INDEX.

ABATEMENT.

A suit to compel the Commissioner of Patents to issue a patent abates by the death of the Commissioner, and cannot be revived so as to bring in his successor, although the latter gives his consent. The act of Maryland of 1785, c. 80, is not applicable to such a case. *United States, ex rel. Bernardin* v. *Butterworth*, 600.

CASES AFFIRMED AND FOLLOWED.

See FINDING OF FACTS;
JURISDICTION, A, 6;
LIMITATION, STATUTES OF.

CIRCUIT COURTS OF THE UNITED STATES.

1. In December, 1894, when the proceedings took place which are questioned in this case, there were not two judicial districts in the State of South Carolina, to the territorial limits of each of which the jurisdiction of the Circuit Court of the United States was confined. *Barrett* v. *United States*, No. 1, 218.
2. The legislation on this subject from the commencement of the Government reviewed. *Ib.*

CITIZENSHIP.

See CONSTITUTIONAL LAW, 15.

CIVIL WAR, ITS EFFECT UPON CONTRACTS.

See MARRIED WOMAN, 2, 3.

CLAIMS AGAINST THE UNITED STATES.

1. The act of March 3, 1891, c. 540, providing for the payment to the city of Louisville of the amount found under the act of June 16, 1890, c. 424, was in the nature of a judgment, final in its character, and subject to no appeal, and the duties of the officers of the Government thereafter charged with the payment of the moneys appropriated by

that act were not discretionary, and were limited to the clerical function of making payment as directed by the act. *United States* v. *Louisville*, 249.

2. By the act of February 25, 1893, c. 165, making provision for the payment of further and other claims of the same character, Congress did not intend to in anywise open the transactions which had been closed by the payment of the moneys directed in the act of 1891. *Ib.*
3. Article 420 of the Treasury Regulations, providing that night watchmen shall be divided into two watches as nearly as possible, both watches to perform duty every night, and empowering the surveyor of the port to make such changes in the division of the watches as he may deem expedient, and to appoint the hours of duty for different watches; and that when it is necessary to assign a night watchman to a vessel, or to any other all night charge, the night watchman so assigned must remain on the vessel or on his charge until relieved, and will be excused from performing duty the following night, does not authorize the payment of an extra day's work to a night watchman so employed during the whole night, and again put upon duty in the following night. *United States* v. *Garlinger*, 316.
4. It is not possible for the Secretary of the Treasury, by passing regulations, to divide a day's service into parts, and to attach to each part the pay for a full day's work. *Ib.*
5. Where payments for work done in Government employ are made frequently and through a considerable period of time, and are received without objection or protest, and where there is no pretence of fraud or of circumstances constituting duress, it is legitimate to infer that such payments were made and received on the understanding of both parties that they were made in full; and such a presumption is much strengthened if the employé waits two years after the expiration of his service before making any demand for further compensation. *Ib.*

CONSTITUTIONAL LAW.

1. A statute of a State, providing that no contract shall exempt any railroad corporation from the liability of a common carrier, or carrier of passengers, which would have existed if no contract had been made, does not, as applied to a claim for an injury happening within the State under a contract for interstate transportation, contravene the provision of the Constitution of the United States empowering Congress to regulate interstate commerce. *Chicago, Milwaukee & St. Paul Railway Co.* v. *Solan*, 133.
2. It is the rule of courts, both state and Federal, not to decide constitutional questions until the necessity for such decision arises in the record before the court. *Baker* v. *Grice*, 284.
3. The provisions in the act of March 30, 1896, c. 72, of Utah, providing that "The period of employment of workingmen in all underground

mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger;" that "The period of employment of workingmen in smelters and all other institutions for the reduction or refining of ores or metals shall be eight hours per day, except in cases of emergency where life or property is in imminent danger;" and that "Any person, body corporate, agent, manager or employer who shall violate any of the provisions of sections one and two of this act shall be deemed guilty of a misdemeanor," are a valid exercise of the police power of the State, and do not violate the provisions of the Fourteenth Amendment of the Constitution of the United States by abridging the privileges or immunities of its citizens, or by depriving them of their property, or by denying to them the equal protection of the laws. *Holden* v. *Hardy*, 366.

4. The cases arising under the Fourteenth Amendment are examined in detail, and are held to demonstrate that, in passing upon the validity of state legislation under it, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some States methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals or classes had proved detrimental to their interests; and other classes of persons, particularly those engaged in dangerous or unhealthy employments, have been found to be in need of additional protection: but this power of change is limited by the fundamental principles laid down in the Constitution, to which each member of the Union is bound to accede as a condition of its admission as a State. *Ib.*

5. The statute of Oregon of October 26, 1882, taxing mortgages of lands in that State to the mortgagees in the county where the land lies, does not, as applied to mortgages owned by citizens of other States and in their possession outside of the State of Oregon, contravene the Fourteenth Amendment of the Constitution of the United States. *Savings & Loan Society* v. *Multnomah County*, 421.

6. A suit against individuals for the purpose of preventing them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of the Eleventh Amendment. *Smyth* v. *Ames*, 466.

7. It is settled that: (1) A railroad corporation is a person within the meaning of the Fourteenth Amendment declaring that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; (2) A state enactment, or regulations made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earn-

ing such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the Fourteenth Amendment to the Constitution of the United States; (3) While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and, therefore, without due process of law, cannot be so conclusively determined by the legislature of the State or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry. *Ib.*

8. The grant to the legislature in the constitution of Nebraska of the power to establish maximum rates for the transportation of passengers and freight on railroads in that State has reference to "reasonable" maximum rates, as the words strongly imply that it was not intended to give a power to fix maximum rates without regard to their reasonableness; and as it cannot be admitted that the power granted may be exerted in derogation of rights secured by the Constitution of the United States, and that the judiciary may not, when its jurisdiction is properly invoked, protect those rights. *Ib.*
9. The idea that any legislature, state or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions; as the duty rests upon all courts, Federal and state, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. *Ib.*
10. The effect of the Nebraska statute of 1893, entitled "An act to regulate railroads, to classify freights, to fix reasonable maximum rates to be charged for the transportation of freights upon each of the railroads in the State of Nebraska, and to provide penalties for the violation of this act," is to deprive each of the companies involved in these suits of the just compensation secured to them by the Constitution of the United States, and therefore the decree below restraining its enforcement was correct. *Ib.*
11. If the Circuit Court finds that the present condition of business is such as to admit of the application of the statute to the railroad companies in question without depriving them of just compensation, it will be its duty to discharge the injunction heretofore granted, and to make whatever order is necessary to remove any obstruction placed by the decrees in these cases in the way of the enforcement of the statute. *Ib.*
12. Chapter 320 of the Laws of North Carolina of 1891 was a valid law, and the action of the Governor of the State under it in suspending the plaintiff in error as railroad commissioner, appointed under it,

was, as construed by the Supreme Court of that State, a valid exercise of the power conferred upon the Governor by that act, and was due process of law, within the meaning of the Constitution. *Wilson* v. *North Carolina*, 586.

