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ADMINISTRATION OF PERSONAL PROPERTY.

1. The amount of the estate, as a whole, was the matter in dispute below, and it amounted to sufficient to give this court jurisdiction. *Overby* v. *Gordon*, 214.
2. The sovereignty of the State of Georgia, and the jurisdiction of its courts at the time of the grant of letters of administration on the estate of Haralson did not extend to or embrace the assets of the decedent situated within the territorial jurisdiction of the District of Columbia; and while the De Kalb county court possessed the power to determine the question of the domicil of the decedent for the purpose of conclusively adjudicating the validity within the State of Georgia of a grant of letters of administration, it did not possess the power to conclusively bind all the world as to the fact of domicil, by a mere finding of such fact in a proceeding *in rem*. *Ib.*
3. Pending proceedings for the appointment of an administrator in the District of Columbia, the personal assets of the deceased there situated were delivered up to the administrator appointed by the Georgia court. The trial court declined to rule that their delivery operated to protect those who made it as against an administrator appointed within the District. *Held* that this was a proper ruling. *Ib.*
4. The act of Congress of February 28, 1887, c. 281, has no relation to a case of this kind. *Ib.*

ADMIRALTY.

1. In January, 1897, the navigation of the Mississippi River below New Orleans was governed by the rules and regulations of 1864, (Rev. Stat. sec. 4233) and also by the supervising inspectors' rules for Atlantic and Pacific inland waters. *The Albert Dumois*, 240.
2. A steamer ascending the Mississippi within 500 feet from the eastern bank, made both colored lights of a descending steamer, approaching her "end on, or nearly end on." She blew her a signal of two whistles and starboarded her wheel. *Held:* That she was in fault for so doing, and that this was the primary cause for the collision which followed. *Held* also: That the fact the descending steamer seemed to be nearer the eastern bank and that her lights were confused with the lights of other vessels moored to that bank, was not a "special circumstance" within the meaning of Rule 24, rendering a departure from Rule 18

necessary " to avoid immediate danger," since if there were any danger at all, it was not an immediate one, or one which could not have been provided against by easing the engines and slackening speed. *Ib.*

3. Exceptions to general rules of navigation are admitted with reluctance on the part of courts, and only when an adherence to such rules must almost necessarily result in a collision. *Ib.*
4. The descending steamer, running at a speed of twenty miles an hour, made the white and red lights of the Dumois, the ascending steamer, upon her port bow, and blew her a signal of one whistle to which the Dumois responded with a signal of two whistles, starboarded her helm, shut in her red and exhibited her green light. *Held:* That the descending steamer, the Argo, in view of her great speed, should at once upon observing the faulty movement of the Dumois, have stopped and reversed, and that her failure to do so was a fault contributing to the collision; and that the damages should be divided. *Ib.*
5. While a steamer may be so built as to attain the utmost possible speed, she ought also to be provided with such means of stopping or changing her course as are commensurate with her great speed, and the very fact of her being so fast and apparently uncontrollable is additional reason for greater caution in her navigation. *Ib.*
6. The nineteenth rule, which declares that the vessel which has the other on her own starboard side shall keep out of the way of the other, does not absolve the preferred vessel from the duty of stopping and reversing, in case of a faulty movement on the part of the other vessel. *Ib.*
7. The representatives of two passengers on the descending steamer who lost their lives, filed a libel against the owner of the ascending steamer for damages, and recovered. *Held:* That as both vessels were in fault, one half of such damages should be deducted from the amount recovered from the Dumois, notwithstanding that the local law gave no lien or privilege upon the vessel itself. *Ib.*
8. The limited liability act applies to cases of personal injury and death, as well as to those of loss of, or injury to, property. *Ib.*
9. The Carlos F. Roses, a Spanish vessel, owned at Barcelona, Spain, sailed from that port for Montevideo, Uraguay, with a cargo which was discharged there, and a cargo of jerked beef and garlic taken on board for Havana, for which she sailed March 16, 1898. On May 17, while proceeding to Havana, she was captured by a vessel of the United States and sent to Key West, where she was libelled. A British company doing business in London, laid claim to the cargo on the ground that they had advanced money for its purchase to a citizen of Montevideo, and had received bills of lading covering the shipment. The vessel was condemned as enemy's property, but the proceeds of the cargo, which had been ordered to be sold as perishable property, was ordered to be paid to the claimants. *Held*, (1) That as the vessel was an enemy vessel, the presumption was that the cargo was enemy's property, and this could only be overcome by clear and positive evidence to the contrary; (2) that on the face of the papers given in evidence, it must be presumed that when these goods were delivered to the vessel, they

became the property of the consignors named in the invoices; (3) that the British company got the legal title to the goods and the right of possession only if such were the intention of the parties, and that that intention was open to explanation, although the person holding the papers might have innocently paid value for them; (4) that in prize courts it is necessary for the claimants to show the absence of anything to impeach the transaction, and at least to disclose fully all the surrounding circumstances, and that the claimants had failed to do so; (5) that the right of capture acts on the proprietary interest of the thing captured at the time of the capture, and is not affected by the secret liens or private engagements of the parties; (6) that in this case the belligerent right overrides the neutral claim, which must be regarded merely as a debt, and the assignment as a cover to an enemy interest. *The Carlos F. Roses*, 655.

AGENT AND PRINCIPAL.

See INSURANCE.

BANKRUPTCY.

A representation as to a fact, made knowingly, falsely and fraudulently, for the purpose of obtaining money from another, and by means of which such money is obtained, creates a debt by means of a fraud involving moral turpitude and intentional wrong, and such debt is not discharged by a discharge in bankruptcy. *Forsyth* v. *Vehmeyer*, 177.

CASES AFFIRMED OR FOLLOWED.

1. Decree below affirmed on the authority of the cases named in the opinion of the court. *Chrystal Springs Land & Water Co.* v. *Los Angeles*, 169.
2. Dismissed on the authorities cited. *Phinney* v. *Sheppard*, 170.
3. Dismissed on the authority of *Sayward* v. *Denny*, 158 U. S. 180, 183, and other cases cited in the opinion of the court. *Henkel* v. *Cincinnati*, 170.
4. The judgment below is affirmed for the reason given in *Ohio Oil Company* v. *Indiana*, *No. 1*, 177 U. S. 190. *Ohio Oil Company* v. *Indiana*, *No. 2*, 212.
5. The same disposition and for the same reason is made of *Ohio Oil Company* v. *Indiana*, *No. 3*, 213.
6. The matter embraced in the questions submitted to this court has been considered, and was passed on in the opinion in *American Express Co.* v. *Michigan*, 177 U. S. 404, which is followed in this case. *Crawford* v. *Hubbell*, 419.

