INDEX.

ADMIRALTY.

1. Where the stipulated compensation in a salvage contract is dependent upon success it may be made for a larger compensation than a *quantum meruit* and much more so when such success is to be achieved within a limited time; and such contract, after execution, will not be set aside simply because the compensation is excessive, unless shown to have been corruptly entered into, or made under fraudulent representations, a clear mistake or suppression of important facts, in immediate danger to the ship, or under other circumstances amounting to compulsion, or when its enforcement would be contrary to equity and good conscience. *The Elfrida*, 186.

2. Many leading cases in this country and some in England, where salvage contracts have been set aside, and compensation awarded in proportion to the merits of the services, examined, and shown to establish (1) That the courts of both countries are in entire accord in holding that a contract of salvage, which the master has been corruptly or recklessly induced to sign, will be wholly disregarded; (2) that some of the American courts have also laid down the rule that all salvage contracts are within the discretion of the court, and will be set aside in all cases where, after the service is performed, the stipulated compensation appears to be unreasonable, to which this court is unable to give its assent; (3) that while in England there has been some slight fluctuation of opinion, by the great weight of authority, and particularly of the more recent cases, it is held that if the contract has been fairly entered into, with eyes open to all the facts, and no fraud or compulsion exists, the mere fact that it is a hard bargain, or that the service was attended with greater or less difficulty than was anticipated, will not justify setting it aside. *Ib.*

3. Where no circumstances exist which amount to a moral compulsion, such a contract should not be held bad simply because the price agreed to be paid turned out to be much greater than the services were actually worth. *Ib.*

4. On the continent of Europe the courts appear to exercise a wider discretion, and to treat such contracts as of no effect if made when the vessel is in danger, but this court cannot accept this as expressing the true rule on the subject. *Ib.*

5. The facts relating to the making of the contract which is in dispute in this case, as detailed in the opinion of the court, show that few cases are presented showing a contract entered into with more care and prudence than this, and the court is clear in its opinion that it should be sustained. *Ib.*

AGENT.

See CORPORATION, 1, 2, 3.

CASES AFFIRMED OR FOLLOWED.

Hooper v. *California*, 155 U. S. 648, cited, approved and applied; *Orient Insurance Co.* v. *Daggs*, 557.

See DECISIONS WITHOUT OPINIONS, pages 641 *et seq.;*
PATENT FOR INVENTION, 3.

CASES DISTINGUISHED.

See JURISDICTION, B, 11;
PUBLIC LAND, 2.

CIRCUIT COURT OF APPEALS.

1. A judgment of a Circuit or District Court of the United States for the plaintiff in an action at law under the act of March 3, 1887, c. 359, 24 Stat. 505, is reviewable by the Circuit Court of Appeals upon writ of error. *United States* v. *Harsha*, 567.
2. The provision of the act of July 31, 1894, c. 174, § 2, 28 Stat. 162, 205, that "no person who holds an office, the salary or annual compensation of which amounts to the sum of two thousand five hundred dollars, shall be appointed to or hold any other office to which compensation is attached," does not, *ex proprio vigore*, create a vacancy in the office of clerk of a Circuit Court of the United States, by reason of the fact that at the time of its taking effect the then lawful incumbent of that office is also holding the office of clerk of the United States Circuit Court of Appeals in the same circuit, having previously resigned the latter office, and his resignation not having been accepted by the judges. *Ib.*

CITIZEN AND CITIZENSHIP.

See CONSTITUTIONAL LAW, A, 6 to 9, 17.

CLAIMS AGAINST THE UNITED STATES.

The appellee's testator contracted with the United States in 1863 to construct war vessels. Owing to changes in plan and additional work required by the Government, the time of the completion of the work was prolonged over a year, during which prices for labor and materials greatly advanced. Full payment of the contract price was made, and also of an additional sum for changes and extra work. In 1890 Congress authorized the contractor's executor to bring suit in the Court of Claims for still further compensation. The act authorizing it contained this proviso: "Provided, however, That the investigation of said claim shall be made upon the following basis: The said court shall ascertain the additional cost which was necessarily incurred by the contractors for building the light-draught monitors Squando and Nauset and the side-wheel steamer Ashuelot in the completion of the same, by reason of any changes or alterations in the plans and specifications required and delays in the prosecution of the work: Provided, That such additional cost in completing the same, and such changes or alterations in the plans and specifications required, and delays in the prosecution of the work, were occasioned by the Government of the United States; but no allowance for any advance in the price of labor or material shall be considered unless such advance occurred during the prolonged term for completing the work rendered necessary by delay resulting from the action of the Government aforesaid; and then only when such advance could not have been avoided by the exercise of ordinary prudence and diligence on the part of the contractors." *Held*, that the petitioner's right of recovery for advance in prices was limited to the prolonged term, and the Court of Claims could not consider advances which took place during the term named in the contract. *United States* v. *Bliss*, 321.

See Contract;
Limitation, Statutes of.

CONFLICT OF LAW.

See Louisiana, Local Law of.

CONSTITUTIONAL LAW.

A. Constitution of the United States.

1. By an act of November 28, 1883, the legislature of Washington Territory incorporated the city of Walla Walla, conferring upon it, among other powers, the power to provide a sufficient supply of water for the city, and the right to permit the use of the city streets for the purpose of laying pipes for furnishing such supply for a term not exceeding twenty-five years. The act contained a further provision fixing the limit of indebtedness of the city at fifty thousand dollars. The city, under this authority, by contract granted to the Walla Walla Water Company the right to lay and maintain water mains, etc., for twenty-five years, reserving to itself the right to maintain fire hydrants and to flush sewers

during this term, each without charge. The contract further provided that it was voidable by the city, so far as it required the payment of money, upon the judgment of a court of competent jurisdiction, whenever there should be a substantial failure of such supply, or a like failure on the part of the company to perform its agreements, and that, until the contract should have been so avoided, the city should not erect, or maintain, or become interested in other water works. These provisions were accepted by the Water Company, and were complied with by it, and the contract was in force when this bill was filed. In 1893 the city authorities passed an ordinance to provide for the construction of a system of water works to supply the city with water, and to issue bonds for that purpose to the amount of one hundred and sixty thousand dollars, which ordinance was accepted by the necessary majority of legal voters. The Water Company then filed its bill to enjoin the city from creating the proposed water works, or from expending city moneys for that purpose, or from issuing city securities therefor. To this bill the city demurred, resting its demurrer upon a want of jurisdiction, all parties on both sides being citizens of the State of Washington. *Held:* (1) That the allegations in the bill raise a question of the constitutional power of the city to impair the obligations of its contract with the plaintiffs by adopting the ordinance; (2) that the grant of a right to supply water to a municipality and its inhabitants through pipes and mains laid in the streets of a city, upon condition of the performance of its service by the grantee, is the grant of a franchise vested in the State, (which may be made by municipal authorities when the right to do so is given by their charters,) in consideration of the performance of a public service, and, after performance by the grantee, is a contract, protected by the Constitution of the United States against state legislation to impair it; (3) that the plaintiff has no adequate and complete remedy at law, and the court has jurisdiction in equity; (4) that as the contract was limited to twenty-five years, and as no attempt was made to grant an exclusive privilege, the city acted within the strictest limitation of its charter; (5) that if the contract for the water supply was innocuous in itself, and was carried out with due regard to the good order of the city and the health of its inhabitants, the aid of the police power could not be invoked to abrogate or impair it; (6) that the stipulation that the city would not erect water works of its own during the life of the contract did not render it objectionable; (7) that the objection that the indebtedness created by the contract exceeded the amount authorized by the charter was without merit, under the circumstances; (8) that the act of 1883, being subsequent to the general statute of 1881, authorizing cities to provide for a supply of water, was not in violation of that act; (9) that the city was bound to procure the nullity of the contract before the courts, before it could treat it as void. *Walla Walla City* v. *Walla Walla Water Co.*, 1.

