

# INDEX.

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## ADMIRALTY.

1. A collision between two vessels by the fault of one of them creates a maritime lien upon her for the damages to the other, which is to be preferred, in admiralty, to a lien for previous supplies. *The John G. Stevens*, 113.
2. A lien upon a tug, for damages to her tow by negligent towage bringing the tow into collision with a third vessel, is to be preferred, in admiralty, to a lien for supplies previously furnished to the tug in her home port. *Ib.*
3. Under the settled doctrine of this court, that the concurrent decisions of two courts upon a question of fact will be followed unless shown to be clearly erroneous, this court accepts as indisputable the finding that the *Carib Prince* was unseaworthy at the time of the commencement of the voyage in question in this case, by reason of the defect in the tank referred to in its opinion. *The Carib Prince*, 655.
4. The condition of unseaworthiness so found to exist was not within the exceptions contained in the bill of lading, and, under the other facts disclosed by the record, the ship owner was liable for the damages caused by the unseaworthy condition of his ship; and there is nothing in the act of February 19, 1893, c. 105, 27 Stat. 445, commonly known as the Harter Act, which relieved him from that liability. *Ib.*
5. The provision in that act exempting owners or charterers from loss resulting from "faults or errors in navigation or in the management of the vessel," and from certain other designated causes, in no way implies that because the owner is thus exempted when he has been duly diligent, the law has thereby also relieved him from the duty of furnishing a seaworthy vessel. *Ib.*

## AGENT.

See SURETY BOND.

## BOND.

See SURETY BOND.

## CASES AFFIRMED OR FOLLOWED.

*Tennessee v. Union & Planters' Bank*, 152 U. S. 454, followed. *Sawyer v. Kochersperger*, 303.

See CRIMINAL LAW, 2; MUNICIPAL CORPORATION, 7;  
DISTRICT ATTORNEY, 2; RAILROAD, 5;  
TAX AND TAXATION, 1, 2.

## CASES DISTINGUISHED.

See CONSTITUTIONAL LAW, 6.

## COMMON CARRIER.

The appellant shipped, by a vessel belonging to the appellee, goods under a bill of lading which contained the following stipulation: "In accepting this bill of lading, the shipper, owner and consignee of the goods and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions and conditions as printed on the back hereof, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder." Of these stipulations and conditions, this court regards only the following as material: "1. It is also mutually agreed that the carrier shall not be liable for gold, silver, bullion, specie, documents, jewellery, pictures, embroideries, works of art, silks, furs, china, porcelain, watches, clocks or for goods of any description which are above the value of \$100 per package, unless bills of lading are signed therefor, with the value therein expressed, and a special agreement is made." "9. Also, in case any part of the goods cannot be found for delivery during the steamer's stay at the port of destination, they are to be forwarded by first opportunity, when found, at the company's expense, the steamer not to be held liable for any claim for delay or otherwise." "14. This agreement is made with reference to, and subject to the provisions of the U. S. carriers' act, approved February 13, 1893." The goods were not delivered at the port to which they were consigned, and were subsequently lost at sea on another vessel belonging to the appellee, on which they had been placed without the appellant's knowledge. In a suit in admiralty to recover their value, *Held*, (1) That as the negligence of the company was clearly proven, there can be no doubt of its liability under the act of February 13, 1893, c. 105, known as the "Harter Act;" (2) That the clause limiting the amount of the carriers' liability is to be construed as a statement that the carrier shall not be liable to any amount for goods exceeding \$100 per package; and being so interpreted, that it is a clear attempt on the part of the carrier to exonerate itself from all responsibility for goods exceeding the value of \$100 per package, and as such is not only prohibited by the Harter Act, but held to be invalid in a series of cases in this court. *Calderon v. Atlas Steamship Co.*, 272.

See RAILROAD.



## CONSTITUTIONAL LAW.

1. The provision in the act of the legislature of New York of May 9, 1893, c. 661, relating to the public health, as amended by the act of April 25, 1895, c. 398, that "any person who, . . . after conviction of a felony, shall attempt to practise medicine, or shall so practise, . . . shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two hundred and fifty dollars, or imprisonment for six months for the first offence, and on conviction of any subsequent offence, by a fine of not more than five hundred dollars, or imprisonment for not less than one year, or by both fine and imprisonment," does not conflict with Article I, section 10, of the Constitution of the United States which provides that "No State shall . . . pass any Bill of Attainder, *ex post facto* Law or law impairing the Obligation of Contracts," when applied to a person who had been convicted of a felony prior to its enactment. *Hawker v. New York*, 189.
2. The provisions in section 241 of the constitution of Mississippi prescribing the qualifications for electors; in section 242, conferring upon the legislature power to enact laws to carry those provisions into effect; in section 244, making ability to read any section of the constitution, or to understand it when read, a necessary qualification to a legal voter; and of section 264, making it a necessary qualification for a grand or petit juror that he shall be able to read and write; and sections 2358, 3643 and 3644 of the Mississippi Code of 1892, with regard to elections, do not, on their face, discriminate between the white and negro races, and do not amount to a denial of the equal protection of the law, secured by the Fourteenth Amendment to the Constitution; and it has not been shown that their actual administration was evil, but only that evil was possible under them. *Williams v. Mississippi*, 213.
3. The provision in the constitution of Texas of 1869, that the legislature should not thereafter grant lands to any person or persons, as enforced against the Galveston, Harrisburg and San Antonio Railway Company, the successor of the Buffalo Bayou, Brazos and Colorado Railway Company, which had received grants of public land under previous legislation to encourage the construction of railroads in that State, involved no infraction of the Federal Constitution. *Galveston, Harrisburg &c. Railway Co. v. Texas*, 226.
4. A clause in a charter of a railroad company, granting it power to consolidate with or become the owner of other railroads, is not such a vested right that it cannot be rendered inoperative by subsequent legislation, passed before the company avails itself of the power thus granted. *Id.*
5. The question in this case was as to whether the railroad company was entitled to the particular lands in controversy by virtue of the location thereon of certificates issued for building the road from Columbus to San Antonio. The ruling was that, as the law stood, no title was ac-

quired thereby, and the State was entitled to recover. But it was also contended that no recovery could be had because the company had earned other lands of which it had been, as it alleged, unlawfully deprived. The Supreme Court of the State held that it was no defence to the suit, by way of set-off, counter claim, or otherwise, that the company might have been entitled to land certificates for road constructed under the law of 1876, and said that it had "never been ruled that the claimant of land against the State under a location made by virtue of a void certificate has any equity in the premises by reason of being the possessor of another valid certificate." *Held*, that in arriving at this conclusion the state courts did not determine whether as to those other lands any vested right of the railway company had or had not been impaired or taken away; and that this court cannot hold that the company was denied by the judgment of those courts in this respect any title, right, privilege or immunity secured by the Constitution or laws of the United States. *Ib.*