See CONSTITUTIONAL LAW, 7; CONTRACT, 3; JURISDICITON, A, 7, 10; JURISDICTION, B, 2, 5; MEXICAN GRANT, 1; NORTHERN PACIFIC RAILWAY, 2.

CERTIORARI.

See HABEAS CORPUS.

CONSTITUTIONAL LAW.

1. Section 6513 of the General Statutes of Minnesota for 1894 provides that "All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community; *Provided, however*, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, shall not be deemed a work of necessity or charity." *Held* that the legislature did not exceed the limits of its legislative police power in declaring that, as a matter of law, keeping barber shops open on Sunday is not a work of necessity or charity, while, as to all other kinds of labor, they have left that question to be determined as one of fact. *Petit* v. *Minnesota*, 164.

2. The ordinance of the city of Chicago, authorizing the issue of a license to persons to sell cigarettes upon payment of one hundred dollars, and forbidding their sale without license, is no violation of the Federal Constitution, and the amount of the tax named for the license is within the power of the State to fix. *Gundling* v. *Chicago*, 183.

3. The provision in the act of March 4, 1893, of the State of Indiana "that it shall be unlawful for any person, firm or corporation having possession or control of any natural gas or oil well, whether as a contractor, owner, lessee, agent or manager, to allow or permit the flow of gas or oil from any such well to escape into the open air without being confined within such well or proper pipes, or other safe receptacle, for a longer period than two days next after gas or oil shall have been struck in such well; and thereafter all such gas or oil shall be safely and securely confined in such well, pipes or other safe and proper receptacles," is not a violation of the Constitution of the United States; and its enforcement as to persons whose obedience to its commands were coerced by injunction, is not a taking of private property without adequate compensation, and does not amount to a denial of due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, but is only a regulation by the State of Indiana of a subject which especially comes within its lawful authority. *Ohio Oil Company* v. *Indiana*, *No. 1*, 190.

4. The due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in state courts, or regulate practice therein; and all its requirements are complied with provided that in the proceedings which are claimed not to have been due process of law, the person condemned has had sufficient notice, and adequate opportunity has been afforded him to defend. *Louisville & Nashville Railroad Company* v. *Schmidt*, 230.

5. The mere fact that in this case the proceeding to hold the Louisville and Nashville Company liable was by rule does not conflict with due process under the Fourteenth Amendment, since forms of procedure in state courts are not controlled by that amendment, provided the fundamental rights secured by the amendment are not denied. *Ib.*

6. Although the Louisville and Nashville Company appeared in response to the rule, pleaded its set-off, and declared that its answer constituted

a full response, no defence personal to itself of any other character except the set-off was pleaded or suggested in any form, and this court cannot be called upon to conjecture that defences existed which were not made, and to decide that proceedings in a state court have denied due process of law because defences were denied when they were not prosecuted. *Ib.*

7. *Turner* v. *New York*, 168 U. S. 90, is affirmed and followed to the point that "the statute of New York of 1885, c. 448, providing that deeds from the comptroller of the State of lands in the forest preserve, sold for nonpayment of taxes, shall, after having been recorded for two years, and in any action brought more than six months after the act takes effect, be conclusive evidence that there was no irregularity in the assessment of the taxes, is a statute of limitations, and does not deprive the former owner of such lands of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States," and is held to be decisive. *Saranac Land & Timber Co.* v. *Comptroller of New York*, 318.

8. Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. And when a defendant has had no opportunity to challenge the grand jury which found the indictment against him, the objection to the constitution of the grand jury upon this ground may be taken, either by plea in abatement, or by motion to quash the indictment, before pleading in bar. *Carter* v. *Texas*, 442.

9. The question whether a right or privilege, claimed under the Constitution or laws of the United States, was distinctly and sufficiently pleaded and brought to the notice of a state court, is itself a Federal question, in the decision of which this court, on writ of error, is not concluded by the view taken by the highest court of the State. *Ib.*

10. A person of the African race was indicted, in an inferior court of a State, for a murder committed since the impanelling of the grand jury; and, before pleading in bar, presented and read to the court a motion to quash, duly and distinctly alleging that all persons of the African race were excluded, because of their race and color, from the grand jury which found the indictment; and, as was stated in his bill of exceptions allowed by the judge, thereupon offered to introduce witnesses to prove that allegation, but the court refused to hear any evidence upon the subject, and, without investigating whether the allegation was true or false, overruled the motion, and the defendant excepted. After conviction and sentence, he appealed to the highest court of the State in which a decision in the case could be had. That court affirmed the judgment, upon the assumption that the defendant had introduced no evidence in support of the motion to quash. *Held*, that this assumption was plainly disproved by the statements in the bill of exceptions; and that the judgment of affirmance denied to the defendant a

right duly set up and claimed by him under the Constitution and laws of the United States, and must therefore be reversed by this court on writ of error. *Ib.*

11. The ordinance of the city of New Orleans set forth at length below in the statement of the case, prescribing limits in that city outside of which no woman of lewd character shall dwell, does not operate to deprive persons owning or occupying property in or adjacent to the prescribed limits, whether occupied as a residence or for other purposes, of any rights secured by the Constitution of the United States, and they cannot prevent its enforcement on the ground that by it their rights under the Federal Constitution are invaded. *L'Hote* v. *New Orleans*, 587.
12. Until there is some invasion of congressional power or of private rights secured by the Constitution of the United States, the action of a State in such respect is beyond question in the Federal Courts. *Ib.*
13. The settled rule of this court is that the mere fact of pecuniary injury, does not warrant the overthrow of legislation of a police character. *Ib.*

See CORPORATION, 2, 3.

CONTRACT.