2. Under the legislation and contracts set forth in the opinion of the court in this case, the water power incidentally created by the erection and maintenance of the dam and canal for the purpose of navigation in Fox River is subject to control and appropriation by the United States, and the plaintiff in error is possessed of whatever rights to the use of this incidental water power could be granted by the United States. *Green Bay & Mississippi Canal Co.* v. *Patten Paper Co.*, 58.

3. At what points in the dams and canal the water for power may be withdrawn, and the quantity which can be treated as surplus with due regard to navigation, must be determined by the authority which owns and controls that navigation. *Ib.*

4. The plaintiff's declaration, in a case pending in a *nisi prius* court in Virginia, set forth that he was the owner in fee of a lot of land fronting on Eighth street between Cary and Canal streets, in Richmond, on which were located two brick buildings, the first floor of which was used for store purposes and the second story as dwellings; that said property, previous to the obstruction of Eighth street, as hereinafter described, was very profitable as an investment, being continuously rented to good tenants, who promptly paid remunerative rents for the same; that on the 25th day of June, 1886, the city council of Richmond, by ordinance, authorized the Richmond and Alleghany Railway Company to obstruct for the distance of sixty feet (commencing at Canal street in the direction of Cary street) Eighth street, and by virtue of which said railway company wholly obstructed and occupied said street for said distance with its tracks, sheds, fences, etc., except to pedestrians, for whom said company was required to provide by overhead bridge and stairway approaches thereto. It further was averred that by means of this obstruction, so made by said company by authority of said city, travel along said street was arrested and the property rights of the petitioner, as an abutter upon said street, were not only substantially injured, but practically destroyed; that the city had no right under the Constitution and laws of the land to authorize the said railroad company to close said street or place obstructions therein without proper legal proceedings for that purpose and the making of just compensation to such abutting owners as might be injured by said action; that this unconstitutional and illegal action rendered said defendants liable to the petitioner, as trespassers on his property, for all damages that he had sustained not common to the public; that the obstructions were in themselves nuisances which the city was charged with the duty of abating and moving, and that every day's continuation of the same was a new offence. A general demurrer being entered, judgment was given for defendants. The plaintiff moved to set aside said judgment, solely on the ground that the act of the general assembly of Virginia, approved May 24, 1870, providing a charter for the city of Richmond, so far as it authorized the passage of the ordinance in the declaration mentioned, as well as said ordinance,

is unconstitutional and void, because in conflict with the Fourteenth Amendment of the Constitution of the United States, which prohibits any State from depriving any person of property without due process of law, and therefore there was no warrant of law for the closing of said street; but the court overruled said motion and refused to grant said motion and to set aside said judgment; to which action of the court the plaintiff excepted. The Supreme Court of Appeals of the State sustained that judgment, whereupon a writ of error was sued out to this court. *Held*, (1) That the constitutional question so raised was set up in time, and this court has jurisdiction; (2) that the judgment of the state court was right, and should be affirmed. *Meyer* v. *Richmond*, 82.

5. On the 29th of May, 1862, the plaintiff below (plaintiff in error here) filed a bill in the Circuit Court of the city of Norfolk, Virginia, to establish the genuineness of certain coupons tendered by him in payment of taxes, and obtained a judgment there in his favor. When the suit was commenced, the highest court of Virginia had often decided against the right to require the State to accept such coupons in payment of taxes. This court, on the other hand, in a series of decisions reaching from 1880 to 1889, had been uniform and positive in favor of the validity of the act authorizing the issue of such bonds, and of the liability of the State to accept the coupons in payment of taxes. In the present case the Supreme Court of Appeals of Virginia dismissed the plaintiff's petition, on appeal, and awarded costs to the Commonwealth, on the ground that the coupon provision of the act of 1871 was void. In the previous cases there had been no direct decision by the state court that such provision was entirely void, although the intimation was clear that such was the opinion of the judges then composing the court. It was contended by the State that this court has no jurisdiction of this case, for the reason that the state Court of Appeals does not consider, in its opinion, the subsequent legislation of the State, passed with a view to impair the act of 1871, but limits itself to the consideration of that act, which it adjudges to be void, and also that the repeal of the act of 1882, after the judgment in the trial court below, amounts to a withdrawal of the consent of the State to be sued, and is fatal to the maintenance of this action. *Held:* (1) That the lawful owner of such coupons has the right to tender the same after maturity in payment of taxes, debts and demands due the State; (2) that this court has the right to inquire and judge for itself with regard to the making of the alleged contract with the holder of the coupons without regard to the views or decisions of the state court in relation thereto; (3) that the owner's right to pay taxes in coupons is not affected by the consideration that some taxes, other than the ones now in question, were, when the act of 1871 was passed, required to be paid in money; (4) that while it is true that the state court placed its decision on the ground that the act of 1871 was void, in so

far as it related to the coupon contract, the judgment also gave effect to subsequent statutes; and this court has jurisdiction of the case; (5) that the rights acquired by the plaintiff under the judgment were not lost or disturbed by the repeal, after judgment, of the act of 1882. *McCullough* v. *Virginia*, 102.

6. Chapter 31 of the acts of Tennessee of 1877, entitled "An act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold and convey real and personal property in this State," provided that corporations organized under the laws of other States and countries, for purposes named in the act, might carry on within that State the business authorized by their respective charters, but "that creditors who may be residents of this State shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts, engagements and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. *Held*, that, as no question had been made in the state court that the individual plaintiffs in error were not citizens of, but only residents in, Ohio, that question could not be considered; and as the manifest purpose of the act was to give to all Tennessee creditors priority over all creditors residing out of that State, without reference to the question whether they were citizens or only residents in some other State or country, the act must be held to infringe rights secured to the plaintiffs in error, citizens of Ohio, by the provision of Sec. 2 of Art. IV of the Constitution declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, although, generally speaking, the State has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business. *Blake* v. *McClung*, 239.
7. It is not in the power of one State, when establishing regulations for the conduct of private business of a particular kind, to give its own citizens essential privileges, connected with that business, which it denies to citizens of other States. *Ib.*
8. When the general property and assets of a private corporation, lawfully doing business in a State, are in course of administration by the courts of said State, creditors who are citizens of other States are entitled, under the Constitution of the United States, to stand upon the same plane with creditors of like class who are citizens of such State, and cannot be denied equality of right simply because they do not reside in that State, but are citizens residing in other States of the Union. *Ib.*
9. While the members of a corporation are, for purpose of suit by or against it in the courts of the United States, to be conclusively pre-

sumed to be citizens of the State creating it, the corporation itself is not a citizen within the meaning of the provision of the Constitution that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. *Ib.*

10. The said statute of Tennessee, so far as it subordinates the claims of private business corporations not within the jurisdiction of that State (although such private corporations may be creditors of a corporation doing business within the State under the authority of that statute) to the claims against the latter corporation of creditors residing in Tennessee, is not a denial of the equal protection of the laws secured by the Fourteenth Amendment to persons within the jurisdiction of the State, however unjust such a regulation may be deemed. *Ib.*

11. The principle underlying special assessments upon private property to meet the cost of public improvements is that the property upon which they are imposed is peculiarly benefited, and therefore that the owners do not in fact pay anything in excess of what they receive by reason of such improvement. *Norwood* v. *Baker*, 269.

