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ADMIRALTY.

1. The question in this case is as to the adequacy of the proof offered on behalf of the Government and the captors to show that the Newfoundland was trying to violate the blockade of Havana, and the court is of opinion that it does not attain to that degree which affords a reasonable assurance of the justice of the sentence of forfeiture in the court below — that it raises doubts and suspicions and makes probable cause for the capture of the ship and justification of her captors, but not forfeiture. *The Newfoundland*, 97.
2. It appearing in this case that both the charterer and the vessel had been previously engaged in bringing away refugees from Cuba, and were chargeable with notice of the military and naval operations against that island, that such facts were of common knowledge at the port from which she sailed, and that intercourse with Cuban ports was dangerous; and it appearing from a preponderance of evidence that both the charterer and master of the vessel had knowledge of the blockade: *held*, that the vessel was properly condemned. *The Adula*, 361.
3. If an examination of the ship's papers and the testimony of the crew, taken *in preparatorio*, make a case for condemnation, an order for further proof is only made where the interests of justice clearly require it: *held*, in this case that there was no error in denying the motion of the claimant for further proof. *Ib.*
4. No general rule of international law exempts mail ships from capture as prize of war. *The Panama*, 535.
5. A Spanish mail steamship, carrying mail of the United States from New York to Havana at the time of the breaking out of the recent war with Spain, was not exempt from capture by the sixth clause of the President's proclamation of April 26, 1898. *Ib.*
6. At the time of the breaking out of the recent war with Spain, a Spanish mail steamship was on a voyage from New York to Havana, carrying a general cargo, passengers and mails, and having mounted on board two breech-loading Hontoria guns of nine centimetre bore, and one Maxim rapid-firing gun, and having also on board twenty Remington rifles and ten Mauser rifles, with ammunition for all the guns

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and rifles, and thirty or forty cutlasses. Her armament had been put on board more than a year before, for her own defence, as required by her owner's mail contract with the Spanish Government, which also provided that, in case of war, that government might take possession of the vessel with her equipment, increase her armament, and use her as a war vessel, and, in these and other provisions, contemplated her use for hostile purposes in time of war. *Held*, that she was not exempt from capture as prize of war by the fourth clause of the President's proclamation of April 26, 1898. *Ib.*

7. The general rule is that in time of war the citizens or subjects of the belligerents are enemies to each other without regard to individual sentiments or dispositions, and that political status determines the question of enemy ownership. *The Benito Estenger*, 568.
8. By the law of prize, property engaged in any illegal intercourse with the enemy is deemed enemy property, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences. *Ib.*
9. Provisions are not, in general, deemed contraband; but they may become so if destined for the army or navy of the enemy, or his ports of naval or military equipment. *Ib.*
10. In dealing with a vessel asserted to be an enemy vessel, the fact of trade with the enemy in supplies necessary for the enemy's forces is of decisive importance. *Ib.*
11. Individual acts of friendship cannot change political status where there is no open adherence to the opposite cause and former allegiance remains apparently unchanged. *Ib.*
12. A consul has no authority by reason of his official station to grant exemption from capture to an enemy vessel; and this vessel was not entitled to protection by reason of any engagement with the United States. *Ib.*
13. In cases of peculiar hardship, or calling for liberal treatment, it is not for the courts, but for another department of the Government, to extend such amelioration as the particular instance may demand. *Ib.*
14. Transfers of vessels *flagrante bello* cannot be sustained if subjected to any condition by which the vendor retains an interest in the vessel or its profits, a control over it, or a right to its restoration at the close of the war. *Ib.*
15. The burden of proof in respect of the validity of such transfers is on the claimant, and the court holds as to the transfer in this case that requirements of the law of prize were not satisfied by the proofs. *Ib.*

See BLOCKADE.

BLOCKADE.

1. A legal blockade may be established by a naval officer acting upon his own discretion, or under direction of superiors, without governmental notification. *The Adula*, 361.

2. In view of the operations being carried on for the purpose of destroying or capturing the Spanish fleet at Santiago de Cuba, and the reduction of that place, it was competent for the Admiral commanding the squadron to establish a blockade there, and at Guantanamo, as an adjunct to such operations, and such blockade was valid as against all vessels having notice thereof. *Ib.*
3. It appearing that Guantanamo was eighteen miles from the mouth of Guantanamo Bay and was still occupied by the enemy, *held*, that although the American troops occupied the mouth of the bay, the blockade was still operative as to vessels bound to the city of Guantanamo. *Ib.*
4. The legal effect of a lawful and sufficient blockade is a closing of the port, and an interdiction of the entrance of all vessels of whatever nationality or business. *Ib.*
5. The sailing of a vessel with a premeditated intent to violate a blockade, is *ipso facto* a violation of the blockade, and renders her subject to capture from the moment she leaves the port of departure. *Ib.*
6. If a master has actual notice of a blockade, he is not at liberty even to approach the blockaded port for the purpose of making inquiries. *Ib.*
7. If a neutral vessel be chartered to an enemy, she becomes to a certain extent and *pro hac vice* an enemy's vessel, and a notice to her charterer of the existence of a blockade is a notice to the vessel. *Ib.*

CANALS.

See PUBLIC LAND, 11–14.

CASES AFFIRMED OR FOLLOWED.

1. The judgment in this case affirmed upon the authority of *United States* v. *Oregon and California Railroad Company*, 176 U. S. 28; *Wilcox* v. *Eastern Oregon Land Company*, 51.
2. The judgment in this case affirmed upon the authority of *United States* v. *Oregon and California Railroad Company*, 172 U. S. 28, and *Wilcox* v. *Eastern Oregon Land Co.*, Same, 51; *Messinger* v. *Eastern Oregon Land Company*, 58.
3. The reasons for refusing, at October Term, 1898, to dismiss this case on the ground that the appeal to this court was not taken in time, are the same as those set forth in *Allen* v. *Southern Pacific Railroad*, 173 U. S. 479; *Holt* v. *Indiana Manufacturing Co.*, 68.
4. *Walsh* v. *Columbus, Hocking Valley & Athens Railroad Co.*, 176 U. S. 469, followed. *Vought* v. *Columbus, Hocking Valley &c. Railroad Co.*, 481; *Wright* v. *Same*, 481.
5. *Hurtado* v. *California*, 110 U. S. 516, affirmed and followed. *Maxwell* v. *Dow*, 581.

See CONSTITUTIONAL LAW, B, 18;
JURISDICTION, C, 3;
RAILROAD, 11.

CASES DISTINGUISHED.

This case and *Western National Bank* v. *Armstrong*, 152 U. S. 346, distinguished. *Aldrich* v. *Chemical National Bank*, 618.

CHINESE IMMIGRANTS.