1. When a municipality contracts for a municipal improvement, which it is within its power to agree for, and engages to pay for the same in bonds which it is beyond its power to issue, and the work so contracted for is done, the municipality is responsible for it in money as it cannot pay in bonds. *Houston & Texas Central Railroad Co.* v. *Texas*, 66.
2. Where the validity of a contract is attacked on the ground of its illegal purpose, that purpose must clearly appear, and it will not be inferred simply because the performance of the contract might result in an aid to an illegal transaction. *Ib.*
3. On the principles laid down in *Baldy* v. *Hunter*, 171 U. S. 388, the contract in this case cannot be held to be unlawful. *Ib.*
4. When the officers of the State, pursuant to its statutes, received warrants as payment, they acted for the State in carrying out an offer on its part which the State had legal capacity to make and to carry out; and the contract having been fully executed by the company and the State, neither party having chosen to refuse to perform its terms, neither party, as between themselves can thereafter act as if the contract had not been performed. *Ib.*
5. A farmer made an arrangement with his son under which it was agreed that the latter should undertake the management of the farm, farm implements and live stock, make all repairs, pay all taxes and other expenses, sell the products of the farm, replace all implements as they wore out, keep up all live stock, and have as his own the net profits. It was further agreed that each party should be at liberty to terminate the arrangement at any time, and that the son should return to his father the farm with its implements, stock and other personalty, of the same kind and amount as was on the farm when the father retired, and as in good condition as when he took it. *Held*, that no sale of the farm

property was intended; that the title to the same remained in the father, and that the property was not subject to execution by creditors of the son. *Arnold* v. *Hatch*, 276.

6. Specific performance of an executory contract is not of absolute right. It rests entirely in judicial discretion, exercised, it is true, according to the settled principles of equity, and not arbitrarily or capriciously, yet always with reference to the facts of the particular case. *Wesley* v. *Eells*, 370.
7. A court of equity will not compel specific performances if under all the circumstances it would be inequitable to do so. *Ib.*
8. It is a settled rule in equity that the defendant in a suit brought for the specific performance of an executory contract will not be compelled to take a title about which doubt may reasonably exist or which may expose him to litigation. *Ib.*
9. Speaking generally, a title is to be deemed doubtful where a court of coordinate jurisdiction has decided adversely to it or to the principles on which it rests. *Ib.*
10. July 22, 1869, Los Angeles City leased to Griffin and others for a named sum its water works for a term of 30 years and granted them the right to lay pipes in the street, and to take the water from the Los Angeles river at a point above the dam then existing, and to sell and distribute it to the inhabitants of the city, reserving the right to regulate the water rates, provided that they should not be reduced to less than those then charged by the lessees. The lessees agreed to pay a fixed rental, to erect hydrants and furnish water for public uses without charge, and at the expiration of the term to return the works to the city in good order and condition, reasonable wear and damage excepted. This contract was procured for the purpose of transferring it to a corporation to be formed, which was done. Subsequently the limits of the city were extended as stated by the court, and the expenses of the corporation were increased accordingly. The city subsequently established water rates below those named in the contract, and the company collected the new rates, without in any other way acquiescing in the change. This suit was brought by the company to enforce the original contract. *Held*, (1) That the power to regulate rates was an existent power, not granted by the contract, but reserved from it with a single limitation, the limitation that it should not be exercised to reduce rates below what was then charged, and that undoubtedly there was a contractual element, but that it was not in granting the power of regulation, but in the limitation upon it; (2) that the city of Los Angeles, by its solemn contract, and for various considerations therein stated, gave to the party under whom defendant claims, the privilege of introducing, distributing and selling water to the inhabitants of that city, on certain terms and conditions, which defendant has complied with, and it was not within the power of the city authorities, by ordinance or otherwise, afterward to impose additional burdens as a condition to the exercise of the rights and privileges granted; (3) that by acquiescing in the regulations of rates ever since 1880 the company is not estopped from claim-

ing equitable relief and is guilty of no laches. *Los Angeles* v. *Los Angeles City Water Co.*, 558.

See INSURANCE;
WATER RATES.

CORPORATION.

1. A suit was brought in the Circuit Court of the United States for the Western District of Michigan by parties citizens of other States than Michigan against a Michigan mining corporation and certain individual defendants holding shares of stock in that corporation and being citizens residing in Massachusetts. The plaintiffs claimed that they were the real owners of certain shares of stock of the corporation the certificates of which were held by the Massachusetts defendants, and sought a decree removing the cloud upon their title to such shares and adjudging that they were entitled to them. *Held*, (1) That the defendants, citizens of Massachusetts, were necessary parties to the suit; (2) that they could be proceeded against in respect of the stock in question in the mode and for the limited purposes indicated in the eighth section of the act of Congress of March 3, 1875, 18 Stat. 470, c. 137, which authorized proceedings by publication against absent defendants in any suit commenced in any Circuit Court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought; (3) that for the purposes of that act the stock held by the citizens of Massachusetts was to be deemed personal property "within the district" where the suit was brought. The certificates of stock were only evidence of the ownership of the shares, and the interest represented by the shares was held by the Company for the benefit of the true owner. As the habitation or domicil of the Company is and must be in the State that created it, the property represented by its certificates of stock may be deemed to be held by the company within the State whose creature it is, whenever it is sought by suit to determine who is its real owner. *Jellenik* v. *Huron Copper Mining Co.*, 1.
2. It is well settled that a State has the power to impose such conditions as it pleases upon foreign corporations seeking to do business within it. *Waters-Pierce Oil Co.* v. *Texas*, 28.
3. The statute of Texas of March 30, 1890, prohibiting foreign corporations, which violated the provisions of that act, from doing any business within the State imposed conditions which it was within the power of the State to impose; and this statute was not repealed by the act of April 30, 1895, c. 83. *Ib.*
4. A limited partnership, doing business under a firm name, and organized under the act of the General Assembly of Pennsylvania approved June 2, 1874, entitled "An act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances," is not a corporation within the rule that a suit by or against a corpora-

tion in a court of the United States is conclusively presumed, for the purposes of the litigation, to be one by or against citizens of the State creating the corporation. It is not sufficient that the association may be described as a *quasi* corporation or as a "new artificial person." The rule does not embrace a new artificial person that is not a corporation. *Great Southern Fire Proof Hotel Company* v. *Jones*, 449.

CRIMINAL LAW.

