INDEX.

ADMIRALTY.

1. The Johnson, an American ship, was chartered at Valparaiso to carry a cargo of nitrate of soda, of 1938 tons, from Caleta to Hamburg consigned to a London firm. On the way she sprang a leak, and put into Callao. There 1200 tons of the cargo were transferred to the Leslie, a British bark, and the Johnson was repaired, the master executing a bottomry bond to meet the expenses of the repairs. That bond bound the Johnson, cargo and freight, hypothecated the portion of the cargo transhipped to the bark and further provided that "if during the said voyage an utter loss of the said vessel" [*in the singular*] "by fire, enemies, pirates, the perils of the sea or navigation, or any other casualty shall unavoidably happen," "then and in either of the said cases this obligation shall be void." Both vessels sailed for Hamburg. The Johnson collided at sea with the Thirlmere, a British vessel, and was sunk with a total loss. The bark reached Hamburg safely. The consignees, in order to obtain the cargo, agreed to refer to arbitration by German lawyers the question of its liability for the whole amount of the bond. They decided that it was so liable, and the consignees paid the amount of the bond and received the cargo. The owners of the Johnson libelled the Thirlmere and its owners. The latter were held not to be personally liable, and judgment was rendered only for the value of the Thirlmere. The insurers of the Johnson also paid to its owners the amount of the policies of insurance, and the latter, after receiving the amount of the judgment against the Thirlmere, paid to the insurers their proportionate part of it. This suit was then instituted by the consignors and the consignees of the cargo of the bark to recover from the owners of the Johnson their share of the sum paid on the bottomry bond. *Held*, (1) That the terms of the bottomry bond included not only the Andrew Johnson and her cargo, but the cargo transhipped to the Leslie; (2) That the owners of the Johnson, to the extent of the damages paid on account of the collision, were liable to the libellants, as creditors of the ship. *O'Brien* v. *Miller*, 287.
2. In interpreting a contract the whole contract must be brought into view, and it must be interpreted with reference to the nature of the obligations between the parties, and the intention which they have manifested in forming them: and this rule is especially applicable to the interpretation of contracts of bottomry and respondentia. *Ib.*

3. In an action to recover on a bottomry bond from the shipowner for advances made for his benefit and charged upon the property of the cargo owners by the master, if he questions the power of the master to execute the instrument of hypothecation, it is his duty to plead it in defence. *Ib.*
4. The action of the district judge in refusing to permit the respondent to amend his answer by setting up the plea of laches and *res judicata* was not error. *Ib.*
5. On the facts, which are detailed in the statement of the case, respecting the navigation and the conduct of the Victory and the Plymothian just previous to the collision which caused the injuries and damage herein complained of, *Held;* (1) That as a general rule, vessels approaching each other in narrow channels, or where their courses diverge as much as one and one half or two points, are bound to keep to port and pass to the right, whatever the occasional effect of the sinuosities of the channel; (2) That the Victory was grossly in fault, and that the collision was the direct consequence of her disregard of that rule of the road, and of her reckless navigation; (3) That the fault of the Victory being obvious and inexcusable, the evidence to establish fault on the part of the Plymothian must be clear and convincing in order to make a case for apportionment; the burden of proof being upon each vessel to establish fault on the part of the other; (4) That as the damage was occasioned by collision and was within the exceptions in the bills of lading, it rested upon the underwriters to defeat the operation of the exception by proof of such negligence on the part of the Plymothian as would justify a decree against her, if sued alone; (5) That the Plymothian was on her proper course, that she was not bound to anticipate the conduct of the Victory, and that she took all proper precautions as soon as chargeable with notice of risk of collision. *The Victory & The Plymothian*, 410.

ADVERSE POSSESSION.

This was an action of ejectment. The plaintiff claimed under one Hall, former owner of the land. The defendants claimed under one Douglas, who bought it at a tax sale in 1865. The defendants set up adverse possession in defence. The court instructed the jury that to defeat the claim of the plaintiffs upon the defence of adverse possession the jury must find from the evidence that the defendants, in person or by their tenants, have for more than twenty years prior to the 31st day of May, 1889, held actual, exclusive, continuous, open, notorious and adverse possession of the said premises, and they cannot extend their possession by tacking it to the prior possession of any person who, during such prior possession, did not claim any title or right to the premises; and, on the request of the defendants, that "if the jury find from the evidence that William Douglas, the ancestor

of the defendants, bought at a tax sale held by the late corporation of Washington, so called, the property in controversy in this case and paid the price bid for it by him at such sale and received from the corporation of Washington a deed to said property, which was by him duly filed for record and recorded in the land records of the District of Columbia more than twenty years prior to the commencement of this suit; that thereupon the said property was assessed to the said William Douglas on the tax books of the city of Washington, and the taxes thereon from that time until the beginning of this suit paid by the said William Douglas or his successors in title, the defendants in this case; that at a period of time more than twenty years before the commencement of this suit the said property was rented on behalf of the defendants to a person who took the same and held possession thereof as tenant of the defendants for the purposes of a stone yard, paying rent therefor from the date of making such arrangements with the defendants, and that, although the said property was not inclosed by a fence, yet the person so renting the same, either upon the whole or a part thereof, during his occupancy, deposited stone used by him in his business, and that such use and possession of said property was continued by the occupant thereof actually, exclusively, continuously, openly, notoriously, adversely and uninterruptedly for a period of twenty years next before the commencement of this suit, then the jury is instructed that the defendants are entitled to recover." *Held*, that the instructions as given were substantially correct, and there was evidence in the case upon which to found the one given at defendants' request. *Holtzman* v. *Douglas*, 278.

APPEAL.

See JURISDICTION, A, 17; B.

ATTORNEYS' FEES.

1. Attorneys and counsellors specially employed to render legal services for the United States cannot, under existing legislation, be compensated for such services in the absence of the certificate of the Attorney General required by Rev. Stat. § 365; and if he fails or refuses to give such certificate, Congress alone can provide for compensation. *United States* v. *Crosthwaite*, 375.
2. One who receives a commission as special assistant to a District Attorney for particular cases, or for a single term of court, or for a limited time, is not an Assistant District Attorney within the meaning of Rev. Stat. § 365, and therefore the certificate of the Attorney General prescribed therein is a prerequisite to the allowance of compensation. *Ib.*

See PRACTICE, 1.

CASES AFFIRMED AND FOLLOWED.

See ESTOPPEL; INTERSTATE COMMERCE COMMISSION, 1; JURISDICTION, A, 6, 19; D, 3; RAILROAD, 6.

CASES EXPLAINED.

See INTERSTATE COMMERCE COMMISSION, 3, 4; PUBLIC LAND, 12.

CERTIORARI.

See JURISDICTION, A, 16.

CHINESE EXCLUSION ACTS.

See CRIMINAL LAW, 1 to 7.

CLAIMS AGAINST THE UNITED STATES.

1. To entitle a supervisor of elections to a valid claim against the Government, he must make it appear that the services performed were required by the letter of Rev. Stat. § 2020 and § 2026, or were such as were actually and necessarily performed in the proper execution of the duties therein prescribed, and that his charges therefor are covered by Rev. Stat. § 2031, or, if not fixed in the very words of that section, that by analogy to some other service, he is entitled to make a corresponding charge. *Dennison* v. *United States*, 241.
2. If the services were only performed for his own convenience, or were manifestly unnecessary or useless, even if they be such as he judges proper himself, they cannot be made the basis of a claim against the Government. *Ib.*
3. It is *held* that the applicant, a chief supervisor, should have been allowed for drawing instructions to supervisors, and, in the absence of proof to the contrary, for the full amount of his claim for auditing claims of and drawing pay rolls of supervisors, and certifying the same to the marshal; and all the other claims, enumerated in the opinion of the court, are disallowed. *Ib.*
4. When a consul of the United States, in his regular accounts and settlements with the Treasury, charges himself with fees received by him as consul for which he is not obliged to account, and pays the same into the Treasury with each settlement, and retires, and makes his final settlement with the Treasury on the same basis, he cannot, in an action commenced in the Court of Claims three years after his retirement, recover back such payments, but they will be regarded as wholly voluntary payments. *United States* v. *Wilson*, 273.

See ATTORNEYS' FEES.

CONSTITUTIONAL LAW.