6. In *Galveston, Harrisburg & San Antonio Railway Co. v. Texas*, 170 U. S. 226, the grants of land repealed by the operation of Section 6 of Article X of the constitution of Texas of 1869, were grants to aid in the construction of lines of railway not authorized until after that provision took effect; whereas, in this case, the grants which are claimed to be affected by it were grants made prior to the adoption of that constitution, for the purpose of aiding in the construction of the road from Brenham to Austin. *Held*, that that constitutional provision, as thus enforced, impairs the obligation of the contract between the State and the railway company, and cannot be sustained. *Houston & Texas Central Railway Co. v. Texas*, 243.
7. Argument was urged on behalf of defendant in error that the particular lands sued for are situated in what is known as the Pacific reservation, being a reservation for the benefit of the Texas and Pacific Railway Company, created by a special act of May 2, 1873, and hence, that though the certificates were valid, they were not located, as the law required, on unappropriated public domain. This question was not determined by either of the appellate tribunals, but, on the contrary, their judgments rested distinctly on the invalidity of the certificates for reasons involving the disposition of Federal questions. This court therefore declines to enter on an examination of the controversy now suggested on this point. *Ib.*
8. The inheritance tax law of Illinois, of June 15, 1895 (Laws of 1895, page 301), makes a classification for taxation which the legislature had power to make, and does not conflict in any way with the provisions of the Constitution of the United States. *Magoun v. Illinois Trust & Savings Bank*, 283.
9. The legislation of the State of Connecticut whereby the franchise and property of a company which had constructed and was maintaining a toll bridge across the Connecticut at Hartford were condemned for



public use, and the cost was apportioned between the State and the town of Glastonbury and four other municipal corporations in proportions determined by the statutes, and the proceedings had under this and subsequent legislation set forth in the statement of the case and the opinion of the court, did not violate any provisions of the Federal Constitution. *Williams v. Eggleston*, 304.

10. The provision in the constitution of the State of Utah, providing for the trial of criminal cases, not capital, in courts of general jurisdiction by a jury composed of eight persons, is *ex post facto* in its application to felonies committed before the Territory became a State. *Thompson v. Utah*, 343.

See CONTRACT, 1, 2;

MUNICIPAL CORPORATION, 1 to 5;

INTERSTATE COMMERCE; RAILROAD, 1, 2;

TAX AND TAXATION, 1.

### CONTRACT.

1. The contract between the city of Omaha, the Union Pacific Railway Company, and the Omaha & Southwestern Railroad Company of February 1, 1886 (founded upon the act of Nebraska of March 4, 1885, relating to viaducts, bridges and tunnels in cities), providing for the building of a viaduct along Eleventh street in Omaha, at the expense of the two railway companies, was a contract in such a sense that the respective parties thereto continued to be bound by its provisions so long as the legislation, in virtue of which it was entered into, remained unchanged; but it was not a contract whose continuance and operation could not be affected or controlled by subsequent legislation. *Chicago, Burlington & Quincy Railroad v. Nebraska*, 57.
2. When the subject-matter of such a contract is one which affects the safety and welfare of the public, the contract is within the supervising power and control of the legislature, when exercised to protect the public safety, health and morals, and the clause of the Federal Constitution which protects contracts from legislative action cannot in every case be successfully invoked. *Ib.*

### CONTRIBUTORY NEGLIGENCE.

See RAILROAD, 6.

### COURT AND JURY.

1. It is again decided that it is no ground for reversal that the court below omitted to give instructions which were not requested by the defendant. *Humes v. United States*, 210.
2. The charge of the trial court was sufficiently full and elaborate. *Ib.*
3. It is again held that this court cannot consider an objection that the

verdict was against the weight of evidence, if there was any evidence proper to go to the jury in support of the verdict. *Ib.*

#### CRIMINAL LAW.

1. Plaintiff in error was indicted for alleged violations of Rev. Stat. § 5457. The indictment contained four counts. The first charged the unlawful possession of two counterfeit half dollars; the second, an illegal passing and uttering of two such pieces; the third, an unlawful passing and uttering of three pieces of like nature; and the fourth, the counterfeiting of five like coins. After the jury had retired, they returned into court and stated, that, whilst they were agreed as to the first three counts, they could not do so as to the fourth, and the court was asked if a verdict to that effect could be lawfully rendered. They were instructed that it could be, whereupon they rendered a verdict that they found the prisoner guilty on the first, second and third counts of the indictment, and that they disagreed on the fourth count, which verdict was received, and the jury discharged. *Held*, that there was no error in this. *Selvester v. United States*, 262.
2. *Latham v. The Queen*, 8 B. & S. 635, cited, quoted from, and approved as to the point that, "in a criminal case, where each count is, as it were, a separate indictment, one count not having been disposed of no more affects the proceedings with error than if there were two indictments." *Ib.*
3. Postage stamps belonging to the United States are personal property, within the meaning of Rev. Stat. § 5456, which enacts that "Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one year nor more than ten years, or by both such fine and imprisonment," and may be made the subject of larceny. *Jolly v. United States*, 402.
4. The indictment in this case, which is set forth at length in the statement of the case, alleged the murder to have been committed "on the high seas, and within the jurisdiction of this court, and within the admiralty and maritime jurisdiction of the said United States of America, and out of the jurisdiction of any particular State of the said United States of America, in and on board of a certain American vessel." *Held*, that nothing more was required to show the locality of the offence. *Andersen v. United States*, 481.
5. The indictment was claimed to be demurrable because it charged the homicide to have been caused by shooting and drowning, means inconsistent with each other, and not of the same species. *Held*, that the indictment was sufficient, and was not objectionable on the ground of duplicity or uncertainty. *Ib.*



6. There was no irregularity in summoning and empanelling the jury. *Ib.*
7. There was no error in permitting the builder of the vessel on which the crime was alleged to have taken place, to testify as to its general character and situation. *Ib.*
8. As there was nothing to indicate that antecedent conduct of the captain, an account of which was offered in evidence, was so connected with the killing of the mate as to form part of the *res gestæ*, or that it could have any legitimate tendency to justify, excuse or mitigate the crime for the commission of which he was on trial, there was no error in excluding the evidence relating to it. *Ib.*
9. After the Government had closed its case in chief, defendant's counsel moved that a verdict of not guilty be directed, because the indictment charged that the mate met his death by drowning, whereas the proof showed that his death resulted from the pistol shots. *Held*, that there was no error in denying this motion. *Ib.*
10. While a homicide, committed in actual defence of life or limb, is excusable if it appear that the slayer was acting under a reasonable belief that he was in imminent danger of death or great bodily harm from the deceased, and that his act was necessary in order to avoid death or harm, where there is manifestly no adequate or reasonable ground for such belief, or the slayer brings on the difficulty for the purpose of killing the deceased, or violation of law on his part is the reason of his expectation of an attack, the plea of self-defence cannot avail. *Ib.*
11. The evidence offered as to the general reputation of the captain was properly excluded. *Ib.*
12. As the testimony of the accused did not develop the existence of any facts which operated in law to reduce the crime from murder to manslaughter, there is no error in instructing the jury to that effect. *Ib.*
13. An indictment for a violation of the provisions of section 16 of the act of February 8, 1875, c. 36, forbidding the carrying on of the business of a rectifier, wholesale liquor dealer, etc., without first having paid the special tax required by law, which charges the offence in the language of the statute creating it, is sufficient; and it comes within the rule, well settled in this court, that where the crime is a statutory one, it must be charged with precision and certainty, and every ingredient of which it is composed must be clearly and accurately set forth, and that even in the cases of misdemeanors, the indictment must be free from all ambiguity, and leave no doubt in the minds of the accused and of the court, of the exact offence intended to be charged. *Ledbetter v. United States*, 606.
14. Properly speaking, the indictment should state not only the county, but the township, city or other municipality within which the crime is alleged to have been committed; but the authorities in this particular are much less rigid than formerly. *Ib.*