12. The exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking, under the guise of taxation, of private property for public use without compensation; but, unless such excess of cost over special benefits be of a material character, it ought not to be regarded by a court of equity, when its aid is invoked to restrain the enforcement of a special assessment. *Ib.*

13. The constitution of Ohio authorizes the taking of private property for the purpose of making public roads, but requires a compensation to be made therefor to the owner, to be assessed by a jury, without deduction for benefits. The statutes of the State, quoted or referred to in the opinion of the court, make provisions for the manner in which this power is to be exercised. In the case of the opening of a new road, they authorize a special assessment upon bounding and abutting property by the front foot for the entire cost and expense of the improvement, without taking special benefits into account. The alleged improvement in this case was the construction through property of the appellee of a street 300 feet in length and 50 feet in width, to connect two streets of that width running from each end in opposite directions. In the proceedings in this case the corporation of Norwood manifestly went upon the theory that the abutting property could be made to bear the whole cost of the new road, whether it was benefited or not to the extent of such cost, and the assessment was made accordingly. This suit was brought to obtain a decree restraining the corporation from enforcing the assessment against the plaintiff's abutting property, which decree was granted. *Held*, that the assessment was, in itself, an illegal one, because it rested upon a basis that excluded any consideration of benefits; that therefore a decree enjoining the whole assessment was the only appropriate decree; that it was not necessary to tender,

as a condition of relief being granted to the plaintiff, any sum as representing what she supposed, or might guess, or was willing to concede was the excess of costs over any benefits accruing to the property; and that the legal effect of the decree was only to prevent the enforcement of the particular assessment in question, leaving the corporation free to take such steps as might be within its power, to make a new assessment upon the plaintiff's abutting property for so much of the expense of opening the street as might be found equal to the special benefits accruing to the property. *Ib.*

14. It was within the power of Congress to validate the bonds in question in this proceeding, issued by the authorities of the Territory of Arizona, to promote the construction of a railroad. *Utter* v. *Franklin*, 416.

15. A suit brought by the receivers of a railroad against the Attorney General of the State of Alabama and the Solicitor of the Eleventh Judicial Circuit of that State, to restrain them, as officers of the State, from taking steps to enforce against the complainants the provisions of a law of that State reducing the tolls which had been exacted of the public under a prior law for crossing on a bridge of the railroad over a river, is a suit against the State, and this court accordingly reverses the judgment of the court below, adjudging that the latter law was unconstitutional and void, and that the defendants should not institute or prosecute any indictment or criminal proceeding against any one for violating the provisions of that act, and directed the court below to dissolve its injunction restraining the institution or prosecution of indictments or other criminal proceedings so instituted in the state courts, and to dismiss the suit so brought by the receivers against the Attorney General of Alabama and the Solicitor of the Eleventh Judicial Circuit of that State. *Fitts* v. *McGhee*, 516.

16. The provision in section 5897 of c. 89, art. 4 of the Revised Statutes of Missouri, that "in all suits upon policies of insurance against loss or damage by fire, hereafter issued or renewed, the defendant shall not be permitted to deny that the property insured thereby was worth at the time of the issuing of the policy the full amount insured therein on said property; and in case of total loss of the property insured, the measure of damage shall be the amount for which the same was insured, less whatever depreciation in value below the amount for which the property is insured the property may have sustained between the time of issuing the policy and the time of the loss, and the burden of proving such depreciation shall be upon the defendant; and in case of partial loss, the measure of damages shall be that portion of the value of the whole property insured, ascertained in the manner hereinafter described, which the party injured bears to the whole property insured;" and the provision in section 5898 "that no condition of any policy of insurance contrary to the provisions of this article shall be legal or valid," are not when applied to a foreign insurance corporation insuring property within the State in conflict with the provisions of the Fourteenth

Amendment to the Constitution of the United States, forbidding a State to make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, or to deprive any person of life, liberty or property without due process of law; or to deny to any person, within its jurisdiction, the equal protection of the laws. *Orient Insurance Co.* v. *Daggs*, 557.

17. A corporation is not a citizen within the meaning of that Amendment, and hence has not the privileges and immunities secured to citizens against state legislation. *Ib.*

18. That which a State may do with corporations of its own creation it may do with foreign corporations admitted into it. *Ib.*

See CORPORATION, 5 to 9;
PATENT FOR INVENTION, 1.

B. STATE CONSTITUTIONS.

The claim made in the court below that the provision in the constitution of Maryland which abridged the right of trial by jury in the courts of the city of Baltimore without making a similar provision for the counties of the State denied to litigants of the city the equal protection of the laws, is not tenable. *Chappell Chemical &c. Co.* v. *Sulphur Mines Co.* (No. 3), 474.

CONTRACT.

The plaintiffs contracted with the United States to construct a dry dock at the Brooklyn Navy Yard according to plans and specifications, and to be built upon a site that was available. No provision was made in regard to quicksands should they come upon such in making the foundations. The main features of the contract are stated in detail in the statement of the case. In executing the said contract the contractors came upon shifting quicksands, by reason of which the work was made more difficult, and was much increased; and being unable to complete the work within the time specified in the contract, they asked for an extension, which was granted. On completion a settlement was had, all the money remaining due under the contract, and some that was due for extra work, was paid. It was not until about three years later that the claim for compensation for the extra labor and materials made necessary by the quicksand was made; and, when it was refused, this action to recover it was brought in the Court of Claims, and there decided adversely to the claimants. *Held*, That the contract imposed upon the contractors the obligation to construct the dock according to the specifications within a designated time, for an agreed price, upon a site to be selected by the United States, and contained no statement, or agreement or even intimation that any warranty, express or implied, in favor of the contractor was entered into by the United States concerning the character of the underlying soil; and that the judgment of the court below should be affirmed. *Simpson* v. *United States*, 372.

See Constitutional Law, A, 1.

CORPORATION.

1. In order to hold a corporation liable for the torts of any of its agents, the act in question must be performed in the course and within the scope of the agent's employment in the business of the principal. *Washington Gaslight Co.* v. *Lansden*, 534.
2. A corporation can, however, also be held responsible for acts of its agent, not strictly within its corporate powers, which were assumed to be performed for it by an agent competent to employ the corporate powers actually exercised; but in such case, there must be evidence of some facts from which the authority of the agent to act upon or in relation to the subject-matter involved may be fairly and legitimately inferred by the court or jury, though this evidence need not necessarily be in writing. *Ib.*
3. When the only conclusion to be drawn from such evidence is a want of authority, the question is one for the court to decide without submitting it to the jury. *Ib.*
4. In this case the court should have directed a verdict for the corporation on the ground that there was an entire lack of evidence on which to base a verdict against it. *Ib.*
5. In a suit in a state court against a foreign corporation where no property of the corporation is within the State, and the judgment sought is a personal one, it is material to ascertain whether the corporation is doing business within the State; and if so, the service of process must be upon some agent in the State so far representing it that he may properly be held in law its agent to receive such process in its behalf. *Connecticut Mut. Life Ins. Co.* v. *Spratley*, 602.
6. A foreign insurance company which has been doing business within a State through its agents does not cease to do business therein when it withdraws its agent and ceases to obtain or ask for new risks or obtain new policies, while, at the same time, its old policies continue in force, and the premiums thereon are paid by the policyholders to an agent residing in another State, who was once the agent in the State where the policyholders reside. *Ib.*
7. On the facts stated in the opinion of the court, it is held that the law implies, from the appointment and authority of the agent of the plaintiff in error, the power to receive in Tennessee service of process against the company. *Ib.*
8. If it appears that there is a law of the State in respect to the service of process upon foreign corporations, and that the character of an agency of a foreign corporation is such as to render it fair, reasonable and just to imply an authority on the part of the agent to re-

ceive service, the law will, and ought to, draw such an inference, and imply such authority, and service under such circumstances and upon an agent of that character is sufficient. *Ib.*

9. When the legislature of Tennessee, under the act of March 22, 1875, permitted the plaintiff in error, a foreign corporation, to do business within the State, on appointing an agent therein upon whom process might be served, and when, in pursuance of such provisions, the company entered the State and appointed the agent no contract was thereby created which would prevent the State from thereafter passing another statute in regard to service of process, and making such statute applicable to all foreign corporations, already doing business within the State. *Ib.*

See CONSTITUTIONAL LAW, A, 6 to 10, 17, 18.