1. The statute of New York of 1885, c. 448, providing that deeds from the comptroller of the State of lands in the forest preserve sold for non-payment of taxes shall, after having been recorded for two years, and in any action brought more than six months after the act takes effect, be conclusive evidence that there was no irregularity in the assessment of the taxes, is a statute of limitations, and does not deprive the former owner of such lands of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. *Turner* v. *New York*, 90.
2. In this case, which was an indictment for murder, the verdict being "guilty as charged;" and judgment of condemnation to death thereon being affirmed by the Supreme Court of the State; and this court having determined, on a former petition by the petitioner, that it had no jurisdiction to review that judgment, *Craemer* v. *Washington State*, 164 U. S. 704; and the time appointed for execution having passed, pending all these proceedings, it was within the power of the state court to make a subsequent appointment of another day therefor, and to issue a death warrant accordingly, and a judgment to that effect involved no violation of the Constitution of the United States. *Craemer* v. *Washington State*, 124.
3. The State's attorney of Vermont, under the statutes of that State, filed an information in the proper court against H., charging that on a day and at a place named he "did, at divers times, sell, furnish and give away intoxicating liquor, without authority, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State." At the same time he filed specifications as follows: "In said case the State's attorney, for a specification, specifies, and says as follows: That he will rely upon, and expect to prove in the trial of said cause, the fact that the respondent, within three years before the filing of the information in the said cause, sold, furnished and gave away intoxicating liquor to the following named persons, or to some one of them, that is to say," giving the names without the residences. "And the undersigned State's attorney states that he has also specified the offences against said respondent with all the certainty as to the time and person, and he is now able from all the information he has in said cause; and the State's attorney reserves the right to amend these specifications if he shall have further evidence pursuant to the statute. And the State's attorney further specifies and relies upon the selling, furnishing and giving away of intoxicating liquor by the respondent within three years before the filing of said information, to some person or persons now unknown to the State's attorney, and claims the right to add the names of such persons, when ascertained, to the specifications, and to make such other amendments in these specifications as the law and discretion of the court may admit." This specification is not required by any statute, and forms no part of the

information. It is, however, provided by statute that "when a specification is required, it shall be sufficient to specify the offences with such certainty as to time and person as the prosecutor may be able, and the same shall be subject to amendment at any stage of the trial; and when the specification sets forth the sale, furnishing or giving away to any person or persons unknown, the witnesses produced may be inquired of as to such transactions with any person, whether named in the specification, or not, and as the name of such person may be disclosed by the evidence it may be inserted in or added to the specification, upon such terms as to a postponement of the trial, for this cause, as the court may think reasonable." It did not appear from the record that the specification was asked for by the respondent, nor whether the offences of which he was convicted were for selling, furnishing or giving away; or whether to either of the sixty-six persons named in the specification, or to some person or persons not named. *Held*, that this was due process of law, within the meaning of the Fourteenth Amendment to the Constitution. *Hodgson* v. *Vermont*, 262.

4. The words "due process of law" do not necessarily require an indictment by a grand jury in a prosecution by a State for murder. The Amendment undoubtedly forbids arbitrary deprivation of life, liberty or property, and in the administration of criminal justice requires that no different or higher punishment shall be imposed on one than is imposed on all for like offences, but it was not designed to interfere with the power of the State to protect the lives, liberty and property of its citizens, nor with the exercise of that power in the adjudications of the courts of a State in administering the process provided by the law of the State. *Ib.*

5. The grants made to the plaintiffs in error by the acts of February 26, 1856, and February 27, 1856, of the legislature of the Territory of Minnesota, to maintain dams and sluices in the Mississippi River, etc., etc., were subject at all times to the paramount right of the public to divert a portion of the waters for public uses, and to the rights in regard to navigation and commerce existing in the General Government, under the Constitution of the United States; and under those grants the plaintiff in error took no contract rights which have been impaired in any degree by the acts of the legislature of Minnesota respecting the public waterworks of the city of St. Paul. *St. Anthony Falls Water Power Co.* v. *St. Paul Water Commissioners*, 349.

6. If, after a regular conviction and sentence in that State, a suggestion of a then existing insanity is made, it is not necessary, in order to constitute "due process of law," that the question so presented should be tried by a jury. *Nobles* v. *Georgia*, 398.

7. By the constitution of Kentucky of 1891 it is provided that "lotteries and gift enterprises are forbidden, and no privileges shall be granted for such purposes, and none shall be exercised, and no schemes for similar purposes shall be allowed. The General Assembly shall enforce this

act by proper penalties. All lottery privileges or charters heretofore granted are revoked." *Held*, (1) That the provision when applied to a previously existing lottery grant in the State of Kentucky was not inconsistent with the contract clause of the Constitution of the United States; (2) That a lottery grant is not, in any sense, a contract within the meaning of the Constitution, but is simply a gratuity and license, which the State, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery; and that no right acquired during the life of the grant, on the faith of or by agreement with the grantee, can be exercised after the revocation of the grant and the forbidding of the lottery, if its exercise involves a continuance of such lottery; (3) That all rights acquired on the faith of a lottery grant must be deemed to have been acquired subject to the power of the State to the extent just indicated; nevertheless, rights acquired under a lottery grant, consistently with existing law, and which may be exercised and enjoyed without conducting a lottery forbidden by the State are, of course, not affected, and could not be affected, by the revocation of such grant; (4) That this court when reviewing the final judgment of a state court upholding a state enactment alleged to be in violation of the contract clause of the Constitution, possesses paramount authority to determine for itself the existence or non-existence of the contract set up, and whether its obligation has been impaired by the state enactment. *Douglas* v. *Kentucky*, 488.

8. The sixth section of the act of September 27, 1890, c. 1001, 26 Stat. 492, authorizing the establishment of Rock Creek Park in the District of Columbia, does not violate the provisions of the Constitution of the United States, and is valid. *Wilson* v. *Lambert*, 611.
9. It is not necessary to decide whether the act of 1883 conflicts with the Constitution in that it lays taxes upon earnings arising from transportation of persons and property between different States. *McHenry* v. *Alford*, 651.
10. The objection that the act of 1883 violates the Fourteenth Amendment is untenable. *Ib.*

See JURISDICTION, A, 3, 4, 5;
STATUTE, A, 2.

CONSUL.

See CLAIMS AGAINST THE UNITED STATES, 4.

CONTRACT.

1. A contract, made at New York to carry cattle on the deck of a steamship from New York to Liverpool, contained these provisions: "On deck at owner's risk, steamer not to be held accountable for accident

to, or mortality of, the animals, from whatever cause arising." "The carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters;" "by barratry of the master or crew;" "by collisions, stranding or other accidents of navigation, of whatsoever kind, even when occasioned by the negligence, default, or error in judgment of the pilot, master, mariners or other servants of the shipowner." *Held*, that by the terms of this contract, whether governed by the law of this country or by the law of England, the carrier was not exempted from responsibility for the loss of sound cattle, forcibly thrown or driven overboard, in rough weather, by order of the master, from unfounded apprehension on his part, in the absence of any pressing peril to the ship, and with no apparent or reasonable necessity for a jettison of the sound cattle, and no attempt to separate them from those which had already been injured by perils of the sea. *Compania la Flecha* v. *Brauer*, 104.

2. A. & S. owned a tract of land in a township numbered 5 which was within the limits of the Union Pacific Railroad grants and was acquired from that company after the execution of its mortgages, its deed reserving to the company the exclusive right to prospect for coal and other minerals on the lands. A. & S. contracted to sell this tract to R. & H., representing that they had a good and indefeasible estate in fee simple in it, and agreeing to furnish an abstract of title. R. & H. agreed to buy the tract for a sum named, to be paid partly in cash and partly by notes secured by mortgage on the property. The deed, mortgage, notes and money payments were accordingly made and exchanged in supposed compliance with the agreement, but no abstract of title was furnished. In the deed and mortgage the land was by mistake of the scrivener described as township No. 6 instead of township No. 5. A. & S. had no interest in or title to land in township No. 6. No patent was ever issued by the Government for land in township No. 5. R. & H., on learning the facts, demanded the return of the money paid, and of the notes, claiming to rescind the contract of sale. A. & S. tendered a deed of the land in township No. 5. Subsequent to the tender, the Union Pacific Company released the land from claim under the coal reservation, but not as to other minerals. *Held*, that R. & H. were not bound to accept the deed tendered, and were entitled to have the contract rescinded, and to receive back the money paid by them. *Adams* v. *Henderson*, 573.

See ADMIRALTY, 2;
EQUITY, 1.

CORPORATION.

See MASTER AND SERVANT.

COSTS.

See PRACTICE, 4.

COURT AND JURY.

When a given state of facts is such that reasonable men may fairly differ upon the question as to whether there was negligence or not, the determining the matter is for the jury. *Warner* v. *Baltimore & Ohio Railroad Co.*, 339.

CRIMINAL LAW.