1. Murphy was tried in a state court of Massachusetts on an indictment charging him with embezzlement; was convicted; and was sentenced to imprisonment for a term, one day of which was to be in solitary confinement, and the rest at hard labor. He remained in confinement for nearly three years, and then sued out a writ of error, and the judgment was reversed on the ground that the sentence was unconstitutional. The case was then remanded to the court below to have him resentenced, which was done. Before imposing the new sentence the court said that as he had already suffered one term of solitary confinement, the court would not impose another, if a written waiver by the prisoner of the provision therefor were filed. He declined to file such a waiver, and the sentence was accordingly imposed. Upon his taking steps to have the sentence set aside, *held* that his contention in that respect was unavailing. *Murphy* v. *Massachusetts*, 155.
2. Three policemen in South Dakota attempted, under verbal orders, to arrest another policeman for an alleged violation of law, when no charge had been formally made against him, and no warrant had issued for his arrest. Those attempting to make the arrest carried arms, and when he refused to go, they tried to oblige him to do so by force. He fired and killed one of them. He was arrested, tried for murder and convicted. The court charged the jury: "The deceased, John Kills Back, had been ordered to arrest the defendant; hence he had a right to go and make the attempt to arrest the defendant. The defendant had no right to resist him. It is claimed on the part of the defendant that he made no resistance, and he was willing to go with the officer in the morning. I charge you, of course, that the officer, John Kills Back, had a right to determine for himself when this man should go to the agency with him. . . . In this connection, I desire to say to you, gentlemen of the jury, that the deceased, being an officer of the law, had a right to be armed, and for the purpose of arresting the defendant he would have had the right to show his revolver. He would have had the right to use only so much force as was necessary to take his prisoner, and the fact that he was using no more force than was necessary to take his prisoner would not be sufficient justification for the defendant to shoot him and kill him. The defendant would only be justified in killing the deceased when you should find that the circumstances showed that the deceased had so far forgot his duties as an officer and had gone beyond the force necessary to arrest the defendant, and was about to kill him or to inflict great bodily injury upon him, which was not necessary for the purpose of making the arrest." *Held*, that the court clearly erred in charging that the policemen had

the right to arrest the plaintiff in error and to use such force as was necessary to accomplish the arrest, and that the plaintiff in error had no right to resist it. *John Bad Elk* v. *United States*, 529.

3. At common law, if a party resisted arrest by an officer without warrant, and who had no right to arrest him, and if, in the course of that resistance the officer was killed, the offence of the party resisting arrest would be reduced from what would have been murder, if the officer had had the right to arrest, to manslaughter. *Ib.*

EQUITY.

1. A suit in equity is commenced by filing a bill of complaint; and this general rule prevails also by statute in Illinois. *Farmers' Loan & Trust Co.* v. *Lake Street Elevated Railroad Co.*, 51.
2. As between the immediate parties in a proceeding *in rem* jurisdiction attaches when the bill is filed and the process has issued, and when that process is duly served, in accordance with the rules of practice of the court. *Ib.*
3. The possession of the *res* in case of conflict of jurisdiction vests the court which has first acquired jurisdiction with power to hear and determine all controversies relating thereto, and, for the time being, disables other courts of coördinate jurisdiction from exercising a like power. *Ib.*
4. This rule is not restricted, in its application, to cases where property has been actually seized under judicial process before a second suit is instituted in another court, but it applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, liquidate insolvent estates, and in suits of a similar nature, and it is applicable to the present case. *Ib.*

See CONSTITUTIONAL LAW, 8, 9;
CONTRACT, 8.

EVIDENCE.

1. This was an action brought in the Circuit Court of the United States for the District of New Jersey against a railway company, for an alleged injury to the plaintiff, caused by the neglect of the railway company while the plaintiff was a passenger on one of its cars. *Held* that the court had the legal right or power, under the statute of New Jersey and the United States Revised Statutes, to order a surgical examination of the plaintiff. *Camden & Suburban Railway Co.* v. *Stetson*, 172.

EXECUTOR AND ADMINISTRATOR.

See ADMINISTRATOR OF PERSONAL PROPERTY.

EXPRESS.

The statute of June 13, 1848, c. 448, "to meet war expenditures, and for other purposes," does not forbid an express company, upon which is imposed the duty of paying a tax upon express matter, from requiring the shipper to furnish the stamp, or the means of paying for it. *American Express Company* v. *Michigan*, 404.

FERRY.

The act of the legislature of Virginia of March 5, 1840, providing that "it shall not be lawful for the court of any county to grant leave to establish a ferry over any watercourse within one half mile, in a direct line, of any other ferry legally established over the same watercourse," was one of general legislation, and subject to repeal by the general assembly, and did not tie the hands of the legislature, or prevent it from authorizing another ferry within a half mile whenever in its judgment it saw fit. *Williams* v. *Wingo*, 601.

HABEAS CORPUS.

It is well settled that this court will not proceed to adjudication where there is no subject-matter upon which the judgment of the court can operate; and although the application in this case has not reached that stage, still as it is obvious that before a return to the writ can be made, or any other action can be taken, the restraint of which the petitioner complains would have terminated, the court feels constrained to decline to grant leave to file the petition for a writ of *habeas corpus* and *certiorari;* but, in arriving at this conclusion, it is not to be understood as intimating, in any degree, an opinion on the question of jurisdiction, or the other questions pressed on its attention. *Ex parte Baez*, 378.

INJUNCTION.

This court, in view of the finding of the court below as to the influence of the dam placed by the Mesa Company upon the flow of water in the canal of the Consolidated Company, is concluded as to the question of fact; and an injunction will not issue to enforce a right that is doubtful, or to restrain an act, the injurious consequences of which are doubtful; the dam built by the Mesa Company although it had the effect of raising the flow of water in its canal so as to destroy the water power obtained by the Consolidated Company through the construction of its canal, was not an infringement of the rights secured to the Consolidated Company under the contract set forth in the statement of the case. *Consolidated Canal Company* v. *Mesa Canal Co.*, 296.

INSURANCE.

By the rules of the beneficial or insurance branch of the Supreme Lodge, Knights of Pythias, persons holding certificates of endowment or insurance were required to make their monthly payments to the secretary of the subordinate section before the tenth day of each month; and it was made the duty of the secretary to forward such monthly payments at once to the Board of Control. If such dues were not received by the Board of Control on or before the last day of the month, all members of the section stood suspended and their certificates forfeited, with the right to regain their privileges if the amounts were paid within thirty days after the suspension of the section; provided, no deaths had occurred in the meantime. There was a further provision that the

section should be responsible to the Board of Control for all moneys collected, and that the officers of the section should be regarded as the agents of the members, and not of the Board of Control. The insured made his payments promptly, but the Secretary of the section delayed the remittance to the Board of Control until the last day of the month, so that such remittance was not received until the fourth day of the following month. The insured in the meantime died. *Held:* That the Supreme Lodge having undertaken to control the secretary of the section by holding the section responsible for moneys collected, and requiring him to render an account and remit each month, — a matter over which the insured had no control, — he was thereby made the agent of the Supreme Lodge, and that the provision that he should be regarded as the agent of the insured was nugatory, and that the insured having made his payments promptly, his beneficiary was entitled to recover. *Knights of Pythias* v. *Withers*, 260.