Under the act of July 5, 1884, c. 220, 23 Stat. 115, construed in connection with the treaty with China of November 17, 1880, 22 Stat. 826, the wives and minor children of Chinese merchants domiciled in this country may enter the United States without certificates. *United States* v. *Mrs. Gue Lim*, 459.

COMMUNITY PROPERTY.

The statute of Washington Territory of November 14, 1879, providing that one-half of the community property of husband and wife should be subject to the testamentary disposition of the husband or wife, subject respectively to the community debts, and, in default of such testamentary disposition that the share of deceased husband or wife should descend to his or her issue, or, if there was no such issue, should pass to the survivor, does no violation to the Constitution of the United States when applied to such community property held under the statute of that Territory of November 14, 1873, which provided that property acquired after marriage by either husband or wife, except such as might be acquired by gift, bequest, devise or descent, should be common property, of which the husband should have the entire management and control, with the like absolute power of disposition as of his own separate estate. *Warburton* v. *White*, 484.

CONSTITUTIONAL LAW.

A. Constitution of the United States.

1. The bill of complaint on the part of Louisiana against Texas, alleged that the State of Texas had granted to its Governor and its health officer extensive powers over the establishment and maintenance of quarantines over infectious or contagious diseases; that this power had been exercised in a way and with a purpose to build up and benefit the commerce of cities in Texas which were rivals of New Orleans; and it prayed for a decree that "neither the State of Texas, nor her Governor, nor her health officer, have the right, under the cover of an exercise of police or quarantine powers, to declare and enforce against interstate commerce, between the State of Louisiana, or any part thereof, and the State of Texas, an absolute embargo, prohibiting the movement and conduct of said commerce, or to make, declare and enforce against places infected with yellow fever or other infectious diseases in the State of Louisiana discriminative quarantine rules or regulations, affecting interstate commerce between the State of Louisi-

ana, or any part thereof, and the State of Texas, different from and more burdensome than the quarantine rules and regulations affecting interstate or foreign commerce between the State of Texas and other States and countries infected with yellow fever and other infectious diseases;" and the bill asked for an injunction, restraining the Texas officials from enforcing the Texas laws in the manner in which they were enforced. *Held:* (1) That in order to maintain jurisdiction of the bill it must appear that the controversy to be determined was a controversy arising directly between the State of Louisiana and the State of Texas, and not a controversy in vindication of the grievances of particular individuals; (2) that the gravamen of this bill was not a special and peculiar injury, such as would sustain an action by a private person, but that the State of Louisiana presented herself in the attitude of *parens patriæ*, trustee, guardian or representative of all her citizens; (3) that the bill does not set up facts which show that the State of Texas has so authorized or confirmed the alleged action of her health officer as to make it her own, or from which it necessarily follows that the two States are in controversy within the meaning of the Constitution; (4) that the court was unable to hold that the bill could be maintained as presenting a case of controversy between a State and citizens of another State; (5) that the bill could not be maintained as against the health officer alone, on the theory that his conduct was in violation of or in excess of a valid law of the State. MR. JUSTICE WHITE concurred in the result, MR. JUSTICE HARLAN concurred in the result, but dissented from some of the propositions contained in the opinion of the court: as did also MR. JUSTICE BROWN. *Louisiana* v. *Texas*, 1.

2. The decision in *Blake* v. *McClung*, 172 U. S. 239, referred to; and it is held that the judgment now under review was not in conformity with the opinion and mandate in that case — the court adjudging, as it had adjudged in the previous case, that when the general property and assets of a private corporation, lawfully doing business in a State, are in the course of administration by the courts of such State, creditors who are citizens of other States are entitled, under the Constitution of the United States, to stand *in all respects* 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. *Blake* v. *McClung*, 59.

3. A law of Nebraska permitting the prosecution of felonies by information is not in violation of the Constitution of the United States. *Bolln* v. *Nebraska*, 83.

4. Whatever be the limitations upon the power of a territorial government, it becomes entitled, upon the admission of such Territory as a State, to all the rights of dominion and sovereignty belonging to the original States, and stands upon an equal footing with them in all respects. *Ib.*

5. An objection that a defendant was denied due process of law in being refused a jury trial upon a plea in abatement, cannot be raised here, when no violation of the Fourteenth Amendment was set up until after the cause had been decided by the Supreme Court of the State. *Ib.*

6. The provision in section 1 of chapter 74 of the Laws of Kansas of 1891, authorizing certain first-class cities to take in described tracts of land in territory adjoining or touching the city limits and make them a part of the city by ordinance, and providing that "nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes, when the same is not owned by any railroad or other corporation" does not conflict with the provisions of the Constitution of the United States, when exercised by such a city to take in lands belonging to a railroad company which are not used for agricultural purposes, but are occupied by the company for railroad purposes. *Clark* v. *Kansas City*, 114.

7. The power of Congress to pass laws for the navigation of public rivers, and to prevent any and all obstructions therein, cannot be questioned. *United States* v. *Bellingham Bay Boom Co.*, 211.

8. When the Attorney General acts under the authority conferred by the river and harbor act of September 19, 1890, c. 907, he has the right to call upon the court, upon proper proofs being made, to enjoin the continuance of any obstruction not authorized by statute, and the court has jurisdiction, and it is its duty to decide whether the existing obstruction is or is not affirmatively authorized by law. *Ib.*

9. In such inquiry the court is bound to decide whether the boom, as existing is authorized by any law of the State, when such law is claimed to be a justification for its creation or continuance. *Ib.*

10. There is no doubt that the boom in question in this case violates the statute under which it was built, because it does not allow free passage between the boom and the opposite shore for boats or vessels as provided for in the state law. *Ib.*

11. The constitutional provision that full faith and credit shall be given in each State to the judicial proceedings in other States, does not preclude inquiry into the jurisdiction of the court, in which the judgment is rendered, over the subject-matter or the parties affected by it, or into the facts necessary to give such jurisdiction. *Thormann* v. *Frame*, 350.

12. The provision in the statute of Minnesota for 1893, c. 151, authorizing the Governor of the State when it is made to appear that there has been a gross undervaluation of taxable property by the assessors for any county in the State, to appoint a board to revalue and reassess it, which board shall, after due examination prepare a list of all such undervalued property, of the year or years in which it was so underassessed, the amount of the assessment and the actual and true value thereof for which it should have been so assessed, does no violation to the Four-

teenth Amendment to the Constitution of the United States, and does not deprive the owner of lands, so reassessed at an advanced value, of his lands without due process of law. *Weyerhaueser* v. *Minnesota*, 550.