13. The Federal question which is attempted to be raised in this case is unfounded in substance, and does not really exist. *Ib.*
14. The judgment of the state court in this case operated of itself to remove the plaintiff in error from the office of railroad commissioner, and there is no foundation in the evidence for the allegation that his successor knew of the filing of the supersedeas bond when he took possession of the office, or was guilty of contempt in doing so. *Ib.*
15. A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the Fourteenth Amendment of the Constitution, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." *United States* v. *Wong Kim Ark*, 649.

See DISEASED CATTLE, INTERSTATE TRANSPORTATION OF; EMINENT DOMAIN; INTERSTATE COMMERCE.

CONSULS AND VICE-CONSULS.

1. Congress has power, under the Constitution, to vest in the President authority to appoint a subordinate officer, called a vice-consul, to be temporarily charged with the duty of performing the functions of the consular office. *United States* v. *Eaton*, 331.
2. The Revised Statutes confer upon the President full power, in his discretion, to appoint vice-consuls, and fix their compensation, to be paid out of the allowance made by law for the principal consular officer in whose place such appointment shall be made. *Ib.*
3. The facts that the minister resident and consul-general at Siam had obtained a leave of absence from the President, and was ill and unable to discharge his duties, and that the vice-consul previously appointed had not qualified, and was absent from Siam, created a temporary vacancy and justified an emergency appointment to fill it. *Ib.*
4. The accounting officers of the Government did not err in treating the salary fixed by law for the joint service of minister resident and consul-general at Siam as indivisible. *Ib.*
5. There was no error in allowing Eaton compensation for a period during which he performed the duties of the office before his official bond was received and approved. *Ib.*

6. A consular officer must account to the Government for fees received by him for administering upon the estates of citizens of the United States, dying within the limits of his jurisdiction. *Ib.*

CONTRACT.

See MARRIED WOMAN;
TAX AND TAXATION.

CORPORATION.

See TAX AND TAXATION.

CUSTOMS DUTIES.

1. In proceedings brought before the board of general appraisers by protests under § 14 of the Customs Administrative Act of June 10, 1890, c. 407, 26 Stat. 131, to review decisions of a collector of customs upon entries, the board has jurisdiction to inquire into and impeach the dutiable valuation reported to the collector by the appraiser upon which the collector assessed the rate of duty to which the merchandise was subject. *United States* v. *Passavant*, 16.
2. The "German duty," which is a tax imposed by the German Government on merchandise when sold by manufacturers for consumption or sale in the markets of Germany, but is remitted by that Government when the goods are purchased in bond or consigned while in bond for exportation to a foreign country, was lawfully included by the appraiser in his estimate of the dutiable value of the importation in question in this case. *Ib.*
3. In paragraph 297 of the tariff act of August 27, 1894, c. 349, 28 Stat. 509, providing that "the reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, eighteen hundred and ninety-five," the words "manufactures of wool" had relation to the raw material out of which the articles were made, and, as the material of worsted dress goods was wool, such goods fell within the paragraph. *United States* v. *Klumpp*, 209.

DAMAGES.

This was an action to recover damages for injury done to certain land in the city of Washington by reason of the illegal occupation by a railroad company of the street on which the land abutted. The land constituted original lot one in square 630, and long prior to the action it had been subdivided between the owners, and a plat thereof recorded. In the partition it was provided that the alleys marked on the plat were exclusively for the sole benefit and use of the sub-lots, should be private and under the control of all owners of property thereon, and that,

except as provided, could not be closed unless by common consent. Before the action was brought the plaintiff had become the owner of the fee of all the sub-lots constituting original lot one. *Held*, (1) If the plaintiff did not own all of original lot one, she was entitled to recover damages for any injury done to such part of it as she did own; (2) The plaintiff, being the owner of all the sub-lots, was entitled, under the deed, to close the alleys altogether; and therefore it was error to instruct the jury that she could not have conveyed a good title to the land marked on the plat as alleys; (3) The plaintiff was entitled to recover such damages as were equivalent to or would fairly compensate her for the injury done to her land by the defendant. Absolute certainty as to damages in such cases is impossible. All that the law requires is that such damages be allowed as, in the judgment of fair men, directly and naturally resulted from the injury for which suit is brought. What the plaintiff was entitled to was reasonable compensation for the wrongs done to her. *Hetzel* v. *Baltimore & Ohio Railroad*, 26.

DISEASED CATTLE, INTERSTATE TRANSPORTATION OF.

1. The act of Kansas, 1891, c. 201, as amended and as it appears in 2 Gen. Stats. Kansas, 1897, 761, c. 139, relating to bringing into the State cattle liable or capable of communicating Texas, splenic or Spanish fever to any domestic cattle of the State, and providing for the trial of civil actions brought to recover damages therefor, is not overridden by the act of Congress of May 29, 1884, 23 Stat. 31, c. 60, known as the Animal Industry Act, nor by the act of March 3, 1891, 26 Stat. 1044, 1049, c. 544, appropriating money to carry out the provisions of the above act, nor by section 5258 of the Revised Statutes, authorizing every railroad company in the United States, operated by steam, its successors and assigns, "to carry upon and over its road, boats, bridges and ferries all passengers, troops, Government supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination; as Congress has not assumed to give to any corporation, company or person, the affirmative right to transport from one State to another State cattle that were liable to impart or capable of communicating contagious, infectious or communicable diseases. *Missouri Kansas & Texas Railway Co.* v. *Haber*, 613.
2. Whether a corporation transporting, or the person causing to be transported from one State to another, cattle of the class specified in the Kansas statute should be liable in a civil action for any damages sustained by the owners of domestic cattle by reason of the introduction into their State of such diseased cattle, is a subject about which the act of May 29, 1884, c. 60, 23 Stat. 31, known as the Animal Industry Act, did not make any provision. *Ib.*

3. The provision in the Kansas act imposing such civil liability is in aid of the objects which Congress had in view when it passed the Animal Industry Act, and it was passed in execution of a power with which the State did not part when entering the Union, namely, the power to protect the people in the enjoyment of their rights of property, and to provide for the redress of wrongs within its limits, and is not, within the meaning of the Constitution, nor in any just sense, a regulation of commerce among the States. *Ib.*

4. A state statute, although enacted in pursuance of a power not surrendered to the General Government, must in the execution of its provisions yield in case of conflict to a statute constitutionally enacted under authority conferred upon Congress; and this, without regard to the source of power whence the state legislature derived its enactment. *Ib.*

5. Neither corporations nor individuals are entitled by force alone of the Constitution of the United States and without liability for injuries resulting therefrom to others, to bring into one State from another State cattle liable to impart or capable of communicating disease to domestic cattle. *Ib.*