INTERNAL REVENUE.

A United States Collector of Internal Revenue was adjudged by a court of limited jurisdiction in Kentucky to be in contempt because he refused, while giving his deposition in a case pending in the state court, to file copies of certain reports made by distillers, and which reports were in his custody as a subordinate officer of the Treasury Department. He based his refusal upon a regulation of that Department which provided: "All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose." This regulation was made by the Secretary of the Treasury under the authority conferred upon him by section 161 of the Revised Statutes of the United States, which authorized that officer, as the head of an Executive Department of the Government, "to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it." The Collector having been arrested under the order of the state authorities, sued out a writ of *habeas corpus* before the District Court of the United States for the Kentucky District. *Held:* (1) That the case was properly brought directly from the District Court to this court as one involving the construction or application of the Constitution of the United States; (2) As the petitioner was an officer in the revenue service of the United States whose presence at his post of duty was important to the public interests, and whose detention in prison by the state authorities might have interfered with the regular and orderly course of the business of the Department to which he belonged, it was proper for the District Court to consider the questions raised by the writ of *habeas corpus* and to discharge the petitioner if held in violation of the Constitution and laws of the United States; (3) The regulation adopted by the Secretary of the Treasury was authorized by sec-

tion 161 of the Revised Statutes, and that section was consistent with the Constitution of the United States. To invest the Secretary with authority to prescribe regulations not inconsistent with law for the conduct of the business of his Department and to provide for the custody, use and preservation of the records, papers and property appertaining to it, was a means appropriate and plainly adapted to the successful administration of the affairs of his Department; and it was competent for him to forbid his subordinates to allow the use of official papers in their custody except for the purpose of aiding the collection of the revenues of the United States; (4) in determining whether the regulation in question was valid, the court proceeded upon the ground that it was not to be deemed invalid unless it was plainly and palpably against law. *Boske* v. *Comingore*, 460.

JUDGMENT.

When leave to intervene in an equity case is asked and refused, the order denying leave is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. The action of the court below, in denying the petition to intervene, was an exercise of purely discretionary power, and was not final in its character. *Credits Commutation Co.* v. *United States*, 311.

See MUNICIPAL CORPORATION, 1.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. When a defendant has, by his own action, reduced the judgment against him by a voluntary settlement and payment below the amount which is necessary in order to give this court jurisdiction to review it, the real matter in dispute is only the balance still remaining due on the judgment, and the right of review in this court is taken away. *Thorp* v. *Bonnifield*, 15.
2. The court, being satisfied that the amount in dispute in this case is less than the amount required by statute to give it jurisdiction, orders the writ dismissed for want of jurisdiction. *Ib.*
3. In the light of the various orders of the court below, this court holds that a rehearing was not granted in this case, but that the motion for rehearing was permitted to be argued, and as that was heard before four of the judges of the court, and there was an equal division, it was denied; and, as the judgment of reversal was not a final judgment, the appeal must be dismissed. *Carmichael* v. *Eberle*, 63.
4. The Federal character of a suit must appear in the plaintiff's own statement of his claim, and where a defence has been interposed, the reply to which brings out matters of a Federal nature, those matters thus brought out by the plaintiff do not form a part of his cause of action. *Houston and Texas Central Railroad Co.* v. *Texas*, 66.
5. The plaintiff in error was county clerk of Oklahoma County, Oklahoma Territory. The Territorial board of equalization increased the valua-

tion of property in the county, assessed for taxation, twenty-four per cent, and officially notified him of their action. He refused to act upon the notice, and a writ of mandamus was issued from the Supreme Court of the Territory, to compel him to do so. He declined to obey the writ, was cited for contempt, was adjudged guilty, and was committed to prison until he should comply. There was no evidence, and nothing tending to show that he had any pecuniary interest in the increase. The case being brought here by writ of error and on appeal, *held*, that as there was nothing to show that the plaintiff in error and appellant was interested in the increase to the extent of five thousand dollars, therefore, under the statute of March 3, 1885, c. 355, 23 Stat. 443, this court had no jurisdiction. *Caffrey* v. *Oklahoma Territory*, 346.

6. By a petition filed by Jackson against Black in the District Court of Kay County, Oklahoma Territory, the following case was made: On the 17th day of November, 1896, Jackson made a homestead entry upon the S. W. $\frac{1}{4}$ sec. 26, T. 28, R. 2, east I. M. The same land prior to that date had been embraced in a homestead entry made by Black, but that entry was finally held for cancellation by the Secretary of the Interior, who by a decision rendered October 26, 1896, denied Black's motion for review and allowed Jackson to make entry of the land. After that decision Black continued to remain in possession of the west eighty acres of the tract, and refused and neglected to vacate the same, although requested to do so. He had upon the land a barbed wire fence and other improvements attached to the realty. It was alleged that he was financially unable to respond in damages for any injury he was causing the plaintiff by trespassing upon the land, and that plaintiff had no adequate remedy other than by this suit. The relief asked was a mandatory injunction to restrain the defendant from entering upon or in any manner trespassing upon or using any portion of the land embraced in the plaintiff's homestead entry; from removing or in any manner destroying the fence or other improvements on the lands that were permanently attached thereto; and for such other and further relief as the court deemed just and right. The defendant filed an answer, but it was withdrawn that he might file a demurrer. He demurred to the application for an injunction upon the grounds, among others, that it did not state facts sufficient to constitute a cause of action and the court was without jurisdiction of the subject-matter of the action. The demurrer was overruled, and the defendant after excepting to that ruling filed an amended answer. In this answer he set up title in himself as a homestead settler, set forth the manner in which it had been acquired, alleged that the value of the property was $6000, and prayed judgment. In his original answer he claimed that he was entitled to a trial by jury, and in his amended answer he insisted that his rights could not be disposed of in equity before the court only. The trial court sustained a demurrer to the answer, and the defendant declining to further answer, judgment was rendered for the plaintiff as prayed for in the application for a mandatory injunction, the defendant being enjoined from in any manner entering upon the premises in question or exercising any control or possession over them except for the pur-

pose of removing therefrom his improvements, including buildings and fences for which thirty days' time was given, which judgment was sustained by the Supreme Court of the Territory. *Held:* (1) That this court has jurisdiction as the amount involved is beyond the jurisdictional amount; (2) that the case made out by the plaintiff was not such as to entitle him to a mandatory injunction, and that the court of original jurisdiction erred in determining the cause without a jury. *Black* v. *Jackson*, 349.