## CUSTOMS DUTIES.

1. Muriate of cocaine is properly dutiable under paragraph 74 of the tariff act of October 1, 1890, and not under paragraph 76 of that act. *Fink v. United States*, 584.
2. A protest by an importer, addressed to the collector and signed by the importer saying, "I do hereby protest against the rate of 50 % assessed on chocolate imported by me, Str. La Bretagne, June 23 / 91. Import entry 96,656. — M. S. No. 52 / 53, I claiming that the said goods under existing laws are dutiable at 2 cts. per lb., and the exaction of a higher rate is unjust and illegal. I pay the duty demanded to obtain possession of the goods, and claim to have the amt. unjustly exacted refunded," is, in form and substance a sufficient compliance with the requirements of section 14 of the act of June 10, 1890, c. 407, 26 Stat. 131, 137. *United States v. Salambier*, 621.
3. When the Government takes no appeal from the action of the board of appraisers upon an importer's protest made under the act of June 10, 1890, c. 407, it is bound by that action; and in case the importer appeals from that action, and subsequently abandons his appeal, the Government cannot claim to be heard, but it is the duty of the court to affirm the decision of the appraiser. *United States v. Lies*, 628.

## DISTRICT ATTORNEY.

1. The boundaries of his district are the limits of the official duties of a District Attorney, and if he is called upon by the Attorney General to do professional duty and services for the Government outside of those limits, and is allowed compensation therefor, he is entitled to receive the same, or to recover it in the Court of Claims if he has the certificate required by Rev. Stat. § 365, or if the court may, from all the evidence before it, fairly assume that the allowance was made in such a way as to secure to him the compensation to which he was entitled. *United States v. Winston*, 522.
2. *United States v. Crosthwaite*, 168 U. S. 375, is adhered to, and the rule laid down in it is not qualified in the least by this decision. *Ib.*
3. It is not a part of the official duties of the District Attorney of the district in which at the time a session of the Court of Appeals is held to assume the management and control of Government cases in that court. *United States v. Garter*, 527.

## DISTRICT OF COLUMBIA.

1. The enactment by Congress that assessments levied for laying water mains in the District of Columbia should be at the rate of \$1.25 per linear front foot against all lots or land abutting upon the street, road or alley in which a water main shall be laid, is conclusive alike



of the necessity of the work and of its benefit as against abutting property. *Parsons v. District of Columbia*, 45.

2. The power of Congress to exercise exclusive jurisdiction in all cases within the District includes the power of taxation. *Ib.*
3. If the assessment for laying such water mains exceeds the cost of the work it is not thereby invalidated. *Ib.*

## EQUITY.

See RAILROAD, 3, 4, 5.

## INDIAN.

1. The provision in the treaty of June 15, 1838, with the New York Indians, that the United States will set apart as a permanent home for them the tract therein described in what afterwards became the State of Kansas, was intended to invest a present legal title thereto in the Indians, which title has not been forfeited and has not been reinvested in the United States; and the Indians are not estopped from claiming the benefit of such reservation. *New York Indians v. United States*, 1.
2. It appears by the records of the proceedings of the Senate that several amendments were there made to said treaty, including a new article; that the ratification was made subject to a proviso, the text of which is stated in the opinion of the court; and that in the official publication of the treaty, and in the President's proclamation announcing it, all the amendments except said proviso were published as part of the treaty, and it was certified that "the treaty, as so amended, is word for word as follows," omitting the proviso. *Held*, that it is difficult to see how the proviso can be regarded as part of the treaty, or as limiting at all the terms of the grant. *Ib.*
3. The judgment and mandate in this case, 170 U. S. 1, are amended. *New York Indians v. United States*, 614.

## INTERSTATE COMMERCE.

1. Section 1553 of the code of Iowa, which provides that "if any express company, railway company or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or

delivered, is authorized to sell such intoxicating liquors in such county, such company, corporation or person so offending, and each of them, and any agent of said company, corporation or person so offending, shall, upon conviction thereof, be fined in the sum of one hundred dollars for each offence and pay costs of prosecution, and the costs shall include a reasonable attorney fee to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid," cannot be held to apply to a box of spirituous liquors, shipped by rail from a point in Illinois to a citizen of Iowa at his residence in that State while in transit from its point of shipment to its delivery to the consignee, without causing the Iowa Law to be repugnant to the Constitution of the United States. *Rhodes v. Iowa*, 412.

2. Moving such goods in the station from the platform on which they are put on arrival to the freight warehouse is a part of the interstate commerce transportation. *Ib.*
3. It is settled by previous adjudications of this court: (1) That the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the lawmaking power of the States, provided always, they do not transcend the limits of state authority by invading rights which are secured by the Constitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union; (2) That the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States; (3) That the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any state regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate commerce clause of the Constitution, until by a sale in the original package they have been commingled with the general mass of property in the State; but, since the passage of the act of August 8, 1890, c. 728, 26 Stat. 313, which provides "that all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being



introduced therein in original packages or otherwise," while the receiver of intoxicating liquors in one State, sent from another State, has the constitutional right to receive them for his own use, without regard to the state laws to the contrary, he can no longer assert a right to sell them in the original packages in defiance of state law. *Vance v. W. A. Vandercook Co.*, No. 1, 438.

4. The South Carolina act of March 5, 1897, No. 340, amending the act of March 6, 1896, No. 61, is unconstitutional in so far as it compels the resident of the State who desires to order alcoholic liquors for his own use, to first communicate his purpose to a state chemist, and in so far as it deprives any non-resident of the right to ship by means of interstate commerce any liquor into South Carolina unless previous authority is obtained from the officers of the State of South Carolina, since as, on the face of these regulations, it is clear that they subject the constitutional right of the non-resident to ship into the State and of the resident in the State to receive for his own use, to conditions which are wholly incompatible with and repugnant to the existence of the right which the statute itself acknowledges. *Ib.*

### JUDGMENT.

A judgment is not final, so that the jurisdiction of the Appellate Court may be invoked, while it is still under the control of the trial court, through the pendency of a motion for a new trial. *Kingman v. Western Manufacturing Co.*, 675.