6. Although the powers of a State must in their exercise give way to a power exerted by Congress under the Constitution, it has never been adjudged that that instrument by its own force gives any one the right to introduce into a State, against its will, cattle so affected with disease that their presence in the State will be dangerous to domestic cattle. *Ib.*

7. Prior cases reviewed and held to proceed upon the ground that the regulation of the enjoyment of the relative rights, and the performance of the duties, of all persons within the jurisdiction of a State belongs primarily to such State under its reserved power to provide for the safety of all persons and property within its limits; and that even if the subject of such regulations be one that may be taken under the exclusive control of Congress, and be reached by national legislation, any action taken by the State upon that subject that does not directly interfere with rights secured by the Constitution of the United States or by some valid act of Congress, must be respected until Congress intervenes. *Ib.*

8. An act of Congress that does no more than give authority to railroad companies to carry "freight and property" over their respective roads from one State to another State, will not authorize a railroad company to carry into a State cattle known, or which by due diligence may be known, to be in such a condition as to impart or communicate disease to the domestic cattle of such State. *Ib.*

9. If the carrier takes diseased cattle into a State, it does so subject for any injury thereby done to domestic cattle to such liability as may arise under any law of the State that does not go beyond the necessities of the case and burden or prohibit interstate commerce; and a statute prescribing as a rule of civil conduct that a person or corpora-

tion shall not bring into the State cattle that are known, or which by proper diligence could be known, to be capable of communicating disease to domestic cattle, cannot be regarded as beyond the necessities of the case, nor as interfering with any right intended to be given or recognized by section 5258 of the Revised Statutes. *Ib.*

10. Congress could authorize the carrying of such cattle from one State into another State, and by legislation protect the carrier against all suits for damages arising therefrom; but it has not done so, nor has it enacted any statute that prevents a State from prescribing such a rule of civil conduct as that found in the statute of Kansas. *Ib.*

DISTRICT OF COLUMBIA.

1. A summary process to recover possession of land, under the landlord and tenant act of the District of Columbia, (Rev. Stat. D. C. c. 19,) can be maintained only when the conventional relation of landlord and tenant exists or has existed between the parties; and cannot be maintained by a mortgagee against his mortgagor in possession after breach of condition of the mortgage, although the mortgage contains a provision that until default the mortgagor shall be permitted to possess and enjoy the premises, and to take and use the rents and profits thereof, "in the same manner, to the same extent, and with the same effect, as if this deed had not been made." *Willis* v. *Eastern Trust & Banking Co.*, 295.

2. In the District of Columbia it is the rule that when, upon a purchase of real estate the conveyance of the legal title is to one person while the consideration is paid by another, an implied or resulting trust arises, which may be shown by parol proof; and the grantee in the conveyance will be held, on such evidence, as trustee for the party from whom the consideration proceeds, whose rights will be enforced as against those claiming under the record title. *Smithsonian Institution* v. *Meech*, 398.

3. This case comes within that rule, the evidence being clear and satisfactory that the oral agreement made between Mr. and Mrs. Avery, at the time when the property was conveyed to the latter, was made as asserted by the Smithsonian Institution. *Ib.*

4. Such being established as the fact, it is the duty of a court of equity to recognize that agreement as against the legal effect of the conveyance to Mrs. Avery. *Ib.*

5. The presumption that when the consideration for a deed is paid by a husband, and the conveyance is made to his wife, the conveyance is intended for her benefit, is one of fact which can be overthrown by proof of the real intent of the parties. *Ib.*

6. When a testator declares in his will that his several bequests are made upon the condition that the legatees acquiesce in the provisions of his will, no legatee can, without compliance with that condition, receive

his bounty, or be put in a position to use it in an effort to thwart his expressed purposes. *Ib.*

EJECTMENT.

See JURISDICTION, C, 1.

EMINENT DOMAIN.

1. The settled rule of this court in cases for the determination of the amount of damages to be paid for private property condemned and taken for public use, is that it accepts the construction placed by the Supreme Court of the State upon its own constitution and statutes. *Backus* v. *Fort Street Union Depot Co.*, 557.
2. In case of such condemnation and taking, a State may authorize possession to be taken prior to the final determination of the amount of compensation, provided adequate provision for compensation is made. *Ib.*
3. As to the court to determine the question, or the form of procedure, all that is essential is that, in some appropriate way, before some properly constituted tribunal, inquiry shall be made as to the amount of compensation; and when this has been provided for there is that due process of law which is required by the Federal Constitution. *Ib.*
4. There is no vested right in a mode of procedure established by state law for the condemnation of property for public use; but each succeeding legislature may establish a different one, provided only that in each is preserved the essential element of protection. *Ib.*
5. This court is bound to accept the construction placed upon the state statute by the Supreme Court of the State, and to hold that it means that if the second appraisal was less than the first, and the amount of the first had been paid, the company was entitled to recover the difference from the party to whom it had been paid. *Ib.*

EQUITY.

See DISTRICT OF COLUMBIA, 2, 4; LACHES, 1;
JURISDICTION, C, 7; LIMITATION, STATUTES OF.

EXCEPTION.

When a bill of exceptions does not contain the evidence, it is impossible for this court to know the ground on which the trial court proceeded in overruling a motion on the evidence to compel the district attorney to elect, and an exception in that regard will not be considered. *Barrett* v. *United States*, No. 1, 218.

FINDING OF FACTS.

Stuart v. *Hayden*, 169 U. S. 1, affirmed to the point that when two courts have reached the same conclusion on a question of fact, their finding

will not be disturbed unless it be clear that their conclusion was erroneous. *Baker* v. *Cummings*, 189.

HABEAS CORPUS.

1. Application for leave to file a petition for a writ of *habeas corpus* will be denied if it be apparent that the only result, if the writ were issued, would be the remanding of the petitioner. *In re Boardman*, 39.
2. The action of a Circuit Court in refusing an appeal from a final order dismissing a petition for *habeas corpus* and denying the writ cannot be revised by this court on *habeas corpus*. *Ib.*
3. The fact that, when an appeal from a final order of a Circuit Court, denying a writ of *habeas corpus* and dismissing the petition therefor, of a person confined under state authority, has been prosecuted to this court and the order affirmed, the state court proceeds to direct sentence of death to be enforced before the issue of the mandate from this court, does not justify the interposition of this court by the writ of *habeas corpus*. *Ib.*
4. Where the statutes of a State provide that execution under a sentence of death shall not be stayed by an appeal to the highest tribunal of the State unless a certificate of probable cause be granted as provided, and such certificate has been refused, and application for supersedeas denied, this court cannot interfere on *habeas corpus* on the ground, if Federal questions were raised on such appeal, that thereby the party condemned is deprived of the privilege or immunity of suing out a writ of error from this court. *Ib.*

See JURISDICTION, C, 5, 6.

HUSBAND AND WIFE.