13. The liability imposed upon stockholders in corporations by the provision in the constitution of the State of Kansas that "dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder, and such other means as shall be provided by law; but such individual liabilities shall not apply to railroad corporations, nor corporations for religious or charitable purposes" and by the statutes of that State which are referred to in the opinion of the court in this case, though statutory in origin, is contractual in its nature; and an action on this liability, not being one to enforce a penal statute of Kansas, but only to secure a private remedy, can be maintained in any court of competent jurisdiction, whether Federal or state. *Whitman* v. *Oxford National Bank*, 559.
14. The decision in *Hurtado* v. *California*, 110 U. S. 516, that the words "due process of law" in the Fourteenth Amendment to the Constitution of the United States do not necessarily require an indictment by a grand jury in a prosecution by a State for murder, has been often affirmed, and is now reaffirmed and applied to this case. *Maxwell* v. *Dow*, 581.
15. The privileges and immunities of citizens of the United States do not necessarily include all the rights protected by the first eight amendments to the Federal Constitution against the powers of the Federal Government. *Ib.*
16. The trial of a person accused as a criminal by a jury of only eight persons instead of twelve, and his subsequent imprisonment after conviction do not abridge his privileges and immunities under the Constitution as a citizen of the United States and do not deprive him of his liberty without due process of law. *Ib.*
17. Whether a trial in criminal cases not capital shall be by a jury composed of eight instead of twelve jurors, and whether, in case of an infamous crime, a person shall be only liable to be tried after presentment or indictment by a grand jury, are proper to be determined by the citizens of each State for themselves, and do not come within the Fourteenth Amendment to the Constitution so long as all persons within the jurisdiction of the State are made liable to be proceeded against by the same kind of procedure, and to have the same kind of trial, and the equal protection of the laws is secured to them. *Ib.*
18. A plaintiff, after the recovery of a judgment against a Kansas corporation in the courts of Kansas, and the return of an execution unsatisfied, can maintain an action in any court of competent jurisdiction against a stockholder of the corporation to recover in satisfaction of his judgment an amount not exceeding the par value of the defend-

ant's stock. *Whitman* v. *Oxford National Bank, ante*, 559, followed to this point. *Hancock National Bank* v. *Farnum*, 640.

19. The action of the Supreme Court of Rhode Island in failing to recognize such right in the plaintiff in error can be revised by proceeding in error in this court. *Ib.*

20. The judgment rendered in the Kansas court is in that State conclusive against the corporation, as well as binding upon the stockholder, and, under the Constitution and laws of the United States when attempted to be enforced in their courts. *Ib.*

See INJUNCTION, 1; NON-RESIDENTS, &c., 3; LOG BOOMING, 2 to 7; PUBLIC LAND, 11; RAILROAD, 12, 13, 14.

B. CONSTITUTION OF STATES.

See CONSTITUTIONAL LAW, A, 1, 13, 17.

CONTRACT.

ee PUBLIC LAND, 11; RAILROAD, 15.

CONTRIBUTORY NEGLIGENCE.

See RAILROAD, 6.

CORPORATION.

See MORTGAGE.

COURT AND JURY.

See RAILROAD, 2, 4, 6.

CRIMINAL LAW.

See CONSTITUTIONAL LAW, A, 3, 14, 15, 16, 17.

CUSTOMS DUTIES.

1. The seizure of importations of teas purchased after the approval of the act of March 2, 1897, c. 358, entitled "An act to prevent the importation of impure and unwholesome tea," and the establishment of regulations and standards thereunder, publicly promulgated and known to complainants, because falling below the standards prescribed, could inflict no other injury than what it must be assumed was anticipated, and the interposition of a court of equity cannot properly be invoked, under such circumstances, to determine in advance whether complainants, if they imported teas of that character, could escape the conse-

quences on the ground of the invalidity of the law. *Cruickshank* v. *Bidwell*, 73.

2. Tapioca flour is not a preparation fit for use as starch, and under the tariff act of October 1, 1890, c. 1244, paragraph 720, is entitled to free entry. *Chew Hing Lung* v. *Wise*, 156.
3. The designation of an article, *eo nomine*, either for duty or as exempt from duty, must prevail over words of a general description which might otherwise include the article specially designated. *Ib.*

DISTRICT OF COLUMBIA.

1. A judgment of the Court of Claims, under the act of June 16, 1880, c. 243, in favor of the claimant, against the District of Columbia, upon a certificate of the board of audit of the District, in an action commenced in 1880, is not affected by the provision in the act of July 5, 1884, c. 227, forbidding the payment of such certificates, not presented for payment within one year from the date of the passage of the latter act. *Roberts* v. *United States*, 221.
2. The evident purpose of the act of August 13, 1894, c. 279, was to give the balance of interest upon the certificates between 3.65 and 6 per cent to the original holders of the certificates, or their assignees, the interest upon which had been paid only at the former rate. *Ib.*
3. The right of the relator as assignee having been admitted, it is no longer open to inquiry. *Ib.*
4. If a public officer of the United States refuses to perform a mere ministerial duty, imposed upon him by law, mandamus will lie to compel him to do his duty. *Ib.*
5. In this case, as the duty of the Treasurer of the United States to pay the money in question was ministerial in its nature, and should have been performed by him on demand; mandamus was the proper remedy for failure to do so. *Ib.*

EVIDENCE.

See MEXICAN GRANT, 2, 3, 4, 5.

EXECUTOR AND ADMINISTRATOR.

1. The bare appointment of an executor or administrator of a deceased person by the courts of one State cannot be held, on principle or authority, to foreclose inquiry as to the domicil of the deceased in the courts of another State. *Thormann* v. *Frame*, 350.
2. The general rule is that administration may be granted in any State or Territory where unadministered personal property of a deceased person is found, or real property subject to the claim of any creditor of the deceased. *Ib.*

FRAUD.

See MORTGAGE.

HUSBAND AND WIFE.

See COMMUNITY PROPERTY.

ILLINOIS CENTRAL RAILROAD.

1. The charter of the Illinois Central Railroad Company authorized it to "enter upon and take possession of and use all and singular any lands, streams and materials of every kind for the location of depots and stopping stages for the . . . complete operation of said road;" and granted to it "all such lands, waters, materials and privileges belonging to the State." A subsequent ordinance of the city of Chicago, passed in pursuance of authority granted by the legislature, forbade the driving or placing of any piles, stone, timbers or other obstruction in the harbor of the city, without the permission of the commissioner of public works. *Held:* that a Federal question was presented whether this ordinance impaired or interfered with the charter of the railroad company. *Held* further, that, under its charter, the railroad company had no right to take possession of lands submerged beneath the waters of Lake Michigan. *Held*, also, that the "waters" granted to the railroad company in the second part of the granting clause, were restricted to the "streams" mentioned in the first part, and did not include the waters of Lake Michigan. *Illinois Central Railroad Company* v. *Chicago*, 646.
2. Under another section of the charter, providing that the corporation should not locate its track within any city without the consent of the common council, *held*, that this proviso was not confined to the main track of the road, but included its depots, engine houses and necessary track approaches to the same. *Ib.*
3. This restriction was not limited to the city as bounded at the date of the charter, but applied also to territory subsequently included within the city limits. *Ib.*

INJUNCTION.

