INDEX.

ABATEMENT.

1. An action, pending in the Circuit Court of the United States sitting in Ohio, brought by an injured person as plaintiff, to recover damages for injuries sustained by the negligence of the Baltimore and Ohio Railroad Company in operating its road in Indiana, does not finally abate upon the death of the plaintiff before trial and judgment, but may be revived and prosecuted to judgment by his executor or administrator, duly appointed by the proper court in Ohio. *Baltimore & Ohio Railroad Co.* v. *Joy*, 226.
2. A right given by a statute of a State to revive a pending action for personal injuries in the name of the personal representative of a deceased plaintiff is not lost upon the removal of the case into a Federal court. *Ib.*
3. Whether a pending action may be revived in a Federal court upon the death of either party, and proceed to judgment, depends primarily upon the laws of the jurisdiction in which the action was commenced, and in the present case is not affected in any degree by the fact that the deceased received his injuries in Indiana. *Ib.*

ADMIRALTY.

1. Undoubtedly there was jurisdiction in admiralty in this case, in the courts below. *Smith* v. *Burnett*, 430.
2. Although a wharfinger does not guarantee the safety of vessels coming to his wharves, he is bound to exercise reasonable diligence in ascertaining the conditions of the berths thereat, and, if there is any dangerous obstruction, to remove it, or to give due notice of its existence to vessels about to use the berths; at the same time the master is bound to use ordinary care, and cannot carelessly run into danger. *Ib.*
3. This court is unable to decide that the Court of Appeals of the District of Columbia was not justified in holding, on the evidence, that appellants were liable for negligence and want of reasonable care, and that the master was free from contributory negligence, and therefore affirms the decree of the Court of Appeals which agreed with the trial court on the facts. *Ib.*
4. The Golden Rule, a Canadian topsail schooner with twelve sails, all

of which with a small exception she was carrying, was sailing off Nantucket Shoals at a speed of seven knots an hour, in a fog so dense that the hull of another vessel could not be seen more than a few hundred feet off. The Chattahoochee, an American steamer, came up at an angle in the opposite direction with a speed of ten or twelve knots an hour. The schooner was sounding a foghorn, and the steamer a steam whistle. When the steam whistle was heard on the schooner she kept on her way at full speed. When the foghorn was heard on the steamer, order was given and obeyed to stop and reverse, and the wheel was put hard-a-port. Upon seeing the schooner the steamship engines were put at full speed ahead, for the purpose of clearing it; but a collision took place, and the schooner sank almost immediately. The sunken vessel had a valuable cargo on board. It was held below that both vessels were in fault for immoderate speed, and the District Court, ruling that the damages should be divided, made a decree respecting such division which was modified by the Court of Appeals as hereafter stated. *Held:* (1) That there can be no doubt as to the liability of the steamer, and, as no appeal was taken on her part she is estopped from denying that liability here; (2) That the schooner, also, was proceeding at an immoderate speed, and was properly condemned therefor; and the cases bearing upon the question of what is immoderate speed in a sailing vessel, under such circumstances, are cited and reviewed; (3) That the Court of Appeals did not err in deducting half the value of the cargo from half the value of the sunken schooner, and in limiting a recovery to the difference between these values; and in reaching this conclusion the court cites and reviews several cases, in deciding which the act known as the Harter Act has been considered and applied. *The Chattahoochee*, 540.

See PRACTICE.

ATTACHMENT.

The plaintiff in error, a Texas corporation, commenced an action, in a court of Oklahoma, against the defendant in error, a Missouri corporation, and caused a writ of attachment to be issued and levied upon five thousand head of cattle, claimed to be the property of the Missouri corporation. After such levy, service was made upon one Pierce as garnishee of the Missouri corporation. Pierce answered, denying that he was indebted to or held property of that company, and further set up an agreement under the provisions of which he had shipped to the pastures of that company a large number of cattle, the ownership to remain in him until full payment for the cattle. The cattle levied upon were of this number. He also set up a notice from one Stoddard of an assignment to him of the contract by the Missouri company. He further set up that he was

entitled to the possession of the cattle, and asked that they should be returned to him with damages. With the consent of both sides Pierce was appointed receiver of the cattle, and then service was made upon the Missouri corporation by publication, had in compliance with requirements of law. Stoddard then filed an interplea, setting up rights of other parties. This was demurred to, but no action was had on the demurrer. The receiver sold the cattle, paid himself in full and reported to the court that he had a balance in his hands, subject to its order. Then the Missouri company filed pleas to the jurisdiction of the court, and other pleas were filed, setting up claims to the balance in the receiver's hands. The Missouri company also set up that Pierce, by becoming receiver, had abandoned his claim to the ownership of the cattle. The trial court held that the territorial act, authorizing the probate judge, as to debts not yet due, to order an attachment in the absence of the district judge, was unconstitutional and void, and ordered the action dismissed. The Supreme Court of the Territory held that the court below was wrong in this respect, but affirmed its judgment on the ground that an actual levy was necessary in order to give the court jurisdiction, and there had been none. The case being brought here, the Missouri corporation set up that this court was without jurisdiction, because the intervenors in the trial court had not been made parties to the appeal. *Held:* (1) That it was not necessary to make the intervenors parties; (2) That property of the Missouri company had been levied on under the writ of attachment, and that the decision of the Supreme Court of the Territory to the contrary was wrong; (3) That the Oklahoma statute, requiring an affidavit in its support, as a prerequisite to the issuance of a writ of attachment, does not involve the discharge of a judicial function, but is the performance of a ministerial duty; (4) That the court acquired jurisdiction of the defendant corporation by constructive service, by foreign attachment, without its consent; (5) That the territorial statute, authorizing the issue of a writ of attachment against the property of a non-resident defendant, is not repugnant to the Fourteenth Amendment to the Constitution. *Central Loan & Trust Co.* v. *Campbell Commission Co.*, 84.

CASES AFFIRMED OR FOLLOWED.

See CLAIMS AGAINST THE UNITED STATES, 3; HABEAS CORPUS, 1; JURISDICTION, A, 4; C, 2; MUNICIPAL BONDS, 2; PUBLIC LAND, 8; STATUTE A, 1.

CLAIMS AGAINST THE UNITED STATES.

1. Claims for depredations on the Pottawatomie Indians committed by Indians were properly allowed by the Secretary of the Interior under

the treaty of August 7, 1868, and are valid claims. *United States* v. *Navarre*, 77.

