the court, is not a mere report of the evidence, but a finding of those ultimate facts, upon which the law must determine the rights of the parties; and, if the finding of facts be general, only such rulings of the court in the progress of the trial can be reviewed as are presented by a bill of exceptions, and in such case the bill of exceptions cannot be used

to bring up the whole testimony for review any more than in a trial by jury. *St. Louis* v. *Western Union Telegraph Co.*, 388.

See ADMIRALTY, 1, 2, 8; DAMAGES; CERTIORARI; JURISDICTION B, 1, 2, 3; C, 1; CONSTITUTIONAL LAW, 1; NEUTRALITY, 5; RAILROAD, 11.

PROHIBITION, WRIT OF.

Applying to the facts as stated in the opinion of the court the settled rules in reference to writs of prohibition laid down in *In re Rice*, 155 U. S. 396, 402, it is *held* that a proper case is not made for awarding such a writ. *Alix, Petitioner, In re*, 136.

PUBLIC LAND.

1. Generally a patent is necessary for transfer of the legal title to public lands. *Carter* v. *Ruddy*, 493.

2. Lands were expressly excepted from the grant made in 1864 for the benefit of the Northern Pacific Railroad, which were not free from preëmption "or other claims or rights" at the time the line of the road was definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office. The general route of the railroad was fixed February 21, 1872, and its line of definite location on the 6th of July, 1882. After the company filed a map of general route, the Commissioner of the General Land Office, under the directions of the Secretary of the Interior, April 22, 1872, transmitted a diagram of that route to the register and receiver of the land office at Helena, Montana, with a letter of instructions directing the withdrawal from sale or location, preëmption or homestead entry, of all the surveyed and unsurveyed odd-numbered sections of public lands falling within the limits of forty miles as designated on that map. The lands in dispute are within the exterior lines of both the general and definite routes of the railroad. Prior to such definite location certain persons, qualified to purchase mineral lands under the laws of the United States, entered upon the possession of these lands, and did "file upon" them "as mineral lands," applying for patents, and conforming in all respects to the provisions of Chapter 6 of the Revised Statutes of the United States, Title XXXII, relating to "Mineral Lands and Mining Resources." The company filed a protest against the perfection of any entry of the lands as mineral lands upon the ground that they were not mineral lands nor commercially valuable for any gold or other precious metals therein contained. At the time of the definite location of the Northern Pacific Railroad and of the filing of the plat and map thereof in the General Land Office, the applications for these lands as mineral lands were pending and undeter-

mined, the applicants claiming, before the proper office, that they were mineral lands of the United States to which they were entitled under their respective applications, and not lands in quality such as was described in the grant to the Northern Pacific Railroad Company. On the 4th day of August, 1887, the company presented to the register and receiver of the proper land office for approval, a list of lands selected by it as having been granted by the act of Congress, to the end that such lands (the list including the lands here in dispute) might be patented to it; but that officer refused to approve such list because of the existence, on the 6th day of July, 1882, of the above claims to the lands as mineral lands. It did not appear from the record what became of the several applications set out in the answer to purchase these lands as mineral lands, nor whether the railroad company appealed from the decision made in 1887 by the local land office at Helena refusing to approve the list presented of lands claimed by it under the act of Congress. *Held*, That the above applications were "claims" within the meaning of the act of July 2, 1864, granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast by the northern route, and excepting therefrom lands not "free from prëemption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office"; consequently, the lands embraced by those applications did not pass to the railroad company under the grant made by the above act. *Northern Pacific Railroad Co.* v. *Sanders*, 620.

RAILROAD.

1. In a proceeding in a state court in Illinois to ascertain the compensation due to a railroad company arising from the opening of a street across its tracks — the land as such not being taken, and the railroad not being prevented from using it for its ordinary railroad purposes, and being interfered with only so far as the right to its exclusive enjoyment for purposes of railroad tracks was diminished in value by subjecting the land within the crossing to public use as a street — the measure of compensation is the amount of decrease in the value of its use for railroad purposes caused by its use for purposes of a street, the use for the purposes of a street being exercised jointly with the company for railroad purposes. *Chicago, Burlington & Quincy Railroad* v. *Chicago*, 226.
2. While the general rule is that compensation is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business and wants of the community, or such as may be reasonably expected in the immediate future, mere possible or imaginary uses, or the speculative schemes of its proprietor, are to be excluded. *Ib.*