1. The illegal acts described in subdivisions 1 and 2 of Rev. Stat. § 3169, for the alleged violation of which the plaintiff in error was prosecuted, refer to offences committed by officers or agents acting under authority of revenue laws. *Williams* v. *United States*, 382.
2. The Chinese Exclusion Acts have no reference to the subject of revenue, but are designed to exclude persons of a particular race from the United States, and an officer employed in their execution has no connection with the Government revenue system. *Ib.*
3. When an indictment properly charges an offence under laws of the United States, that is sufficient to sustain it, although the prosecuting representative of the United States may have supposed that the offence charged was covered by a different statute. *Ib.*
4. The transactions referred to in the two indictments were of the same class of crimes or offences, and there was no error in consolidating them at the trial. *Ib.*
5. The affidavit and the bank book referred to in the opinion of the court, were not admissible in evidence against the accused, as, on the face of the transactions, there was no necessary connection between them and the charges against him. *Ib.*
6. The estimate placed upon the character of a government employé by the community cannot be shown by proof only of the estimate in which he is held by his coemployés. *Ib.*
7. It was highly improper for the prosecuting officer to say in open court in the presence of the jury, under circumstances described in the opinion of the court, that while Mr. Williams was investigating the Chinese female cases, there were more females sent back to China than were ever sent back, before or after. *Ib.*
8. This was an indictment for murder alleged to have been committed on an American vessel on the high seas. After the crime was discovered, Brown, a sailor, was put in irons and the vessel was headed for Halifax. Before it reached there Brown charged Bram with the commission of the crime, saying that he had seen him do it. Bram was then also put in irons. On the arrival at Halifax, Power, a policeman and detective in the government service at that place, had a conversation with Bram. Bram was indicted at Boston for

the commission of the crime, and on his trial Power was offered as a witness for the Government. He testified that he made an examination of Bram, in his own office, in the city hall at Halifax, when no one was present besides Bram and himself; and that no threats were made in any way to Bram, nor any inducements held out to him. The witness was then asked: "What did you say to him and he to you?" To this defendant's counsel objected. The defendant's counsel was permitted to cross-examine the witness before the court ruled upon the objection, and the witness stated that the conversation took place in his office, where he had caused the defendant Bram to be brought by a police officer; that up to that time the defendant had been in the custody of the police authorities of Halifax; that the witness asked that the defendant should be brought to his office for the purpose of interviewing him; that at his office he stripped the defendant and examined his clothing, but not his pockets; that he told the defendant to submit to an examination, and that he searched him; that the defendant was then in custody and did everything the witness directed him to do; that all this took place before the defendant had been examined before the United States consul, and that the witness did not know that the local authorities had at that time taken any action, or that the defendant was held for the United States — for the consul general of the United States. The witness answered questions by the court as follows: "You say there was no inducement to him in the way of promise or expectation of advantage?" "A. Not any, your honor." "Q. Held out?" "A. Not any, your honor." "Q. Nor anything said, in the way of suggestion to him that he might suffer if he did not — that it might be worse for him?" "A. No, sir, not any." "Q. So far as you were concerned, it was entirely voluntary?" "A. Voluntary, indeed." "Q. No influence on your part exerted to persuade him one way or the other?" "A. None whatever, sir; none whatever." The defendant then renewed his objection to the question, what conversation had taken place between Bram and the witness, for the following reasons: That at the time the defendant was in the custody of the chief of police at Halifax; that the witness in an official capacity directed the police authorities to bring defendant as a prisoner to his office and there stripped him; that defendant understood that he was a prisoner, and obeyed every order and direction that the witness gave. Under these circumstances the counsel submitted that no statement made by the defendant while so held in custody and his rights interfered with to the extent described was a free and voluntary statement, and no statement as made by him bearing upon this issue was competent. The objection was overruled, and the defendant excepted on all the grounds above stated, and the exceptions were allowed. The witness answered as follows: "When Mr. Bram came into my office, I said to him: 'Bram, we are trying to unravel this horrible mystery.' I said: 'Your posi-

tion is rather an awkward one. I have had Brown in this office and he made a statement that he saw you do the murder.' He said: 'He could not have seen me; where was he?' I said: 'He states he was at the wheel.' 'Well,' he said, 'he could not see me from there.' I said: 'Now, look here, Bram, I am satisfied that you killed the captain from all I have heard from Mr. Brown. But,' I said, 'some of us here think you could not have done all that crime alone. If you had an accomplice, you should say so, and not have the blame of this horrible crime on your own shoulders.' He said: 'Well, I think, and many others on board the ship think, that Brown is the murderer; but I don't know anything about it.' He was rather short in his replies." "Q. Anything further said by either of you?" "A. No; there was nothing further said on that occasion." The direct examination of this witness was limited to the interview between the witness and the defendant Bram. *Held*, (1) That this statement made by the accused to a police officer, was evidently not a voluntary confession and was not admissible in evidence against him; (2) That the objection to its admission, having been twice presented and regularly allowed, it was not necessary that it should be renewed at the termination of the testimony of the witness. *Bram* v. *United States*, 532.

9. The objection that the indictment recited that it was presented upon the oath of the jurors when the fact was that it was presented upon the oath and affirmation of the jurors is without merit. *Ib.*

10. The objection that neither in the indictment, nor in the proof at the hearing of the pleas in abatement was it affirmatively stated or shown that grand juror Merrill, before being permitted to affirm, was shown to have possessed conscientious scruples against taking an oath is also without merit. *Ib.*

11. As the evidence against Bram was purely circumstantial, it was clearly proper for the Government to endeavor to establish, as a circumstance in the case, the fact that another person who was present in the vicinity at the time of the killing, could not have committed the crime. *Ib.*

12. The objection to a question asked of a medical witness, whether, in his opinion, a man standing at the hip of a recumbent person and striking blows on that person's head and forehead with an axe would necessarily be spattered with, or covered with, some of the blood, was also properly overruled. *Ib.*

13. The defendant, who was employed as a postal clerk at station F in the city of New York, was indicted under Rev. Stat. § 5467. The indictment contained three counts; the first two under the first part of § 5467; the third count under the last clause of that section. The evidence showed that the Government detectives prepared a special delivery letter, designed as a test or decoy letter, containing marked bills, and delivered it, bearing a special delivery stamp, to the night

clerk in charge of branch station F of the post office in that city. The defendant was not a letter carrier, but a clerk employed at that office, whose duty it was to take charge of special delivery letters, enter them in a book kept for that purpose and then place them in course of transmission. The letter in question was addressed to Mrs. Susan Metcalf, a fictitious person, 346 E. 24th street, New York city, fictitious number. The letter was placed by the night clerk with other letters upon the table where such letters were usually placed, and the defendant, entering the office not long after, took this letter, along with the others on the same table, removed them to his desk, and properly entered the other letters, but did not enter this letter. On leaving the office not long after, the omission to enter the letter having been observed, he was arrested, and the money contents of the letter, marked and identified by the officers, were found upon his person. The officers testified upon cross-examination that the address was a fictitious one; that the letter was designed as a test letter, and that they did not intend that the letter should be delivered to Mrs. Susan Metcalf or to that address and that it could not be delivered to that person at that address. *Held*, that the evidence was sufficient to sustain a conviction under the third count of the indictment. *Hall* v. *United States*, 632.

See JURISDICTION, E.

CUSTOMS DUTIES.

Where imported foreign goods are entered at a custom house for consumption, the payment by the importer of the full amount of duties ascertained to be due upon the liquidation of the entry of the merchandise, as well as the giving notice of dissatisfaction or protest, within ten days after the liquidation of such duties, is not necessary in order to enable a protesting importer to have the exaction and classification reviewed by a board of general appraisers and by the courts, under the provision in section 14 of the act of June 10, 1890, c. 407, 26 Stat. 131, 137, "that the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall within ten days after, 'but not before,' such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objection thereto,

and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon." *United States* v. *Goldenberg*, 95.

EJECTMENT.

See ADVERSE POSSESSION.

EQUITY.