See DISTRICT OF COLUMBIA, 3, 4, 5.

INDIAN.

See TAX AND TAXATION, 3.

INSURANCE.

See LIFE INSURANCE.

INTEREST.

See NATIONAL BANK.

INTERSTATE COMMERCE.

Section 1295 of the Virginia Code of 1887, enacting that "when a common carrier accepts for transportation anything, directed to a point of destination beyond the terminus of his own line or route, he shall

be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless, at the time of such acceptance, such carrier be released or exempted from such liability by contract in writing signed by the owner or his agent; and, although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless, within a reasonable time after demand made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge" does not attempt to substantially regulate or control contracts as to interstate shipments, but simply establishes a rule of evidence, ordaining the character of proof by which a carrier may show that, although it received goods for transportation beyond its own line, nevertheless, by agreement, its liability was limited to its own line; and it does not conflict with the provisions of the Constitution of the United States, touching interstate commerce. *Richmond & Alleghany Railroad Co.* v. *R. A. Patterson Tobacco Co.*, 311.

See DISEASED CATTLE, INTERSTATE TRANSPORTATION OF.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. Where the Circuit Court and the Circuit Court of Appeals agree as to what facts are established by the evidence, this court will not take a different view, unless it clearly appears that the facts are otherwise. *Stuart* v. *Hayden*, 1.
2. The court below having dismissed the bill in this case on the ground that it had no jurisdiction, as the matter in dispute was determined not to exceed $2000 exclusive of interest and costs, this court examines the bill at length in its opinion, and holds that upon the face of the pleading the matter in dispute is sufficient to give the court below jurisdiction, and remands the case for further proceedings, without determining any of the other questions on the merits. *Dakota Building & Loan Association* v. *Price*, 45.
3. A judgment of the Circuit Court of the United States, against a party contending that that court has no jurisdiction because the case has not been duly removed from a state court, may be reviewed as to the question of jurisdiction by this court upon writ of error directly to that court under the act of March 3, 1891, c. 517, § 5. *Powers* v. *Chesapeake & Ohio Railway Co.*, 92.
4. An order of the Circuit Court of the United States, remanding a case to a state court, is not reviewable by this court. *Ib.*
5. The defendant in error filed a bill against the plaintiff in error in a state court in Illinois to compel the performance of a contract to convey to her land in that State. The case proceeded to judgment in plaintiff's favor in the Supreme Court of the State, but was re-

manded with directions to take an account for the purpose of ascertaining for how much payment should be directed. A writ of error, sued out from this court to review that judgment was dismissed here on the ground that the judgment was not final. It does not appear that any right or title had been specially set up or claimed under any statute of, or authority exercised under, the United States in the courts below, or in the Supreme Court of Illinois, prior to such judgment of that court. It appeared on the second hearing that prior to September 10, 1884, the United States had seized the property for revenue taxes due from a firm then occupying it as a distillery, the defendant in error being in no way connected with the firm, that the property was sold, the Government bidding it in and taking a deed for it, and that the Government conveyed to the plaintiff in error. In the account stated the defendant in error was required to repay the amount so paid with interest. It also appeared that the plaintiff in error, after the case went back, moved to amend its answer by setting up that title, as a right and title acquired and claimed under the Constitution, statutes and authority of the United States, which motion was refused, and the trial court disposed of the case on other grounds. In the Appellate Court and in the Supreme Court the plaintiff in error contended that there was error in refusing its motion; but the Appellate Court held, and its decision was sustained by the Supreme Court, that it was bound by the first decision, and that error could not be assigned, on the second appeal, for any cause existing at the time of the prior judgment. In this court it was contended that, at the second trial it appeared that plaintiff in error claimed to hold an absolute title to the lots in question by virtue of the foreclosure proceedings and of the master's deed obtained thereunder, and hence that the title was claimed under an authority exercised under the United States; that a Federal question was thereby raised on the record; that the decision of the case necessarily involved passing on the claim of title; that the opinion of the Supreme Court of Illinois showed that it was passed upon; and that the necessary effect of the decree and judgment of the state court was against the right and title of defendant sufficiently claimed under Federal authority. *Held*, that the point thus raised was certainly embraced by the first judgment, and that this court cannot revise the second judgment on the ground that the plaintiff in error was thereby denied any right, properly claimed, in apt time, in accordance with Rev. Stat. § 709. *Union Mutual Life Insurance Co.* v. *Kirchoff*, 103.

6. *Oxley Stave Company* v. *Butler County*, 166 U. S. 648, cited, quoted from and approved to the point that the words "specially set up or claimed," in Rev. Stat. § 709, 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. *Ib.*

7. After the answers of this court to the questions of the Circuit Court of Appeals in this case, reported in *New Orleans* v. *Benjamin*, 153 U. S. 411, Benjamin amended his bill in the Circuit Court by inserting an averment that "each of said persons in whose favor said claims accrued and to whom said certificates were issued, are now, and were on the 9th day of February, 1891, citizens respectively of States other than the State of Louisiana, and competent as such citizens to maintain suit in this honorable court against the defendants for the recovery of said indebtedness, represented by said certificates, if no assignment or transfer thereof had been made." The city demurred on the ground that the case was not one of equitable cognizance, and that the amendment was insufficient to show jurisdiction. This demurrer was sustained in the Circuit Court, and the Circuit Court of Appeals affirmed its decree because the necessary diversity of citizenship was not affirmatively shown. *Held*, that this judgment of the Circuit Court of Appeals was final, and could not be appealed from. *Benjamin* v. *New Orleans*, 161.

8. An appeal does not lie to this court from the decision of a Circuit Court in which, after overruling, on the facts, a plea by the defendant that the action was not in truth a controversy between citizens of different States, but solely between citizens of one State, to whom other parties were collusively added for the purpose of giving the Circuit Court jurisdiction, the court then rendered a final judgment in favor of the plaintiffs on the merits. While such an issue involves the jurisdiction of the Circuit Court, it does not involve or require, within the meaning of the act of March 3, 1891, c. 517, either the construction or application of the Constitution. *Merritt* v. *Bowdoin College*, 551.

9. As the respondents, both at the trial in the Circuit Court of the State, and in the subsequent proceedings on the certiorari in the Supreme Court of the State, specifically set up and claimed rights under the Federal Constitution which were denied, the jurisdiction of this court is not open to doubt. *Backus* v. *Fort Street Union Depot Co.*, 557.

10. While this court may examine proceedings had in a state court, under state authority, for the appropriation of private property to public purposes, so far as to inquire whether that court prescribed any rule of law in disregard of the owner's right to just compensation, it may not inquire into matters which do not necessarily involve, in any substantial sense, the Federal right alleged to have been denied. *Ib.*

11. The limit of interference by this court with the judgments of state courts is reached when it appears that no fundamental rights have been disregarded by the state tribunals. *Ib.*

See CONSTITUTIONAL LAW, 13;
MOTION TO DISMISS.