2. There is nothing in this case to take it out of the settled rule that the findings of the Court of Claims in an action at law determine all matters of fact. *Collier* v. *United States*, 79.
3. *Marks* v. *United States*, 164 U. S. 297, followed to the point that when a petition, filed in the Court of Claims, alleges that a depredation was committed by an Indian or Indians belonging to a tribe in amity with the United States it becomes the duty of that court to inquire as to the truth of that allegation; and if it appears that the tribe, as a tribe, was engaged in actual hostilities with the United States, the judgment of the Court of Claims must be that the allegation of the petition is not sustained, and that the claim is not one within its province to adjudicate. *Ib.*
4. It was the manifest purpose of Congress, in the act of March 3, 1891, c. 538, to empower the Court of Claims to receive and consider any document on file in the Departments of the Government or in the courts having a bearing upon any material question arising in the consideration of any particular claim for compensation for Indian depredation, the court to allow the documents such weight as they were entitled to have. *Ib.*
5. In 1850 Price, a purser in the Navy and fiscal agent for that Department, advanced $75,000 to the Government, from his private fortune, to meet emergencies. His right to receive it back was questioned, and was not settled until 1891, when Congress passed an act directing the Secretary of the Treasury to adjust his account "on principles of equity and justice," and to pay to him "or to his heirs" the sum found due him on such adjustment. It was adjusted by the Secretary, and in August, 1892, it was decided that there was due to Price from the United States $76,204.08. Meanwhile Forrest had recovered in the courts of New Jersey, of which Price was a citizen and resident, a judgment against him for $17,000. Forrest died in 1860 without having collected the amount of this judgment. In 1874 his widow, having been appointed administratrix of his estate, caused the judgment to be revived by writ of *scire facias* and asked for the appointment of a receiver. Price appeared and answered, and then the cause slept until August, 1892, when Mrs. Forrest filed a petition, stating that money was about to be paid to Price by the United States on his claim, and asking for the appointment of a receiver of the Treasury draft, and that Price be ordered to endorse it to the receiver, to the end that the amount might be received by him as an officer of the court and disposed of according to law. A receiver was appointed, gave bond and entered on his duties. Price died in 1894. He left no will. No letters of administration were granted, but the New Jersey court appointed an administrator *ad prosequendum*. The bill in this case was then filed. The relief sought was, the revival of the

bill of 1874, that the administrator *ad prosequendum* be made a party, and that the other parties be enjoined from receiving the money from the Treasury, and that the receiver be authorized to receive and dispose of it under the orders of the court. The heirs of Price set up their claims to it. The court held that the plaintiffs were entitled to the moneys in the Treasury and its judgment was affirmed by the highest court in the State. *Held*, that the receiver, and not the heir, was the person entitled to recover the money from the United States; and that the case did not come within the prohibitory provisions against assignments of claims against the United States, contained in Rev. Stat. § 3477. *Price* v. *Forrest*, 410.

6. Under the clause in the act of March 3, 1885, c. 341, regarding claims "on behalf of citizens of the United States, on account of depredations committed, chargeable against any tribe of Indians by reason of any treaty between such tribe and the United States," no claim can be received and considered by the Court of Claims which is presented on behalf of a person who was not a citizen of the United States when the act was passed, but who, a foreigner, had then duly declared his intention to become such citizen, and did subsequently become such. *Yerke* v. *United States*, 439.

See COURT OF CLAIMS.

COMMON CARRIER.

The Texas and Pacific Railway Company received at Bonham, in Texas, 467 bales of cotton for transportation to Liverpool. It was to be taken by the company over its road to New Orleans, and thence to Liverpool by a steamship company, to which it was to be delivered by the railway company at its wharf in New Orleans. Each bill of lading contained the following, among other clauses: "The terms and conditions hereof are understood and accepted by the owner, viz.: (1) That the liability of the Texas and Pacific Railway Company, in respect to said cotton, and under this contract, is limited to its own line of railway, and will cease, and its part of this contract be fully performed upon delivery of said cotton to its next connecting carrier; and in case of any loss, detriment or damage done to or sustained by said cotton before its arrival and delivery at its final destination, whereby any legal liability is incurred by any carrier, that carrier alone shall be held liable therefor in whose actual custody the cotton shall be at the time of such damage, detriment or loss." The cotton reached New Orleans in safety, and was unloaded at the wharf, and the steamship company was notified; but before it was taken possession of by that company it was destroyed by fire at the wharf. The owners in Liverpool having brought suit against the railway company to recover the value of the cotton, that company, on the facts detailed at length in the opinion of the court, contended that the cotton had

passed out of its possession into that of the steamship company; or, if the court should hold otherwise, that its liability as common carrier had ceased, and that it was only liable as a warehouseman. *Held*, that the goods were still in the possession of the railway company at the time of their destruction; and that that company was liable to their owners for the full value as a common carrier, and not as a warehouseman. *Texas & Pacific Railway Co.* v. *Clayton*, 348.

CONSTITUTIONAL LAW.

1. Section 12 of ordinance No. 10, of Eureka City, providing that "No person shall move any building or frame of any building, into or upon any of the public streets, lots or squares of the city, or cause the same to be upon, or otherwise to obstruct the free passage of the streets, without the written permission of the mayor, or president of the city council, or in their absence a councillor. A violation of this section shall on conviction, subject the offender to a fine of not to exceed twenty-five dollars," is not in conflict with the provisions of the Constitution of the United States. *Wilson* v. *Eureka City*, 32.
2. The petitions for rehearing rest upon a misapprehension of the decision in this case, the purport of which was to preserve to the Canal Company the use of the surplus waters created by the dam and the canal; but, after they had flowed over the dam and through the sluices, and had found their way into the unimproved bed of the stream, the rights and disputes of the riparian owners must be determined by state courts. *Green Bay & Mississippi Canal Co.* v. *Patten Paper Co.*, 179.
3. While the state courts may legitimately take cognizance of controversies between riparian owners concerning the use and apportionment of waters flowing in the non-navigable parts of the stream, they cannot interfere, by mandatory injunction or otherwise, with the control of the surplus water power incidentally created by the dam and canal now owned and operated by the United States. *Ib.*
4. A resident in and citizen of Chicago in Illinois, was the owner of certain lots in Des Moines in Iowa, which were assessed by the municipal authorities in that place to an amount beyond their value, for the purpose of paving the street upon which they abutted. The statutes of Iowa authorized a personal judgment against the owner in such cases. He filed a petition to have the assessment set aside; to obtain an injunction against further proceedings for the sale of the property; and to obtain a judgment that there was no personal liability against him for the excess. This petition contained no allegation attacking the validity of the assessment by reason of any violation of the Federal Constitution, and there was nothing in the record to raise such Federal right or claim beyond the mere allegation in the petition that "the amount of said tax is greater than the reasonable market value of said lots, whether considered singly or to-