1. Hyer and Shield were engaged separately, each on behalf of himself and his associates, in seeking from the city government of Richmond a concession for a street railway with collateral lines. Hyer's organization was to be called the Richmond Conduit Company, and Shield's the Richmond Traction Company. Hyer made a deposit of money in a bank in Richmond to aid in his projects. Hyer and Shield then contracted in writing as follows, each being fully authorized thereto by his associates: "We hereby bind ourselves, in our own behalf and for our associates, mutually to coöperate one with the other in securing a franchise for said railway and to divide equally between us and our associates whatever may be realized from the enterprise, first deducting from said amount whatever actual expenses may have been incurred by either side, such expenses to be paid out of the first money realized from said enterprise. The deposit already made with the State Bank of Richmond, by Hyer or his associates, is to stand and remain intact as it now is for the purpose of securing the franchise aforesaid, subject to any conditions for the withdrawal thereof made by Hyer with the depositor after the seventeenth day of August, 1895; and further, it is agreed that the application and franchise to be presented to the common council of the city of Richmond shall be that of the Richmond Traction Company, for the building of an overhead trolley railway or cable system." A full statement of the action of the two companies was made to the Richmond authorities. Hyer fully performed his agreements. He was unable to go to Richmond when the matter was settled, and Shield secured the concession for himself and his associates, and refused to permit Hyer and his associates to participate in it. By bill in equity, amended bill and supplemental bill, Hyer sought to be declared owner of one half interest in the Traction Company's franchise, property and stock, and for a decree securing the possession and enjoyment thereof. *Held*, that, without deciding whether the contract sued on was, under the facts and circumstances disclosed, void as against public policy, the case presented was not one which called for the interposition of a court of equity; but that the plaintiff's remedy was by an action at law. *Hyer* v. *Richmond Traction Co.*, 471.

2. Courts of equity have jurisdiction to hear the complaints of those who

assert that their lands are about to be assessed and subjected to liens by a board or commission acting in pursuance of the provisions of a statute which has been enacted under the forms of law, but which, it is claimed, is unconstitutional, and therefore does not avail to confer the powers sought to be exercised. *Wilson* v. *Lambert*, 611.

EQUITY PLEADING.

1. The 45th Rule of Equity, providing that "no special replication to any answer shall be filed," and that "if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without payment of costs, as the court, or a judge thereof, may in his discretion direct," means, at most, that a general replication is always sufficient to put in issue every material allegation of an answer or amended answer, unless the rules of pleading imperatively require an amendment of the bill; and such an amendment is not required in order to set out that which may be used simply as evidence to establish any fact or facts put in issue by the pleadings. *Southern Pacific Railroad Co.* v. *United States*, 1.
2. When the defendant's answer in a chancery suit sets up matters which are impertinent, and he also files a cross bill making allegations of the same nature, a demurrer to the cross bill on that ground should be sustained. *Harrison* v. *Perea*, 311.

ESTOPPEL.

The ruling in *Cromwell* v. *Sac County*, 94 U. S. 351, that when a second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered, affirmed and applied. *Dennison* v. *United States*, 241.

See RES JUDICATA.

EVIDENCE.

See CRIMINAL LAW, 5, 6, 7, 8, 12.

HABEAS CORPUS.

1. In the case of a petition for *habeas corpus* for relief from a detention under process alleged to be illegal, by reason of the invalidity of the process or proceedings under which the petitioner is held in custody, copies of such process or proceedings must be annexed to, or the essential parts thereof set out in the petition, mere averments of conclusions of law being necessarily inadequate. *Craemer* v. *Washington State*, 124.

2. A writ of *habeas corpus* cannot be made use of as a writ of error. *Crossley* v. *California*, 640.

INDIAN.

1. A right of citizenship in an Indian Nation, conferred by an act of its legislature, can be withdrawn by a subsequent act; and this rule applies to citizenship created by marriage with such a citizen. *Roff* v. *Burney*, 218.
2. Whether any rights of property could be taken away by such subsequent act, is not considered or decided. *Ib.*

INDICTMENT.

See CRIMINAL LAW, 3, 4, 9, 10.

INFANT.

1. An infant is ordinarily bound by acts done in good faith by his solicitor or counsel in the course of the suit, to the same extent as a person of full age; and a decree made in a suit in which an infant is a party, by consent of counsel, without fraud or collusion, is binding upon the infant and cannot be set aside by rehearing, appeal or review. *Thompson* v. *Maxwell Land Grant & Railway Co.*, 451.
2. A compromise made in a pending suit which appears to the court to be for the benefit of an infant, party to the suit, will be confirmed without reference to a master; and, if sanctioned by the court, cannot be afterwards set aside except for fraud. *Ib.*

INTEREST.

It being found that the defendant converted the entire assets which are the subject of this controversy, there was no error in charging him with interest on the amount so converted, without regard to whether he did or did not make profits. *Harrison* v. *Perea*, 311.

INTERNATIONAL LAW.

See JURISDICTION, C, 1, 2.

INTERSTATE COMMERCE COMMISSION.

1. *Cincinnati, New Orleans & Texas Pacific Railway* v. *Interstate Commerce Commission*, 162 U. S. 184, and *Interstate Commerce Commission* v. *Cincinnati, New Orleans & Texas Pacific Railway Company*, 167 U. S. 479, adhered to, to the points that Congress has not conferred upon the Interstate Commerce Commission the legislative power of prescribing rates, either maximum, or minimum, or absolute; and that, as it did not give the express power to the Commission, it did not intend to

secure the same result indirectly by empowering that tribunal, after having determined what, in reference to the past, were reasonable and just rates, to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates thus determined to have been in the past reasonable and just. *Interstate Commerce Commission* v. *Alabama Midland Railway Co.*, 144.

2. Competition is one of the most obvious and effective circumstances that make the conditions, under which a long and short haul is performed, substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce. This is no longer an open question in this court. *Ib.*
3. The conclusion which the court reached in *Interstate Commerce Commission* v. *Baltimore & Ohio Railroad*, 145 U. S. 263, and *Wight* v. *United States*, 167 U. S. 512, that in applying the provisions of §§ 3, 4, of the Interstate Commerce Act of February 4, 1887, c. 104, 24 Stat. 379, making it unlawful for common carriers to make or give any undue or unreasonable preference or advantage to any particular person or locality, or to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, competition which affects rates is one of the matters to be considered, is not applicable to the second section of the act. *Ib.*
4. The purpose of the second section of that act is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor, and it was held in *Wight* v. *United States*, 167 U. S. 512, that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes. *Ib.*
5. This view is not open to the criticism that different meanings are attributed to the same words when found in different sections of the act; for, as the purposes of the several sections are different, the phrase under consideration must be read, in the second section, as restricted to the case of shippers over the same road, thus leaving no room for the operation of competition, but in the other sections, which cover the entire tract of interstate and foreign commerce, a meaning must be given to the phrase wide enough to include all the facts that have a legitimate bearing on the situation — among which is the fact of competition when it affects rates. *Ib.*
6. The mere fact of competition, no matter what its character or extent, does not necessarily relieve the carrier from the restraints of the third and fourth sections; but these sections are not so stringent and imperative as to exclude in all cases the matter of competition from con-

sideration in determining the questions of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such, as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration. *Ib.*

7. The conclusions of the court on this branch of the case are: (1) that competition between rival routes is one of the matters which may lawfully be considered in making rates for interstate commerce; and (2) that substantial dissimilarity of circumstances and conditions may justify common carriers in charging greater compensation for the transportation of like kinds of property for a shorter than for a longer distance over the same line, in such commerce. *Ib.*
8. Whether, in particular instances, there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of the carriage have been substantially similar or otherwise, are questions of fact depending on the matters proved in each case. *Ib.*
9. The Circuit Court had jurisdiction to review the finding of the Interstate Commerce Commission on these questions of fact, giving effect to those findings as *prima facie* evidence of the matters therein stated; and this court is not convinced that the courts below erred in their estimate of the evidence, and perceives no error in the principles of law on which they proceeded in its application. *Ib.*

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. Under Rev. Stat. § 709, if the ground on which the jurisdiction of this court is invoked to review a judgment of a state court is, that the validity of a state law was drawn in question as in conflict with the Constitution of the United States, and the decision of the state court is in favor of its validity, this must appear on the face of the record before the decision below can be reëxamined here. *Miller* v. *Cornwall Railroad Co.*, 131.
2. A suggestion of such appearance, made on application for reargument, after the judgment of the trial court is affirmed by the Supreme Court of the State, comes too late. *Ib.*
3. This court has no jurisdiction on a writ of error to a state court to declare a state law void on account of its collision with the state constitution. *Ib.*
4. An objection in the trial of an action in a state court that an act of the State was "unconstitutional and void," when construed in those courts as raising the question whether the state legislature had power, under the state constitution, to pass the act, and not as having refer-

ence to any repugnance to the Constitution of the United States, is properly construed. *Ib.*