COURT AND JURY.

1. In an action assailing the validity of an assignment by an insolvent debtor with preferences, if there be a conflict as to the words used, or if the words themselves be ambiguous, the question of intent must be left to the jury. *Sonnetheil* v. *Christian Moerlein Brewing Co.*, 401.
2. There is no class of cases which are more peculiarly within the province of the jury than such as involve the existence of fraud. *Ib.*
3. Under the peculiar circumstances of this case, it was not error to submit to the jury the question of fraud referred to in the opinion of the court. *Ib.*

See CORPORATION, 3, 4;
CRIMINAL LAW.

CRIMINAL LAW.

Under the act of Congress of January 15, 1897, c. 29, § 1, by which "in all cases where the accused is found guilty of the crime of murder," "the jury may qualify their verdict by adding thereto 'without capital punishment,' and whenever the jury shall return a verdict qualified as aforesaid the person convicted shall be sentenced to imprisonment at hard labor for life," the authority of the jury to decide that the accused shall not be punished capitally is not limited to cases in which the court, or the jury, is of opinion that there are palliating or mitigating circumstances; but it extends to every case in which, upon a view of the whole evidence, the jury is of opinion that it would not be just or wise to impose capital punishment. *Winston* v. *United States*, 303.

See EVIDENCE, 1, 2;
JURISDICTION, B, 1, 2;
SMUGGLING.

CUSTOMS DUTIES.

1. Section 7 of the act of February 8, 1875, c. 36, 18 Stat. 307, 308, was repealed by the tariff acts of 1883 and of 1890. *United States* v. *Ranlett and Stone*, 133.
2. When bags are imported, part of which are returned bags of American manufacture and part foreign, if the appraiser, after examination, decides that the goods are not as described, his judgment must stand unless reversed. *Ib.*
3. Section 2901, Rev. Stat., was intended for the benefit of the Government, and is not mandatory. *Ib.*
4. Where merchandise, liable in large part to duty, is entered as exempt therefrom, the collector has the right to assume that the mingling was intentional and with design to evade the revenue laws; and it devolves upon the importer to show what part of the whole he contends should not be taxed. *Ib.*
5. In the light of the rulings of the Treasury Department, and the special circumstances of the case, the court is not disposed to hold that if the proportion of dutiable bags sufficiently appeared or might reasonably have been ascertained, the Circuit Court could not have adjudged a recovery of that proportion, or directed a reliquidation. *Ib.*
6. In view of the testimony, and considering that the statute was not strictly pursued in the examination (though the court perceives no reason to doubt the faithfulness of the officials in the discharge of their duties), and the difficulties in the way of determining the make of the bags disclosed by the evidence, and bearing in mind that the taxation of so many of the bags as were of American manufacture operated as a penalty in spite of the concession that no fraud on the revenue was intended, the court thinks it unnecessary to remand the cause for another hearing, and that the ends of justice will be best subserved by directing a decree for the refunding of one fourth of the duties paid. *Ib.*
7. Under the tariff act of October 1, 1890, natural gas is entitled to be admitted free of duty. *United States* v. *Buffalo Natural Gas Fuel Co.*, 339.
8. Under the provisions of paragraph 387 of the act of July 24, 1897, and section 7 of the act of June 10, 1890, as amended by section 32 of the act of July 24, 1897, the merchandise in suit, being certain woven fabrics in the piece composed of silk and cotton, was subject to an ad valorem duty or to a duty based upon or regulated by the value thereof. *Hoeninghaus* v. *United States*, 622.
9. An additional duty of one per centum of the total appraised value of such merchandise for each one per centum that such appraised value exceeded the value declared in the entry as applied to the particular article in such invoice so undervalued, accrued according to the provisions of section 7 of the act of June 10, 1890, as amended by the act of July 24, 1897. *Ib.*

See SMUGGLING.

DECOY LETTER.

See Evidence, 2.

DISTRICT OF COLUMBIA.

1. In the provision in the 16th section of the act of May 20, 1870, c. 108, "to incorporate the Washington Market Company," that "the city government of Washington shall have the right to hold and use, under such rules and regulations as the said corporation may prescribe, the open space at the intersection of Ohio and Louisiana avenues with Tenth and Twelfth streets as a market," etc., the words "the said corporation" refer to the city government of Washington, and not to the Market Company. *Washington Market Co.* v. *District of Columbia*, 361.
2. The correspondence between the Market Company and the city government respecting the use and improvement of this tract which is printed as a note to the statement of the case, creates no easement in the tract in favor of the Market Company; and the company recognized the fact that Congress might lawfully dispossess it from the use and occupancy of it. *Ib.*

EASEMENT.

See District of Columbia, 2.

EQUITY.

See Constitutional Law, A, 1;
Jurisdiction, A, 2;
Tax and Taxation, 1, 2, 3.

EVIDENCE.

1. The plaintiff in error, defendant below, a letter carrier, upon his trial charged with purloining a letter containing money, offered himself as a witness on his own behalf, denying that he had purloined the money. On cross-examination he said that he had enemies in the office, and named two persons. The Government called both as witnesses, and both denied that they bore ill will to him. Their evidence was objected to on the ground that the defendant's evidence on this point was collateral, brought out by cross-examination, and that the Government was bound by the answer. *Held*, that the evidence was admissible. *Scott* v. *United States*, 343.
2. A decoy letter, containing money, addressed to a fictitious person, mailed for the purpose of discovering the frauds of a letter carrier, is to be treated as a real letter, intended to be conveyed by the mail, within the meaning of the statutes on that subject. *Ib.*

3. The judgment in this case against Mr. Bailey should be reversed, as it is not supported by the evidence. *Washington Gas Light Co.* v. *Lansden*, 534.

4. In an action in tort brought in the District of Columbia, the common law rule prevails that those defendants who are sued together and found guilty are liable for the whole injury to the plaintiff, without examining the question of the different degrees of culpability; and as evidence of the wealth of the corporation defendant was admitted in evidence against all the defendants as a ground for punitive damages, and as the individual defendants were joined by the voluntary act of the plaintiff, the court is of opinion that it was not admissible as against them. *Ib.*

5. Evidence of the wealth of one of the defendants in an action of tort is inadmissible as a foundation for computing or determining the amount of such damages against all. *Ib.*

6. In a case of this character, where the line between compensatory and punitive damages is vague, it is impossible to say that, by merely charging the jury that punitive damages cannot be recovered, the effect of incompetent evidence received as to the wealth of one of the defendants was thereby removed, or that the verdict of the jury can be held to have been based solely upon the competent evidence in the case. *Ib.*

FOX RIVER WATER POWER.

See Constitutional Law, A, 2, 3.

FRAUD.

See Court and Jury.

HABEAS CORPUS.

1. The principle that a writ of *habeas corpus* cannot be made use of as a writ of error is again announced and affirmed. *Andersen* v. *Treat*, 24.