gether; the assessment against each particular lot being greater in amount than the value of such particular lot, and the aggregate assessment being greater in amount than the reasonable market value of all of said lots taken together; and that said defendants are seeking to enforce as against plaintiff not merely a sale of said lots but also to compel plaintiff to pay the full amount of said tax regardless of whatever sum said lots may be sold for, and regardless of the actual value of the same." The contractor for the pavement set up his right to a judgment on certificates given him for the work which had been done, which were made a lien upon the abutting lots. The trial court dismissed the petition, and gave judgment in favor of the contract. In the Supreme Court of the State it was assigned as error that "the court erred in holding and deciding that plaintiff was personally liable to said Des Moines Brick Manufacturing Company for so much of said special tax or assessment as could not or would not be realized by a sale of the sixty lots in question on special execution, and in ordering and adjudging that a general execution should issue against plaintiff and in favor of said Des Moines Brick Manufacturing Company for the balance of such tax or assessment; and further that, as plaintiff was at all times a non-resident of the State of Iowa and had no personal notice or knowledge of the assessment proceedings, that the imposition of a personal liability against him, in excess of the value of all the lots, was not due process of law and was in contravention of the provisions on that subject of the Fourteenth Amendment to the Constitution of the United States, as well as in contravention of the provisions of the constitution of the State of Iowa on the same subject." *Held* that this court was confined to the consideration of the question as to the validity of the personal judgment against the plaintiff in error, and that, without deciding what the effect of the proceedings would have been, if the plaintiff had been a resident in Iowa, the State had no power to enact a statute authorizing an assessment upon real estate for a local improvement, and imposing upon its owner, a non-resident of the State, a personal liability to pay such assessment. *Dewey* v. *Des Moines*, 193.

5. In making provision for feeding the inmates of the soldiers' home in Ohio, in accordance with the legislation of Congress in that respect, and under the direction of the board of managers, the governor of the house is engaged in the internal administration of a Federal institution, and the state legislature has no constitutional power to interfere with the management which is provided for it by Congress, nor with the provisions made by Congress for furnishing food to the inmates, nor does the police power of the State enable it to prohibit or regulate the furnishing of any article of food approved by the officers of the home, by the board of managers and by Congress. *Ohio* v. *Thomas*, 276.

6. Federal officers who are discharging their duties in a State, and who are engaged in superintending the internal government and management of a Federal institution, under the lawful direction of its board of managers and with the approval of Congress, are not subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority. *Ib.*

7. The statute of Ohio relating to railroad companies, in that State which provides that "Each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village, containing over three thousand inhabitants, for a time sufficient to receive and let off passengers; if a company, or any agent or employé thereof, violate, or cause or permit to be violated, this provision, such company, agent or employé shall be liable to a forfeiture of not more than one hundred nor less than twenty-five dollars, to be recovered in an action in the name of the State, upon the complaint of any person, before a justice of the peace of the county in which the violation occurs, for the benefit of the general fund of the county; and in all cases in which a forfeiture occurs under the provisions of this section, the company whose agent or employé caused or permitted such violation shall be liable for the amount of the forfeiture, and the conductor in charge of such train shall be held, *prima facie*, to have caused the violation," is not, in the absence of legislation by Congress on the subject, repugnant to the Constitution of the United States, when applied to interstate trains, carrying interstate commerce through the State of Ohio on the Lake Shore and Michigan Southern Railway. *Lake Shore & Michigan Southern Railway Co.* v. *Ohio*, 285.

8. The act of the legislature of Arkansas of March 25, 1889, entitled an act to provide for the protection of servants and employés of railroads, is not in conflict with the provisions of the Constitution of the United States. *St. Louis, Iron Mountain & St. Paul Railway Co.* v. *Paul*, 404.

9. When an act of Congress is claimed to be unconstitutional, the presumption is in favor of its validity, and it is only when the question is free from any reasonable doubt that this court should hold an act of the law-making power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest. *Nicol* v. *Ames*, 509.

10. Whether a general law can be made applicable to the subject-matter, in regard to which a special law is enacted by a territorial legislature, is a matter which rests in the judgment of the legislature itself. *Guthrie National Bank* v. *Guthrie*, 528.

11. The statute in question in this case creates a special tribunal for hearing and deciding upon claims against a municipal corporation, which have no legal obligation, but which the legislature thinks

have sufficient equity to make it proper to provide for their investigation, and payment when found proper, and it does not in any way regulate the practice in courts of justice, and it is indisputably within the power of the territorial legislature to pass it, and it does not infringe upon the Seventh Amendment to the Constitution. *Ib.*

12. The mere grant for a designated time of an immunity from taxation does not take it out of the rule subjecting such grant to the general law retaining the power to amend or repeal, unless the granting act contain an express provision to that effect. *Citizens' Savings Bank* v. *Owensboro*, 636.

13. The act of the legislature of Kentucky of February 14, 1856, and the act of May 12, 1884, c. 1412, incorporating the Citizens' Savings Bank of Owensboro, and the act of May 17, 1886, commonly known as the Hewitt Act, and other acts referred to, did not create an irrevocable contract on the part of the State, protecting the bank from other taxation, and therefore the taxing law of Kentucky of November 11, 1892, c. 108, did not violate the contract clause of the Constitution of the United States. *Ib.*

14. The provision in the act of the legislature of Michigan, No. 90, of the year 1891, amending the general railroad law, that one thousand-mile tickets shall be kept for sale at the principal ticket offices of all railroad companies in this State or carrying on business partly within and partly without the limits of the State, at a price not exceeding twenty dollars in the Lower Peninsula and twenty-five dollars in the Upper Peninsula; that such one thousand-mile tickets may be made non-transferable, but whenever required by the purchaser they shall be issued in the names of the purchaser, his wife and children, designating the name of each on such ticket, and in case such ticket is presented by any other than the person or persons named thereon, the conductor may take it up and collect fare, and thereupon such one thousand-mile ticket shall be forfeited to the railroad company; that each one thousand-mile ticket shall be valid for two years only after date of purchase, and in case it is not wholly used within the time, the company issuing the same shall redeem the unused portion thereof, if presented by the purchaser for redemption within thirty days after the expiration of such time, and shall on such redemption be entitled to charge three cents per mile for the portion thereof used, is a violation of that part of the Constitution of the United States which forbids the taking of property without due process of law, and requires the equal protection of the laws. *Lake Shore & Michigan Southern Railway Co.* v. *Smith*, 684.