1. The mere fact that a law is unconstitutional does not entitle a party to relief by injunction against proceedings in compliance therewith, but it must appear that he has no adequate remedy by the ordinary processes of the law, or that the case falls under some recognized head of equity jurisdiction; and in this case the averments of the complainants' bill did not justify such an interference with executive action. *Cruickshank* v. *Bidwell*, 73.
2. This case comes within the provision of Rev. Stat. § 720 to the effect that no writ of injunction shall be granted by a court of the United States to stay proceedings in any court of a State except in matters of bankruptcy. *United States* v. *Parkhurst-Davis Mercantile Co.*, 317.

INTERSTATE COMMERCE.

See LOG BOOMING, 7.

JURISDICTION.

A. GENERALLY.

See RAILROAD, 14.

B. JURISDICTION OF THE SUPREME COURT.

1. The plaintiff in error executed and delivered to the defendant in error a bond for $4900 (with a mortgage of real estate in Illinois to secure it), payable "in gold coin of the United States of America of the present standard weight and fineness." Default being made, the defendant in error brought suit to foreclose the mortgage, praying judgment according to the bond and mortgage. The plaintiff in error demurred, alleging that the matters and things set out in the bill were contrary to public policy and void, because it was not lawful for the parties to make any money but gold and silver a money tender in payment of the debt, and for other reasons set forth in the statement of the case, below. This was overruled, and, as no further answer was made, the trial court held that the debt and interest, etc., were due amounting to the sum of $5350.76 and decreed that if the sum due was not paid within five days, the mortgaged real estate should be sold. This decree was sustained by the Appellate Court, whose judgment was sustained by the Supreme Court of the State. *Held*, that the state Circuit Court, having simply held plaintiffs in error to respond in lawful money, and entered its decree accordingly, and the Supreme Court having decided that plaintiffs in error could not complain of that decree, because not prejudiced thereby, this was not a decision against any right secured by the Constitution or laws of the United States specially set up or claimed by plaintiffs in error in those courts. *Rae* v. *Homestead Loan and Guarantee Co.*, 121.
2. As the plaintiffs in the Circuit Court claimed in their declaration that the controversy was one that turned on the construction of the laws of the United States, and as both courts below dealt with the case on that assumption, this court has jurisdiction to review the judgment of the Circuit Court of Appeals. *Florida Central & Pennsylvania Railroad Co.* v. *Bell*, 321.
3. In order to maintain a direct appeal to this court from the Circuit Court of the United States under the act of March 3, 1891, c. 517, § 5, as to the jurisdiction of the court below, the record must distinctly and unequivocally show that that court sends up for consideration a single and definite question of its jurisdiction; but this may appear either by the terms of the decree appealed from and of the order allowing the appeal, or by a separate certificate of that court. *Huntington* v. *Laidley*, 668.

4. A certificate of a question of jurisdiction of the Circuit Court of the United States, under the act of March 3, 1891, c. 517, § 5, may be made by the District Judge, even if the decree was rendered by the Circuit Judge. *Ib.*

5. The question whether proceedings concerning the legal or equitable title to land, begun and concluded in the courts of a State, before the commencement of a suit in the Circuit Court of the United States to charge the land with a trust, afford a defence to this suit, is not a question affecting the jurisdiction of that court, but a question affecting the merits of the cause, and as such to be tried and determined by that court in the exercise of its jurisdiction; and if that court, of its own motion, and without hearing the parties on the question of its jurisdiction, enters a final decree dismissing the suit under the act of March 3, 1875, c. 137, § 5, upon the ground that by reason of the proceedings in the courts of the State the suit does not really and substantially involve a dispute or controversy properly within its jurisdiction, and an appeal is taken to this court upon the question of jurisdiction only, under the act of March 3, 1891, c. 517, § 5, the decree must be reversed and the cause remanded for further proceedings. *Ib.*

JURISDICTION OF CIRCUIT COURTS.

1. The complaint of the Manufacturing Company that the assessment upon it of the taxes complained of was illegal, because in effect levied on patents or patent rights, did not involve the construction, or the validity, or the infringement of the patents referred to, or any other question under the patent laws, and was not therefore a suit arising under the patent laws, and the Circuit Court had no jurisdiction of it on that ground. *Holt* v. *Indiana Manufacturing Company*, 68.

2. The provisions in Rev. Stat. § 629, clauses 9 and 16, § 563, and § 1979 brought forward from the act of April 20, 1871, c. 22, refer to civil rights only, and are inapplicable here. *Ib.*

3. Following *United States* v. *Sayward*, 160 U. S. 493, and *Fishback* v. *Western Union Tel. Co.*, 161 U. S. 96, the court holds that the sum of $2000 named in § 1 of the act of March 3, 1887, c. 373, as corrected by the act of August 13, 1888, c. 866, was jurisdictional, and following *The Paquete Habana*, 175 U. S. 677, it holds that this is not affected by the fact that the operation of the act of March 3, 1891, c. 517, was to do away with any pecuniary limitation on appeals directly from the Circuit Court to this court. *Ib.*

4. The warrants and orders sued on in this case were payable to the order of Matthew Carr, deceased, who was a citizen of the State of Louisiana. They were assets of his estate, and the plaintiff in error acquired title to them through a judicial sale made by the sheriff of the parish of Concordia on the 22d day of May, 1868, under authority of an order of the probate court of said parish having the administration of said

estate. The plaintiff in the suit was, at the date of his said purchase, and at the date of filing his original petition herein, a citizen of the State of Louisiana. *Held*, that the plaintiff came within the restriction of § 1 of the act of March 3, 1875: "Nor shall any Circuit or District Court having cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in said court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant, and bills of exchange," and that the Circuit Court below correctly held that jurisdiction could not be sustained. *Glass* v. *Concordia Parish Police Jury*, 207.

5. As the plaintiffs, some of whom were citizens of Florida, and some of whom were citizens of Texas, elected to assert a joint claim to land in Florida in dispute in this case, which was commenced before the Circuit Court of the United States for the Southern District of Florida, and carried by appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and as they recovered a joint judgment for their undivided interests therein, and as the plaintiffs' declaration disclosed no Federal question, the principles settled in the cases cited by the court in its opinion apply, and compel a dismissal of the suit for want of jurisdiction in the Circuit Court. *Florida Central & Peninsular Railroad Co.* v. *Bell*, 321.

See CONSTITUTIONAL LAW, A, 13.

LOG BOOMING.