B. Jurisdiction of Circuit Courts of Appeal.

The provision in § 16 of the act of February 4, 1897, as amended by the act of March 2, 1889, c. 382, that appeals from judgments of Circuit Courts in such cases to this court shall not operate to stay or supersede the order of the court, or the execution of any writ or process thereon, does not refer to an appeal from a judgment of a Circuit Court of Appeals to this court; and such an appeal to this court from such a judgment of a Circuit Court of Appeals operates as a supersedeas. *Louisville & Nashville Railroad Co.* v. *Behlmer*, 644.

C. Jurisdiction of Circuit Courts.

1. In an action of ejectment the question whether the land in dispute is of sufficient value to give a Circuit Court jurisdiction is purely one of fact, and the statutes regulating jurisdiction leave the mode of trying such issues to the discretion of the trial judge. *Wetmore* v. *Rymer*, 115.
2. Whether he elects to submit such issue to a jury, or to himself hear and determine it without the intervention of a jury, in either event the parties are not concluded by the judgment of the Circuit Court. *Ib.*
3. In this case the question was passed upon by the court below on affidavits, and the judgment dismissing the action for want of jurisdiction is reviewable here. *Ib.*
4. A suit cannot properly be dismissed by a Circuit Court as not involving a controversy of an amount sufficient to come within its jurisdiction, unless the facts, when made to appear on the record, create a legal certainty of that conclusion. *Ib.*
5. While Circuit Courts of the United States have jurisdiction, under the circumstances set forth in the statement of the case, to issue a writ of *habeas corpus*, yet those courts ought not to exercise that jurisdiction, by the discharge of a prisoner, unless in cases of peculiar urgency, but should leave the prisoner to be dealt with by the courts of the State; and even after a final determination of the case by those courts should ordinarily leave the prisoner to his remedy by writ of error from this court. *Baker* v. *Grice*, 284.
6. Upon the facts appearing in this case no sufficient case was made out for the exercise of the jurisdiction of the Circuit Court by the issue of a writ of *habeas corpus* to take the prisoner out of the custody of the state court. *Ib.*
7. The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal court, is not to be conclusively determined by the statutes of the particular State in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that

right by reason of his being allowed to sue at law in a state court on the same cause of action. *Smyth* v. *Ames*, 466.

See CIRCUIT COURTS OF THE UNITED STATES.

D. JURISDICTION OF STATE COURTS.

1. On June 25, 1889, plaintiff in error, Daniel Dull, being the owner of the tract of land in controversy, conveyed the same by warranty deed executed by himself and wife to John E. Blackman. Blackman, on August 2, 1889, made a deed of the same land to George F. Wright as security for moneys to be advanced by Wright. On the 29th of February, 1892, Blackman commenced this suit in the District Court of Pottawattamie County, Iowa, to compel a reconveyance by Wright on the ground of his failure to advance any money. Prior thereto, and on January 30, 1892, Blackman had executed a deed of the land to Edward Phelan, which conveyance was at first conditional but by agreement signed by the parties on September 15, 1892, was made absolute. On the 17th of September, 1892, Phelan filed his petition of intervention, setting forth his rights in the matter under the deed of January 30 and the agreement of September 15, and also making plaintiffs in error and others defendants, alleging that they claimed certain interests in the property, and praying a decree quieting his title as against all. On January 24, 1893, plaintiff's counsel withdrew his appearance for Blackman, and, upon his application, was allowed to prosecute the action in the name of Blackman for and in behalf of Phelan, the intervenor. On February 2, 1893, the plaintiffs in error appeared in the suit and filed an answer denying all the allegations in plaintiff's petition and in the petition of intervention. On the 15th of that month they filed an amended answer and a cross petition, in which they set up that Blackman had obtained his deed from them by certain false representations, and that a suit was pending in the Supreme Court of the State of New York, in which Daniel Dull was plaintiff, and Blackman, Wright, Phelan and others were defendants, in which the same issues were made and the same relief sought as in the case at bar. On May 29 they filed an amendment to their answer and cross petition setting forth that the case pending in the Supreme Court of New York had gone to decree, and attached a copy of that decree. The suit in the Supreme Court of the State of New York was commenced on the 3d of November, 1892. Blackman was served personally within the limits of that State, but the other defendants therein, Wright, Phelan and Duffie their counsel, were served only by delivering to them in Omaha, Nebraska, a copy of the complaint and summons. No appearance was made by them, notwithstanding which the decree was entered against them as against Blackman, and was a decree establishing the title of Daniel Dull, setting aside the deed made by him and his wife to Blackman, and enjoining the several de-

fendants from further prosecuting the action in the Iowa court. After certain other pleadings and amendments thereto had been made the case in the District Court of Pottawattamie County, Iowa, came on for hearing, and upon the testimony that court entered a decree quieting Phelan's title to the land as against any and all other parties to the suit, subject, however, to certain mortgage interests which were recognized and protected, but which are not in any way pertinent to this controversy between Dull and wife and the defendants in error. On appeal to the Supreme Court of the State such decree was, on January 21, 1896, affirmed. *Held*, that the decree of the Supreme Court of Iowa was right, and that it should be affirmed. *Dull* v. *Blackman*, 243.

2. In August, 1880, Sackett brought suit in the Supreme Court of the State of New York, on behalf of himself and all other holders and owners of bonds of certain railroad companies against Root, the Harlem Extension Railroad South Coal Transportation Company, the New York, Boston and Montreal Railway Company and David Butterfield, receiver of said company, praying for the appointment of a receiver and for a sale of the railroad and franchises for the benefit of the bondholders. On October 11, 1880, a receiver was appointed and qualified. On April 2, 1881, on petition of the receiver, and after a report by an expert disclosing the necessity for expenditure to make the road safe and to enable trains to be run, an order was made by the court authorizing the receiver to issue and negotiate $350,000 in certificates, the same to be a first lien. The certificates were sold, and the proceeds expended under the approval of the court. On June 12, 1885, sale was made of the road and deed delivered to Foster and Hazard for $155,000, subject to the payment of the unpaid portion of the principal and interest of the certificates. On April 9, 1886, the Central National Bank of Boston brought suit in the Supreme Court of New York, on its own behalf and that of others as owners of the certificates, against Foster, Hazard, the New York, Rutland and Montreal Railway Company and the American Loan and Trust Company. On March 24, 1887, the suit having been transferred on the petition of the defendants to the Circuit Court of the United States, after full hearing and argument the latter court rendered a final decree, establishing the rights of the Central National Bank of Boston and of others as owners of said certificates, declaring the latter to be a first lien, decreeing that Foster and Hazard were liable for any deficiency if the sale should fail to realize enough to pay certificates. On March 23, 1892, sale under said decree to Foster for $7500, and on April 25, 1892, deed of conveyance by referee to Foster were made. On December 8, 1890, Stevens and others brought their suit in the Supreme Court of New York against the Central National Bank of Boston, the other holders of certificates, Foster, Hazard and others, to set aside the decree in Sackett's case and to enjoin proceedings in the