15. In so holding the court is not thereby interfering with the power of the legislature over railroads, as corporations or common carriers, to so legislate as to fix maximum rates, to prevent extortion or undue charges, and to promote the safety, health, convenience or proper protection of the public; but it only says that the particular legis-

lation in review in this case does not partake of the character of legislation fairly or reasonably necessary to attain any of those objects, and that it does violate the Federal Constitution as above stated. *Ib.*

See ATTACHMENT;
TAX AND TAXATION, 3, 4, 5, 6, 13, 14, 15, 17.

CONTRACT.

1. An agreement in writing between a mining company and a machinist stated that while in its employ he was seriously hurt under circumstances which he claimed, and it denied, made it liable to him in damages; that six months after the injury, both parties being desirous of settling his claim for damages, the company agreed to pay him regular wages and to furnish him with certain supplies while he was disabled, and carried out that agreement for six months, at the end of which, after he had resumed work, it was agreed that the company should give him such work as he could do, and pay him wages as before his injury, and this agreement was kept by both parties for a year; and then, in lieu of the previous agreements, a new agreement was made that his wages "from this date" should be a certain sum monthly, and he should receive certain supplies, and he on his part released the company from all liability for his injury, and agreed that this should be a full settlement of all his claims against the company. *Held*, that the last agreement was not terminable at the end of any month at the pleasure of the company, but bound it to pay him the wages stipulated, and to furnish him the supplies agreed, so long as his disability to do full work continued; and that, if the company discharged him from its service without cause, he was entitled to elect to treat the contract as absolutely and finally broken by the company, and, in an action against it upon the contract, to introduce evidence of his age, health and expectancy of life, and, if his disability was permanent, to recover the full value of the contract to him at the time of the breach, including all that he would have received in the future as well as in the past if the contract had been kept, deducting however any sum that he might have earned already or might thereafter earn, as well as the amount of any loss that the defendant sustained by the loss of his services without its fault. *Pierce* v. *Tennessee Coal &c. Railroad Co.*, 1.

2. Under the act of March 8, 1895, of the legislature of the Territory of Arizona, relating to convict labor and the leasing of the same, the board of control thereby created and given charge of all charitable, penal and reformatory institutions then existing, or which might thereafter be created in the Territory, could not dispense with the bond required by the statute to be given by the person or persons leasing the labor of the convicts, for the faithful performance of their

contract; and no contract made by the board leasing the labor of the convicts could become binding upon the Territory, until a bond, such as the statute required, was executed by the lessee and approved by the board. *Nugent* v. *Arizona Improvement Co.*, 338.

3. In this case as it appears that no such bond was executed, the plaintiff was not in a position to ask relief by mandamus. *Ib.*

CORPORATION.

The Supreme Court of Iowa having repeatedly decided that in that State the fact that a corporation of Iowa contracts a debt in excess of its charter or statutory limitation does not render the debt void, but, on the contrary, such debt is merely voidable, and is enforceable against the corporation and those holding under it, and gives rise only to a right of action on the part of the State because of the violation of the statute, or entails a liability on the officers of the corporation for the excessive debts so contracted, this court holds itself bound by those decisions, without determining whether as an independent question, it would decide that the issue of stock by a corporation, in excess of a statutory inhibition, is not void, but merely voidable. *Sioux City Terminal Railroad & Warehouse Co.* v. *Trust Co. of North America*, 99.

COURT OF CLAIMS.

1. Under the act of June 16, 1880, c. 244, the Court of Claims has jurisdiction of an action to recover an excess of payment for lands within the limits of a railroad grant, which grant was, after the payment, forfeited by act of Congress for nonconstruction of the road. *Medbury* v. *United States*, 492.

2. When in such case, by reason of the negligence of the railroad company for many years to construct its road, Congress enacts a forfeiture of the grant, the Government is under no obligation to repay the excess of price paid by the purchaser of such lands in consequence of their being within the limits of the forfeited grant. *Ib.*

DEPUTY MARSHAL.

See FEES, 2.

DISTRICT ATTORNEY.

See FEES, 1.

EQUITY.

See PRACTICE.

ESTOPPEL.

See LACHES

EVIDENCE.

See VOLUNTARY GIFT, 1, 2.

EXCEPTION.

Although the bill of exceptions in this case does not state, in so many words, that it contains all the evidence, it sufficiently appears that it does contain all, and this court can inquire on this record whether the Circuit Court erred in giving a peremptory instruction for the defendant. *Gunnison County Commissioners* v. *Rollins*, 255.

FEES.

1. In proceedings taken by a District Attorney of the United States, by order of the Attorney General at the request of the Secretary of War, and conducted under directions of the latter, to secure the condemnation of private lands within the limits of his district for the purpose of erecting fortifications thereon for the use of the United States, he is performing his official duties as District Attorney of the United States, and is not entitled to any extra or special compensation for them. *United States* v. *Johnson*, 363.
2. The authority conferred upon the Attorney General by the act of March 3, 1891, c. 542, 26 Stat. 985, to offer rewards for the detection and prosecution of crimes against the United States, preliminary to the indictment, empowered him to authorize the Marshal of the Northern District of Florida to offer a reward for the arrest and delivery of a person accused of the committal of a crime against the United States in that district, the reward to be paid upon conviction; and a deputy marshal, who had complied with all the conditions of the offer and of the statute, was entitled to receive the amount of the reward offered. *United States* v. *Matthews*, 381.

FOX RIVER WATER POWER.

See CONSTITUTIONAL LAW, 2, 3.

FRAUD.

The facts in this case, as detailed in the statement of the case and the opinion of the court, show that a gross fraud was committed by the plaintiffs in error against the defendants, to dispossess them of the property in question; and in view of the peculiar circumstances of the case, the fraud, so glaring, the original and persistent intention of McIntire through so many years to make himself the owner of the property, the utter disregard shown of the rights of the plaintiff as well as of the mortgagee, the false personation of Emma Taylor, and the

fact that the decree can do no harm to any innocent person, this court holds that these facts do away with the defence of laches, and demand of the court an affirmance of the action of the Court of Appeals of the District of Columbia, granting the relief prayed for by the plaintiffs below. *McIntire* v. *Pryor*, 38.

See VOLUNTARY GIFT.

HABEAS CORPUS.

1. This is one of the cases in which it is proper to issue a writ of *habeas corpus* from the Federal court under the rule as stated in *Ex parte Royall*, 117 U. S. 241, instead of awaiting the slow process of a writ of error from this court to the highest court of the State where the decision could be had. *Ohio* v. *Thomas*, 276.
2. Where a court has jurisdiction of an offence and of the accused, and the proceedings are otherwise regular, a conviction is lawful although the judge holding the court may be only an officer *de facto;* and the validity of the title of such judge to the office, or his right to exercise the judicial functions, cannot be determined on a writ of *habeas corpus;* this rule is well settled, and is applicable to this case. *Ex parte Henry Ward*, 452.
3. The title of a person acting with color of authority, even if he be not a good officer in point of law, cannot be collaterally attacked. *Ib.*

INDIANS.