1. The provision in § 2400 of the statutes of Minnesota of 1894, requiring each surveyor general to survey all logs and timbers running out of any boom now chartered or which may hereafter be chartered by law in his district, refers to corporations organized under a general law, as well as to those whose organization is provided for by special act. *Lindsay & Phelps Company* v. *Mullen*, 126.
2. The business of booming logs on the waters of streams running through the forests of the West is a lawful business, and the Minnesota Boom Company was a lawfully organized corporation for the purpose of doing such lawful business. *Ib.*
3. The statute of Minnesota requiring all logs running out of a boom to be surveyed, inspected and scaled, is compulsory, and such legislation was within the power of the State. *Ib.*
4. The scale bills in this case were certified as required by the laws of the State, and, being so certified, were competent evidence; and, when taken in connection with other evidence, supported the finding of the court that the work was done as alleged. *Ib.*
5. A record in the books of the surveyor general is not preliminary to a right to a lien for such work. *Ib.*
6. The logs of one party passing the boom can be subjected to a lien for surveying and scaling not only his own logs, but also for surveying

and scaling the logs of other parties, as any log owner may send his logs down the river without the use of the boom, taking proper care of them, and if he uses the boom he takes it subject to the conditions prescribed by the legislature. *Ib.*

7. The improvement made in the Mississippi River by the construction of the boom and its works, and the exaction of reasonable charges for the use of such works, including fees of state officials for surveying and scaling, if done under state authority, cannot be considered in any just sense a burden upon interstate commerce. *Ib.*

See CONSTITUTIONAL LAW, A, 7–10.

MANDAMUS.

See DISTRICT OF COLUMBIA, 4, 5.

MEXICAN GRANT.

1. In the hearing of an application for confirmation of an alleged Mexican grant the law casts primarily upon the applicant the duty of tendering such proof as to the existence, regularity and archive record of the grant, as well as his connection with it, such as possession, ownership and other related incidents, of sufficient probative force to create a just inference as to the reality and validity of the grant, before the burden of proof, if at all, can be shifted from the claimant to the United States. *United States* v. *Ortiz*, 422.
2. The surveyor general had authority to make a supplementary investigation, and the supplementary proceedings were properly admitted in evidence. *Ib.*
3. The special qualifications of the witness Tipton, resulting from his great familiarity with the signatures of Armijo and Vigil, qualified him to testify as an expert as to the genuineness of the signatures upon the alleged grant which were claimed to be theirs. *Ib.*
4. Genuine signatures of Armijo and of Vigil, shown to have come from the archives, were properly received in evidence as standards of comparison with the signatures offered to prove the alleged grant. *Ib.*
5. Enlarged photographs of such original signatures were also properly received. *Ib.*
6. After an extended examination of the testimony, the court holds that it is unnecessary to examine or decide upon the questions made as to the form of the alleged grant and other questions, and refrains from expressing an opinion upon all, and holds that the court below erred in confirming the grant. *Ib.*

MORTGAGE.

1 A mortgage, given to secure a large number of bonds, provided that the bonds should become payable if any execution should be sued out against the property of the company, and such company should not

forthwith pay the same. A bondholder brought suit before a justice of the peace upon six coupons. The defendant company consented to a judgment and to the issue of an execution; and upon the same day the trustees gave notice that, by reason of such execution having been unpaid, they declared the principal and interest upon all the bonds to be immediately payable; and at once took possession of the property. *Held:* That, while these proceedings were taken by connivance and consent of the parties, they were not conclusive in a legal sense, as the debt was honestly due and the plaintiff entitled to the judgment. *Held, also:* That while the judgment was obtained for the obvious purpose of enabling the trustees to declare the mortgage to be due, the court would not inquire into the motives of the parties. *Dickerman* v. *Northern Trust Company*, 181.

2. Where a bill is filed to foreclose a mortgage, and the answer admits the bonds secured by such mortgage to have been issued, it is not necessary that the bonds should be put in evidence before a decree of foreclosure and sale. *Ib.*
3. Bonds payable "to the bearer, or, when registered, to the registered owner thereof," and declared to be due on or before a certain date, are negotiable, though redeemable by instalments determined by annual drawings.
4. That the mortgagor corporation may have been organized for the purpose of creating a trust or unlawful combination in restraint of trade, is no defence to the mortgage. *Ib.*
5. The fact that such corporation was organized in pursuance of a fraudulent scheme to defraud certain stockholders who had contributed their properties to the capital stock of the corporation, is no defence to a foreclosure of the mortgage, so far, at least, as the bonds were held by parties innocent of the fraud. *Ib.*
6. Promoters of a corporation are bound to the exercise of good faith toward all the stockholders, to disclose all the facts relating to the property, and to select competent persons as directors, who will act honestly in the interest of the shareholders, and are precluded from taking a secret advantage of other shareholders. *Ib.*

See RAILROAD, 8, 9, 10.

NATIONAL BANK.

1. As a general rule, the legal owner of stock in a national banking association — that is, the one in whose name stock stands on the books of the association — remains liable for an assessment so long as the stock is allowed to stand in his name on the books, and, consequently, although the registered owner may have made a transfer to another person, unless it had been accompanied by a transfer on the books of registry of the association, such registered owner remains liable for contributions in case of the insolvency of the bank. *Matteson* v. *Dent*, 521.

2. The exceptions to this general rule so far as established by decisions of this court are: (1) That where a transfer has been fraudulently or collusively made to avoid an obligation to pay assessments, such transfer will be disregarded, and the real owner be held liable; (2) that where a transfer of stock is made and delivered to officers of a bank, and such officials fail to make entry of it, those acts will operate a transfer on the books, and extinguish the liability, as stockholder, of the transferrer; (3) where stock was transferred in pledge, and the pledgee for the purpose of protecting his contract caused the stock to be put in his name as pledgee, and a registry did not amount to a transfer to the pledgee as owner. *Ib.*

3. H., as vice president of a Cincinnati bank, made application to a New York bank for a loan of $300,000. The request was granted and that amount was placed to the credit of the Cincinnati bank upon the books of the New York bank. Immediately thereafter H. fraudulently caused himself to be personally credited upon the books of his own bank with a like sum of $300,000. The action of H. in negotiating the above loan with the New York bank was unauthorized by the board of directors of the Cincinnati bank, but after the arrangement had been made that bank drew out by check the money that had been placed to its credit by the New York bank and used the same in discharging its valid obligations. *Held*, that by so using the money obtained from the New York bank by H. in his capacity of vice president, the Cincinnati bank became bound to account for the same as for money had and received, and could not escape liability to the New York bank upon the mere ground, supposing it to be true, that it was not permitted by its charter to borrow money. The fraud perpetrated by H. upon his own bank in having himself personally credited upon its books with the amount of the loan, was a matter with which the New York bank had no connection, and its right to recover could not be affected thereby. The liability of the Cincinnati bank rested upon the fact, and the implied obligation arising therefrom, that that bank used in its business and for its benefit the money which the other bank placed to its credit in consequence of the loan negotiated by H. who assumed to represent it. *Aldrich* v. *Chemical Bank*, 618.