3. The railroad having laid its tracks within the limits of the city must be deemed to have done so subject to the condition — not, it is true, expressed, but necessarily implied — that new streets of the city might be opened and extended from time to time across its tracks as the public convenience required, and under such restrictions as might be prescribed by statute. *Ib.*
4. When a city seeks by condemnation proceedings to open a street across the tracks of a railroad within its corporate limits, it is not bound to obtain and pay for the fee in the land over which the street is opened, leaving untouched the right of the company to cross the street with its tracks, nor is it bound to pay the expenses that will be incurred by the railroad company in the way of constructing gates, placing flagmen, etc., caused by the opening of the street across its tracks. *Ib.*
5. All property, whether owned by private persons or by corporations, is held subject to the power of the State to regulate its use in such manner as not to unnecessarily endanger the lives and the personal safety of the people. The requirement that compensation be made for private property taken for public use imposes no restriction upon the inherent power of the State by reasonable regulations to protect the lives and secure the safety of the people. *Ib.*
6. The expenses that will be incurred by the railroad company in erecting gates, planking the crossing and maintaining flagmen, in order that its road may be safely operated — if all that should be required — necessarily result from the maintenance of a public highway, under legislative sanction, and must be deemed to have been taken by the company into account when it accepted the privileges and franchises granted by the State. Such expenses must be regarded as incidental to the exercise of the police powers of the State, and must be borne by the company. *Ib.*
7. The plaintiff in error was in the employment of the defendant in error as a common laborer. While on a hand car on the road, proceeding to his place of work, he was run into by a train, and seriously injured. It was claimed that the collision was caused by carelessness and negligence on the part of other employés of the company, roadmaster, foreman of the gang of laborers, conductor, etc. *Held*, that the coemployés whose negligence was alleged to have caused the injury were fellow-servants of the plaintiff, and hence that the defendant was not liable for the injuries caused by that negligence. *Martin* v. *Atchison, Topeka & Santa Fé Railroad*, 399.
8. A car upon a street horse railroad in Washington, arriving at a point where the street crossed a steam railroad at grade, found the gate bars lowered. A train on the steam railroad was seen to be approaching. Before it arrived at the crossing the bars were raised. The driver of the horse car attempted to cross, notwithstanding the approaching train. The gate bars were lowered again and the horse car was caught upon the track. It was filled with passengers, among

whom was Mrs. H., one of the defendants in error, sitting upon an open outer seat. The frightened passengers rushed precipitately from the car. Their doing this caused Mrs. H. to be thrown from the car, whereby she was seriously injured. The railroad train was stopped just before reaching the horse car. The bars were again raised, and the horse car went off the railroad track uninjured. Mrs. H. and her husband sued both railroad companies to recover damages; alleging that she was pushed and shoved from her seat and thrown violently to the ground; claiming that the steam railroad company was liable by reason of the negligence of its servant in managing the gates, and that the horse railroad company was liable by reason of the negligence of its driver in not waiting till the train should have passed; and demanding a recovery of thirty thousand dollars as damages. The court charged the jury that if they should find from all the evidence that the plaintiffs were entitled to recover, they might award damages within the limits claimed in the declaration. The jury returned a verdict for twelve thousand dollars. The court thought this to be excessive. With the plaintiffs' consent it was reduced to six thousand dollars, and judgment entered for that amount. *Held*, (1) That the driver of the horse car was guilty of negligence in attempting to cross the track of the steam railroad under the circumstances; (2) That there was evidence to warrant the jury to find that the gateman was the servant of the steam railroad company, and that that company was responsible for the results of his negligence; (3) That as there was no exception to the charge respecting damages, no question about it was before the court; (4) That whether Mrs. H. was injured by falling from the car or from being pushed from it was immaterial, in view of the causes of the injury. *Washington & Georgetown Railroad* v. *Hickey*, 521.