See CLAIMS AGAINST THE UNITED STATES, 1, 3, 6.

INSOLVENCY.

1. With regard to the operation of a voluntary, or common law assignment of his property by an insolvent debtor for the benefit of his creditors upon property situated in other States, there is a general consensus of opinion that it will be respected, except so far as it comes in conflict with the rights of local creditors, or with the laws or public policy of the State in which it is sought to be enforced. *Security Trust Co.* v. *Dodd, Mead & Co.*, 624.
2. With respect to statutory assignments of the property of an insolvent debtor, the prevailing American doctrine is, that a conveyance under a state insolvent law operates only upon property within the territory of that State, and with respect to property in another State it is given only to such effect as the laws of that State permit, and in general must give way to claims of creditors pursuing their remedies there. *Ib.*
3. The execution and delivery by Merrill & Company to the Security and Trust Company in Minnesota of an assignment of their property for the benefit of their creditors, made under the insolvent laws of that

State, and the acceptance thereof by the assignee and its qualification thereunder, and the notice thereof to Mudge & Sons in Massachusetts, who held personal property belonging to the said assignors, did not vest in the assignee such a title to that property that it could not, after such notice, be lawfully seized by attachment in an action instituted in Massachusetts by creditors of the insolvents who were citizens of New York, and who had notice of the assignment, but had not proved their claims against the assigned estate, nor filed a release thereof. *Ib.*

See NATIONAL BANK, 1.

INTERNAL REVENUE.

See REBATE OF TAXES.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 7.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. A receiver of a railroad in a State, appointed by a Circuit Court of the United States, is not authorized by the fact of such appointment to bring here for review a judgment in a court of the State against him, when no other cause exists to give this court jurisdiction. *Bausman* v. *Dixon*, 113.
2. On the facts stated by the court in its opinion, it declines to hold that it affirmatively appears from the record that a decision could not have been had in the Supreme Court of the State, which is the highest court in the State; and this being so, it holds that the writ of error must be dismissed. *Mullen* v. *Western Union Beef Co.*, 116.
3. As the controversy in this case involved the question on what basis dividends in insolvency should have been declared, and therein the enforcement of the trust in accordance with law, this court has jurisdiction of it in equity. *Merrill* v. *National Bank of Jacksonville*, 131.
4. On the facts stated in the opinion, the court holds that the plaintiff in error, a New York corporation, having, of its own motion, sought to litigate its rights in a state court of Louisiana, and having been given the opportunity to do so, no Federal question arises out of the fact that the litigation there resulted unsuccessfully, and without the decision of a Federal question which might give this court jurisdiction; following *Eustis* v. *Bolles*, 150 U. S. 370, in holding that when a state court has based its decision on a local or state question, the logical course here is to dismiss the writ of error. *Remington Paper Company* v. *Watson*, 443.

5. On a writ of error to a state court this court cannot take jurisdiction under the allegation that a contract has been impaired by a decision of that court, when it appears that the state court has done nothing more than construe its own constitution and statutes existing at the time when the bonds were issued, there being no subsequent legislation touching the subject. *Turner* v. *Wilkes County*, 461.
6. This court is bound by the decision of a state court in regard to the meaning of the constitution and laws of its own State, and its decision upon such a state of facts raises no Federal question; though other principles obtain when the writ of error is to a Federal court. *Ib.*
7. After the hearing of the former appeal in this case, 170 U. S. 1, and after the decree of this court determining the rights of the parties, and remanding the case to the Court of Claims with instructions to enter a new judgment for the net amount actually received by the Government for the Kansas lands, without interest, less the amount of lands upon the basis of which settlement was made with the Tonawandas, and other just deductions, etc., and after the Court of Claims had complied with this mandate, in accordance with its terms, a motion on the part of the United States to this court to direct the Court of Claims to find further facts comes too late. *United States* v. *New York Indians*, 464.
8. As the judgment of the Court of Claims now appealed from was in exact accordance with the mandate of this court, the appeal from it is dismissed. *Ib.*
9. The sixth section of the act of March 3, 1891, c. 517, did not change the limit of two years as regards cases which could be taken from Circuit and District Courts of the United States to this court, and that act did not operate to reduce the time in which writs of error could issue from this court to state courts. *Allen* v. *Southern Pacific Railroad Co.*, 479.
10. As a reference to the opinion of the Supreme Court of California makes patent the fact that that court rested its decision solely upon the construction of the contract between the parties to this action which forms its subject, and decided the case wholly independent of the Federal questions now set up; and as the decree of the court below was adequately sustained by such independent, non-Federal question, it follows that no issue is presented on the record which this court has power to review. *Ib.*
11. In ascertaining the jurisdictional amount on an appeal to this court, it is proper to compute interest as part of the claim. *Guthrie National Bank* v. *Guthrie*, 528.
12. The court has the power in the absence of statutory provisions for notice to parties, to make rules regarding it. *Ib.*
13. This court has jurisdiction to review the final judgment of the state court in this case, for the purpose of ascertaining whether it deprived the defendants of any right, privilege or immunity set up by them

under the Constitution of the United States. *Henderson Bridge Co.* v. *Henderson City*, 592.

14. The question raised by the eighth and ninth assignments of error, relating to alleged violations of the Fourteenth Amendment to the Constitution of the United States, are not presented by the record, and do not result by necessary intendment therefrom, and are therefore not considered by the court, under the well-settled rules that the attempt to raise a Federal question for the first time after a decision by the court of last resort of a State is too late; and that where it is disclosed that an asserted Federal question was not presented to the state court or called in any way to its attention, and where it is not necessarily involved in the decision of the state court, such question will not be considered by this court. *Citizens' Savings Bank* v. *Owensboro*, 636.

See ABATEMENT; CONSTITUTIONAL LAW, 2, 8; PRACTICE; TAX AND TAXATION, 12.

B. JURISDICTION OF CIRCUIT COURTS OF APPEAL.

A Circuit Court of Appeals is without jurisdiction to review a decree of a Circuit Court when that decree, as in this case, was not a final one. *Guarantee Co.* v. *Mechanics' Savings Bank & Trust Co.*, 582.

See JURISDICTION, C, 10, 11.