4. There is nothing in the acts of Congress authorizing or permitting a national bank to appropriate and use the money or property of others without incurring liability for so doing. *Ib.*

See CONSTITUTIONAL LAW, A, 13.

NON-RESIDENTS — SERVICE OF PROCESS UPON.

1. A state statute authorizing service of process by publication or otherwise upon absent and non-resident defendants, has no application to suits *in personam;* but is a sufficient authority for the institution of suits *in rem*, where, under recognized principles of law, such suits

may be instituted against non-resident defendants. *Roller* v. *Holly*, 398.

2. Where a statute specifies certain classes of cases which may be brought against non-residents, such specification operates as a restriction and limitation upon the power of the court; but where the power is a general one it is, as respects suits *in rem*, subject to no limitation. *Ib.*
3. Where service of process was made upon a defendant residing in Virginia, requiring him to appear and answer a suit in Texas within five days, it is held that such notice was not a reasonable one, was not "due process of law" within the Fourteenth Amendment to the Constitution of the United States, and that a judgment obtained upon such notice was not binding upon the defendant. *Ib.*

PRACTICE.

1. The decree heretofore entered in this case is vacated, and a new decree is entered *nunc pro tunc* as of March 13, 1899, affirming the decree of the Circuit Court of Appeals in all respects. *New Orleans* v. *Warner*, 92.
2. Clerks of the Circuit Court of Appeals, having prepared the records on which causes are heard therein for the printer, indexed, and supervised the printing of the same, and distributed the printed copies thereof, and been paid therefor, may certify one of such copies for use on application to this court for certiorari. *Toledo, St. Louis &c. Railroad* v. *Continental Trust Co.*, 219.
3. The reproduction of transcripts, in manuscript or in print, under such circumstances, is not required. *Ib.*
4. On motion of the plaintiff made after commencement of the trial of this case, a juror was withdrawn, the remaining jurors were dismissed, and leave was given to the plaintiff to amend his declaration within a time named, and the case was continued for the term. Subsequently, on motion of the defendants' attorney, made after notice to plaintiff, the time within which the amendment could be filed was enlarged, and the plaintiff was ordered to pay the costs of the term in which the juror was withdrawn. The plaintiff declined to pay those costs and the court dismissed the case. *Held*, that the trial court erred in so doing, as whatever conditions or rights the defendants were entitled to in consequence of the plaintiff's motion should have been asserted and adjudged when that motion was made. *Jackson* v. *Emmons*, 532.

See RAILROAD, 1.

PRIZE CASES.

See ADMIRALTY.

PUBLIC LAND.

1. By the act of July 2, 1864, 13 Stat. 365, c. 217, Congress granted lands to the Northern Pacific Railroad Company to aid in the construction

of a railroad and telegraph line from a point on Lake Superior in Wisconsin or Minnesota to some point on Puget Sound, with a branch *via* the valley of the Columbia River to a point at or near Portland in the State of Oregon. The grant was of "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line as said company may adopt through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from preëmption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preëmpted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections." In March, 1865, the president of that company filed in the Land Department a map which if of value for any purpose was only a map of "general route," not one of definite location between Wallula and Portland. That map was not accepted. By act of July 25, 1866, 14 Stat. 239, c. 242, Congress made a grant of land in aid of the construction of a railroad and telegraph line between Portland, Oregon, and the Central Pacific Railroad in California. That grant was in the usual terms employed in such acts. Subsequently the benefit of that grant as to the part of the road to be constructed in Oregon was conferred upon the Oregon Central Railroad Company. The lands here in dispute, whether place or indemnity, were within the limits of the grant of 1866. The entire line of road of the Oregon and California Railroad Company, which was the successor of the Oregon Central Railroad Company, was fully constructed and duly accepted by the President, and at the time this suit was begun was being operated and had been continuously operated by that company. The Oregon Company filed its map of definite location in 1870, and it was accepted by the Land Department. By the act of September 29, 1890, 26 Stat. 496, c. 1040, all lands theretofore granted to any State or corporation to aid in the construction of a railroad opposite to or coterminous with the portion of any such railroad not then completed and in operation, for the construction of which such lands were granted, were forfeited to the United States. There never was any withdrawal of indemnity lands on the proposed line of the Northern Pacific Railroad Company between Wallula and Portland, nor was there any definite location or construction of its road opposite to the lands in suit. *Held*, (1) That

nothing in the act of 1864 stood in the way of Congress subsequently granting to other railroad corporations the privilege of earning any lands that might be embraced within the general route of the Northern Pacific Railroad. (2) That as the grant contained in the act did not include any lands that had been reserved, sold, granted or otherwise appropriated at the time the line of the Northern Pacific Railroad was "definitely fixed;" as the route of the Northern Pacific Railroad had not been definitely fixed at the time the act of July 25, 1866, was passed, or when the line of the Oregon Company was definitely located; as the lands in dispute are within the limits of the grant contained in the act of 1866; as the route of the Oregon Railroad was definitely fixed, at least when the map showing that route was accepted by the Secretary of the Interior on the 29th day of January, 1870,— the Northern Pacific Railroad Company having done nothing prior to the latter date except to file the Perham map of 1865; and as prior to the forfeiture act of September 29, 1890, there had not been any definite location of the Northern Pacific Railroad opposite the lands in dispute, there is no escape from the conclusion that these lands were lawfully earned by the Oregon Company and were rightfully patented to it. Of course, if the route of the Northern Pacific road had been definitely located before the act of 1890 was passed, and had embraced the lands in dispute, different questions would have been presented. *United States* v. *Oregon & California Railroad Company*, 28.

2. The grant of public land made to the State of Alabama by the act of June 3, 1856, c. 41, to aid in the construction of railroads, to be subject to the disposal of the legislature for the purposes named in the act and no other, with a provision that if any of said roads were not completed within ten years the lands remaining unsold should revert to the United States, was a grant *in præsenti;* the condition so expressed was a condition subsequent; and the rights and powers of the State continued until the grant should be directly forfeited by judicial or legislative proceedings. *United States* v. *Tennessee & Coosa Railroad Co.*, 242.

3. The provision in the act of September 29, 1890, c. 1040, that "there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation, to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed and in operation, for the construction and benefit of which such lands were granted, and all such lands are declared to be a part of the public domain," did not operate upon lands opposite completed roads, and such lands were not thereby forfeited or resumed. *Ib.*

4. The allegation that the sale to Carlisle was without consideration and colorable was not sustained by the evidence. *Ib.*

5. Although the bill was framed to secure a forfeiture of the entire grant, that does not preclude a forfeiture for a part of it. *Ib.*

6. Decisions of the land department in contest cases on questions of fact are conclusive. *Moss* v. *Dowman*, 413.

7. Dowman went upon the public land in controversy, then unoccupied, on the 19th September, 1890, built a cabin and continued to live there. November 18, 1890, he made a formal homestead entry in the local land office, and after five years of continued occupancy and proof of the same he received a patent. On May 7, 1890, one Doran made a homestead entry of the same land without occupying it, which he subsequently relinquished, Moss paying him $1000 therefor, and thereupon Moss on the 24th of October, 1890, filed that relinquishment in the local land office, and made a homestead entry in her own name. April 22, 1891, she appeared on the land, commenced the construction of a house, and occupied it when finished. A contest between the two as to which had the right to acquire title was finally settled by the Secretary of the Interior in favor of Dowman. *Held*, that the decision of the Secretary was correct. *Ib.*

8. The power to review and set aside the action of local land officers exists in the general land department. *Guaranty Savings Bank* v. *Bladow*, 448.