2. Where a petition for a writ of *habeas corpus* is founded upon judicial proceedings which are claimed to be void, and those proceedings and the records thereof are insufficiently set forth in the petition, the originals may be referred to on the hearing. *Ib.*

3. It appearing on examination of the original record and proceedings that the contention of the petitioner as to the facts is not supported by them, this case comes within the general rule that the judgment of a court having jurisdiction of the offence charged and of the party charged with its commission is not open to collateral attack; and it is held that the District Court could not have done otherwise than deny the writ, and its order in that respect is affirmed, and the mandate ordered to issue at once. *Ib.*

INTERSTATE COMMERCE.

See Usury, 3.

JURISDICTION.

A. Generally.

1. Two propositions have been so firmly established by frequent decisions of this court as to require only to be stated: (1) When a state court has entered upon the trial of a criminal case, under a statute not repugnant to the Constitution of the United States, or to any law or treaty thereof, and where the state court has jurisdiction of the offence and of the accused, no mere error in the conduct of the trial can be made the basis of jurisdiction in a court of the United States to review the proceedings upon a writ of *habeas corpus*. (2) When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases. *Harkrader* v. *Wadley*, 148.
2. A court of equity, although having jurisdiction over person and property in a case pending before it, is not thereby vested with jurisdiction over crimes committed in dealing with such property by a party before the civil suit was brought, and cannot restrain by injunction proceedings regularly brought in a criminal court having jurisdiction of the crime and of the accused. *Ib.*

B. Jurisdiction of the Supreme Court.

1. No particular form of words or phrases in which a claim of Federal rights must be asserted in a state court has ever been declared necessary by this court; but it is sufficient, if it appears from the record that such rights were specially set up or claimed there in such way as to bring the subject to the attention of the state court. *Green Bay & Mississippi Canal Co.* v. *Patten Paper Co.*, 58.
2. The facts in the record show that there is no merit in the several objections to the jurisdiction of this court taken by the appellee in this case. *Harkrader* v. *Wadley*, 148.
3. An answer by the defendant in an action in a state court brought to enforce a lien created by a reassessment of taxes upon its real estate, which sets up that the notice of the reassessment was insufficient, and that by reason thereof its property was sought to be taken without due process of law, and in conflict with the terms of the Fourteenth Amendment to the Constitution, raises a Federal question of which this court has jurisdiction. *Bellingham Bay &c. Railroad Co.* v. *New Whatcom*, 314.
4. As the laws of Kansas permit an amendment of the plaintiffs' plead-

ings in the court below after the overruling by the Supreme Court of a demurrer to them, and as the Supreme Court of the State, in deciding this case, did not take that right away, it follows that the judgment of the state court was not final, and that this case must be dismissed for want of jurisdiction. *Clark* v. *Kansas City*, 334.

5. A writ of error from this court to revise the judgment of a state court can only be maintained when within the purview of section 709 of the Revised Statutes. *Capital National Bank* v. *Cadiz Bank*, 425.
6. If the denial by the state court of a right under a statute of the United States is relied on as justifying the interposition of this court, before it can be held that the state court thus disposed of a Federal question, the record must show, either by the words used or by clear and necessary intendment therefrom, that the right was specifically claimed; or a definite issue as to the possession of the right must be distinctly deducible from the record, without an adverse decision of which the judgment could not have been rendered. *Ib.*
7. Though a Federal question may have been raised and decided, yet if a question, not Federal, is also raised and decided, and the decision of that question is sufficient to support the judgment, this court will not review the judgment. *Ib.*
8. No Federal right was specially set up or claimed in this case at the proper time or in the proper way; nor was any such right in issue and necessarily determined; but the judgment rested on non-Federal grounds entirely sufficient to support it. *Ib.*
9. The record discloses no Federal question asserted in terms save in the application to the Supreme Court for a rehearing, when the suggestion came too late. *Ib.*
10. The petition did, indeed, allege that the Capital National Bank was organized under the banking act, and that a receiver was appointed, who took possession of the bank's assets and of all trusts and moneys held by it in a fiduciary capacity, and the answer admitted these averments, respecting which there was no controversy; yet no right to appropriate trust funds was claimed by defendant under any law of the United States, nor was it asserted that any judgment which might be rendered for plaintiff would be in contravention of any provision of the banking act. *Ib.*
11. *California Bank* v. *Kennedy*, 167 U. S. 362, distinguished from this case. *Ib.*
12. The decision of the Maryland Court of Appeals in this case rests on grounds other than those dependent on Federal questions, if any such questions were raised, and the writ of error must be dismissed. *Chappell Chemical &c. Co.* v. *Sulphur Mines Co.* (No. 1), 465.
13. The Court of Appeals of Maryland, in dismissing this case, said: "The defendant, long after the time fixed by the rule of court, demanded a jury trial, and, without waiting for the action of the court upon his motion, and indeed before there was any trial of the case

upon its merits and before any judgment, final or otherwise, was rendered, this appeal was taken from what the order of appeal calls the order of court of the 6th of February, 1896, denying the defendant the right of a jury trial; but no such order appears to have been passed. On the day mentioned in the order of appeal there was an order passed by the court below fixing the case for trial, but there was no action taken in pursuance of such order until subsequent to this appeal. There is another appeal pending here from the orders which were ultimately passed." *Held*, that no Federal question was disposed of by this decision. *Same* v. *Same* (No. 2), 472.

14. The record does not contain the petition for the removal of this case from the state court to the Circuit Court of the United States, nor disclose the grounds on which it was founded, and this court does not pass upon the question whether the state court lost jurisdiction by reason of it. *Same* v. *Same* (No. 3), 474.

15. Reading the complaint and the answer in this case together, the question whether the contract of the plaintiff was impaired by subsequent state action appears on the face of the pleadings, and this court has jurisdiction to hear and determine the case. *Columbia Water Power Co.* v. *Columbia Electric Street Railway, Light & Power Co.*, 475.

16. Under Rev. Stat. § 709 there are three classes of cases in which the final decree of a state court may be examined here: (1) where is drawn in question the validity of a treaty, or statute of, or authority exercised under, the United States, and the decision is against their validity; (2) where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; (3) where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege or immunity specially set up and claimed by either party under such Constitution, statute, commission or authority, and in this class the Federal right, title, privilege or immunity must, with possibly some rare exceptions, be specially set up or claimed to give this court jurisdiction. *Ib.*

17. But where the validity of a treaty or statute of the United States is raised, and the decision is against it, or the validity of a state statute is drawn in question, and the decision is in favor of its validity, if the Federal question appears in the record and was decided, or if such decision was necessarily involved in the case, and the case could not have been determined without deciding such question, the fact that it was not specially set up and claimed is not conclusive against a review of such question here. *Ib.*

18. Whether the plaintiff had a legal title to the lands in question in this case was purely a local issue, and whether the erection of a steam

plant by the defendant was an incident of its contract with the state penitentiary is not reviewable here. *Ib.*

19. In view of the statute giving this court authority to reëxamine the final judgment of the highest court of a State, denying a right specially set up or claimed under an authority exercised under the United States, this court has jurisdiction to inquire whether due effect was accorded to the foreclosure proceedings in the Circuit Courts of the United States, under which the plaintiff in error claims title to the lands and property in question in this suit. *Pittsburgh, Cincinnati &c. Railway Co.* v. *Long Island Loan & Trust Co.*, 493.
20. Where a judgment is based upon a cause of action of such a nature that it might work injustice to one party defendant, if it were to remain intact as against him, while reversed for error as to the other defendants, the power exists in the court, founded upon such fact of possible injustice, to reverse the judgment *in toto*, and grant a new trial in regard to all the defendants. *Washington Gas Light Co.* v. *Lansden*, 534.
21. The motion in this case to dismiss or affirm was founded upon the allegation that the judgment of the Supreme Court of the State rested on two grounds, one of which, broad enough in itself to sustain the judgment, involved no Federal question. This court, while declining to sustain the motion to dismiss, holds that there was color for it, and takes jurisdiction of the motion to affirm. *First National Bank of Grand Forks* v. *Anderson*, 573.
22. A decision by a state court of a Federal question will not sustain the jurisdiction of this Court, if another question, not Federal, were also raised and decided against the plaintiff in error, and the decision thereof be sufficient, notwithstanding the Federal question, to sustain the judgment; and much more is this the case where no Federal question is shown to have been decided, and the case might have been, as in this case it probably was, disposed of upon non-Federal grounds. *McQuade* v. *Trenton*, 636.