9. The Citizens' Street Railway Company of Indianapolis was organized in 1864 under an act of the legislature of Indiana of 1861, authorizing such a company to be "a body politic and corporation in perpetuity." January 18, 1864, the common council of that city passed an ordinance authorizing the company to lay tracks upon designated streets, and providing that "the right to operate said railway shall extend to the full time of thirty years," during which time the city authorities were not to extend to other companies privileges which would impair or destroy the rights so granted. In April, 1880, the common council amended the original grant "so as to read thirty-seven years where the same now reads thirty years." The company, desiring to issue bonds to run for a longer period than the thirty years, had, for that purpose, petitioned the common council for an extension to forty-five years. The city government was willing to extend to thirty-seven years, and this was accepted by the company as a compromise. On the 23d of April, 1888, the road and franchises were sold and conveyed to the Citizens' Street Railroad Company, which sale and trans-

fer were duly approved by the city government. December 18, 1889, a further ordinance authorized the use of electric power by the company, and provided how it should be applied. In accordance with its provisions the company, at great expense, built a power house, and changed its plant to an electric system. In April, 1893, the city council, claiming that the rights of the company would expire in thirty years from January 18, 1864, granted to another corporation called the City Railway Company the right to lay tracks to be operated by electricity in a large number of streets then occupied by the tracks of the Citizens' Street Railroad Company, whereupon a bill was filed in the Circuit Court of the United States by the Street Railroad Company against the City Railway Company, to enjoin it from interrupting or disturbing the railroad company in the maintenance and operation of its car system, alleging that the action of the city council sought to impair, annul and destroy the obligation of the city's contract with the plaintiff. *Held*, (1) That the Circuit Court had jurisdiction, although both parties were corporations and citizens of Indiana; (2) That the right of repeal reserved to the legislature in the act of 1861 was not delegated to the city government; (3) That the circumstances connected with the passage of the amended ordinance of April 7, 1880, operated to estop the city from denying that the charter was extended to thirty-seven years; (4) That the continued operation of the road was a sufficient consideration for the extension of the franchise; (5) That the Citizens' company had a valid contract with the city which would not expire until January 18, 1901, and that the contract of April 24, 1893, with the City Railway Company was invalid; (6) But no opinion was expressed whether complainant was entitled to a perpetual franchise from the city. *City Railway Co.* v. *Citizens' Street Railroad Co.*, 557.

10. In an action against a railroad company to recover damages for injuries received by a person travelling on a highway, by a collision at a crossing of the railroad by the highway at grade, an instruction to the jury that the obligations, rights and duties of railroads and travellers upon highways crossing them are mutual and reciprocal, and that no greater care is required of the one than of the other is substantially correct. *Continental Improvement Co.* v. *Stead*, 95 U. S. 161, followed. *Texas & Pacific Railway Co.* v. *Cody*, 606.

11. The instructions as to damages were not incorrect. If the company desired particular instructions, it should have asked for them. *Ib.*

12. A railway company is bound to use ordinary care to furnish safe machinery and appliances for the use of its employés, and the neglect of its agents in that regard is its neglect; and if injury happens to one of its employés by reason of the explosion of a boiler which was defective and unfit for use, and the defect and unfitness were known or by reasonable care might have been known to the servants of the company whose duty it was to keep such machinery in repair, their negli-

gence is imputable to the company, but in an action against the company by the injured employé, the burden of proof is on the plaintiff to show that the exploded boiler and engine were improper appliances to be used on the railroad, and that the boiler exploded by reason of the particular defects insisted on by plaintiff. *Texas & Pacific Railway Co.* v. *Barrett*, 617.

See CONSTITUTIONAL LAW, 9;
JURISDICTION, C, 6;
MUNICIPAL CORPORATION, 1.

REMOVAL OF CAUSES.

See JURISDICTION, C, 6.

REPEAL.

See RAILROAD, 9.

RES JUDICATA.

1. The plaintiff in error having voluntarily commenced an action in the Supreme Court of the State to establish her rights against the city of Hammond, and the questions at issue being judicial in nature and within the undoubted cognizance of the state court, she cannot, after a decision by that court be heard in any other tribunal to collaterally deny its validity. *Forsyth* v. *Hammond*, 506.
2. Though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in one action is conclusive between the parties in all subsequent actions. *Ib.*

See DISTRICT OF COLUMBIA, 2.

RIPARIAN OWNERSHIP.

Riparian ownership on navigable waters is subject to the obligation to suffer the consequences of an improvement of the navigation, under an act of Congress, passed in the exercise of the dominant right of the Government in that regard; and damages resulting from the prosecution of such an improvement cannot be recovered in the Court of Claims. *Gibson* v. *United States*, 269.

SCIRE FACIAS.

See JURISDICTION, C, 3.

SIGNAL SERVICE.

1. A bond to the United States, conditioned that a property and disbursing officer of the War Department shall faithfully discharge his duties,

and faithfully account for public money and property committed to his charge, takes effect on the day when it is accepted by the Government, and is to be regarded as of that date. *Moses* v. *United States*, 571.