Circuit Court of the United States. November 11, 1891, judgment setting aside the sale in Sackett's case and finally enjoining the Central National Bank and others, plaintiffs in the Circuit Court of the United States, from selling under the decree of the Federal court. On May 16, 1892, sale and conveyance were made by referee under the decree in the present suit to Foster. On May 9, 1893, judgment of the general term was rendered, and November 27, 1894, judgment of the Court of Appeals, each affirming the judgment of the Supreme Court, *Held* that the judgment of the Supreme Court of New York and of the Court of Appeals affirming the same are erroneous in so far as they command the Central National Bank of Boston, the Massachusetts Mutual Life Insurance Company and other holders of the receiver's certificates whose rights, as such holders, were adjudged by the Circuit Court of the United States, to appear before the referee appointed by the Supreme Court in the present case, and which enjoin the Central National Bank of Boston and others, whose rights have been adjudged by the Circuit Court of the United States for the Northern District of New York, from proceeding with the sale under the decree of that court. *Central National Bank* v. *Stevens*, 432.

LACHES.

1. In this case the court arrives at the conclusion, on the evidence, that if the false representations as to the earned fees were made by Baker as alleged, there was entire knowledge thereof by Cummings more than three years before the filing of his bill, which is the time in which an action at law for such a cause is barred in the District of Columbia, and that the conduct of Cummings, in permitting Baker to go on and prosecute the claims as if they were his own, debars him from proceeding in a court of equity; but in so holding the court must not be considered as intimating that it concludes that there was either clear and convincing proof, or even a preponderance of proof, that the sale was as claimed by Cummings. *Baker* v. *Cummings*, 189.
2. The decree of the Circuit Court, affirmed by the Circuit Court of Appeals, dismissing the bill in this case on the ground of laches, was correct, and that decree is affirmed. *Wetzel* v. *Minnesota Railway Transfer Co.*, 237.

LANDLORD AND TENANT.

See DISTRICT OF COLUMBIA, 1.

LIFE INSURANCE.

This was an action on six policies of insurance, all alike (except as to the amount of insurance), and in the following form: "In consideration of the application for this policy, which is hereby made a part of this

contract, the Mutual Life Insurance Company of New York promises to pay at its home office in the city of New York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, twenty thousand dollars, upon acceptance of satisfactory proofs at its home office of the death of the said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part thereof. The annual premium of seven hundred and eighty-two dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract. In witness whereof," etc. The principal defence was that the assured, when in sound mind, deliberately and intentionally took his own life, whereby the event insured against — his death — was precipitated. One of the issues was the sanity or insanity of the assured when he committed self-destruction. *Held*, (1) If the assured understood what he was doing, and the consequences of his act or acts, to himself as well as to others — in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded as sane; (2) In the case of fire insurance it is well settled that although a policy, in the usual form, indemnifying against loss by fire, may cover a loss attributable merely to the negligence or carelessness of the insured, unaffected by fraud or design, it will not cover a destruction of the property by the wilful act of the assured himself in setting fire to it, not for the purpose of avoiding a peril of a worse kind but with the intention of simply effecting its destruction; (3) Much more should it be held that it is not contemplated by a policy taken out by the person whose life is insured and stipulating for the payment of a named sum to himself, his executors, administrators or assigns, that the company should be liable, if his death was intentionally caused by himself when in sound mind. When the policy is silent as to suicide, it is to be taken that the subject of the insurance, that is, the life of the assured, shall not be intentionally and directly, with whatever motive, destroyed by him when in sound mind. To hold otherwise is to say that the occurrence of the event upon the happening of which the company undertook to pay, was intended to be left to his option. That view is against the very essence of the contract; (4) A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment; (5) If, therefore, a policy — taken out by the person whose life

is insured, and in which the sum named is made payable to himself, his executors, administrators or assigns — expressly provided for the payment of the sum stipulated when or if the assured, in sound mind, took his own life, the contract, even if not prohibited by statute, would be held to be against public policy, in that it tempted or encouraged the assured to commit suicide in order to make provision for those dependent upon him, or to whom he was indebted. The case is not different in principle, if the policy be silent as to suicide, and the event insured, the death of the assured, is brought about by his wilful, deliberate act when in sound mind. *Ritter* v. *N. Y. Life Insurance Co.*, 139.

LIMITATION, STATUTES OF.

Metropolitan National Bank v. *St. Louis Dispatch Co.*, 149 U. S. 436, affirmed to the point that courts of equity, in cases of concurrent jurisdiction, consider themselves bound by the statutes of limitation which govern actions at law. *Baker* v. *Cummings*, 189.

MARRIED WOMAN.

1. Under the laws of Maryland, which were in force in the District of Columbia in 1859, it was competent for a married woman, outside of the District, to execute, with her husband, a power of attorney to convey her lands therein, which, when acknowledged by her according to the statute relating to the acknowledgment by married women of deeds conveying their real property in the District, thereby became a valid and sufficient instrument to authorize the conveyance by attorney; and the first section of the act of March 3, 1865, c. 110, 13 Stat. 531, contains a clear legislative recognition of the right to execute such power. *Williams* v. *Paine*, 55.
2. Such a power of attorney, executed in one of the Northern States before the civil war by a married woman then residing there, was not revoked by the fact that when that war broke out she and her husband removed to the Southern States, where he entered the Confederate service, and where she resided to the close of the war. *Ib.*
3. When the purchase money for land sold under such a power is received by the principal, to permit her heirs after her death to repudiate the transaction, on the ground that the power of attorney had been revoked by the war, would be in conflict with every principle of equity and fair dealing. *Ib.*
4. A majority of the court think that the deed made under the power of attorney which is in controversy in this suit, and which is printed at length in the Statement of the Case, was in the nature of a conveyance of the legal title, though defectively executed, and that it came within the provisions of the act of March 3, 1865, and its defective execution was thereby cured. *Ib.*

5. By this disposition of the whole case upon the merits the court is not to be considered as deciding that parties situated as the plaintiffs were in this case, out of possession, can maintain an action for partition. *Ib.*

MEXICAN LAND GRANT.

See PUBLIC LAND, 1, 3, 4, 5, 6.

MORTGAGOR AND MORTGAGEE.

See DISTRICT OF COLUMBIA, 1.

MOTION TO DISMISS.

On a motion to dismiss for want of jurisdiction, this court being of opinion that the ruling of the state court on the points upon which the case turned there was obviously correct, does not feel constrained to retain the case for further argument, and accordingly affirms the judgment. *Richardson* v. *Louisville & Nashville Railroad Co.*, 128.

NATIONAL BANK.