See CONSTITUTIONAL LAW, A, 2, 3, 5;
HABEAS CORPUS, 3.

C. JURISDICTION OF CIRCUIT COURTS OF APPEAL.
See CIRCUIT COURTS OF APPEAL, 1.

D. JURISDICTION OF CIRCUIT COURTS.

1. A Circuit Court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in a state court in the name of a State to enforce the criminal laws of such State. *Harkrader* v. *Wadley*, 148.
2. A suit against a marshal of the United States, for acts done in his official capacity, is a suit arising under the laws of the United States;

and the joinder of another defendant, jurisdiction over whom is dependent upon diversity of citizenship, does not deprive the marshal of rights he would otherwise possess. *Sonnentheil* v. *Christian Moerlein Brewing Co.*, 401.

E. JURISDICTION OF STATE COURTS.
See LOUISIANA, LOCAL LAW OF.

LEASE.

The provision in the act of the South Carolina legislature of December 24, 1887, that the right of the State to the five hundred horse power of water retained for the use of the penitentiary should be "absolute" authorized the leases of such portion thereof as was not required for the individual use of the penitentiary. *Columbia Water Power Co.* v. *Columbia Electric Street Railway & Light Co.*, 475.

LIMITATION, STATUTES OF.

Three cheques were drawn in June, 1869, by authorized army officers upon the Assistant Treasurer of the United States in New York, in favor of Wardwell and in payment of his lawful claims against the United States. These cheques, while in his possession, were lost or destroyed, presumably in a depredation made on his house by hostile Indians in 1872. Not having been presented for payment, the amount of these cheques was covered into the Treasury in pursuance of the statutes of the United States, and was carried to the account of "outstanding liabilities." Wardwell having died, his administratrix applied to the Treasury for payment of the cheques by the issue of Treasury warrants, under the authority conferred by Rev. Stat. §§ 306, 307, 308. This payment being refused, this suit was brought in the Court of Claims in April, 1896, and the statute of limitations was set up as a defence. *Held*, that the promise by the Government contained in the statute to hold money so paid into the Treasury was a continuing promise available to plaintiff at any time she saw fit, to which full force should be given; that there was no cause for a suit until after refusal of an application for a warrant, and that then for the first time a claim for the breach of the contract accrued, and the limitation, prescribed by Rev. Stat. § 1069, began to run. *United States* v. *Wardwell*, 48.

LOUISIANA, LOCAL LAW OF.

Certain real estate in Louisiana, consisting of five plantations standing in the name of J. Morgan, was community property. His wife died in 1844, leaving two children as her heirs; and in 1858 Morgan conveyed all the real estate to his children and grandchildren. He died in 1860, and in 1872 his creditors took proceedings to set aside the conveyance and to subject his interest in the property to the payment of his debts. Their contention was sustained by this court in *Johnson* v. *Waters*, 111 U. S. 640. Then a receiver was appointed to take charge of both interests in all the property. The portion to which this suit relates was in the possession of Buckner, claiming under the conveyance made by Morgan in 1858. The receiver threatening to eject him, Buckner, in order to remain in possession, took a lease of the whole plantation from the receiver. In 1891 it was decided in *Mellen* v. *Buckner*, 139 U. S. 388, that one undivided half of the plantation belonged to Buckner, and that only the remaining half was subject to the debts of Morgan, and that if the heirs should not desire a severance of their portions, the whole should be sold and the proceeds divided in accordance with the decree. The sale was made two years later. Buckner paid the receiver rent for the whole plantation from 1884 to 1891, but paid nothing thereafter. This action was commenced by the receiver in a state court of Louisiana to recover from Buckner rent for one-half of the estate for 1891 and 1892, and one half of the taxes thereon for those years. Buckner in reply claimed the right to offset against the receiver's demand one half of the rent which he had paid to him between 1884 and 1891, and asked for judgment against the receiver for the surplus. The Supreme Court of Louisiana sustained the offset and reserved to Buckner the right to recover the surplus. *Held:* (1) That Buckner was entitled to set off against the rent unquestionably due for the undivided half of the plantation for 1891 and 1892 one half the amount paid by him for rent between 1884 and 1891; (2) that he was not precluded from obtaining the benefit of this right in the state courts by the fact that the receiver was an officer of the Federal court, or by any proceedings had in that court, as the receiver voluntarily went into the state court; (3) that the jurisdiction of the state court was clear, and its judgment is affirmed. *Grant* v. *Buckner*, 232.

MUNICIPAL CORPORATION.

See Constitutional Law, A, 1, 11, 12, 13.

NATIONAL BANK.

A national bank which, being authorized by the owner of notes in its possession to sell them to a third party, purchases them itself and converts them to its own use, is liable to their owner for their value, as for a conversion, even though it was not within its power to sell them as the owner's agent. *First National Bank of Grand Forks* v. *Anderson*, 573.

PATENT FOR INVENTION.

1. An appeal to the Court of Appeals of the District of Columbia from the decision of the Commissioner of Patents in an interference controversy presents all the features of a civil case, a plaintiff, a defendant and a judge, and deals with a question judicial in its nature, in respect of which the judgment of the court is final, so far as the particular action of the Patent Office is concerned; and such judgment is none the less a judgment because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it by Congress in execution of a power granted by the Constitution. *United States* v. *Duell*, 576.

2. In deciding whether a patent shall issue or not, the Commissioner of Patents acts on evidence, finds the facts, applies the law and decides questions affecting not only public, but private interests; and likewise as to reissues, or extension, or on interference between contesting claimants; in all of which he exercises judicial functions. *Ib.*

3. *Butterworth* v. *Hoe*, 112 U.S. 50, held to be directly in point, and the language on page 59 held to be also in point in which the court, speaking of that clause in Article 1, Section 8 of the Constitution, which confers upon Congress the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries," says: "The legislation based on this provision regards the right of property in the inventor as the medium of the public advantage derived from his invention; so that in every grant of the limited monopoly two interests are involved — that of the public, who are the grantors, and that of the patentee. There are thus two parties to every application for a patent, and more when, as in case of interfering claims or patents, other private interests compete for preference. The questions of fact arising in this field find their answers in every department of physical science, in every branch of mechanical art; the questions of law necessary to be applied in the settlement of this class of public and private rights have founded a special branch of technical jurisprudence. The investigation of every claim presented involves the adjudication of disputed questions of fact upon scientific or legal principles, and is, therefore, essentially judicial in its character, and requires the intelligent judgment of a trained body of skilled officials, expert in the various branches of science and art, learned in the history of invention, and proceeding by fixed rules to systematic conclusions." *Ib.*

PRACTICE.

As there was no finding of facts by the court below, and no statement of facts in the nature of a special verdict, this court must assume that the judgment of the court below was justified by the evidence, and affirm the judgment of the Supreme Court. *Marshall* v. *Burtis*, 630.