### JURISDICTION.

#### A. JURISDICTION OF THE SUPREME COURT.

1. In a suit commenced in a court of the State of Montana by the administrator of the donor of national bank stock, no written assignment having been made, against the donee to compel the delivery of the certificates to the plaintiff, and against the bank to require it to make a transfer of the stock to the plaintiff, the donee set up that the gift was voluntarily made to him by his father in his lifetime, *causa mortis*, and on trial it was decided that he was the owner of such stock and of the certificates, and was entitled to have new certificates therefor issued to him by the bank; and a decree having been entered accordingly, it was sustained by the Supreme Court of the State upon appeal. *Held*, that these matters raised no Federal question; that no title, right, privilege or immunity was specially set up or claimed by the administrator under a law of the United States, and denied by the highest tribunal of the States; and that the controversy was merely as to which of the claimants had the superior equity to those shares of stock, and the national banking act was only collaterally involved. *Leyson v. Davis*, 36.

2. No question is presented which brings this case within the supervisory power of this court, as the alleged invalidities of the entries and of the patents do not arise out of any alleged misconstruction or breach of any treaty, but out of the alleged misconduct of the officers of the Land Office; to correct which errors, if they exist, the proper course of the defendants was to have gone to the Circuit Court of Appeals. *Budzisz v. Illinois Steel Company*, 41.
3. Although the matter in dispute in this case is not sufficient to give this court jurisdiction, it plainly appears that the validity of statutes of the United States, and of an authority exercised under the United States was drawn into question in the court below, and is presented for the consideration of this court. *Parsons v. District of Columbia*, 45.
4. A Federal question was specifically presented in the trial of this case both in the trial court and at the hearing in error before the Supreme Court of the State, and the motion to dismiss cannot be allowed. *Chicago, Quincy & Burlington Railroad v. Nebraska*, 57.
5. This court, when reviewing the final judgment of a state court, upholding a state law alleged to be in violation of the contract clause of the Constitution, must determine for itself the existence or the non-existence of the contract set up, and whether its obligation has been impaired by the state law. *Ib.*
6. On a writ of error to a state court this court cannot revise the judgment of its highest tribunal unless a Federal question has been erroneously disposed of. *Laclede Gas Light Co. v. Murphy*, 78.
7. When the jurisdiction of this court is invoked for the protection, against the final judgment of the highest court of a State, of some title, right, privilege or immunity secured by the Constitution or laws of the United States, it must appear expressly or by necessary intendment, from the record, that such right, title, privilege or immunity was specially "set up or claimed" under such Constitution or laws; as the jurisdiction of this court cannot arise in such case from inference, but only from averments so distinct and positive as to place it beyond question that the party bringing the case up intended to assert a federal right. *Kipley v. Illinois*, 182.
8. An interlocutory order of a Circuit Court for the issue of a temporary injunction, having been taken on appeal to the Circuit Court of Appeals, was there affirmed, and an order was issued for temporary injunction. An appeal from this was taken to this court. *Held*, that this court has no jurisdiction, and that the appeal must be dismissed. *Kirwan v. Murphy*, 205.
9. It was essential, in order to confer jurisdiction on this court, in this case, that the chief judge of the Court of Appeals of the State of New York, or his lawful substitute, or a justice of this court, should have allowed the writ and the citation; and as the writ was signed by a judge as "Asso. Judge, Court of Appeals, State of New York," and there was nothing in the record warranting the inference that he



was, at that time, acting as Chief Judge *pro tem.* of that court, the writ is dismissed. *Havner v. New York*, 408.

10. In determining from the face of a pleading whether the amount really in dispute is sufficient to confer jurisdiction upon a court of the United States, it is settled that if from the nature of the case as stated in the pleadings there could not legally be a judgment for an amount necessary to the jurisdiction, jurisdiction cannot attach even though the damages be laid in the declaration at a larger sum. *Vance v. W. A. Vandercook Co.* (No. 2), 468.
11. The courts of South Carolina having held that in an action of trover consequential damages are not recoverable, and the damage claimed by the plaintiff below, in this case, omitting the consequential damages, being less than the sum necessary to give the Circuit Court jurisdiction of it, it follows that, on the face of the complaint, that court was without jurisdiction over the action. *Ib.*

See JUDGMENT.

#### B. JURISDICTION OF CIRCUIT COURTS.

The Circuit Court of the United States, held within one State, has jurisdiction of an action brought, by a citizen and resident of another State, against a foreign corporation doing business in the first State through its regularly appointed agents, upon whom the summons is there served, for a cause of action arising in a foreign country; although the statutes of the State confer no authority upon any court to issue process against a foreign corporation, at the suit of a person not residing within the State, and for a cause of action not arising therein. *Barrow Steamship Co. v. Kane*, 100.

#### C. JURISDICTION OF STATE COURTS.

The courts of a State may take cognizance of a suit brought by the State, in its own courts, against citizens of other States, subject to the right of the defendant to have such suit removed to the proper Circuit Court of the United States, whenever the removal thereof is authorized by act of Congress, and subject also to the authority of this court to review the final judgment of the state court, if the case be one within its appellate jurisdiction. *Plaquemines Tropical Fruit Co. v. Henderson*, 511.

#### MEXICAN GRANT.

1. In the spring of the year 1825, when the grant of public land in controversy in this suit was made, the territorial deputation of New Mexico had no authority to make such grant. *Hayes v. United States*, 637.
2. After a careful examination of all the acts of the Mexican authorities

upon which the appellee claims that his title to the grant in question in this case is founded, the court arrives at the conclusion that the officers who made the grant had no power to make it; and the decree of the Court of Private Land Claims establishing it is reversed, and the case is remanded for further proceedings. *United States v. Coe*, 681.

#### MINERAL LAND.

See PUBLIC LAND, 1, 2.

#### MUNICIPAL CORPORATION.

1. The Supreme Court of Missouri having held that the act of the legislature of that State incorporating the Laclede Gas Light Company and conferring upon it the sole and exclusive privilege of lighting the streets in parts of St. Louis, though construed to include the right to use electricity for illuminating purposes in respect to such right, was taken subject to reasonable regulations as to its use, and that the power to regulate had been delegated to the city of St. Louis, and that under its general public power the city had the right to require compliance with reasonable regulations as a condition to using its streets for electric wires, this court concurs with the conclusion of the Supreme Court that the company was subject to reasonable regulations in the exercise of the police powers of the city, and holds that, so far as that involved any Federal question, such question was correctly decided. *Laclede Gas Light Co. v. Murphy*, 78.
2. If the company, as it asserted, possessed the right to place electric wires beneath the surface of the streets, that right was subject to such reasonable regulations as the city deemed best to make for the public safety and convenience, and the duty rested on the company to comply with them. *Ib.*
3. If requirements were exacted or duties imposed by the ordinances, which, if enforced, would have impaired the obligations of the company's contract, this did not relieve the company from offering to do those things which it was lawfully bound to do. *Ib.*
4. The exemption of the company from requirements inconsistent with its charter could not operate to relieve it from submitting itself to such police regulations as the city might lawfully impose; and until it had complied, or offered to comply, with regulations to which it was bound to conform, it was not in a position to assert that its charter rights were invaded because of other regulations, which, though applicable to other companies, it contended would be invalid if applied to it. *Ib.*
5. The Supreme Court of Missouri did not feel called on to define in advance what might, or might not, be lawful requirements; and there is nothing in this record compelling this court to do so. *Ib.*
6. The transactions between the county of Mercer, which resulted in the



delivery of the bonds of the county to the Railroad Company, were had in the utmost good faith. *Provident Life & Trust Co. v. Mercer County*, 593.