1. One who holds shares of national bank stock — the bank being at the time insolvent — cannot escape the individual liability imposed by the statute by transferring his stock with intent to avoid that liability, knowing or having reason to believe, at the time of the transfer on the books of the bank, that it is insolvent or about to fail. *Stuart* v. *Hayden*, 1.

2. A transfer with such intent and under such circumstances, is a fraud upon the creditors of the bank, and may be treated by the receiver as inoperative between the transferrer and himself, and the former held liable as a shareholder without reference to the financial condition of the transferee. *Ib.*

3. The right of creditors of a national bank to look to the individual liability of shareholders, to the extent indicated by the statute, for its contracts, debts and engagements, attaches when the bank becomes insolvent; and the shareholder cannot, by transferring his stock, compel creditors to surrender this security as to him, and force the receiver and creditors to look to the person to whom his stock has been transferred. *Ib.*

4. If the bank be solvent at the time of the transfer, that is, able to meet its existing contracts, debts and engagements, the motive with which the transfer is made is immaterial, as a transfer under such circumstances does not impair the security given to creditors; but if the bank be insolvent, the receiver may, without suing the transferee and litigating the question of his liability, look to every shareholder who, knowing or having reason to know, at the time, that the bank was insolvent, got rid of

his stock in order to escape the individual liability to which the statute subjected him. *Ib.*

5. Whether, the bank being in fact insolvent, the transferrer is liable to be treated as a shareholder in respect of its existing contracts, debts and engagements, if he believed in good faith, at the time of the transfer, that the bank was solvent — not decided; although he may be so treated, even when acting in good faith, if the transfer is to one who is financially irresponsible. *Ib.*
6. Section 5198 of the Revised Statutes of the United States prescribing what rate of interest may be taken, received, reserved or charged by a national banking association, makes a difference between interest which a note, bill or other evidence of debt "carries with it, or which has been agreed to be paid thereon," and interest which has been "paid." *Brown* v. *Marion Nat. Bank*, 416.
7. Interest included in a renewal note, or evidenced by a separate note, does not thereby cease to be interest within the meaning of section 5198. *Ib.*
8. If a national bank sues upon a note, bill or other evidence of debt held by it, the debtor may insist that the entire interest, legal and usurious, included in his written obligation and agreed to be paid, but which has not been actually paid, shall be either credited on the note, or eliminated from it, and judgment given only for the original principal debt, with interest at the legal rate from the commencement of the suit. *Ib.*
9. The forfeiture declared by the statute is not waived by giving a renewal note, in which is included the usurious interest. No matter how many renewals may be made, if the bank has charged a greater rate of interest than the law allows, it must, if the forfeiture clause of the statute be relied on, and the matter is thus brought to the attention of the court, lose the entire interest which the note carries or which has been agreed to be paid. *Ib.*
10. If, for instance, one executes his note to a national bank for a named sum as evidence of a loan to him of that amount to be paid in one year at ten per cent interest, such a rate of interest being illegal, and if renewal notes are executed each year for five years, without any money being in fact paid by the borrower, — each renewal note including past interest, legal and usurious, — the sum included in the last note, in excess of the sum originally loaned, would be *interest* which that note carried or which was agreed to be paid, and not, as to any part of it, interest paid. *Ib.*
11. If the note when sued on includes usurious interest, or interest upon usurious interest, agreed to be paid, the holder may elect to remit such interest, and it cannot then be said that usurious interest was paid to him. *Ib.*
12. If the obligee actually pays usurious interest as such, the usurious transaction must be held to have then, and not before, occurred, and he must sue within two years thereafter. *Ib.*

PARTITION.

See MARRIED WOMAN, 5.

PATENT FOR INVENTION.

If the owner of a patent applies to the Patent Office for a reissue of it and includes, among the claims in the application, the same claims as those which were included in the old patent, and the primary examiner rejects some of such claims for want of patentable novelty, by reference to prior patents, and allows others, both old and new, the owner of the patent does not, by taking no appeal and by abandoning his application for reissue, hold the original patent (the return of which he procures from the Patent Office) invalidated as to those of its claims which were disallowed for want of patentable novelty by the primary examiner in the proceeding for reissue; as the Patent Office, by the issue of the original patent, had lost jurisdiction over it, and did not regain it by the application for a reissue. *McCormick Harvesting Machine Co.* v. *Aultman*, 606.

See ABATEMENT.

POWER OF ATTORNEY.

See MARRIED WOMAN.

PRACTICE.

1. Decree affirmed on a question of fact only. *Lewis* v. *Kengla*, 234.
2. An appellate court is not required to set aside the judgment of the trial court by reason of failure to give instructions which were not asked for. *Backus* v. *Fort Street Union Depot Co.*, 557.
3. The Supreme Court of Michigan was called upon to consider only such objections as had been particularly specified, and all others were deemed to have been waived. *Ib.*
4. The decision by the Supreme Court that it had power to set aside the verdict and order a new trial was not a reversal of a ruling that the Circuit Court had no such power. *Ib.*

See MOTION TO DISMISS.

PUBLIC LAND.

1. The decision of the Court of Private Land Claims that the ayuntamiento of El Paso had no power to make a grant, like the one in controversy in this case, entirely outside of the four square leagues supposed to belong to El Paso, and that even if it had such power, the conditions of the alleged grant were never performed by the grantee, and therefore that he acquired no title to the property, was correct. *Cessna* v. *United States*, 165.

2. A deputy marshal of the United States, duly appointed as such prior to the passage of the act of March 2, 1889, c. 412, providing for the opening of the Territory of Oklahoma to settlement, and prior to the proclamation of the President of March 23, 1889, fixing the time of the opening of the lands for settlement, and who entered on said lands and remained there in his official character prior to the day fixed for said opening, was thereby disqualified from making a homestead entry immediately upon the lands being opened for settlement. *Payne* v. *Robertson*, 323.
3. The patent to the defendant in error does not preclude this court from inquiring into the effect of the act of July 23, 1866, c. 219, "to quiet land titles in California;" and the court holds that that act does not require proof of an actual grant from the Mexican authorities to some grantee through whom the title set up is derived; but that the proper officers of the United States had jurisdiction to issue a patent upon being satisfied of the existence of those facts in regard to which it was their province to determine; and that the act includes those who, in good faith and for a valuable consideration, have purchased land from those who claimed and were thought to be Mexican grantees or assignees, provided they fulfil the other conditions named in the act. *Beley* v. *Naphtaly*, 353.
4. The facts in this case do not show, as matter of law, that Millett could not have been a *bona fide* purchaser of these lands for a valuable consideration; and whether in fact he were so was a fact to be determined by the Government on the issue of the patent, which precluded further inquiry into that question. *Ib.*
5. A person who was within the statute and had the right to purchase land as provided therein, could assign or convey his right of purchase and his grantee could exercise that right. *Ib.*
6. The rejection by the Secretary of the Interior of the first application made by the defendant in error for a patent, and the subsequent granting of a rehearing and the issuing of a patent thereafter were all acts within his jurisdiction. *Ib.*

RAILROAD.