9. When an entry is cancelled, after due notice to the entryman, and after a hearing in the case, it is conclusive against him everywhere, upon all questions of fact; and it cannot be regarded as a mere nullity, when set up against his mortgagee, even though such mortgagee had no notice of the proceeding to cancel the certificate. *Ib.*

10. Such an entry does not transfer the title to the land, but simply furnishes *prima facie* evidence of an equitable claim for a patent, and the use of the certificate for that purpose is subject to be destroyed by its official cancellation. *Ib.*

11. By an act of Congress passed in 1828, a large quantity of land was granted to the State of Ohio for the construction of canals. The act provided that such canals "when completed or used, shall be, and forever remain, public highways, for the use of the Government of the United States." The grant was accepted by the State; but in 1894, the state legislature authorized the abandonment of certain canals, which had been constructed under the act of Congress, and the leasing of the same to a railroad company. *Held*, that there was reason to claim that the act of 1894 impaired the obligation of the previous contract between the state and the Federal Government, and that a Federal question was thereby raised. *Held*, further, that in accepting the Congressional land grant of 1828, there was no undertaking on the part of the State to maintain the canals as such in perpetuity, and that the Government was only entitled to their free use as long as they were kept up as public highways, and that the act of the legislature of Ohio, authorizing their abandonment as canals and leasing them to a railway company, did no violence to the contract clause of the Constitution. *Held*, further, that a private property owner was no party to

the contract between the state and the Federal Government, and stood in no position to take advantage of a default of the State in respect to its contract. His rights were entirely subsidiary to those of the Government, and if the latter chose to acquiesce in the abandonment of the canals, he had no right to complain. *Walsh* v. *Columbus, Hocking Valley and Athens Railroad Co.*, 469.

See MEXICAN GRANT.

RAILROAD.

1. The State of South Dakota having passed an act providing for the appointment of a board of railroad commissioners, and authorizing that board to make a schedule of reasonable maximum fares and charges for the transportation of passengers, freight and cars on the railroads within the State, provided that the maximum charge for the carriage of passengers on roads of the standard gauge should not be greater than three cents per mile; and that board having acted in accordance with the statute, and having published its schedule of maximum charges, the Chicago, Milwaukee and St. Paul Railway Company filed the bill in this case in the Circuit Court of the United States for the District of South Dakota, seeking to restrain the enforcement of the schedule. The railroad commissioners answered fully, and testimony was taken before an examiner upon the issues made by the pleadings. This testimony was reported without findings of fact or conclusion of law. The case went to hearing. The Judge, without the aid of a master, examined the pleadings and the mass of proof. He made findings of fact and conclusions of law; delivered an opinion; and rendered a decree dismissing the bill. This court is of opinion: (1) That neither the findings made by the court, nor such facts as are stated in its opinion, are sufficient to warrant a conclusion upon the question whether the rates prescribed by the defendants were unreasonable or not, and that the process by which the court came to its conclusion is not one which can be relied upon; (2) that there was error in the failure to find the cost of doing the local business, and that only by a comparison between the gross receipts and the cost of doing the business, ascertaining thus the net earnings, can the true effect of the reduction of rates be determined; (3) that the better practice would be to refer the testimony, when taken, to the most competent and reliable master, general or special, that can be found, to make all needed computations, and find fully the facts; so that this court, if it should be called upon to examine the testimony, may have the benefit of the services of such master. *Chicago, Milwaukee & St. Paul Railway Co.* v. *Tompkins*, 167.
2. Under a regulation requiring railroad tracks running through the streets of a city to be fenced, whenever the grade is "approximately even" with the adjacent surface of the streets, it is proper for the

jury to say whether a track elevated two feet two inches above the surface of the street, is within the regulation. *Baltimore & Potomac Railroad* v. *Cumberland*, 232.

3. Where the declaration averred that there was "no light" upon the engine to indicate its approach, and the proof was that an insufficient light was carried, it was held that there was no material variance. *Ib.*
4. Where the regulation required that "a headlight, or other equivalent reflecting lantern," should be carried upon a train to indicate its approach, it is for the jury to say whether an ordinary hand-lantern is a substantial compliance with the regulation. *Ib.*
5. In determining the existence of contributory negligence, the plaintiff is not liable for faults which arise from inherent mental or physical defects, or want of capacity to appreciate what is and what is not negligence. He is only responsible for the exercise of such faculties and capacities as he is endowed with by nature for the avoidance of danger. *Ib.*
6. While under the circumstances of this case the court might have held the plaintiff liable for contributory negligence, if he had been a man of mature age and average intelligence, as he was a boy of twelve years of age, it was held that the question was properly submitted to the jury. *Ib.*
7. A person crossing the track of a railroad company in the streets of a city for the more convenient performance of his duties is not *ipso facto* a trespasser. *Ib.*
8. In a decree for the foreclosure and sale of a railroad property under a mortgage, power was reserved by the court to compel the purchaser to pay any and all receivers' debts or claims adjudged or to be adjudged as prior in lien or equity to the mortgage debts or entitled to preference in payment out of the proceeds of sale. *Held*, that the rights of creditors whose claims had been filed were not affected by the sale of the property or by the fact of its transfer to the purchaser; nor did the reservation in the order of sale prevent the purchaser from contesting upon their merits any claims allowed after the purchase under the decree of sale. *Southern Railway Co.* v. *Carnegie Steel Co.*, 257.
9. A railroad mortgagee when accepting his security impliedly agrees that the current debts of a railroad company contracted in the ordinary course of its business shall be paid out of current receipts before he has any claim upon such income; that, within this rule, a debt not contracted upon the personal credit of the company, but in order to keep the railroad itself in condition to be used with reasonable safety for the transportation of persons and property, and with the expectation of the parties that it was to be met out of the current receipts of the company, may be treated as a current debt; that whether the debt was contracted upon the personal credit of the company, without any reference to its receipts, is to be determined in each case by the amount of the debt, the time and terms of payment, and all other cir-

cumstances attending the transaction; and that when current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the funds thus improperly diverted from their primary use. *Ib.*