5. The report of this case in the Supreme Court of Pennsylvania shows that it assumed that it was dealing, under the assignments of error, only with the state constitution. *Ib.*
6. An examination of the record discloses that none of the complainants, save one, was assessed with a sufficient amount of taxes, to enable him to bring the case here on appeal, and accordingly, under the doctrine of *Russell* v. *Stansell*, 105 U. S. 303, and *Gibson* v. *Shufeldt*, 122 U. S. 27, the appeal is dismissed as to such parties. *Ogden City* v. *Armstrong*, 224.
7. The findings of fact in an appeal from the Supreme Court of a Territory are conclusive upon this court, whose jurisdiction on such appeal, apart from exceptions duly taken to rulings on the admission or rejection of evidence, is limited to determining whether the findings of fact support the judgment. *Harrison* v. *Perea*, 311.
8. A case may be said to involve the construction or application of the Constitution of the United States when a title, right, privilege or immunity is claimed under that instrument; but a definite issue in respect to the possession of the right must be distinctly deducible from the record, before the judgment of the court below can be revised on the ground of error in the disposal of such a claim by its decision. *Muse* v. *Arlington Hotel Co.*, 430.
9. The same rule being applicable in respect of the validity or construction of a treaty, some right, title, privilege or immunity, dependent on the treaty, must be so set up or claimed as to require the Circuit Court to pass on the question of validity or construction in disposing of the right asserted. *Ib.*
10. In respect of the plaintiffs' case as stated in their complaint, the Circuit Court decided no question as to the application or construction of the Constitution, or the validity or construction of the treaty, and this court is without jurisdiction to review the action of that court. *Ib.*
11. That which has been decided on one appeal or writ of error, cannot be reëxamined on a second appeal or writ of error, brought in the same suit. *Thompson* v. *Maxwell Land Grant Co.*, 451.
12. Whenever a case comes from the highest court of a State for review, and, by statute or settled practice in that State the opinion of the court is a part of the record, this court may examine such opinion for the purpose of ascertaining the grounds of the judgment. *Ib.*
13. Although the judgment and the mandate in a given case in this court express its decision, it may examine the opinion for the purpose of determining what matters were considered, upon what grounds the judgment was entered, and what has become settled, for the future disposition of the case. *Ib.*
14. In the former decision of this case, 95 U. S. 391, the decree was re-

versed on the ground that the bill, as it stood, was technically a bill of review; but it was further decided that certain matters then in issue were sufficiently and effectually determined by the proofs already in, and the reversal did not throw open the case for additional proofs upon such matters. *Ib.*

15. The questions propounded in the certificate in this case do not present distinct points or propositions of law, clearly stated, so that each can be distinctly answered, without regard to the other issues of law involved, and they obviously bring the whole case up for consideration; and as to answer them would require this court to consider the several matters thus pressed upon its attention, to pass upon questions of law not specifically propounded, and to dispose of the whole case, it is held, referring to previous decisions, that the certificate is insufficient under the statute. *United States* v. *Union Pacific Railway Co.*, 505.
16. A writ of certiorari, such as is asked for in this case, will be refused when there is a plain and adequate remedy, by appeal or otherwise. *In re Tampa Suburban Railroad Co.*, 583.
17. Where, as in this case, an order is made by a Circuit Court, appointing a receiver, and granting an injunction against interfering with his management of the property confided to him, an appeal may be taken to the Circuit Court of Appeals, carrying up the entire order. *Ib.*
18. In order to give this court jurisdiction to review the judgment of a state court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be a title or right of the plaintiff in error and not of a third person only; and the statute or authority must be directly in issue. In this case the controversy was merely as to which of the claimants had the superior equity in the fund; the statute was only collaterally involved; and plaintiffs in error asserted no right to the money based upon it. *Conde* v. *York*, 642.
19. The ruling in *United States* v. *Union Pacific Railroad*, 168 U. S. 505, that each question certified to this court from a Circuit Court of Appeals "had to be a distinct point or proposition of law, clearly stated, so that it could be distinctly answered without regard to the other issues of law in the case; to be a question of law only and not a question of fact, or of mixed law and fact, and hence could not involve or imply a conclusion or judgment upon the weight or effect of testimony or facts adduced in the case, and could not embrace the whole case, even where its decision turned upon matter of law only, and even though it was split up in the form of questions," is affirmed and followed; and, being applied to the questions certified in this case, makes it necessary for the court to decline to answer the first, second and sixth questions. *McHenry* v. *Alford*, 651.
20. This action was brought and prosecuted to final judgment in the state courts of Louisiana. Its object was to recover land in New Orleans which had been sold for nonpayment of taxes and had passed from the

purchaser at the tax sale by sundry mesne conveyances to the defendant. The grounds on which it was sought to avoid the sale were alleged defects in the statement of the name and of the sex of the owner in the advertisements of sale. The judgment of the trial court was in favor of the defendant, and that judgment was affirmed by the Supreme Court of the State. Touching the objections made to the proceedings the latter court said: "The act of 1884 makes the deed conclusive of the sufficiency of the assessment of the property sold under it. The question of the competency of this legislation in this respect has been before this court on repeated occasions. The argument now addressed to us against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of this court. To those decisions we must adhere." It was claimed in argument here that though no Federal question was directly raised in the trial in the state court, one was necessarily involved in the decision. *Held*, that this court had no jurisdiction to review the decision of the Supreme Court of the State. *Castillo* v. *McConnico*, 674.

21. The complainants in their bill predicated their right to relief upon the averment that certain ordinances adopted by the municipal authorities of Austin, and an act of the legislature of Texas referred to in their bill impaired the obligations of a contract which the bill alleged had been entered into with the complainants by the city of Austin, and that both the law of the State and the city ordinances were in contravention of the Constitution of the United States. *Held*, that these allegations plainly brought the case within the provision in the act of March 3, 1861, c. 517, 26 Stat. 826, conferring upon this court jurisdiction to review by direct appeal any final judgment rendered by a Circuit Court in any case in which the constitution or a law of a State is claimed to be in contravention of the Constitution of the United States. *Penn Mutual Life Insurance Co.* v. *Austin*, 685.

See PRACTICE, 2, 5.

B. JURISDICTION OF CIRCUIT COURTS OF APPEAL.

An interlocutory order appointing a receiver is not appealable from the Circuit Court of the United States to the Circuit Court of Appeals, and does not become so by the incorporation into it of a direction to the defendant, his agents and employés, to turn over and deliver to the receiver the property in his or their hands. *Highland Avenue & Belt Railroad Co.* v. *Columbia Equipment Co.*, 627.

C. JURISDICTION OF CIRCUIT COURTS.

1. Hernandez was in command of a revolutionary army in Venezuela when an engagement took place with the government forces which resulted in the defeat of the latter, and the occupation of Bolivar by

the former. Underhill was living in Bolivar, where he had constructed a waterworks system for the city under a contract with the government, and carried on a machinery repair business. He applied for a passport to leave the city, which was refused by Hernandez with a view to coerce him to operate his waterworks and his repair works for the benefit of the community and the revolutionary forces. Subsequently a passport was given him. The revolutionary government under which Hernandez was acting was recognized by the United States as the legitimate government of Venezuela. Subsequently Underhill sued Hernandez in the Circuit Court for the Second Circuit to recover damages caused by the refusal to grant the passport, for alleged confinement of him to his own house, and for alleged assaults and affronts by Hernandez's soldiers. Judgment being rendered for defendant the case was taken to the Circuit Court of Appeals, where the judgment was affirmed, the court holding "that the acts of the defendant were the acts of Venezuela, and as such are not properly the subject of adjudication in the courts of another government." *Held* that the Circuit Court of Appeals was justified in that conclusion. *Underhill* v. *Hernandez*, 250.

2. Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. *Ib.*

3. By denying the application in this case for a certiorari, the Court must not be understood as intimating an opinion that a Circuit Judge has power to grant injunctions, appoint receivers, or enter orders or decrees, *in invitum*, outside of his circuit. *In re Tampa Suburban Railroad Co.*, 583.

4. In a trial before a state court for murder charged to have been committed within the State, it is for the state court to decide whether the question of whether the evidence tended to show that the accused was guilty of murder only in the second degree shall or shall not be submitted to the jury, and its decision is not subject to revision in the Circuit Court of the United States, nor here. *Crossley* v. *California*, 640.

See INTERSTATE COMMERCE COMMISSION, 9;
PATENT FOR INVENTION;
PRACTICE, 6.

D. JURISDICTION OF DISTRICT COURTS.

1. A District Court of the United States has jurisdiction of a libel of a vessel for seamen's wages, which accrued while the vessel was in the custody of a receiver appointed by a state court upon the foreclosure of a mortgage upon the property of a railroad company, owner of the vessel, the vessel having been sold and passed into the purchaser's

hands, and the receiver discharged when the warrant of arrest was served. *The Resolute*, 437.

2. The remedy against the decree of the District Court was an appeal to the Circuit Courts of Appeals. *Ib.*
3. These cases are affirmed as to the jurisdiction of the District Court on the authority of *The Resolute*, *ante*, 437. *The William M. Hoag*, 443.