2. When it appears that such a bond, duly signed by sureties, had been offered to the government official, and rejected by him as not bearing seals, and that it was taken away by the property and disbursing officer, the principal, and returned with proper seals, it will be presumed, in the absence of proof to the contrary, that the seals were attached with the consent of the sureties. *Ib.*
3. The order of the Secretary of War directing the execution of such a bond was one which he had power to make, and, being made, the disbursing officer was bound to have it executed and filed. *Ib.*
4. The Chief Signal Officer had the right to designate one of the officers under him as a property and disbursing officer to whom should belong the custody of all government property and funds pertaining to the office of the Chief Signal Officer, and he further had the power, under the general direction of the Secretary of War, to provide that such officer should be responsible for the due execution of his official duties; and, a bond having been given for such faithful performance, and such officer having been guilty of the forgery of vouchers and the embezzling of public moneys officially received by him, such conduct was a plain violation of his duty as such officer, and the condition of the bond, as it plainly covered such conduct, was violated thereby. *Ib.*
5. A certificate given to such disbursing officer before the discovery of his fraud that his accounts had been examined, found correct and were closed, did not operate to release him or his sureties from liability on the bond. *Ib.*
6. There was no delay in the commencement of the proceedings against the disbursing officer, which injured the sureties, or operated to release the latter from their liability under the bond. *Ib.*
7. The transcripts from the books and proceedings of the Treasury Department were admissible in evidence as sufficient transcripts within Rev. Stat. § 886, and the certificate which certified that the papers annexed thereto were true copies of the originals on file, and of the whole of such originals, was a full compliance with the law. *Ib.*
8. Under circumstances like those disclosed in this case the account between the Government and its officer may be restated, and the sums allowed him on fraudulent vouchers disallowed. *Ib.*
9. The judgment recovered against the officer was admissible in evidence in an action against the surety on his bond, although the latter was no party to it. *Ib.*

STATUTE.

A. Construction of Statutes.

1. Debates in Congress are not appropriate sources of information, from which to discover the meaning of the language of a statute passed

by that body. *United States* v. *Trans-Missouri Freight Association*, 290.

2. It is the ordinary rule to accept the interpretation given to a statute by the courts of the country by which it was originally adopted; but the rule is not an absolute one to be followed under all circumstances. In this case the court accepts the construction given by the Supreme Court of the Territory of Utah to a statute of that Territory disqualifying certain persons as witnesses, rather than the construction placed upon a like statute by the Supreme Court of California, although the Utah statute was apparently taken from the statute of California. *Whitney* v. *Fox*, 637.
3. Statutes should receive a sensible construction, such as will effectuate the legislative intention, and avoid, if possible, an unjust or absurd conclusion. *In re Chapman*, 661.

B. Statutes of the United States.

See Admiralty, 3; Constitutional Law, 15; Customs Duties, 2; Internal Revenue Taxes; Interstate Commerce, 1 to 6; Jurisdiction, B, 7, 10; C, 3; E; F; Neutrality, 2; Public Land, 2; Signal Service, 7; Tax and Taxation, 15, 16.

C. Statutes of States and Territories.

California. *See* Statute, 2.
Kentucky. *See* Tax and Taxation, 1, 2, 5, 6, 7.
Louisiana. *See* Constitutional Law, 2.
Minnesota. *See* Constitutional Law, 9.
New Hampshire. *See* Jurisdiction, C, 4.
Utah, Territory of. *See* Constitutional Law, 10; Statute, A, 2.
Washington. *See* Tax and Taxation, 15.

TAX AND TAXATION.

1. The Henderson Bridge Company was a corporation created by the Commonwealth of Kentucky for the purpose of erecting and operating a railroad bridge, with its approaches, over the Ohio River between the city of Henderson, in Kentucky, and the Indiana shore. It owned 9.46 miles of railroad and .65 of a mile of siding, making its railroad connections in Indiana, which property was assessed for taxation in that State, at $627,660. The length of the bridge in the two States, measured by feet, was one third in Indiana and two thirds in Kentucky. The tangible property of the company was assessed in Henderson County, Kentucky, at $649,735.54. From the evidence before them, the Board of Valuation and Assessment placed the value of the company's entire property at $2,900,000 and deducted therefrom $627,660 for the tangible property assessed in Indiana, which left