7. *Barnum v. Okolona*, 148 U. S. 395, reaffirmed to these points; "that municipal corporations have no power to issue bonds in aid of railroads, except by legislative permission; that the legislature, in granting permission to a municipality to issue its bonds in aid of a railroad, may impose such conditions as it may choose; and that such legislative permission does not carry with it authority to execute negotiable bonds, except subject to the restrictions and conditions of the enabling act." But when the good faith of all the parties is unquestionable, the courts will lean to that construction of the statute which will uphold the transaction as consummated. *Ib.*
8. The provision in the act authorizing the issue of Mercer County bonds to the Louisville Southern Railroad Company, when its railway should have been so completed "through such county that a train of cars shall have passed over the same," was fully complied with when the railroad was so completed, from the northern line of the county to Harrodsburg, that a train of cars passed over it; but, even if this construction be incorrect, it must be held that when the trustee, in whose hands the county bonds were placed in escrow, adjudged that the condition prescribed for their delivery had been complied with, and delivered the bonds to the railroad company, the company took such a title as, when the bond was transferred to a *bona fide* holder, would enable him to recover against the county, even if the condition had in fact not been performed. *Ib.*

#### NATIONAL BANK.

See JURISDICTION, A, 1;  
SURETY BOND.

#### NEGLIGENCE.

See RAILROAD, 6.

#### PATENT FOR INVENTION.

The Boyden device for a fluid-pressure brake is not an infringement of patent No. 360,070 issued to George Westinghouse, Jr., March 29, 1887, for a fluid-pressure automatic-brake mechanism. *Westinghouse v. Boyden Power Brake Co.*, 537.

#### PRACTICE.

1. On an appeal from the judgment of the Supreme Court of a Territory, the findings of fact are conclusive upon this court. *Holloway v. Dunham*, 615.

2. One general exception to thirteen different instructions cannot be considered sufficient when each instruction consists of different propositions of law and fact, and many of them are clearly correct. *Ib.*

#### PUBLIC LAND.

1. In 1869 Congress granted a quantity of land in New Mexico, in fulfilment of a grant of non-mineral lands made by Mexico before its transfer, the land to be selected by the grantees, and the surveyor general to survey and locate the land selected, and thus determine whether it was such as the grantees might select. The grantees made their selection, and after considerable correspondence as to the forms of the application and as to the evidence that the selected lands were not mineral lands, the surveyor general, under the direction of the Land Department, approved the selection, and made the survey and location. The Land Department approved the survey, field notes and plat, and the parties were notified thereof, but no patent was issued, as Congress had not provided for such issue. The Land Department noted on its maps that this tract had been segregated from the public domain, and had become private property, and so reported to Congress, and that body never questioned the validity of its action. The grantees entered into possession, fenced the tract, and paid all taxes assessed upon it as private property by the State. *Held*, that the action taken by the Land Department was a finality, and that the title passed, all having been done which was prescribed by the statute. *Shaw v. Kellogg*, 312.
2. Such approval entered upon the plat in the Land Department by the surveyor general, under the directions of that department, was in terms "subject to the conditions and provisions of section 6 of the act of Congress, approved June 21, 1860." *Held*, that such limitation was beyond the power of executive officers to impose. *Ib.*
3. When an entryman goes to the public land office for the purpose of obtaining public land, and is told by the receiver that his proofs cannot be filed or accepted unless and until he pays the purchase price of the land, which he thereupon does, he makes such payment to the receiver as a public officer of the United States, and not to him as the agent of the entryman, and the payment is to be regarded as one made to the Government and as public money, within the meaning of the law and of any bond given for the faithful discharge of the duties of his office by the receiver, and for his honestly accounting for all public funds and property coming into his hands. *Smith v. United States*, 372.
4. The construction and legal effect of a patent for land is matter for the court, and evidence to aid in that construction is incompetent. *Stuart v. Easton*, 383.

*See MEXICAN GRANT.*



## RAILROAD.

1. In view of the paramount duty of a state legislature to secure the safety of the community at an important railroad crossing within a populous city, it was and is within its power to supervise, control and change agreements from time to time entered into between the city and the railroad company as to a viaduct over such crossing, saving any rights previously vested. *Chicago, Burlington & Quincy Railroad v. Nebraska*, 57.
2. It is competent for the legislature of the State to put the burden of the repairs of such a viaduct crossing several railroads upon one of the companies, or to apportion it among all, as it sees fit; and an apportionment may be made through the instrumentality of the City Council. *Ib.*
3. Where expenditures have been made which were essentially necessary to enable a railroad to be operated as a continuing business, and it was the expectation of the creditors that the indebtedness so created would be paid out of the current earnings of the company, a superior equity arises, in case the property is put into the hands of a receiver, in favor of the material man, as against mortgage bondholders, in income arising from the operation of the property both before and after the appointment of the receiver, which equity is not affected by the fact that the company itself is the purchaser of the supplies, but is solely dependent upon the facts that the supplies were sold and purchased for use, that they were used in the operation of the road, that they were essential for such operation, and that the sale was not made simply upon personal credit, but upon the understanding, tacit or expressed, that the current earnings would be appropriated for the payment of the debt. *Virginia & Alabama Coal Co. v. Central Railroad & Banking Co.*, 355.
4. Upon the evidence contained in the record it is *Held*, that in the contract with the Virginia and Alabama Coal Company and in that with the Sloss Iron and Steel Company, it was the intention of the parties that the coal furnished was to be used in the operation of the lines of the Central Company, and that the Coal Companies looked to the earnings of the Central System as the source from which the funds to pay for the coal to be furnished were to be derived. *Ib.*
5. In concluding that the claims of the intervenors were entitled to priority out of the surplus earnings which arose during the control of the road by the court, this court must not be understood as in anywise detracting from the force of the intimations contained in its opinions in *Kneeland v. American Loan & Trust Co.*, 136 U. S. 89, and *Thomas v. Western Car Co.*, 149 U. S. 95. *Ib.*
6. A provision in a contract, made with a railroad company for the carriage of live stock, that the person in charge of the stock shall remain in the caboose car while the train is in motion, is not violated by his being in the car with the live stock when the train is not in

- motion, even though he may have been in that car instead of in the caboose car when the train was in motion; and in case of an accident happening to him, while so in the cattle car, caused by a sudden jerk made when the train was at rest, his being in the cattle car at that time, and under such circumstances, does not make him guilty of contributory negligence. *Texas & Pacific Railway Co. v. Reeder*, 530.
7. It is the duty of a railroad company to use reasonable care to see that the cars employed on its road, both those which it owns and those which it receives from other roads, are in good order and fit for the purposes for which they are intended, and this duty it owes to its employes as well as to the public. *Texas & Pacific Railway Co. v. Archibald*, 665.
  8. An employé of a railroad company has a right to rely upon this duty being performed, as, while in entering the employment he assumes the ordinary risks incident to the business, he does not assume the risk arising from his employer's neglect to perform the duties owing to him with respect to the appliances furnished.