C. JURISDICTION OF CIRCUIT COURTS.

1. The Circuit Court of the United States for the Eastern District of Louisiana has jurisdiction of a suit brought in it by a citizen of New York to recover from the city of New Orleans on a number of certificates, payable to bearer, made by the city, although the petition contains no averment that the suit could have been maintained by the assignors of the claims or certificates sued upon. *New Orleans* v. *Quinlan*, 191.
2. *Newgass* v. *New Orleans*, 33 Fed. Rep. 196, approved in holding that "A Circuit Court shall have no jurisdiction for the recovery of the contents of promissory notes or other choses in action brought in favor of assignees or transferees except over, (1) suits upon foreign bills of exchange; (2) suits that might have been prosecuted in such court to recover the said contents, if no assignment or transfer had been made; (3) suits upon choses in action payable to bearer, and made by a corporation." *Ib.*
3. The instruments sued on in this case being payable to bearer, and having been made by a corporation, are expressly excepted by the Judiciary Act of August 13, 1888, c. 866, from the general rule prescribed in it that an assignee or subsequent holder of a promissory note or chose in action could not sue in a Circuit or District Court of

the United States, unless his assignor or transferrer could have sued in such court. *Lake County Commissioners* v. *Dudley*, 243.

4. From the evidence of Dudley himself, the plaintiff below, it is clear that he does not own any of the coupons sued on, and that his name is being used with his own consent, to give jurisdiction to the Circuit Court to render judgment for persons who could not have invoked the jurisdiction of a Federal court, and the trial court, on its own motion, should have dismissed the case, without considering its merits. *Ib.*
5. Under the act of August 13, 1888, c. 866, a Circuit Court of the United States has no jurisdiction, either original, or by removal from a state court, of a suit as one arising under the Constitution, laws or treaties, of the United States, unless that appears by the plaintiff's statement to be a necessary part of his claim. *Third St. & Suburban Railway Co.* v. *Lewis*, 457.
6. If it does not appear at the outset that a suit is one of which the Circuit Court, at the time its jurisdiction is invoked, could properly take cognizance, the suit must be dismissed; and lack of jurisdiction cannot be supplied by anything set up by way of defence. *Ib.*
7. When jurisdiction originally depends upon diverse citizenship the decree of the Circuit Court of Appeals is final, though another ground of jurisdiction may be developed in the course of the proceedings. *Ib.*
8. The Circuit Court of the United States sitting in the State of Texas was not bound to treat the judgment of the district court of Brazoria County as if it were a domestic judgment drawn in question in one of the state courts, and to therefore hold that it could not be assailed collaterally, but, on the contrary, it was no more shut out from examining into jurisdiction than is a Circuit Court of the United States sitting in another State, or than are the courts of another State. *Cooper* v. *Newell*, 555.
9. When the jurisdiction of a Circuit Court of the United States depends on diverse citizenship, its decree is made final by the act of March 3, 1891, c. 517, 26 Stat. 826. *Pope* v. *Louisville, New Albany & Chicago Railway Co.*, 573.
10. When an action or suit is commenced by a receiver, appointed by a Circuit Court, to accomplish the ends sought and directed by the suit in which the appointment was made, such action or suit is regarded as ancillary, so far as the jurisdiction of the Circuit Court, as a court of the United States, is concerned; and where the jurisdiction of the main suit is predicated on diversity of citizenship, and the decree therein in the Circuit Court of Appeals therefore becomes final, the judgment and decrees in the ancillary litigation are also final. *Ib.*
11. The suits in which this receiver was appointed were in the nature of creditors' bills, and the only ground of Federal jurisdiction set up in them was diversity of citizenship; and as, if the decrees therein had been passed upon by the Circuit Court of Appeals, its decision would

have been final, the same finality attaches to the decree of the Circuit Court of Appeals in this suit. *Ib.*

D. Jurisdiction of the Court of Claims.

See Claims against the United States, 2.

E. Jurisdiction of Territorial Courts.

Personal service of a summons, made in the Territory of Arizona upon the general manager of a foreign corporation doing business in that Territory, is sufficient service under the laws of the Territory to give its courts jurisdiction of the case. *Henrietta Mining & Milling Co.* v. *Johnson*, 221.

F. Jurisdiction of State Courts.

1. It appearing from the opinion of the Circuit Judge that the various bills in this case were dismissed on the grounds: (1) That the jurisdiction of the Circuit Court could not be maintained because the state court, in the exercise of its general jurisdiction, determined the eligibility of the defendant Florence Blythe to inherit an estate which that court was called upon to distribute under the laws of the State, and that other propositions contended for by the complainants were for the same reason deemed insufficient to take this case out of the general rule that after a court of a State, with full jurisdiction over property in its possession, has finally determined all rights to that property, a court of the United States will not entertain jurisdiction to annul such decree and disturb rights once definitely determined; and (2) That the remedy of complainants, if any, was at law, and not in equity: *Held;* as neither ground went to the jurisdiction of the Circuit Court as a court of the United States, the appeal could not be sustained as within any class mentioned in § 5 of the Judiciary Act of 1891, and if error was committed this was not the proper mode for correcting it. *Blythe* v. *Hinckley*, 501.
2. In 1850 McGrael, a resident citizen in Brazoria County, Texas, brought an action against Newell, who was alleged to be a citizen and resident in that county, to recover several parcels of land. Swett, an attorney at law, appeared for Newell and a verdict was rendered that McGrael recover the tracts, upon which verdict judgment was rendered in his favor, and he went into possession. At the time when that action was brought Newell had ceased to be a citizen of Texas, and had become a citizen of Pennsylvania, from whence he soon removed to the city of New York, and became a citizen of that State, and spent the remainder of his life there and died there. He was never served with process in the action in Texas, no notice of it was given him by publication, he never authorized Swett to appear for

him, and was ignorant of the whole proceeding. In 1890, upon the matter coming to his knowledge, he brought this action in the Circuit Court of the United States for the Eastern District of Texas against persons occupying and claiming part of the land, setting up the above facts, and asking a decree that the judgment of 1850 was null and void, and not binding upon him. He died before trial could be had, and the action proceeded to trial and judgment in the name of his executors. The jury found a verdict in favor of the executors, judgment was rendered accordingly, and an appeal was taken to the Court of Appeals. In answer to a question certified to this court by the Court of Appeals, it is *Held*, that the said judgment of the district court of Brazoria, Texas, which was a court of general jurisdiction, was, under the circumstances stated, subject to collateral attack in the United States Circuit Court for the Eastern District of Texas, sitting in the same territory in which said district court sat, in this suit, between a citizen of the State of New York and a citizen of the State of Texas by evidence *aliunde* the record of the state court. *Cooper* v. *Newell*, 555.

See CONSTITUTIONAL LAW, 2, 3.

LACHES.

Less than two years having elapsed from the payment of the first dividend to the filing of this bill, and the other creditors of the bank not having been harmed by the delay, no presumption of laches is raised, nor can an estoppel properly be held to have arisen. *Merrill* v. *National Bank of Jacksonville*, 131.