7. For the reasons stated in the opinion in *Black* v. *Jackson*, *ante*, 349, the court holds that the issue of fact involving the right of possession of the premises in dispute could not properly be determined without the aid of a jury, unless a jury was waived; and that the case made by the plaintiff was not such as to entitle him to a mandatory injunction. *Potts* v. *Hollen*, 365.
8. A Federal question, which was decided in the court below, is involved in this suit. *American Express Company* v. *Michigan*, 404.
9. On writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it. *Great Southern Fire Proof Hotel Co.* v. *Jones*, 449.
10. Captain Carter, of the corps of engineers, in the army of the United States, was duly and regularly tried before a legally convened court martial, was found guilty of the charges made against him, and was sentenced to dismissal; to be fined; to be imprisoned; and to publication of crime and punishment; and the sentence was duly approved and confirmed. On a motion in his behalf the United States Circuit Court for the Second Circuit issued a writ of *habeas corpus*, to inquire into the matter, which resulted in the dismissal of the writ, and the remanding of Carter to custody. He took an appeal to the Circuit Court of Appeals for the Second Circuit, which affirmed the judgment below, and this court denied an application for a writ of certiorari to review that judgment. An appeal and writ of error was allowed on the same day by a Judge of the Circuit Court to this Court. *Held*, That the appeal and writ of error could not be maintained, as they fall directly within the ruling in *Robinson* v. *Caldwell*, 165 U. S. 359, where it was held that the judiciary act of March 3, 1891, does not give a defeated party in a Circuit Court the right to have his case finally determined both in this court and in the Circuit Court of Appeals on independent appeals. *Carter* v. *Roberts*, 496.
11. When cases arise which are controlled by the construction or application of the Constitution of the United States, a direct appeal lies to this court, and if such cases are carried to the Circuit Courts of Appeals, those courts may decline to take jurisdiction, or where such construction or application is involved with other questions, may certify the constitutional question and afterwards proceed to judgment, or may decide the whole case in the first instance. But when the Circuit Court of Appeals has acted on the whole case its judgment stands unless re-

vised by certiorari to or appeal from that court in accordance with the act of March 3, 1891. *Ib.*

12. The substantial relief sought in this case against the attaching creditors and the matter in dispute was the defeat of distinct and separate claims of each attaching creditor, so far as it affected the real estate owned by Scott, and as no defendant was asserting a claim which aggregated the amount required to confer jurisdiction upon this court, the case is dismissed for want of jurisdiction. *Chamberlin* v. *Browning*, 605.
13. A record showing an instruction by the Circuit Court directing a jury that the plaintiff is entitled to recover in his action under a state law upon which the plaintiff relies for recovery, to which instruction a general exception is reserved by the defendant, does not disclose a case in which it is claimed that the law of a state is in contravention of the Constitution of the United States, within the meaning of section 5, of the act of March 3, 1891, where the record of the Circuit Court does not affirmatively show that any issue as to the statute was raised by the pleadings, and where the record does not affirmatively show that said exception to said instruction was upon the ground that said statute was in contravention of the Constitution of the United States, or that the constitutionality of said statute was otherwise presented or considered or passed upon by the Circuit Court. *Cincinnati, Hamilton & Dayton Railroad Co.* v. *Thiebaud*, 615.
14. The act of March 3, 1891, does not contemplate several separate appeals or writs of error, on the merits in the same case and at the same time to or from two appellate courts, and the record in No. 271 falls within this rule. *Ib.*

See Administration of Personal Property, 1;
Mining Claims, 2;
Municipal Corporation, 1.

B. Jurisdiction of Circuit Courts.

1. A suit brought in support of an adverse claim under Rev. Stat. §§ 2325, 2326, is not a suit arising under the laws of the United States in such a sense as to confer jurisdiction on a Federal Court, regardless of the citizenship of the parties. *Shoshone Mining Co.* v. *Rutter*, 505.
2. *Blackburn* v. *Portland Gold Mining Co.*, 175 U. S. 571, reëxamined and affirmed to this point. *Ib.*
3. Although suits like the present one may sometimes so present questions arising under the Constitution or laws of the United States that a Federal court will have jurisdiction, yet the mere fact that a suit is an adverse suit, authorized by the statutes of Congress, is not, in and of itself, sufficient to vest jurisdiction in the Federal courts. *Ib.*
4. The substantial relief sought in this case against the attaching creditors and the matter in dispute was the defeat of distinct and separate claims of each attaching creditor, so far as it affected the real estate owned by Scott, and as no defendant was asserting a claim which aggregated the amount required to confer jurisdiction upon this court, the case is dismissed for want of jurisdiction. *Chamberlin* v. *Browning*, 605.
5. Following *Cooper* v. *Newell*, 173 U. S. 555, it is held that the judgment

of the Texas Court which is attacked in this case may be the subject of collateral attack in the courts of the United States, sitting in the same territory in a suit between citizens of Louisiana and citizens of Texas. *Howard* v. *De Cordova*, 609.

6. By c. 95, §§ 13, 14 of the Laws of Texas of 1847 and 1848, the affidavit by the plaintiff or his attorney as to the want of knowledge of the names of the parties defendant or their residence is made an essential prerequisite of the jurisdiction of the court to issue an order for publication. In the state court the affidavit was therefore jurisdictional in its character, and its verity was directly assailed by the averments of the present bill, which were admitted by the demurrer. *Ib.*

See PATENT FOR INVENTION, 3.

C. JURISDICTION OF THE COURT OF CLAIMS.

Keim was honorably discharged from the military service by reason of disability resulting from injuries received in it. He passed the Civil Service examination, and, after service in the Post Office Department, was transferred to the Department of the Interior at his own request. Soon after he was discharged because his rating was inefficient. No other charge was made against him. *Held* that the courts of the United States could not supervise the action of the head of the Department of the Interior in discharging him. *Keim* v. *United States*, 290.

D. JURISDICTION OF STATE COURTS.

A bill in equity in a state court to foreclose a common law lien upon a raft for towage services, is not an invasion of the exclusive admiralty jurisdiction of the District Courts, but is a proceeding to enforce a common law remedy and within the saving clause of section 563 of a remedy which the common law is competent to give. *Knapp, Stout & Co. Company* v. *McCaffrey*, 638.