$2,272,340, of which two thirds, or $1,514,893, was held to be the entire value of the property in Kentucky. From this, $649,735.54, the value of the tangible property in Henderson County, was deducted, and the remainder, $865,157.46, was fixed by the Board as the value of the company's franchise. From the total value, $1,385,107 was deducted for the tangible and intangible property in Indiana, and the taxes in Kentucky were levied on $1,514,893 of tangible and intangible property in that State. The company paid the tax on the tangible property ($2762.08), and refused to pay the tax on the intangible property ($3675.91). This action was brought to recover it. The Court of Appeals held that the Commonwealth was entitled to recover it. *Held*, (1) That the company was chartered by the State of Kentucky to build and operate a bridge and the State could properly include the franchises it had granted in the valuation of the company's property for taxation; (2) That the tax was not a tax on the interstate business carried on over or by means of the bridge, because the bridge company did not transact such business; that business being carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge; (3) That the fact that the tax in question was to some extent affected by the amount of the tolls received, and therefore might be supposed to increase the rate of tolls, was too remote and incidental to make it a tax on the business transacted; (4) That the acts of Congress conferred no right or franchise on the company to erect the bridge or collect tolls for its use; that they merely regulated the height of bridges over that river and the width of their spans, in order that they might not interfere with its navigation; and that the declaration that such bridges should be regarded as post roads did not interfere with the right of the State to impose taxes; (5) That the tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky, and was sustained as such by the Court of Appeals, as consistent with the provisions of the constitution of Kentucky in reference to taxation; and that for the reasons given, and on the authorities cited in *Adams Express Co.* v. *Ohio State Auditor*, 165 U. S. 194, this court is unable to conclude that the method of taxation prescribed by the statute of Kentucky and followed in making this assessment is in violation of the Constitution of the United States. *Henderson Bridge Co.* v. *Kentucky*, 150.

2. Section 4077 of the compilation of the Kentucky statutes of 1894 provides that each of the enumerated companies or corporations; "every other like company, corporation or association"; and also "every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised"; and

in the succeeding sections the words "franchise," "franchises" and "corporate franchise" are used. *Held* that, taking the whole act together, and in view of the provisions of sections 4078, 4079, 4080 and 4081, it was evident that the word "franchise" was not employed in a technical sense, and that the legislative intention was plain that the entire property, tangible and intangible, of all foreign and domestic corporations, and all foreign and domestic companies possessing no franchise, should be valued as an entirety, the value of the tangible property be deducted, and the value of the intangible property thus ascertained be taxed under these provisions; and as to railroad, telegraph, telephone, express, sleeping car, etc., companies, whose lines extend beyond the limits of the State, that their intangible property should be assessed on the basis of the mileage of their lines within and without the State; but that from the valuation on the mileage basis the value of all tangible property should be deducted before the taxation was applied. *Adams Express Company* v. *Kentucky*, 171.

3. So far as the commerce clause and the Fourteenth Amendment of the Federal Constitution are concerned, this scheme of taxation is not in contravention thereof, as already determined in *Adams Express Company* v. *Ohio State Auditor*, 165 U. S. 194, and cases cited. *Ib.*
4. Considered as a property tax, it is in harmony with the provisions of the constitution of the Commonwealth of Kentucky. *Ib.*
5. Section 174 of the constitution of Kentucky does not prevent intangible property from being taxed, and the tax mentioned in section 4077 is not an additional tax upon the same property, but upon intangible property which has not been taxed as tangible property. *Ib.*
6. Neither section 172 of the Kentucky constitution, nor any other section, confines the levy of an *ad valorem* tax to tangible property. *Ib.*
7. The statute, as construed by the Court of Appeals of the State of Kentucky cannot be overthrown for failure to conform to the requirements of sections 171, 172 and 174 of the state constitution. *Ib.*
8. It is well settled that no State can interfere with interstate commerce through the imposition of a tax which is, in effect, a tax for the privilege of transacting such commerce; and also that such restriction upon the power of a State does not in the least degree abridge its right to tax at their full value all the instrumentalities used for such commerce. *Adams Express Co.* v. *Ohio State Auditor*, 185.
9. The state statutes imposing taxes upon express companies which form the subject of these suits grant no privilege of doing an express business, and contemplate only the assessment and levy of taxes upon the properties of the respective companies situated within the respective States. *Ib.*
10. In the complex civilization of to-day a large portion of the wealth of a community consists of intangible property, and there is nothing in the nature of things or in the limitations of the Federal Constitution which restrains a State from taxing such intangible property at its real value. *Ib.*