PUBLIC LAND.

1. Under the act of June 3, 1856, c. 44, 11 Stat. 21, the State of Michigan took the fee of the lands thereby granted, to be thereafter identified, subject to a condition subsequent that, if the railroad, to aid in whose construction they were granted, should not be completed within ten years, the lands unsold should revert to the United States; but, until proceedings were taken by Congress to effect such reversion, the legal title to the lands and the ownership of the timber growing upon them remained in the State, and the United States could not maintain an action of trespass against a person unlawfully entering thereon, and cutting and removing timber from the land so granted: and timber so cut and separated from the soil was not the property of the United States, and did not become such after acquisition of the lands by reversion; and the United States could not avail themselves of the rule that in an action of trover, a mere trespasser cannot defeat the plaintiff's right to possession by showing a superior title in a third person, without showing himself in priority with, or connecting himself with such third person. *United States* v. *Loughrey*, 206.

2. In 1890, appellee, under the Desert Land act of 1877 applied to reclaim and enter a tract of land, which was part of an even-numbered section of lands within the limits of the grant to the Union Pacific Railway Company. The entry was approved, the claimant made the preliminary payment thereon and received a certificate of entry. Subsequently he abandoned the entry, and it was cancelled in 1895. This action was brought to recover the sum so paid. *Held*, that, as he had voluntarily abandoned the entry, he had no cause of action for the sum which he paid to initiate it. *United States* v. *Healey*, 160 U. S. 136, examined and shown not to be inconsistent with this decision. *United States* v. *Ingram*, 327.

See Tax and Taxation, 4, 5, 8.

RAILROAD.

1. Under the circumstances stated in the finding of facts, Lynde acquired a good title, (as between himself and the mortgagor company and the companies which succeeded it by consolidation,) to the thirty-six bonds purchased by him, as well as the right to claim the benefit of the mortgage executed to Parkhurst. *Pittsburgh, Cincinatti &c. Railway Co.* v. *Long Island Loan & Trust Co.*, 493.

2. The state court having adjudged that there was no rule of law arising out of the public policy of the State, as manifested by state legislation, that required it to deny to the holders of those bonds the rights and privileges pertaining to commercial paper, purchased in good faith, in the ordinary course of business; and in view of the fact that the lien attending the thirty-six bonds purchased by Lynde did not arise after

the institution of the foreclosure suits, but had its origin in the execution and delivery of the Parkhurst mortgage and the authentication by the trustee of the bonds named in it; and in view of the further fact that the trustee in the prior mortgage was not made a party to the foreclosure suits, and was not bound by the decree; under the well settled rule that a sale of real estate under judicial proceedings concludes no one who is not, in some form, a party to such proceedings, this court holds, that the pendency of the foreclosure suits did not interfere with the negotiation or transfer of the bonds secured by the prior Parkhurst mortgage; that the decree in those suits did not impair in any degree the lien created by that mortgage; that the purchase of the bonds by Lynde could not be regarded as hostile to the possession taken of the property embraced by the Roosevelt mortgage for the purpose of selling it in satisfaction of the debts secured thereby; and that the state court did not fail to give due effect to the several decrees in the Circuit Courts in the Roosevelt foreclosure suits, when it held that those decrees did not prevent the defendant in error from claiming the benefit of the lien created by the mortgage to Parkhurst to secure the payment of the bonds purchased by Lynde. *Ib.*

See Constitutional Law, A, 14;
Tax and Taxation, 4, 5, 8.

RECEIVER.

See Louisiana, Local Law of.

RENT.

See Louisiana, Local Law of.

RES JUDICATA.

If a party neither pleads nor proves what has been decided by a court of competent jurisdiction in some other case between himself and his antagonist, he cannot insist upon the benefit of *res judicata*, and this, although such prior judgment may have been rendered by the same court. *United States* v. *Bliss*, 321.

SALVAGE.

See Admiralty.

SERVICE OF PROCESS.

See Corporation, 5 to 9.

SET-OFF.

See Louisiana, Local Law of.

SMUGGLING.

1. An indictment based upon that portion of Rev. Stat. § 3082, which makes it an offence to "fraudulently or knowingly import or bring into the United States, or assist in doing so, any merchandise contrary to law," charging that the defendant, on a date named, "did knowingly, wilfully and unlawfully import and bring into the United States, and did assist in importing and bringing into the United States, to wit, into the port of Philadelphia," diamonds of a stated value, "contrary to law, and the provisions of the act of Congress in such cases made and provided" is clearly insufficient, as the allegations are too general, and do not sufficiently inform the defendant of the nature of the accusation against him. *Keck* v. *United States*, 434.
2. An indictment for a violation of Rev. Stat. § 2865, which charges that the defendant "did knowingly, wilfully and unlawfully, and with intent to defraud the revenue of the United States, smuggle and clandestinely introduce into the United States, to wit, into the port of Philadelphia," certain "diamonds" of a stated value, which should have been invoiced and duty thereon paid or accounted for, but which, to the knowledge of the defendant and with intent to defraud the revenue, were not invoiced nor the duty paid or accounted for, sufficiently describes the offence to make it clear what articles were charged to have been smuggled. *Ib.*
3. Under the tariff act of 1894, c. 349, diamonds were subject to duty. *Ib.*
4. Mere acts of concealment of merchandise, on entering the waters of the United States, do not, taken by themselves, constitute smuggling or clandestine introduction. *Ib.*
5. The offence described in Rev. Stat. § 2865, is not committed by an act done before the obligation to pay or account for the duties arises. *Ib.*
6. The word "smuggling" had a well understood import at common law; and, in the absence of a particularized definition of its significance in the statute creating it, resort may be had to the common law for the purpose of arriving at its meaning. *Ib.*
7. A review of the principal statutes enacted in this country regulating the collection of customs duties establishes that, so far as they embraced legislation designed to prevent the evasion of duties, they proceeded upon the theory of the English law on the same subject; that is, that they forbade all the acts which were deemed by the lawmaker means to the end of smuggling, or clandestinely introducing dutiable goods into the country in violation of law, and which were likewise considered as efficient to enable the offender to reap the benefits of his wrongful acts; and that therefore they forbade and prescribed penalties for everything which could precede smuggling or follow it, without specifically making a distinct and separate offence designated as smuggling, or clandestine introduction. *Ib.*

8. Whether we consider the testimony of the captain alone, or all the testimony contained in the record, it unquestionably establishes that there was no passage of the package of diamonds through the lines of the customs authorities, but, on the contrary, that the package was delivered to the customs officer on board the vessel itself, at a time when or before the obligation to make entry and pay the duties arose, and that the offence of smuggling was not committed within the meaning of the statute. *Ib.*

STATUTE.

A. Construction of Statutes.

When a later statute is a complete revision of the subject to which the earlier statute related, and the new legislation was manifestly intended as a substitute for the former legislation, the prior act must be held to have been repealed. *United States* v. *Ranlett and Stone*, 133.

See Usury, 1, 2.

B. Statutes of the United States.

See Circuit Courts of Appeal, 1, 2;
Claims against the United States;
Constitutional Law, 2, 16;
Criminal Law;
Customs Duties, 1, 3, 7, 8, 9;
District of Columbia, 1;
Jurisdiction, B, 5, 16;
Limitation, Statutes of;
Public Land, 1, 2;
Smuggling, 1, 2, 3, 5, 7;
Tax and Taxation, 4, 5, 9.