E. Jurisdiction of State Courts.

While the derailment of a train carrying the mails of the United States is a crime which may be punished through the courts of the United States under the provisions of the statutes in that behalf, the death of the engineer thereof, produced thereby, is a crime against the laws of the State in which the derailment takes place, for which the person causing it may be proceeded against in the state court through an indictment for murder. *Crossley* v. *California*, 640.

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

See Railroad, 10, 12.

LACHES.

The reason upon which the rule that the mere assertion of a claim, unaccompanied by any act to give effect to the asserted right, cannot avail to keep alive a right which would otherwise be precluded because of laches, is based not alone upon the lapse of time during which the neglect to enforce the right has existed, but upon the change of condition which may have arisen during the period in which there has been neglect; and when a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect. The facts in this case bring it within that rule. *Penn Mutual Life Insurance Co.* v. *Austin*, 685.

LOTTERY.

See Constitutional Law, 7.

MASTER AND SERVANT.

Where the business of a mining corporation is under the control of a general manager, and is divided into three departments of which the mining department is one, each with a superintendent under the general manager, and in the mining department are several gangs of work-

men, the foreman of one of these gangs, whether he has or has not authority to engage and discharge the men under him, is a fellow-servant with them; and the corporation is not liable to one of them for an injury caused by the foreman's negligence in managing the machinery or in giving orders to the men. *Alaska Mining Co.* v. *Whelan*, 86.

MECHANICS' LIEN.

1. Section 1524 of the Compiled Laws of New Mexico providing for the creation of mechanics' liens for work done on land, required the contractor, in order to obtain the benefit of the act, to file for record "a claim containing a statement of his demands, after deducting all just credit and offset, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials." The claim duly filed by Ford was preceded by a title describing the Springer Land Association and others and the Maxwell Land Grant Company and others, as "owners or reputed owners;" and stated a demand for the sum of $17,634.27, as "the balance due and owing to the said Patrick P. Ford, by the aforesaid owners, or reputed owners, after deducting all just credits and offsets for excavating and embankments done and performed by him under a certain contract entered into by the said the Springer Land Association, a copy of which contract is hereto annexed and made a part of this claim of lien. As also for the further sum of three hundred and ninety dollars for excavating and hauling, ordered by the engineer in charge of said ditch, and allowed by him in pursuance of the provisions of said contract;" and it stated when the work was commenced and when it was finished, and that on the last date it was "completed and accepted." It gave the names of the reputed owners of the land as the Maxwell Land Grant Company and others, enumerating them, trustees of that company; and alleged that claimant "was employed to do the said work by the Springer Land Association, C. N. Barnes, general manager, approved by C. C. Strawn as president." And it added that "the terms, time given and conditions of said contract are those that fully appear in the copy of the said contract which is attached hereto and made a part hereof." *Held* that this claim of lien was sufficient under the statute in respect of all these particulars. *Springer Land Association* v. *Ford*, 513.
2. As between the parties the fact that a lien is claimed for a greater sum than is actually owing, or is actually covered by the lien, does not vitiate the claim when honestly made; and under the findings it is impossible to impute bad faith in this instance. *Ib.*
3. The findings show that Ford carried out the conditions of the contract by him to be kept and performed; that he made no objection to the deed, and would have been willing to receive it, but for appellants' failure on their part; and they cannot now be allowed to insist that

Ford should be required to accept what they have not indicated a willingness or readiness to deliver; still less that the lien should be held invalidated because Ford did not credit $8000 for land never conveyed to him. *Ib.*

4. To limit the land upon which the lien was given to the strip of land sixty feet in width and twenty-six miles long, which was actually occupied by the ditch, and exclude the tract which the ditch was constructed to benefit by its continuous operation, would be to unreasonably circumscribe the meaning of the statute. *Ib.*
5. As the Supreme Court expressly found that it appeared "by the admissions in the pleadings and from the testimony that the 22,000 acres of land outside the ditches and reservoirs and the right of way for the same were appurtenant to said ditch and reservoirs and were under said ditch and to be irrigated thereby," it cannot now be urged that the description was void for uncertainty or that the decree included more land than was connected with the ditch. *Ib.*

MEXICAN GRANT.

See PUBLIC LAND, 5, 6.

MUNICIPAL CORPORATION.

See TAX AND TAXATION, 1, 2, 3, 4.

NAVIGABLE WATERS.

See RIPARIAN OWNERS.

PARTNERSHIP.

A partner who, within the term stipulated in the articles of partnership for its continuance, undertakes, of his own will, and without the consent of his copartner, to dissolve the partnership, takes exclusive possession of its property and business, profitably carries on the business with the property for his own benefit, and excludes his copartner from any participation in the business or the profits, is liable (whether the partnership should or should not be considered as having been dissolved by his acts) to account to the copartner for his share of the property and of the profits of the partnership, according to the partnership agreement. *Karrick* v. *Hannaman*, 328.

PATENT FOR INVENTION.

1. To constitute an action one arising under the patent-right laws of the United States, the plaintiff must set up some right, title or interest under the patent laws, or, at least, make it appear that some right

or privilege under those laws will be defeated by one construction, or sustained by the opposite construction of these laws. *Pratt* v. *Paris Gas Light and Coke Co.*, 255.

2. When a state court has jurisdiction both of the parties and the subject matter as set forth in the declaration, it cannot be ousted of such jurisdiction by the fact that, incidentally to his defence, the defendant claims the invalidity of a certain patent. *Ib.*

POST OFFICE.

See CRIMINAL LAW, 13.

PRACTICE.

1. The solicitor was properly allowed a fee from the fund. *Harrison* v. *Perea*, 311.
2. An item in the decree below which was not appealed from by the complainant is not before this court for consideration. *Ib.*
3. A clerical error in the decree of the court below caused by the omission of the name of one of the distributees, can be corrected, on application, by the court below after the case is sent down. *Ib.*
4. The costs in this court must be paid by Harrison personally. *Ib.*
5. When the court below has not acquired jurisdiction over a defendant by a valid service of process upon him, a judgment against him can be reviewed here through a writ of error directly sued out to this court. *Shepard* v. *Adams*, 618.
6. While it was the undoubted purpose of Congress in enacting in the act of June 1, 1872, c. 255, § 5, embodied in Rev. Stat. § 914, that "the practice, pleadings and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the Circuit and District Courts, shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record in the States within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding," to bring about a general uniformity in Federal and state proceedings in civil cases, and to confer upon suitors in courts of the United States the advantage of remedies provided by state legislation, yet it was also the intention to reach that uniformity largely through the discretion of Federal courts, exercised in the form of rules, adopted from time to time, so regulating their own practice as might be necessary or convenient for the advancement of justice and the prevention of delays in proceedings. *Ib.*
7. The summons in this case was issued under a general rule adopted to make proceedings in the District Court conform to those existing at that time under the state statutes; and if the court has not changed its rules to make its proceedings conform to subsequent statutes changing the

state proceedings, it is to be presumed that its discretion was legitimately exercised both in adopting and in maintaining the rule. *Ib.*

See ADMIRALTY, 3, 4.

PUBLIC LAND.

1. The cases of *United States* v. *Southern Pacific Railroad*, 146 U. S. 570, and *United States* v. *Colton Marble and Lime Co.* and *United States* v. *Southern Pacific Railroad*, 146 U. S. 615, held to have adjudged, as between the United States and the Southern Pacific Railroad Company: (1) That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of Congress of July 27, 1866, c. 278, 14 Stat. 292; (2) That upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted, attached, by relation, as of the date of that act; and, (3) That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the act of July 6, 1886, c. 637, 24 Stat. 123, forfeiting the lands granted to the Atlantic and Pacific Railroad Company, the property of the United States and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein that affected the ownership of the United States. *Southern Pacific Railroad Co.* v. *United States*, 1.

2. On a petition to the governor of the province of New Mexico, in 1819, for a grant of public land, made by a resident in that province, the governor directed possession to be given by the alcalde, and the expediente to be transmitted by that officer to the office of the governor, so that, if approved by him, the proper testimonio might be ordered to be given to the petitioner. *Held*, (1) That no grant was made until return should be made by the alcalde, and that, until his action should be approved by the governor, it was without effect; (2) That as there was no evidence in this case, either in the papers presented in support of the petitioner's claim, or in the facts and circumstances proved, from which an approval could properly be presumed, the petitioner must be held to have failed in a material part of her case; (3) That in consequence of such failure, the petitioner was not entitled to judgment for eleven square leagues of the land claimed, under the 7th subdivision of § 13 of the act of March 3, 1891, c. 539, 26 Stat. 854, creating the Court of Private Land Claims. *Bergere* v. *United States*, 66.