See CONSTITUTIONAL LAW, 3, 4, 5.

#### REMOVAL OF CAUSES.

When it does not appear from the plaintiff's statement of his case, that the suit was one arising under the Constitution and laws of the United States, a petition to remove the cause into the Circuit Court of the United States should be overruled. *Galveston, Harrisburgh & San Antonio Railway Co. v. Texas*, 226.

#### SPIRITUOUS LIQUORS.

See INTERSTATE COMMERCE.

#### STATUTE.

##### A. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 4;	CUSTOMS DUTIES, 1, 2, 3;
COMMON CARRIER;	DISTRICT ATTORNEY, 1;
CONSTITUTIONAL LAW, 7;	DISTRICT OF COLUMBIA, 1;
CRIMINAL LAW, 1, 3, 13;	INTERSTATE COMMERCE, 3 (3);
	PUBLIC LAND, 1, 2.

##### B. STATUTES OF STATES AND TERRITORIES.

<i>Connecticut.</i>	See CONSTITUTIONAL LAW, 9.
<i>Illinois.</i>	See CONSTITUTIONAL LAW, 8.
<i>Iowa.</i>	See INTERSTATE COMMERCE, 1.
<i>Kentucky.</i>	See TAX AND TAXATION, 1.
<i>Mississippi.</i>	See CONSTITUTIONAL LAW, 2.



<i>Missouri.</i>	<i>See MUNICIPAL CORPORATION, 1.</i>
<i>Nebraska.</i>	<i>See CONTRACT, 1,</i>
<i>New York.</i>	<i>See CONSTITUTIONAL LAW, 1.</i>
<i>Oklahoma.</i>	<i>See TAX AND TAXATION, 2, 3.</i>
<i>Pennsylvania.</i>	<i>See TRUST, 1, 3, 4, 5.</i>
<i>South Carolina.</i>	<i>See INTERSTATE COMMERCE, 4.</i>
<i>Texas.</i>	<i>See CONSTITUTIONAL LAW, 3.</i>
<i>Utah.</i>	<i>See CONSTITUTIONAL LAW, 10.</i>

# SURETY BOND.

1. In an action against the maker of a bond, given to indemnify or insure a bank against loss arising from acts of fraud or dishonesty on the part of its cashier, if the bond was fairly and reasonably susceptible of two constructions, one favorable to the bank and the other to the insurer, the former, if consistent with the objects for which the bond was given, must be adopted. *American Surety Co. v. Pauly* (No. 1), 133.
2. Under the condition of the bond in this case, requiring notice of acts of fraud or dishonesty, the defendant was entitled to notice in writing of any act of the cashier which came to the knowledge of the plaintiff of a fraudulent or a dishonest character as soon as practicable after the plaintiff acquired knowledge; and it is not sufficient to defeat the plaintiff's right of action upon the policy to show that the plaintiff may have had suspicions of dishonest conduct of the cashier; but it was plaintiff's duty, when it came to his knowledge, when he was satisfied that the cashier had committed acts of dishonesty or fraud likely to involve loss to the defendant under the bond, as soon as was practicable thereafter to give written notice to the defendant: though he may have had suspicions of irregularities or fraud, he was not bound to act until he had acquired knowledge of some specific fraudulent or dishonest act that might involve the defendant in liability for the misconduct. *Ib.*
3. When the bank suspended business, and the investigation by the examiner commenced, O'Brien ceased to perform the ordinary duties of a cashier; but, within the meaning of the bond, he did not retire from, but remained in, the service of the employer during at least the investigation of the bank's affairs and the custody of its assets by the national bank examiner, which lasted until the appointment of a receiver and his qualification. *Held*, that the six months from "the death or dismissal or retirement of the employ  from the service of the employer," within which his fraud or dishonesty must have been discovered in order to hold the company liable, did not commence to run prior to the date last named. *Ib.*
4. The making of a statement as to the honesty and fidelity of an employ  of a bank for the benefit of the employ , and to enable the latter to

obtain a bond insuring his fidelity, was no part of the ordinary routine business of a bank president, and there was nothing to show that by any usage of this particular bank such function was committed to its president. *Ib.*

5. The presumption that an agent informs his principal of that which his duty and the interests of his principal require him to communicate does not arise where the agent acts or makes declarations not in execution of any duty that he owes to the principal, nor within any authority possessed by him, but to subserve simply his own personal ends or to commit some fraud against the principal; and in such cases the principal is not bound by the acts or declarations of the agent unless it be proved that he had at the time actual notice of them, or having received notice of them, failed to disavow what was assumed to be said and done in his behalf. *Ib.*
6. When an agent has, in the course of his employment, been guilty of an actual fraud contrived and carried out for his own benefit, by which he intended to defraud and did defraud his own principal or client, as well as perhaps the other party, and the very perpetration of such fraud involved the necessity of his concealing the facts from his own client, then under such circumstances the principal is not charged with constructive notice of facts known by the attorney and thus fraudulently concealed. *Ib.*
7. This was an action upon a bond guaranteeing a national bank against loss by any act of fraud or dishonesty by its president. The bond was similar in its provisions to the one referred to in the case preceding this, and contained among other provisions the following: "Now, therefore, in consideration," etc., . . . "it is hereby declared and agreed, that subject to the provision herein contained, the company shall, within three months next after notice, accompanied by satisfactory proof of a loss, as hereinafter mentioned, has been given to the company, make good and reimburse to the employer all and any pecuniary loss sustained by the employer of moneys, securities or other personal property in the possession of the employé, or for the possession of which he is responsible, by any act of fraud or dishonesty, on the part of the employé, in connection with the duties of the office or position hereinbefore referred to, or the duties to which in the employer's service he may be subsequently appointed, and occurring during the continuance of this bond, and discovered during said continuance, or within six months thereafter, and within six months from the death or dismissal or retirement of the employé from the service of the employer. It being understood that a written statement of such loss, certified by the duly authorized officer or representative of the employer, and based upon the accounts of the employé, shall be *prima facie* evidence thereof." *Held*, (1) That this language was susceptible of two constructions, equally reasonable, and that the one most favorable to the insured should be accepted, namely, that the required



written statement of loss arising from the fraud or dishonesty of the president of the bank, based upon its accounts, was admissible in evidence, if suit was brought, and was *prima facie* sufficient to establish the loss; (2) That within the meaning of the bond in suit, the president of the bank remained in its service at least up to the day on which the receiver took possession of books, papers and assets. *American Surety Company v. Pauly* (No. 2), 160.