10. A general, unsecured creditor of an insolvent railroad corporation in the hands of a receiver is not entitled to priority over mortgage creditors in the distribution of net earnings simply because that which he furnished to the company prior to the appointment of the receiver was for the preservation of the property and the benefit of the mortgage securities. Before such a creditor is accorded a preference over mortgage creditors in the distribution of net earnings in the hands of a receiver of a railroad company, it should reasonably appear, from all the circumstances, that the debt was one to be fairly regarded as part of the operating expenses of the railroad incurred in the ordinary course of business and to be met out of current receipts. *Ib.*
11. The principles announced in *Southern Railway Co.* v. *Carnegie Steel Co.*, *ante*, 257, reaffirmed; but the claims filed in this suit were held not to be current receipts of an insolvent railroad company in the hands of a receiver in preference to the claims of mortgage creditors. *Lackawanna Iron & Coal Co.* v. *Farmers' Loan & Trust Co.*, 298.
12. While the legislative power to amend or repeal a statute cannot be availed of to take away property already acquired, or to deprive a corporation of fruits of contracts lawfully made already reduced to possession, the capacity to acquire land by condemnation for the construction of a railroad attends the franchise to be a railroad corporation, and, when unexecuted, cannot be held to be in itself a vested right surviving the existence of the franchise, or an authorized circumscription of its scope. *Adirondack Railway Co.* v. *New York State*, 335.
13. The highest court of the State of New York having held that there is no property in a naked railroad route in that State which the State is obliged to pay for when it needs the land covered by that route for a great public use, and its officers are by appropriate legislation authorized to act, this court accepts the views of that court, and thinks that the proceedings on the part of the State which are complained of in this case, impaired the obligation of no contract between it and the railway company. *Ib.*
14. The necessity or expediency of appropriating particular property for public use is not a matter of judicial cognizance, but one for the determination of the legislative branch of the Government; and this must obviously be so when the State takes for its own purposes. *Ib.*
15. The railway company, being engaged as a common carrier in the business of transporting passengers and freight for hire, entered into a contract in writing with an express company authorized by law to do and actually doing the business known as express business, by which

contract the railroad company agreed, solely upon the considerations and terms hereinafter mentioned, to furnish for the exclusive use of such express company, in the conduct of its said express business over said railway company's lines, certain privileges, facilities and express cars to be used and employed exclusively by said express company in the conduct of such express business; and to transport said cars and contents, consisting of express matter, in its fast passenger trains, together with one or more persons in charge of said express matter, known as express messengers, for that purpose to be allowed to ride in said express cars; to transport such express messengers for the purposes and under the circumstances aforesaid free of charge. And by said contract it was agreed on the part of said express company to pay said railroad company for such privileges and facilities and for the furnishing and use of said express car or cars, and for such transportation thereof, a compensation named in said contract; and by which contract it was further agreed by the express company to protect the railroad company and hold it harmless from all liability it might be under to employés of the express company for any injuries sustained by them while being so transported by said railroad company, whether the injuries were caused by negligence of the railroad company or its employés or otherwise. Voigt made application to said express company in writing to be employed by it as express messenger on the railroad of a company, between which and such express company a contract as aforesaid existed, and such applicant, pursuant to his application, was employed by the express company under a contract in writing signed by him and it, whereby it was agreed between him and the express company that he did assume the risk of all accident or injury he might sustain in the course of said employment, whether occasioned by negligence or otherwise, and did undertake and agree to indemnify and hold harmless said express company from any and all claims that might be made against it arising out of any claim or recovery on his part for any damages sustained by him by reason of any injury, whether such damage resulted from negligence or otherwise, and to pay said express company on demand any sum which it might be compelled to pay in consequence of any such claim, and to execute and deliver to said railroad company a good and sufficient release under his hand and seal of all claims and demands and causes of action arising out of or in any manner connected with said employment, and expressly ratified the agreement aforesaid between said express company and said railroad company. *Held*, that Voigt, occupying an express car as a messenger in charge of express matter, in pursuance of the contract between the companies, was not a passenger within the meaning of the case of *Railroad Company* v. *Lockwood*, 17 Wall. 357; that he was not constrained to enter into the contract whereby the railroad company was exonerated from liability to him, but entered into the same freely and voluntarily, and obtained the ben-

efit of it by securing his appointment as such messenger; and that such a contract did not contravene public policy. *Baltimore & Ohio Southwestern Railway Co.* v. *Voigt*, 498.

16. The charter of the Illinois Central Railroad Company authorized it to "enter upon and take possession of and use all and singular any lands, streams and materials of every kind for the location of depots and stopping stages for the . . . complete operation of said road;" and granted to it "all such lands, waters, materials and privileges belonging to the State." A subsequent ordinance of the city of Chicago, passed in pursuance of authority granted by the legislature, forbade the driving or placing of any piles, stones, timber or other obstruction in the harbor of the city, without the permission of the commissioner of public works. *Held*, that a Federal question was presented whether this ordinance impaired or interfered with the charter of the railroad company. *Held*, further, that, under its charter, the railroad company had no right to take possession of lands submerged beneath the waters of Lake Michigan. *Held*, also, that the "waters" granted to the railroad company in the second part of the granting clause, were restricted to the "streams" mentioned in the first part, and did not include the waters of Lake Michigan. *Illinois Central Railroad Co.* v. *Chicago*, 646.
17. Under another section of the charter, providing that the corporation should not locate its tracks within any city without the consent of the common council, *held*, that this proviso was not confined to the main track of the road, but includes its depots, engine houses and necessary track approaches to the same. *Ib.*
18. This restriction was not limited to the city as bounded at the date of the charter, but applied also to territory subsequently included within the city limits. *Ib.*

See PUBLIC LAND, 1.

SALARY.

Extra compensation received by a District Judge for holding court outside of his own district is no part of his official salary, or recoverable as such under the provisions of the retiring act. *Benedict* v. *United States*, 357.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See CHINESE IMMIGRANTS;
CONSTITUTIONAL LAW, 8;
CUSTOMS DUTIES, 1, 2;
DISTRICT OF COLUMBIA, 1, 2;
JURISDICTION, B, 3, 4, 5;
INJUNCTION, 2;
JURISDICTION, C, 2, 3, 4;
PUBLIC LAND, 1, 2, 3, 11.

B. STATUTES OF STATES AND TERRITORIES.

Illinois. *See* ILLINOIS CENTRAL RAILROAD.
Kansas. *See* CONSTITUTIONAL LAW, 3.
Minnesota. *See* CONSTITUTIONAL LAW, 12; LOG BOOMING.
Nebraska. *See* CONSTITUTIONAL LAW, 3.
South Dakota. *See* RAILROAD, 1.
Washington. *See* COMMUNITY PROPERTY.

SUITS BETWEEN STATES.

See CONSTITUTIONAL LAW, 1.

TERRITORY.

See CONSTITUTIONAL LAW, 4.