C. Statutes of States and Territories.

Alabama. *See* Constitutional Law, A, 15.
Kansas. *See* Jurisdiction, B, 4.
Missouri. *See* Constitutional Law, A, 16.
Ohio. *See* Constitutional Law, A, 13.
South Carolina. *See* Lease.
Tennessee. *See* Constitutional Law, 6, 10; Corporation, 9.
Virginia. *See* Constitutional Law, A, 4, 5.
Washington Territory. *See* Constitutional Law, A, 1.
West Virginia. *See* Tax and Taxation, 3.
Wisconsin. *See* Constitutional Law, A, 2.

TAX AND TAXATION.

1. The collection of taxes assessed under the authority of a State is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but

that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case within some recognized head of equity jurisdiction. *Pittsburgh &c. Railway* v. *Board of Public Works of West Virginia*, 32.

2. A railroad bridge across a navigable river forming the boundary line between two States is not, by reason of being an instrument of interstate commerce, exempt from taxation by either State upon the part within it. *Ib.*
3. A railroad bridge is taxable under the Code of West Virginia of 1891, c. 29, § 67; and, although the board of public works assesses separately the whole length of the railroad track within the State, and that part of the bridge within the State, yet, if the railroad company does not, as allowed by that section, apply to the auditor to correct any supposed mistake in the assessment, nor appeal, within thirty days after receiving notice of the decision of the board, to the circuit court of the county, and the officers of the State make no attempt to interfere with the company's possession and control of its real estate, nor, until after the expiration of the thirty days, either to impose a penalty for delay in paying the taxes, or to levy on personal property for non-payment of them, the company cannot maintain a bill in equity in a court of the United States to restrain the assessment and collection of any part of the taxes. *Ib.*
4. The provision in Sec. 2 of the act of July 27, 1866, c. 278, 14 Stat. 292, 294, which exempts from taxation within the Territories of the United States, the right of way granted by the act to the Atlantic & Pacific Railroad Company, operates to exempt from such taxation the land itself to the extent to which it is made by the act subject to such right of way and all structures erected thereon. *New Mexico* v. *United States Trust Co.*, 171.
5. In so deciding the court does not question the rule of construction declared in *Vicksburg, Shreveport & Pacific Railroad* v. *Thomas*, 116 U. S. 665, and followed in *Yazoo &c. Railroad* v. *Thomas*, 132 U. S. 174; *Wilmington & Weldon Railroad* v. *Alsbrook*, 146 U. S. 279; *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301; *Norfolk & Western Railroad* v. *Pendleton*, 156 U. S. 667; and *Covington &c Turnpike Co.* v. *Sandford*, 169 U. S. 578, but rests the present decision simply on the terms of the statute. *Ib.*
6. When a notice is duly given to landowners by municipal authorities in full accordance with the provisions of the statutes of the State touching the time and place for determining the amounts assessed upon their lands for the cost of street improvements, such notice, so authorized by the legislature, will not be set aside as ineffectual on account of the shortness of the time unless the case is a clear one. *Bellingham Bay &c. Railroad Co.* v. *New Whatcom*, 314.
7. In view of the character of the improvements in this case, of the

residence of the plaintiff in error, of the almost certainty that it must have known of the improvements, and of the action of the Supreme Court of the State, ruling that the notice was sufficient, it is held by this court to have been sufficient. *Ib.*

8. Before proceedings for the collection of taxes, sanctioned by the Supreme Court of a State, are stricken down in this court, it must clearly appear that some one of the fundamental guarantees of right contained in the Federal Constitution has been invaded. *Ib.*

9. This bill was filed to enjoin the enforcement of a tax, imposed under the laws of Montana, upon lands granted by Congress by the act of July 2, 1864, c. 217, to the Northern Pacific Railroad Company, and acquired by the appellant on the reorganization of the company. There was a controversy as to the character of the lands taxed — whether mineral or non-mineral. The lands have never been patented or certified to the company; the company claimed that it had only a potential interest therein; and the relief sought was that the lands be adjudged not subject to such assessment and taxation until the issue of patents therefor by the United States. It was stipulated in the court below that the sole question desired to be submitted was, whether the lands described in the bill were subject to taxation under the laws of the United States and of the State of Montana. The court sustained the taxation. In this court the position of the company was stated by its counsel as follows: "The question for decision is not whether the railway company has any interest in its grant, or in the lands in question, which may be subjected to some form of taxation; but whether the *lands themselves* are taxable: whether the present assessment which is on the lands themselves can be sustained. We may well concede that the taxing power is broad enough to reach in some form the interest of the railway company in its grant. That interest becomes confessedly a vested interest upon construction of the road. It then becomes property and may well be held subject to some form of taxation. But here the legislature authorizes a tax upon, and the assessor makes an assessment upon, the land itself by specific description: the whole legal title to each parcel being specifically and separately assessed. When the plain fact is, that neither the assessor, or the railway company can place its hand on a single specific parcel and say whether it belongs to the company or to the United States." *Held*, that although the question submitted by stipulation had been somewhat changed in form, the same result must be reached, and the judgment of the court below be affirmed. *Northern Pacific Railway Co.* v. *Myers*, 589.

See CONSTITUTIONAL LAW, A, 5, 11, 12, 13;
JURISDICTION, B, 3;
LOUISIANA, LOCAL LAW OF.

TERRITORY.

See CONSTITUTIONAL LAW, A, 14.

TORT.

See Corporation;
Evidence, 3, 4, 5, 6.

TROVER.

See Public Land, 1.

USURY.

1. Usury is a statutory offence, and Federal courts, in dealing with such a question, must look to the laws of the State where the transaction took place, and follow the construction put upon such laws by the state courts. *Missouri, Kansas and Texas Trust Co.* v. *Krumseig*, 351.
2. When a State thinks that the evils of usury are best prevented by making usurious contracts void, and by giving a right to the borrowers to have such contracts unconditionally nullified and cancelled by the courts, as in this case, such a view of public policy, in respect to contracts made within the State and sought to be enforced therein, is obligatory on the Federal courts, whether acting in equity, or at law; and the local law, consisting of the applicable statutes, as construed by the Supreme Court of the State, furnishes the rule of decision. *Ib.*
3. These views are not applicable to cases arising out of interstate commerce where the policy to be enforced is Federal. *Ib.*
4. Whether the contract between the parties in this case was, as a contract of life insurance, void because the defendant had not complied with the statutes of Minnesota, has not been considered by the court. *Ib.*

WILL.

Mrs. Ruth died on the 16th of June, 1892, having on the first day of the same month and year executed both a will and a codicil. After revoking all previous wills and codicils and directing the payment of debts and funeral expenses, the will bequeathed all the real, personal or mixed property to the American Security and Trust Company for the benefit of a granddaughter, Sophia Yuengling Huston, during her natural life. On the death of the granddaughter the will provided that the trust should end, and that it should be the duty of the trustee to pay over to the Hospital of the University of Pennsylvania the sum of five thousand dollars for purposes stated, and to deliver all the "residue and remainder of the estate of whatever kind" to the Home for Incurables, to which corporation such residue was bestowed for a stated object. The codicil was as follows: I, Mary Eleanor Ruth, being of sound and disposing mind and memory and understanding, do make and publish this codicil to my last will and testament — I hereby revoke and annul the bequest therein made by me to the Home

for Incurables at Fordham, New York city, in the State of New York, and I hereby give and bequeath the five thousand dollars (heretofore in my will bequeathed to said Home for Incurables) to my friend Emeline Colville, the widow of Samuel Colville, now living in New York city, said bequest being on account of her kindness to my son and myself during his and my illness and my distress. *Held*, That the effect of the codicil was to revoke the bequest of five thousand dollars, made by the will in favor of the Hospital of the University of Pennsylvania, and to substitute therefor the legatee named in the codicil. *Home for Incurables* v. *Noble*, 383.