## TAX AND TAXATION.

1. On the authority of *Louisville Water Company v. Clark*, 143 U. S. 1, which is affirmed, it is held that the exemption from taxation acquired by the Louisville Water Company under the act of Kentucky of April 22, 1882, c. 1349, was not withdrawn except from the day on which the act of May 17, 1886, known as the Hewitt Act, took effect; and the company cannot be held for taxes which were assessed and became due prior to September 14, 1886, when that act took effect. *Louisville Water Company v. Kentucky*, 127.
2. *Thomas v. Gay*, 169 U. S. 264, affirmed and followed to the point that "the act of the legislative assembly of the Territory of Oklahoma of March 5, 1895, 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." *Wagoner v. Evans*, 588.
3. Prior to the passage of that act there existed no power in the authorities of Canadian County to tax property within the attached reservation; and, as such authority was first given by that act, it could only be validly exercised on property subjected to its terms after its enactment. *Ib.*
4. Taxes, otherwise lawful, are not invalidated by the fact that the resulting benefits are unequally shared. *Ib.*

See CONSTITUTIONAL LAW, 8.

## TREATY.

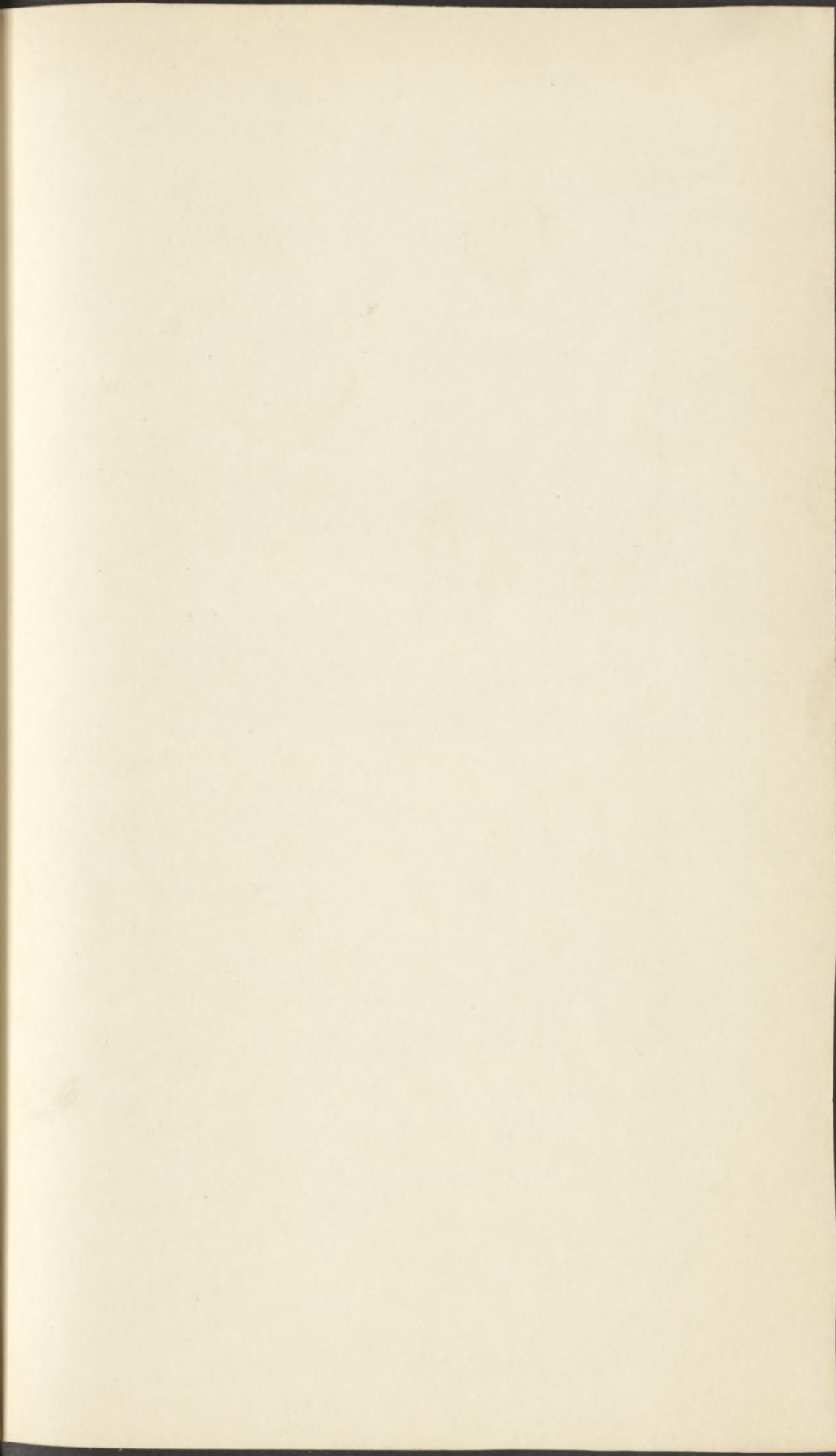
See INDIAN, 2.

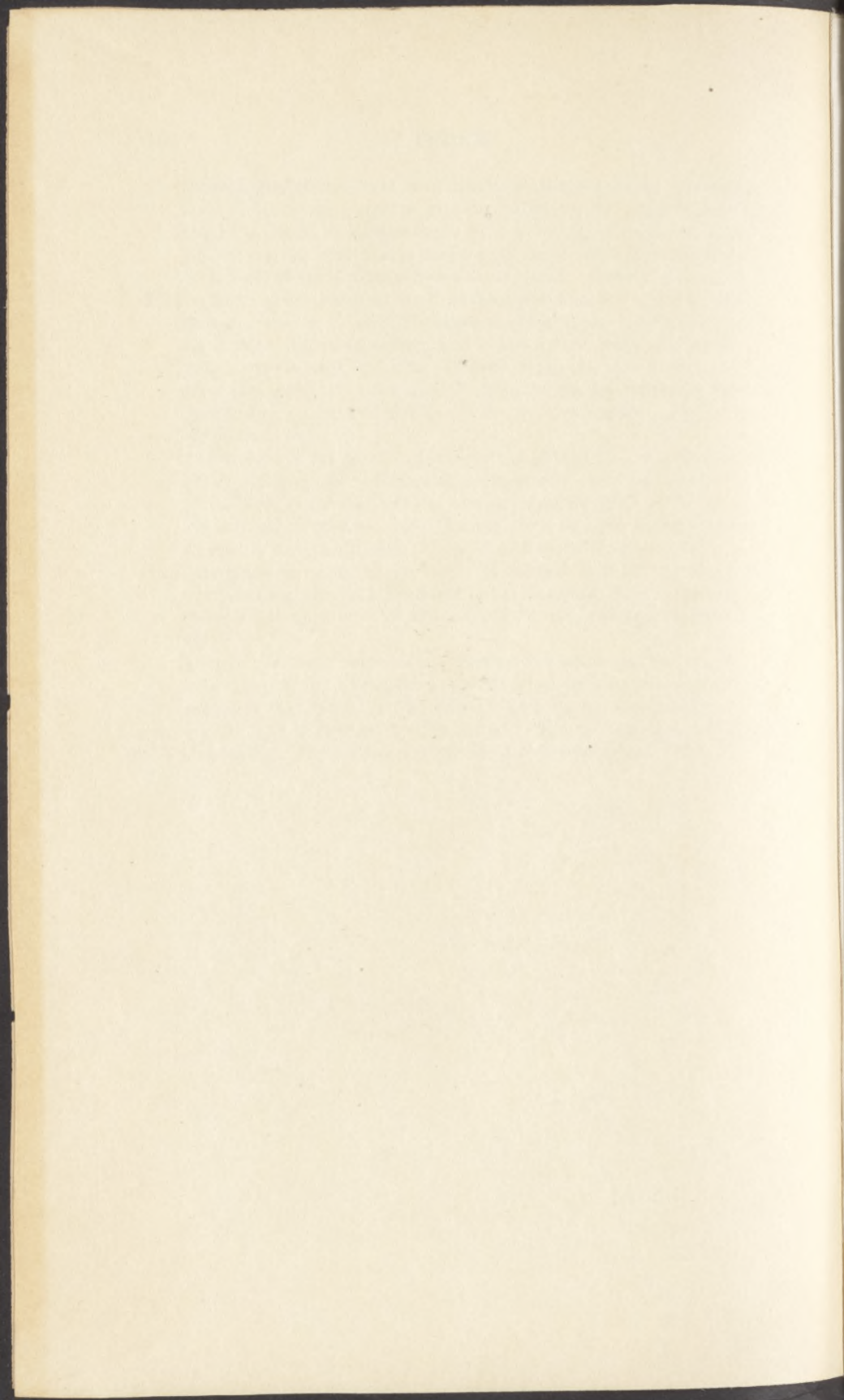
## TRUST.