3. By the Spanish law in force at the time of the alleged grant of 1788, set up in this case, lots and lands were distributed to those who were intending to settle, and it was provided that, "when said settlers shall have lived and labored in said settlements during the space of four years, they are hereby empowered, from the expiration of said

term, to sell the same, and freely to dispose of them, at their will, as their own property," but confirmation after the four years had elapsed was required in completion of the legal title; and it was further provided that it should "not be lawful to give or distribute lands in a settlement to such persons as already possess some in another settlement, unless they shall leave their former residence, and remove themselves to the new place to be settled, except where they shall have resided in the first settlement during the four years necessary to entitle them to fee-simple right, or unless they shall relinquish their title to the same for not having fulfilled their obligation." On the facts in this case it is *Held*, that the granting papers in this record, taken together, do not justify the presumption of settlement and working by the two Garcias on the tract contained in the grant of 1788, for the ten years prior to 1798, or for four years thereof, or any confirmation of the grant thereupon, but that the contrary is to be inferred from the testimony in respect of possession; that Armenta's certificate of 1798 and the correspondence of 1808 conduct to no other result; and that, in the light of all the evidence, the conclusion of the court below was correct. *Chaves* v. *United States*, 177.

4. An officer of the Pueblo of Zia and an officer of the Pueblos of Santa Aña and Jemez, in 1766, petitioned the Spanish governor and captain general, setting forth "that they, from their foundation, have considered as their pasture ground, in the vicinity of their said pueblos, a valley commonly called the Holy Ghost Spring, and that in some urgent cases, the same as is known, is used as a pasture ground for the horses of this royal garrison, and the said parties being aware that the said valley has had, in its vicinity, some applicants to acquire the same by grant, which will cause them very great injury, as they have considerable cattle, sheep, goats and horses for the royal service, and not having any other place in which to pasture them, particularly the people of the Pueblo of Zia, the greater part of whose fields are upland, and some of them in the glens of said valley, adjoining their said pueblo," and asking him to "be pleased to declare said valley to be the legitimate pasture grounds and pastures of the pueblos, directing that the boundaries thereof be designated to them, that is, on the east, the pueblos aforesaid, on the west, the summits of the Puerco River, on the north, a place called the Ventana, where some Navajo Apaches reside, and on the south, the lands of the citizen settlers of said Puerco River." On receipt of this petition the captain general ordered an examination to be made, and, upon the coming in of a favorable report, ordered the alcalde to give royal possession of the grant to the petitioners and the boundaries therein set forth. *Held*, that the language used in the documents indicated nothing more than a right to pasture their cattle upon the lands in question; that the grant did not vest the title to the lands in the petitioners, but was a mere license to use them for pasturage, which license, if not revoked

by subsequent grants, was revoked by the treaty of Guadalupe Hidalgo, ceding the entire territory to the United States; and that the title to the land was not one "lawfully and regularly derived from the government of Spain," nor "one that if not then complete and perfect at the date of the acquisition of the territory by the United States the claimant had a lawful right to make perfect, had the territory not been acquired by the United States," as provided for in the act of March 3, 1891, c. 539, creating the Court of Private Land Claims. *Zia* v. *United States*, 198.

5. The plaintiffs claimed as heirs and legal representatives of the original grantees under a grant alleged to have been made March 24, 1840, by "the prefect or superior political chief of the district of Bernalillo," in the Republic of Mexico. There was no evidence that the grant of the prefect ever received the sanction or approval of the governor, the ayuntamiento, or other superior authority of the Mexican Republic. *Held*, that it was beyond the power of the prefect alone to make the grant in question. *Crespin* v. *United States*, 208.
6. Possession of land so granted after the date of the treaty of Guadalupe Hidalgo, however exclusive and notorious, cannot be regarded as an element going to make up a perfect title. *Ib.*
7. The act of September 28, 1850, c. 84, granting swamp lands to the several States, was a grant *in præsenti*, passing title to all lands which at that date were swamp lands, but leaving to the Secretary of the Interior to determine and identify what lands were, and what lands were not, swamp lands. *Michigan Land & Lumber Co.* v. *Rust*, 589.
8. Whenever the granting act specifically provides for the issue of a patent, the legal title remains in the Government until its issue, with power to inquire into the extent and validity of rights claimed against the Government. *Ib.*
9. Although a survey had been made of the lands in controversy which indicated that they were swamp lands, it was within the power of the land office at any time prior to the issue of a patent to order a resurvey and to correct mistakes made in the prior survey. *Ib.*
10. The facts in this case clearly show an adjustment of the grant upon the basis of the resurveys, and their acceptance by the officer of the State charged by the act of Congress with the duty of so doing, and this makes such adjustment final and conclusive. *Ib.*
11. The act of March 3, 1857, c. 117, did not operate to confirm to the State of Michigan the title to all lands marked on the approved and certified list of January 13, 1854, as swamp and overflowed lands, and direct the issue of a patent or patents therefor, but it simply operated to accept the field notes finally approved as evidence of the lands passing under the grant, leaving to the land department to make any needed corrections in the surveys and field notes. *Ib.*
12. The decision in *Martin* v. *Marks*, 97 U. S. 345, does not conflict with this construction of the act of 1857. *Ib.*

13. The withdrawal from sale by the land department in March, 1866, of lands within the indemnity limits of the grants of June 3, 1856, and May 5, 1864, to the State of Wisconsin to aid in the construction of a railroad, exempted such lands from the operation of the grant to the Northern Pacific Railroad Company by the act of July 2, 1864; though it may be that a different rule would obtain if the grant to the State had been of a later date than that to the Northern Pacific Company. *Northern Pacific Railroad* v. *Musser-Sauntry Land &c. Co.*, 604.

14. As to place lands, it is settled that, in case of conflict, the title depends on the dates of the grants, and not on the times of the filing of the maps of definite location. *Ib.*

15. It is not intended hereby to question the rule that the title to indemnity lands dates from selection, and not from the grant: but all here decided is, that when a withdrawal of lands within indemnity limits is made in aid of an earlier land grant, and made prior to the filing of the map of definite location by a company having a later grant — the latter having such words of exception and limitation as are found in the grant to the plaintiff — it operates to except the withdrawn lands from the scope of such later grant. *Ib.*

See TAX AND TAXATION, 5, 6, 7, 8.

RAILROAD.

1. The plaintiff in error was a workman employed by the defendant in error at its workshop in Washington. Returning from his day's labor, he stopped at the intersection of South Capitol Street and Virginia Avenue, to enable a repair train to pass him. It was and for a long time had been the custom of the railroad company to allow its workmen, who went out on the repair train in the morning, to bring back with them on their return in the evening sticks of refuse timber for their individual use as firewood, and these men were in the habit of throwing their pieces off the train while in motion, at the points nearest their own homes, being cautioned on the part of the company not to injure any one in doing it. As the train passed the plaintiff in error, such a piece of refuse wood was thrown from it by one of the men. It struck the ground, rebounded, struck the plaintiff in error, and injured him seriously and permanently. He sued the company to recover damages. After the plaintiff's evidence was in and he rested, the defendant moved for a verdict in its favor, which motion was granted. *Held*, that this was error; that the question whether the defendant was negligent should have been submitted to the jury; and that it was for the jury to say whether the custom on the part of the workmen was known to the company, whether if known it was acquiesced in, whether it was a dangerous custom from which injury should have been apprehended, and whether there was a failure, on the part of the defendant, to

exercise reasonable care, in view of all the circumstances, to prohibit the custom and prevent the performance of the act. *Fletcher* v. *Baltimore & Ohio Railroad Co.*, 135.