MANDAMUS.

1. If the Circuit Court of the United States, after sufficient service on a defendant, erroneously declines to take jurisdiction of the case or to enter judgment therein, a writ of mandamus lies to compel it to proceed to a determination of the case, except where the authority to issue a writ of mandamus has been taken away by statute. *In re Grossmayer*, 48.
2. A proceeding for a mandamus is "a suit" within the meaning of that term as employed in Rev. Stat. § 709. *American Express Company* v. *Michigan*, 404.

MEXICAN GRANT.

1. *United States* v. *Ortiz*, 176 U. S. 422, affirmed and followed, to the point that, in order to justify the confirmation of a claim under an alleged Mexican grant, under the act of March 3, 1891, c. 539, 26 Stat. 854, it is essential that the claimants establish, by a preponderance of proof, the validity of their asserted title. *United States* v. *Elder*, 104.
2. The mere approval, by the governor, indorsed on a petition presented

to him for a grant, before a reference to ascertain the existence of the prerequisites to a grant, is not the equivalent of a grant. *Ib.*

3. In order to vest an applicant under the regulations of 1828, with title in fee to public land, it was necessary that the grant should be evidenced by an act of the governor, clearly and unequivocally conveying the land intended to be granted, and a public record in some form was required to be made of the grant; and the action of the legislative body could not lawfully be invoked for approval of a grant, unless the expediente evidenced action by the governor, unambiguous in terms as well as regular in character. *Ib.*
4. The mere indorsement by a Mexican governor of action on the petition, before any of the prerequisite steps mentioned in the regulations of 1828 had been taken to determine whether, as to the land and the applicants, the power to grant might be exercised, was a mere reference by the governor to ascertain the preliminary facts required to justify an approval of an application, and had no force and effect as an actual grant of title to the land petitioned for. *Ib.*
5. Although the documents in question in this case, executed by the prefect and the justice of the peace, fairly import that those officials assumed authority to grant something as respected the land in question, they did not, in 1845, possess power to grant a title to public lands. *Ib.*

MINING CLAIMS.

1. The fact that in a state court plaintiff and defendant make adverse claims to a mining location under the mining laws of the United States (Rev. Stat. § 2325), does not of itself present a federal question within the meaning of Rev. Stat. § 709. *De Lamar's Gold Mining Co.* v. *Nesbitt*, 523.
2. Where the plaintiff based his right to recover upon an act of Congress suspending the forfeiture of mining claims for failure to do the required amount of work, and the decision of the court was in favor of the right claimed by him under this statute, the defendant is not entitled to a writ of error from this court to review such finding. *Ib.*

MUNICIPAL CORPORATION.

1. The city of New Orleans commenced an action in March, 1895, in the Civil District Court for the Parish of Orleans, in Louisiana, to recover from Werlein a tract of land of which he was in possession, having acquired title under the following circumstances: In March, 1876, one Klein commenced an action against the city, to recover principal and interest on certain city bonds, and obtained judgment for the same in 1876. Under a writ of *fieri facias* real estate of the city was seized to satisfy the judgment, and was advertised for sale. The city commenced a suit against Klein to prevent the sale, and obtained an interlocutory injunction. After hearing, this injunction was dissolved, and the complaint was dismissed. The property was then sold under the judicial proceeding to a purchaser through whom Werlein claims title. This suit was brought by the city to set aside that sale, on the ground that it was null and void, because the real estate was dedicated to public use long before the alleged sale, and formed part of the public streets

of New Orleans; that it was not susceptible to alienation or private ownership or private possession. Judgment was rendered in favor of the city, which was affirmed by the Supreme Court of the State. *Held*, (1) That this court had jurisdiction to revise that judgment; (2) that if there were no question of a prior judgment, proof that the land had been properly dedicated for a public square to the public use, and therefore had been withdrawn from commerce, would furnish a defence to the claim by any person of a right to sell the property under an execution upon a judgment against the city; (3) that as the city did not set up that defence, although it was open to it to do so, in the former action, it could not set it up now; (4) that although the city holds property of such a nature in trust for the public, that fact does not distinguish it from the character in which it holds other property, so as to bring the case within the meaning of the rule that a judgment against a man as an administrator does not bind him as an individual; (5) that the former judgment should have been admitted in evidence upon the trial of this action. *Werlein* v. *New Orleans*, 390.

2. In an action at common law to recover from a municipal organization upon a warranty issued by it, when the defendant denies the execution of it, and sets up that it is a forgery, the plaintiff, in order to be entitled to put the instrument in evidence, and thereby make a *prima facie* case, would be compelled to prove its execution. *Apache County* v. *Bath*, 538.

3. The Revised Statutes of Arizona of 1887, provide: "735. (Sec. 87). Any answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit—. . . 8. A denial of the execution by himself or by his authority of any instrument in writing upon which any pleading is founded, in whole or in part, and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit will be sufficient if it state that the affiant has reason to believe and does believe, that such instrument was not executed by the decedent or by his authority." *Held*, That when the defendant did not verify his answer in a case provided for therein, the note or warrant or other paper sued on was admitted as genuine, but when an answer denying that fact was verified, the plaintiff must prove it as he would have to do at common law in a case where the genuineness of the paper was put at issue by the pleadings. *Ib.*

NATIONAL BANK.

In the provision in Rev. Stat. § 5197 that when no rate of interest "is fixed by the laws of the State, or Territory, or District" in which a bank is situated it "may take, receive, reserve or charge a rate not exceeding seven per cent," the words "fixed by the laws" must be construed to mean "allowed by the laws." *Daggs* v. *Phœnix National Bank*, 549.

NAVIGABLE WATERS.

1. Subject to the paramount jurisdiction of Congress over the navigable

waters of the United States, the State of Louisiana had, under the act of March 2, 1849, c. 87, and the other statutes referred to in the opinion of the court, full power to authorize the construction and maintenance of levees, drains and other structures necessary and suitable to reclaim swamp and overflowed lands within its limits. *Leovy* v. *United States*, 621.