1. The reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from that business. The State cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control; nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. *Smyth* v. *Ames*, 466.

2. A railroad is a public highway, and none the less so because constructed and maintained through the agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls was given primarily for the benefit of the public. It is, therefore, under governmental control — subject, of course, to the constitutional guarantees for the protection of its property. It may not fix its rates with a view solely to its own interests, and ignore the rights of the public; but the rights of the public would be ignored if rates for the transportation of persons or property on a railroad were enacted without reference to the fair value of the property used for the public or for the services rendered, and in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to stockholders. *Ib.*

3. If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by its stock, bonds and obligations, is not alone to be considered when determining the rates that may be reasonably charged. *Ib.*

4. A corporation maintaining a public highway, although it owns the property it employs for accomplishing public objects, must be held to have accepted its rights, privileges and franchises subject to the condition that the government creating it, or the government within whose limits it conducts its business, may by legislation protect the people against the exaction of unreasonable charges for the services rendered by it: but it is equally true that the corporation performing such public services, and the people financially interested in its business and affairs, have rights that may not be invaded by legislative enactment in disregard of the fundamental guarantees for the protection of property. *Ib.*

5. The basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public; and in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present value as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. What the company is entitled to ask is a fair return upon the value of that which it employs for the pub-

lic convenience; and on the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth. *Ib.*

See CONSTITUTIONAL LAW, 1, 7 to 12;
DAMAGES;
TAX AND TAXATION, 2;
UNION PACIFIC RAILROAD COMPANY.

REMOVAL OF CAUSES.

1. An action brought in a state court, which, by reason of joinder as defendants of citizens of the same State as the plaintiff, is not a removable one under the act of Congress until after the time prescribed by statute or rule of court of the State for answering the declaration, may, upon a subsequent discontinuance in that court by the plaintiff against those defendants, making the action for the first time a removable one by reason of diverse citizenship of the parties, be removed into the Circuit Court of the United States by the defendant upon a petition filed immediately after such discontinuance, and before taking any other steps in defence of the action. *Powers* v. *Chesapeake & Ohio Railway Co.*, 92.

2. If sufficient grounds for the removal of a case into the Circuit Court of the United States are shown upon the face of the petition for removal and of the record of the state court, the petition for removal may be amended in the Circuit Court of the United States by stating more fully and distinctly the facts which support those grounds. *Ib.*

3. The right of a party to insist that a case has been duly removed into the Circuit Court of the United States is not lost or impaired by his making defence in the state court, after that court had denied his petition for removal. *Ib.*

RES JUDICATA.

See JURISDICTION, A, 5, 6.

SOUTH CAROLINA, DISTRICT OF.

It having been decided in *Barrett* v. *United States*, *ante*, 218, that the State of South Carolina constitutes but one judicial district, it follows that the indictment in this case was properly remitted to the next session of the District Court of that district. *Barrett* v. *United States*, No. 2, 231.

See CIRCUIT COURTS OF THE UNITED STATES.

STATUTE.

A. CONSTRUCTION OF STATUTES.

See EMINENT DOMAIN, 1, 5.

B. Statutes of the United States.

See Circuit Courts of the United States, 2;
Claims against the United States, 1, 2;
Consuls and Vice-Consuls, 2;
Customs Duties, 1, 3;
Diseased Cattle, Interstate Transportation of, 1, 2;
District of Columbia, 1;
Jurisdiction, A, 3, 5, 6, 8;
Married Woman, 1, 4;
National Bank, 6, 7;
Public Land, 2, 3;
Tax and Taxation, 2;
Union Pacific Railway Company.

C. Statutes of States and Territories.

District of Columbia. *See* District of Columbia, 1.
Kansas. *See* Diseased Cattle, Interstate Transportation of, 1.
Maryland. *See* Abatement;
Married Woman, 1.
Michigan. *See* Tax and Taxation, 1.
Nebraska. *See* Constitutional Law, 10.
North Carolina. *See* Constitutional Law, 12.
Oklahoma. *See* Tax and Taxation, 3.
Oregon. *See* Constitutional Law, 5.
Utah. *See* Constitutional Law, 3.
Virginia. *See* Interstate Commerce, 1.
Wisconsin. *See* Constitutional Law, 1.

TAX AND TAXATION.

1. Under a statute of a State, imposing a franchise tax on foreign corporations doing business in the State without having filed articles of association under its laws, and providing that "all contracts made in this State" after a certain date, "by any corporation which has not first complied with the provisions of this act, shall be wholly void," a contract of such a corporation, signed by its local agent and by the other party within the State, and stipulating that the contract is not valid unless countersigned by its manager in the State, and approved at its home office in another State, is not "made in this State," within the meaning of the statute, even if it is to be performed within the State. *Holder* v. *Aultman*, 81.
2. Where a railroad company pays a tax on its undistributed surplus under the internal revenue act of June 30, 1864, c. 173, 13 Stat. 223, it is thereby paying a tax upon its own property, and such payment cannot be regarded as a payment of a tax upon a stock dividend thereafter declared by the company. *Logan County* v. *United States*, 255.
3. The act of the legislature of the Territory of Oklahoma of March 5,

1895, c. 43, which provided that "when any cattle are kept or grazed or any other personal property is situated in any unorganized country, district or reservation of this Territory, such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes," was a legitimate exercise of the Territory's power of taxation, and, when enforced in the taxation of cattle belonging to persons not resident in the Territory grazing upon Indian reservations therein, does not violate the Constitution of the United States. *Thomas* v. *Gay*, 264.

4. The Supreme Court of the Territory in this case sustained the authority of the board of equalization to increase the assessment or valuation, and in a subsequent case decided the other way. In view of the fact that the judgment in this case is reversed, and the case remanded for further proceedings, this court declines to pass upon the question. *Ib.*

See CONSTITUTIONAL LAW, 3.

TREASURY REGULATIONS.

See CLAIMS AGAINST THE UNITED STATES, 3, 4.

TRUST.

See DISTRICT OF COLUMBIA, 2 to 5.

UNION PACIFIC RAILROAD COMPANY.

Until Congress, in the exercise either of the power specifically reserved by the eighteenth section of the act of July 1, 1862, incorporating the Union Pacific Railroad Company, or its power under the general reservation made of authority to add to, alter, amend or repeal that act, prescribes rates to be charged by that company, it remains with the States through which the road passes to fix rates for transportation beginning and ending within their respective limits. *Smyth* v. *Ames*, 466.

See CONSTITUTIONAL LAW, 6 to 11;
RAILROAD, 1 to 5.

USURY.

See NATIONAL BANK, 6 to 12.

WASHINGTON, CITY OF.

See DAMAGES, 1.

WILL.

See DISTRICT OF COLUMBIA, 6.