2. The duty to use ordinary care and caution is imposed upon a railroad company to the extent of requiring from it the use of reasonable diligence in the conduct and management of its trains, so that persons or property on the public highway shall not be injured by a negligent or dangerous act performed by any one on the train, either a passenger, or an employé, acting outside of and beyond the scope of his employment. *Ib.*
3. A railroad company owes a duty to the general public, and to individuals who may be in the streets of a town through which its tracks are laid, to use reasonable diligence to see to it that those who are on its trains shall not be guilty of any act which might reasonably be called dangerous and liable to result in injuries to persons on the street, where such act could have been prevented by the exercise of reasonable diligence on the part of the company. *Ib.*
4. If, through and in consequence of its neglect of such duty, an act is perfor[illegible] a passenger or employé, which is one of a series of the sam[illegible]cts, and of which the company had knowledge and in whic[illegible]esced, and the act is in its nature dangerous, and a person[illegible]ily on the street is injured as a result of it, the railroad company is liable. *Ib.*
5. The fact that the custom had existed for some time without any injuries having been received by any one is not a legal bar to the liability of the company. *Ib.*
6. This was an action to recover for the death of plaintiff's testator, caused by a train striking him while crossing the track of defendant's road. The results of the evidence at the trial are condensed in the statement of the case, which cannot well be abridged. Upon them the court below ordered a verdict and judgment in defendant's favor. *Held*, that the peremptory instruction by the trial court and the affirmance of its action by the appellate court manifestly proceeded not on the theory that, as a matter of law, there was no negligence on the part of the defendant, but that the proof of contributory negligence on the part of the plaintiff was so conclusive as to leave no question for the consideration of the jury; but that apart from any question which might have arisen from the proof as an entirety, and apart from the conflicting evidence as to the failure to give warning or proper signals, in the light of the ruling in *Chicago, Milwaukee &c. Railway* v. *Lowell*, 151 U. S. 209, it is obvious there was no room reasonably to claim that it should have been determined, as matter of law, that the railroad company had not been negligent. *Warner* v. *Baltimore & Ohio Railroad Co.*, 339.
7. The rule of the defendant company that "when one passenger train is standing at a station receiving or discharging passengers on double

track no other train, either passenger or freight, will attempt to run past until the passenger train at the station has moved on or signal is given by the conductor of the standing train for them to come ahead, and the whistle must not be sounded while passing a passenger train on double track or sidings unless it is absolutely necessary," is a proper one, and applies to this case. *Ib.*

8. The duty owing by a railroad company to a passenger, actually or constructively in its care, is of such a character that the rules of law regulating the conduct of a traveller upon the highway when about to cross and the trespasser who ventures upon the tracks of a railroad company are not a proper criterion by which to determine whether or not a passenger who sustains injury in going upon the tracks of the railroad was guilty of contributory negligence. *Ib.*
9. A railroad company owes to one standing towards it in the relation of a passenger a different and higher degree of care from that which is due to mere trespassers or strangers, and it is conversely equally true that the passenger, under given conditions, has a right to rely upon the exercise by the road of care; and the question of whether or not he is negligent, under all circumstances, must be determined on due consideration of the obligations of both the company and the passenger. *Ib.*
10. The Supreme Court of the District of Columbia has jurisdiction of an action, sounding in tort, brought by the administrator of a deceased person against the Baltimore and Ohio Railroad Company, to recover damages for the benefit of the widow of the deceased by reason of his being killed by a collision which took place while he was travelling on that railroad in the State of Maryland. *Stewart* v. *Baltimore & Ohio Railroad Co.*, 445.
11. The purpose of the several statutes passed in the States in more or less conformity to what is known as Lord Campbell's act, is to provide the means for recovering the damages caused by that which is in its nature a tort, and where such a statute simply takes away a common law obstacle to a recovery for the tort, an action for that tort can be maintained in any State in which that common law obstacle has been removed, when the statute of the State in which the cause of action arose is not, in substance, inconsistent with the statutes or public policy of the State in which the right of action is sought to be enforced. *Ib.*
12. While, under the Maryland statute authorizing the survival of the right of action, the State is the proper plaintiff and the jury trying the cause is to apportion the damages recovered, and under the act of Congress in force in the District of Columbia, the proper plaintiff is the personal representative of the deceased, and the damages recovered are distributed by law, these differences are not sufficient to render the statutes of Maryland inconsistent with the act of Congress, or the public policy of the District of Columbia. *Ib.*

RECEIVER.

See JURISDICTION, B.

RES JUDICATA.

1. A right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so so long as the judgment in the first suit remains unmodified. *Southern Pacific Railroad Co.* v. *United States*, 1.
2. Where a former recovery is given in evidence, it is equally conclusive, in its effect, as if it were specially pleaded by the way of estoppel. *Ib.*

See ESTOPPEL;
JURISDICTION, A, 11, 12, 13, 14.

RIPARIAN OWNERS ON NAVIGABLE WATERS.

1. The rights of riparian owners of land situated upon navigable rivers are to be measured by the rules and decisions of the courts of the State in which the land is situated, whether it be one of the original States or a State admitted after the adoption of the Constitution. *St. Anthony Falls Water Power Co.* v. *St. Paul Water Commissioners*, 349.
2. The Mississippi is a navigable river at all the points referred to in the records in these cases. *Ib.*

See CONSTITUTIONAL LAW, 5.

SPANISH GRANTS.

See PUBLIC LAND, 2, 3, 4.

STATUTE.

A. GENERALLY.

1. The primary and general rule of statutory construction is that the intent of the law-maker is to be found in the language that he has used; and the cases are few and exceptional in which the letter of the statute is not deemed controlling, and only arise when there are cogent reasons for believing that the letter does not fully justify and accurately disclose the intent. *United States* v. *Goldenberg*, 95.
2. The validity of a statute is drawn in question whenever the power to enact it, as it is by its terms, or is made to read by construction, is

fairly open to denial, and is denied. *Miller* v. *Cornwall Railroad Co.*, 131.

3. This court follows the construction given by the Supreme Court of the State of Georgia to the statutes of that State called in question in this case. *Nobles* v. *Georgia*, 398.

See INTERSTATE COMMERCE COMMISSION, 4, 5.

B. STATUTES OF THE UNITED STATES.

See ATTORNEYS' FEES, 1, 2; CLAIMS AGAINST THE UNITED STATES, 1; CONSTITUTIONAL LAW, 8; CRIMINAL LAW, 1, 2, 13; CUSTOMS DUTIES; INTERSTATE COMMERCE COMMISSION, 3, 4, 5; JURISDICTION, A, 1, 21; PRACTICE, 6; PUBLIC LAND, 1, 2, 4, 7, 11, 13; RAILROAD, 10, 12; TAX AND TAXATION, 6.

C. STATUTES OF STATES AND TERRITORIES.

Dakota. *See* CONSTITUTIONAL LAW, 9, 10; TAX AND TAXATION, 5.
Georgia. *See* STATUTE, A, 3.
Kentucky. *See* CONSTITUTIONAL LAW, 7.
Maryland. *See* RAILROAD, 12.
Minnesota. *See* CONSTITUTIONAL LAW, 5.
New Mexico. *See* MECHANICS' LIEN, 1.
New York. *See* CONSTITUTIONAL LAW, 1.
Vermont. *See* CONSTITUTIONAL LAW, 3.

SUPERVISORS OF ELECTIONS.

See CLAIMS AGAINST THE UNITED STATES, 1, 2, 3.

TAX AND TAXATION.

1. No jurisdiction vested in the appellant's city council to make an assessment and levy a tax for the improvements which are the subject of this controversy until the assent of the requisite proportion of the owners of the property to be affected had been obtained, and the action of the city council in regard to that question was not conclusive. *Ogden City* v. *Armstrong*, 224.
2. In order to justify a court of equity in restraining the collection of a tax, circumstances must exist bringing the case under some recognized head of equity jurisdiction; and this case seems plainly to be one of equitable jurisdiction, within that doctrine. *Ib.*
3. When the illegality or fatal defect in a tax does not appear on the face

of the record, courts of equity regard the case as coming within their jurisdiction. *Ib.*

4. When the authorities have jurisdiction to act, the statutory remedy is the taxpayer's exclusive remedy; but when the statute leaves open to judicial inquiry all questions of a jurisdictional character, a determination of such questions by an administrative board does not preclude parties aggrieved from resorting to judicial remedies. *Ib.*
5. Chapter 99 of the Laws of the Territory of Dakota of 1883 provided for the taxation of the lands of the Northern Pacific Railroad Company granted to it by Congress, outside of its right of way and not used in its business, while owned by the company and not leased, through the payment of percentages on gross earnings as provided for therein; the plain meaning of that act being to render the railroad company and all its property, land grants as well as right of way, free from the payment of all taxes, excepting to the amount and in the manner described in the act. *McHenry* v. *Alford*, 651.
6. That legislation was not in conflict with the provision in the act of March 2, 1861, c. 86, 12 Stat. 239, providing that no law "shall be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed." *Ib.*
7. The railroad company can avail itself of the payment of the taxes under the act of 1883 as a full payment of the taxes for the year 1888, and the court answers the fourth question in the negative. *Ib.*
8. The next and fifth question is answered in the affirmative. The payments made by the railroad company for the year 1888, as set forth in the bill, embraced the whole amount of taxes due from the defendant for that year (as well as others) under the act of 1883. Even if not paid at the exact time provided for in the statute, the failure to so pay might be waived by the public authorities, and as the moneys were in fact paid to and received by the officers of the Territory and went into its treasury, and never have been returned or tendered back, there was an effectual waiver of any objection which might possibly have been urged that the payment was not in time. *Ib.*

TORT, ACTIONS TO RECOVER DAMAGES FOR.

See CLAIMS AGAINST THE UNITED STATES, 1, 2, 3.