1. The clear intent of the act of the Province of Pennsylvania of March 11, 1752, authorizing trustees to acquire the land in question, was, that while the legal estate in fee in the land should be acquired by the

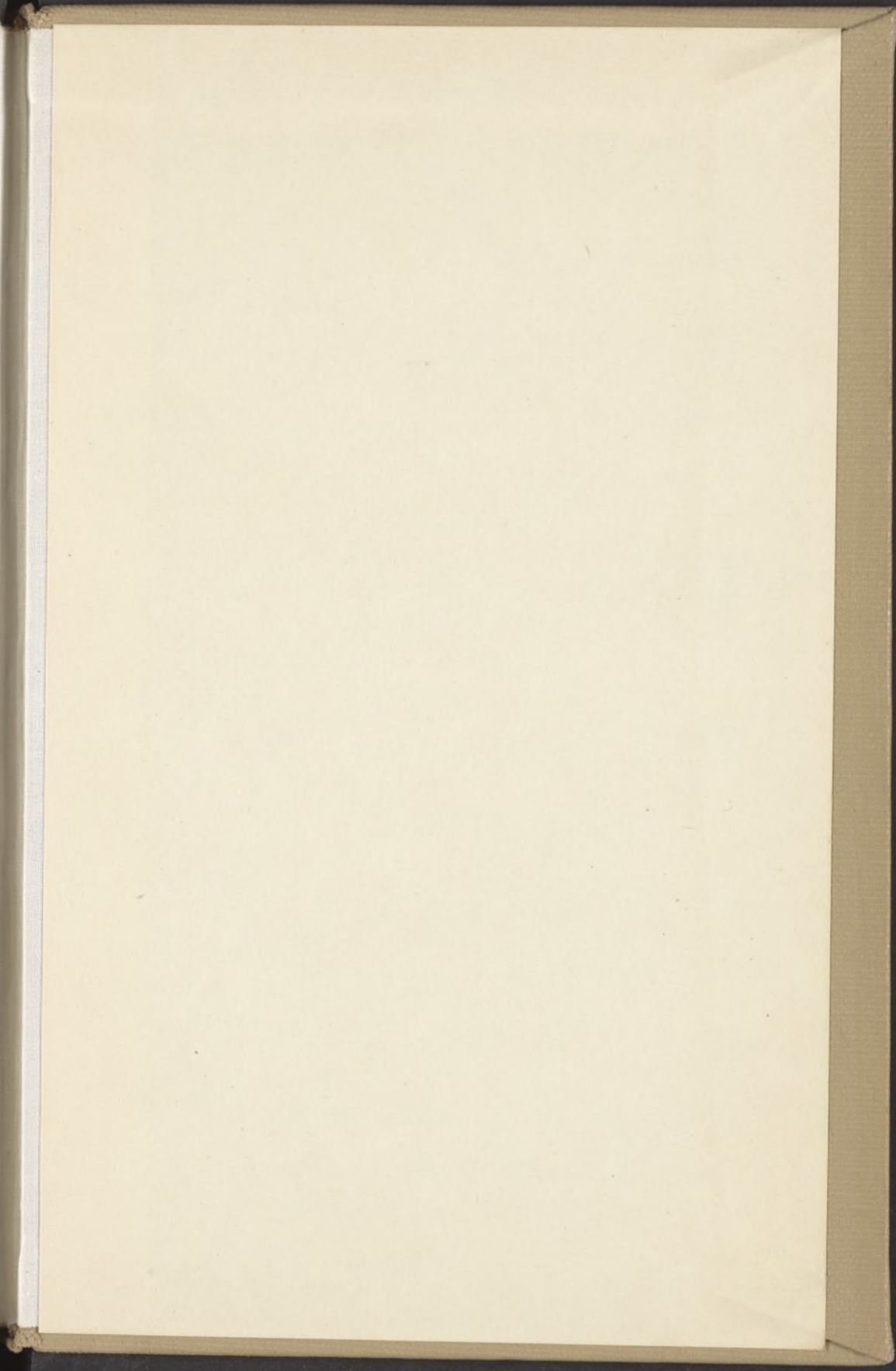
- trustees, the beneficial use or equitable estate was to be in the inhabitants of the county; and the provision following the authorization to acquire the land, "and thereon to erect and build a court house and prison," was no more than a direction to the trustees as to the use to be made of the land after it had been acquired. *Stuart v. Easton*, 383.
2. The language of the habendum that the conveyance is "in trust," nevertheless to and for the erecting thereon a court house for the public use and service of the said county, and to and for no other use, intent or purpose whatsoever, under the decisions of the courts of Pennsylvania amounted simply to conforming the grant to the legislative authority previously given, and cannot be deemed to have imported a limitation of the fee. *Ib.*
  3. The purposes of the grant by the patent of 1764 of the lot in the centre of the public square at Easton, in conformity to the clear intent of the act of 1752, was undoubtedly to vest an equitable estate in the land in the inhabitants of the county, the trust in their favor being executed so soon as the county became capable of holding the title. *Ib.*
  4. If the grant be viewed as one merely to trustees to hold "for the uses and purposes mentioned in the act of the assembly," it is clear that the fee was not upon a condition subsequent nor one upon limitation. *Ib.*
  5. Without positively determining whether the estate in the county is held charged with a trust for a charitable use, or is an unrestricted fee simple on the theory that the trustees were merely the link for passing the title authorized by the act of 1752, it is *held*, that the trial court did not err in directing a verdict for the defendant. *Ib.*











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