MUNICIPAL BONDS.

1. The recitals in the bonds of Gunnison County, the coupons of which are in suit in this case, that they were "issued by the Board of County Commissioners of said Gunnison County in exchange, at par, for valid floating indebtedness of the said county outstanding prior to September 2, 1882, under and by virtue of and in full conformity with the provisions of an act of the general assembly of the State of Colorado, entitled 'An act to enable the several counties of the State to fund their floating indebtedness,' approved February 21, 1881; 'that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond;' that the total amount of the issue does not exceed the limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Gunnison, voting on the question at a general election duly held in said county on the seventh day of November, A.D. 1882," estop the county from asserting, against a

bona fide holder for value, that the bond so issued created an indebtedness in excess of the limit prescribed by the constitution of Colorado. *Gunnison County Commissioners* v. *Rollins*, 255.

2. This case is controlled by the judgment in *Chaffee County* v. *Potter*, 142 U. S. 355, which the court declines to overrule. *Ib.*
3. The plaintiff corporation was a *bona fide* holder, when this suit was brought, of some of the bonds sued for in it. *Ib.*

MUNICIPAL CORPORATION.

See TAX AND TAXATION, 6.

NATIONAL BANK.

1. A secured creditor of an insolvent national bank may prove and receive dividends upon the face of his claim as it stood at the time of the declaration of insolvency, without crediting either his collaterals, or collections made therefrom after such declaration, subject always to the proviso that dividends must cease when, from them and from collaterals realized, the claim has been paid in full. *Merrill* v. *National Bank of Jacksonville*, 131.
2. A State is wholly without power to levy any tax, either direct or indirect, upon national banks, their property, assets or franchises, except when permitted to do so by the legislation of Congress. *Owensboro National Bank* v. *Owensboro*, 664.
3. Section 5219 of the Revised Statutes is the measure of the power of States to tax national banks, their property or their franchises, that power being confined to a taxation of the shares of stock in the names of the shareholders, and to an assessment of the real estate of the bank. *Ib.*
4. The taxing law of the State of Kentucky, under the provisions of which the tax in controversy in this case was imposed, is beyond the authority conferred by Congress on the States, and is void for repugnancy to that act. *Ib.*
5. The tax here complained of having been assessed on the franchise or intangible property of the corporation, was not within the purview of the authority conferred by the act of Congress, and was therefore illegal. *Ib.*

See TAX AND TAXATION, 1, 2.

PARENT AND CHILD.

See VOLUNTARY GIFT, 1, 2.

PRACTICE.

The rule, that successive and concurrent decisions of two courts in the same case upon a mere question of fact are not to be reversed unless

clearly shown to be erroneous, is equally applicable in equity and in admiralty. *Towson* v. *Moore*, 17.

PUBLIC LAND.

1. A record in the Department at Washington of the approval by the President of a deed made by an Indian to convey lands held by him subject to the provision in the treaty of Prairie du Chien that it was never to be leased or conveyed without the permission of the President, is notice to all concerned from the time it was made, and is similar, in effect, to a patent issued by the President for lands that belong to the Government, which is not required to be recorded in the county where the land is located. *Lomax* v. *Pickering*, 26.
2. The recording of a deed of such land, made without previous approval of the President, is notice of the grantee's title to subsequent purchasers; and, when approved, operates to divest the title of the grantor as against a subsequent grantee. *Ib.*
3. The provisions in the act of March 2, 1889, c. 412, 25 Stat. 980, 1005, with regard to honorably discharged Union soldiers and sailors were intended only to give them an equal right with others to acquire a homestead within the territory described by the act, but did not operate to relieve them from the general restriction as to going into the territory imposed upon all persons by the provisions of the act. *Calhoun* v. *Violet*, 60.
4. Under the act of September 28, 1850, c. 84, 9 Stat. 519, known as the Swamp Land Act, the legal title to land passes only on delivery of a patent, and as the record in this case discloses no patent, there was no passing of the legal title from the United States, whatever equitable rights may have vested. Until the legal title to land passes from the Government, inquiry as to all equitable rights comes within the cognizance of the land department. *Brown* v. *Hitchcock*, 473.
5. Although cases may arise in which a party is justified in coming into the courts of the District of Columbia to assert his rights as against a proceeding in the land department, or when that department refuses to act at all, yet, as a general rule, power is vested in the department to determine all questions of equitable right and title, upon proper notice to the parties interested, and the courts should be resorted to only when the legal title has passed from the Government. *Ib.*
6. When a patent of public lands is obtained by inadvertence and mistake, to the injury of a person who had previously initiated the steps required by law to obtain possession and ownership of such land, the courts, in a proper proceeding, will divest or control the title thereby acquired, either by compelling a conveyance to such person, or by quieting his title. *Duluth & Iron Range Railroad Co.* v. *Roy*, 587.
7. The claimant against the patent must so far bring himself within the

laws as to entitle him, if not obstructed or prevented, to complete his claim. *Ib.*

8. *Ard* v. *Brandon*, 156 U. S. 537, is decisive of this case. *Ib.*

See COURT OF CLAIMS.

RAILROAD.

See COMMON CARRIER;
CONSTITUTIONAL LAW, A, 7, 14, 15.

REBATE OF TAXES.

The act of August 28, 1894, c. 349, does not grant a right *in præsenti* to all persons who may, after the passage of the law, use alcohol in the arts, or in any medicinal or other like compounds, to a rebate or repayment of the tax paid on such alcohol, but the grant was conditioned on use, in compliance with regulations to be prescribed, in the absence of which regulations the right did not so vest as to create a cause of action by reason of the unregulated use. *Dunlap* v. *United States*, 65.

STATUTE.

A. GENERALLY.

1. The provisions in the Revised Statutes of Arizona of 1887, c. 42, § 3, concerning the commencement of process for attachment, are inconsistent with those concerning the same subject contained in the act of March 6, 1891; and although chapter 42 is not expressly repealed by the act of 1891, it must be held to be repealed by the later act on the principle laid down in *United States* v. *Tynen*, 11 Wall. 88, 92, that "when there are two acts on the same subject the rule is to give effect to both if possible; but if the two are repugnant in any of their provisions, the latter act without any repealing clause operates, to the extent of the repugnancy, as a repeal of the first." *Henrietta Mining & Milling Co.* v. *Gardner*, 123.