11. Whenever separate articles of tangible property are joined together, not simply by a unity of ownership, but in a unity of use, there is not unfrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. *Ib.*

12. Whatever property is worth for the purposes of income and sale, it is worth for the purposes of taxation; and if the State comprehends all property in its scheme of taxation, then the good will of an organized and established industry must be recognized as a thing of value, and taxable. *Ib.*

13. The capital stock of a corporation and the shares in a joint stock company represent not only its tangible property, but also its intangible property, including therein all corporate franchises and all contracts, privileges and good will of the concern; and when, as in the case of the express company, the tangible property of the corporation is scattered through different States by means of which its business is transacted in each, the situs of this intangible property is not simply where its home office is, but is distributed wherever its tangible property is located and its work is done. *Ib.*

14. No fine spun theories about situs should interfere to enable these large corporations, whose business is of necessity carried on through many States, from bearing in each State such burden of taxation as a fair distribution of the actual value of their property among those States requires. *Ib.*

15. This court is bound by the decision of the Supreme Court of the State of Washington (in which it concurs), that § 21 of the act of that State of March 9, 1891, relating to the taxation of national banks in that State, is to be read in connection with § 23 of the same act, and that when so read they do not impose upon such banks a tax forbidden by Rev. Stat. § 5219. *National Bank* v. *Commonwealth*, 9 Wall. 353, affirmed and followed in this matter. *Aberdeen Bank* v. *Chehalis County*, 440.

16. Money invested in corporations or in individual enterprises that carry on the business of railroads, of manufacturing enterprises, mining investments and investments in mortgages, does not come into competition with the business of national banks, and is therefore not within the meaning of the provision in Rev. Stat. § 5219, forbidding state taxation of its shares at a greater rate than is assessed upon other moneyed capital in the hands of the citizens of the State. *Ib.*

17. Insurance stocks may be taxed on income instead of on value; and deposits in savings banks and moneys belonging to charitable institutions may be exempted without infringing the provisions of that section of the Revised Statutes. *Ib.*

18. The allegations of the complaint do not show that any moneyed capital of the bank of the character defined by the decisions of this court was omitted or intended to be omitted by the assessor, and those allegations

are so general in these respects that they cannot be made the basis of action. *Ib.*

TOBACCO TAX.

See INTERNAL REVENUE TAXES.

WILL.

1. In Pennsylvania, under a will executed and taking effect before the passage of the statute of 1833, by which "all devises of real estate shall pass the whole estate of the testator in the premises devised, although there be no words of inheritance or of perpetuity, unless it appear by a devise over, or by words of limitation or otherwise in the will, that the testator intended to devise a less estate," and beginning with the statement that the testator was desirous of making a distribution of his property in the event of his decease, a devise of a parcel of land, without words of inheritance, gave an estate in fee, unless qualified by other provisions of the will. *Barber* v. *Pittsburgh, Fort Wayne & Chicago Railway Co.*, 83.
2. A devise over in the event of a married woman "dying without offspring by her husband" is equivalent to a devise in the event of her "dying without issue." *Ib.*
3. In Pennsylvania, in a will executed and taking effect before the statute of 1855, enlarging estates tail into estates in fee, a devise of certain lots of land to A in fee, and "in the event of A dying unmarried, or, if married, dying without offspring by her husband, then these lots are to be sold, and the proceeds to be divided equally among the heirs of B," looked to an indefinite failure of issue of A, and gave A an estate tail. *Ib.*
4. A power to sell land upon the expiration of an estate tail, and to divide the proceeds among persons then ascertainable, is not within the rule against perpetuities. *Ib.*
5. In a will devising certain land to A, and, if A die without issue, "then to be sold and the proceeds divided equally among the heirs of B," and directing the residue of the testator's estate to be sold and the proceeds divided into sixteen shares, of which two are given to B and two others to "the heirs of B," both B and his children being alive at the time of the testator's death, the word "heirs" in the specific devise applies either to children or to more remote descendants of B, whichever may be his heirs if he be dead, or his heirs apparent if he be living, when the devise takes effect. *Ib.*
6. Oral testimony to a testator's state of health at the time of publishing his will, or to his length of life afterwards, is incompetent to control the construction or effect of devises therein. *Ib.*

See JURISDICTION, A, 1, 2, 3.

WITNESS.

See CONSTITUTIONAL LAW, 16, 17.