2. When the language of a statute is clear, it needs no construction. *Yerke* v. *United States*, 439.

See TAX AND TAXATION, 5.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 4;
CLAIMS AGAINST THE UNITED STATES, 4, 5, 6;
COURT OF CLAIMS, 1;
FEES, 2;
JURISDICTION, A, 9;
JURISDICTION, C, 3, 5, 9;
NATIONAL BANK, 3;
PUBLIC LAND, 3, 4;
REBATE OF TAXES;
SUGAR BOUNTY.

C. STATUTES OF STATES AND TERRITORIES.

Arizona. *See* CONTRACT, 2;
STATUTE A, 1.
Arkansas. *See* CONSTITUTIONAL LAW, A, 8.
Colorado. *See* MUNICIPAL BONDS, 1.
Illinois. *See* TAX AND TAXATION, 7.
Iowa. *See* CONSTITUTIONAL LAW, A, 4, 5.
Kentucky. *See* CONSTITUTIONAL LAW, A, 13;
NATIONAL BANK, 4;
TAX AND TAXATION, 4.
Michigan. *See* CONSTITUTIONAL LAW, A, 14.
Ohio. *See* CONSTITUTIONAL LAW, A, 7.

SUGAR BOUNTY.

The manufacturer of the sugar, and not the producer of the sugar cane, is the person entitled to the "bounty on sugar" granted by the act of March 2, 1895, c. 189, to "producers and manufacturers of sugar in the United States." *Allen* v. *Smith*, 389.

TAX AND TAXATION.

1. The system of taxation adopted in Ohio was not intended to be unfriendly to, or to discriminate against owners of shares in national banks, and, in its practical operation it does not materially do so; and there is nothing upon the face of these statutes which shows such discrimination. *First National Bank of Wellington* v. *Chapman*, 205.
2. The term "moneyed capital" in the act of Congress fixing limits to state taxation on investments in national banks, Rev. Stat. § 5219, does not include capital which does not come into competition with the business of national banks, and exemptions from taxation, made for reasons of public policy, and not as an unfriendly discrimination against investments in national bank shares, cannot be regarded as forbidden by those statutes. *Ib.*
3. This court is bound by the construction put by the highest court of the State of Kentucky upon the provisions in the Constitution of that State, relating to exemptions from taxation of property used for "public purposes," however much it may doubt the soundness of the interpretation. *Covington* v. *Kentucky*, 231.
4. The provision in the act of the legislature of Kentucky of May 1, 1886, c. 897, that "the said reservoir or reservoirs, machinery, pipes, mains and appurtenances, with the land on which they are situated," which the city of Covington was, by that act authorized to acquire and construct, "shall be and remain forever exempt from state, county and city tax," did not, in view of the provision in the act of February 14, 1856, that "all charters and grants of or to corporations, or amend-

ments thereof, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent shall be therein plainly expressed," which was in force at the time of the passage of the act of May 1, 1886, tie the hands of the Commonwealth of Kentucky, so that it could not, by legislation, withdraw such exemption, and subject the property to taxation. *Ib.*

5. Before a statute — particularly one relating to taxation — should be held to be irrepealable, or not subject to amendment, an intent not to repeal or amend must be so directly and unmistakably expressed as to leave no room for doubt; and it is not so expressed when the existence of the intent arises only from inference or conjecture. *Ib.*
6. A municipal corporation is a public instrumentality, established to aid in the administration of the affairs of the State, and neither its charters, nor any legislative act regulating the use of property held by it for governmental or public purposes, is a contract within the meaning of the Constitution of the United States: and if the legislature choose to subject to taxation property held by a municipal corporation of the State for public purposes, the validity of such legislation, so far as the National Constitution is concerned, cannot be questioned. *Ib.*
7. The tax authorized by the act of June 13, 1898, by the board of trade or exchanges upon the sale of property is not a direct tax, nor a tax upon the business itself which is so transacted, but is a duty upon the facilities made use of and actually employed in the transaction of the business, separate and apart from the business itself, and is a constitutional exercise of the powers of taxation granted to Congress. *Nicol* v. *Ames*, 509.
8. A sale at an exchange forms a proper basis for a classification which excludes all sales made elsewhere from taxation. *Ib.*
9. The means actually adopted by Congress, in the act in question, do not illegally interfere with or obstruct the internal commerce of the States, and are not a restraint upon that commerce, so far as to render illegal the means adopted. *Ib.*
10. There is no difference, for the purposes of this decision, between the Union Stock Yards and an exchange or board of trade. *Ib.*
11. The city of Henderson had authority to tax so much of the property of the Henderson Bridge Company as was permanently between low-water mark on the Kentucky shore and low-water mark on the Indiana shore of the Ohio River, it being settled that the boundary of Kentucky extends to low-water mark on the Indiana shore. *Henderson Bridge Co.* v. *Henderson City*, 592.
12. The declaration of the state court that Kentucky intended by its legislation to confer upon the city of Henderson a power of taxation for local purposes coextensive with its statutory boundary is binding in this court. *Ib.*
13. In order to bring taxation imposed by a State within the scope of the

Fourteenth Amendment of the National Constitution, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation, by its necessary operation, is really spoliation under the guise of exerting the power to tax. *Ib.*

14. The taxation by the city as property of the Bridge Company, of the bridge and its appurtenances within the fixed boundary of the city, between low-water mark on the two sides of the Ohio River, was not a taking of private property for public use without just compensation, in violation of the Constitution of the United States. *Ib.*
15. The Bridge Company did not acquire by contract an exemption from local taxation in respect of its bridge situated between low-water mark on the two shores of the Ohio River. *Ib.*
16. The provision in the city's charter that "no land embraced within the city's limits, and outside of ten-acre lots as originally laid off, shall be assessed and taxed by the city council, unless the same is divided or laid out into lots of five acres or less, and unless the same is actually used and devoted to farming purposes," has no reference to bridges, their approaches, piers, etc. *Ib.*
17. The power of Kentucky to tax this bridge is not affected by the fact that it was erected under the authority or with the consent of Congress. *Ib.*

See CONSTITUTIONAL LAW, A, 13;
NATIONAL BANK, 2, 3, 4, 5;
REBATE OF TAXES.

VOLUNTARY GIFT.

1. In the case of a child's gift of its property to a parent, the circumstances attending the transaction should be vigilantly and carefully scrutinized by the court, in order to ascertain whether there has been undue influence in procuring it; but it cannot be deemed *prima facie* void; the presumption is in favor of its validity; and, in order to set it aside, the court must be satisfied that it was not the voluntary act of the donor. *Towson* v. *Moore*, 17.
2. The same rule as to the burden of proof applies with equal, if not greater, force to the case of a gift from a parent to a child, even if the effect of the gift is to confer upon a child, with whom the parent makes his home and is in peculiarly close relations, a larger share of the parent's estate than will be received by other children or grandchildren. *Ib.*