2. The dam constructed by the plaintiff in error at Red Pass was constructed under the police power of the State, and within the terms and purpose of the grant by Congress. *Ib.*
3. The decision of the jury, to whom it had been left to determine whether the plaintiff in error was guilty, that the pass was in fact navigable, is not binding upon this court. *Ib.*
4. The term navigable waters of the United States has reference to commerce of a substantial and permanent character to be conducted thereon. *Ib.*
5. The defendant below was entitled to the instruction asked for, but refused that the jury should be satisfied from the evidence that Red Pass was, at the time it was closed, substantially useful to some purpose of interstate commerce, as alleged in the indictment. *Ib.*
6. Upon the record now before the court it is held that Red Pass, in the condition it was when the dam was built, was not shown by adequate evidence, to have been a navigable water of the United States, actually used in interstate commerce, and that the court should have charged the jury, as requested, that upon the whole evidence adduced, the defendants were entitled to a verdict of acquittal. *Ib.*

NORTHERN PACIFIC RAILWAY.

1. The eastern terminus of the Northern Pacific Railroad, which was constructed under the powers conferred upon that Railroad Company by the act of July 2, 1864, c. 217, 13 Stat. 365, was at Ashland in Wisconsin, and that company acquired a right of way over public lands in Wisconsin, including the land in question in this case. *Doherty* v. *Northern Pacific Railway Company*, 421.
2. The important questions of fact and law are substantially the same in this case and in *Doherty* v. *Northern Pacific Railway Company*, *ante*, 421, and that case is followed in this in regard to the questions common to the two cases. *United States* v. *Northern Pacific Railway Company*, 435.
3. The obvious purpose of this suit was, to have the question of the proper terminus of the company's road determined; and if that terminus was found to be at Ashland, then the complainant would not be entitled to any relief. *Ib.*
4. Under the act of July 2, 1864, non-completion of the railroad within the time limited did not operate as a forfeiture. *Ib.*
5. As the bill, in this case, does not allege that it is brought under authority of Congress, for the purpose of enforcing a forfeiture, and does not allege any other legislative act, looking to such an intention, this suit must be regarded as only intended to have the point of the eastern terminus judicially ascertained. *Ib.*

6. As the evidence and conceded facts failed to show any mistake, fraud or error, in fact or in law, in the action of the land department in accepting the location of the eastern terminus made by the company, and in issuing the patent in question, the bill was properly dismissed. *Ib.*

PARTNERSHIP.

Under articles 1223 and 1224 of the Revised Statutes of Texas of 1895, an action cannot be maintained against a partnership, consisting of citizens of other States, by service upon an agent within the State. *In re Grossmayer*, 48.

PATENT FOR INVENTION.

1. There is no obligation on the part of courts in patent causes to follow the prior adjudications of other courts of coördinate jurisdiction, particularly if new testimony be introduced varying the issue presented to the prior court. Comity is not a rule of law, but one of practice, convenience and expediency. It requires of no court to abdicate its individual judgment, and is applicable only where, in its own mind, there may be a doubt as to the soundness of its views. *Mast, Foos & Co.* v. *Stover Manufacturing Co.*, 485.
2. Patent No. 433,531, granted to Mast, Foos & Company upon the application of Samuel W. Martin, for an improvement in windmills, was anticipated by prior devices, and is invalid. Under the state of the art it required no invention to adapt to a windmill the combination of an internal toothed spur wheel with an external toothed pinion, for the purpose of converting a revolving into a reciprocating motion. *Ib.*
3. Where a case is carried by appeal to the Circuit Court of Appeals from an order granting a temporary injunction, it is within the power of that court to dismiss the bill, if there be nothing in the affidavits tending to throw doubt upon the existence or date of the anticipating devices, and, giving them their proper effect, they establish the invalidity of the patent. *Ib.*

PRACTICE.

Under the circumstances disclosed by the record the Circuit Court should have allowed an amendment of the pleadings upon the subject of the citizenship of the parties, and the case should have proceeded to a final hearing on the merits in the event the pleadings as amended showed a case within the jurisdiction of the court. *Great Southern Fire Proof Hotel Co.* v. *Jones*, 449.

PUBLIC LAND.

1. Under the act of March 3, 1875, c. 152, "granting to the railroads the right of way through the public lands of the United States," such grant to the plaintiff in error took effect upon the construction of its road. *Jamestown & Northern Railroad Co.* v. *Jones*, 125.
2. On the evidence set forth in the statement of facts and in the opinion of the court, it is *held*, that there was on the part of the entryman a distinct violation of section 2262 of the Revised Statutes, with regard to

contracts by which the tract for which he applies is not to inure to another's benefit, and the adverse judgment of the court below is sustained. *Hyde* v. *Bishop Iron Co.*, 281.

See MEXICAN GRANT;
MINING CLAIMS.

RAILROAD.

1. A receiver of a railroad is not within the letter or the spirit of the provisions of the act of March 3, 1873, c. 252, 17 Stat. 584, entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation within the United States," now incorporated into the Revised Statutes as sections 4386, 4387, 4388 and 4389. *United States* v. *Harris*, 305.
2. There is no substantial difference between the Federal question in this case raised in the Supreme Court of Minnesota, and that raised in it here. *Minneapolis & St. Louis Railway Co.* v. *Gardner*, 332.
3. The act of Minnesota of March 2, 1881, c. 113, authorizing the consolidation of several railroad companies created a new corporation, upon which it conferred the franchises, exemptions and immunities of the constituent companies; but that did not include an exemption of stockholders in the old companies from the payment of corporate debts, or their liability to pay them. *Ib.*
4. In a State having a constitutional provision imposing liability on stockholders, if the legislature intended those of a new corporation created by it should be exempt, it would express the intention directly, and not commit it to disputable inference from provisions which apply by name to the corporation. *Ib.*
5. A state statute required all regular passenger trains to stop a sufficient length of time at county seats to receive and let off passengers with safety. It appearing that the defendant company furnished four regular passenger trains per day each way, which were sufficient to accommodate all the local and through business, and that all such trains stopped at county seats, the act was held to be invalid as applied to an express train intended only for through passengers from St. Louis to New York. *Cleveland, Cincinnati, Chicago & St. Louis Railway Co.* v. *Illinois*, 514.
6. While railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, they have the legal right, after all these local conditions have been met, to adopt special provisions for through traffic, and legislative interference therewith is an infringement upon the clause of the Constitution which requires that commerce between the States shall be free and unobstructed. *Ib.*
7. All questions arising under the constitution and laws of Kansas, are, for the purposes of this case, foreclosed by the decisions of the state courts. *Erb* v. *Morasch*, 584.
8. It is the duty of a receiver appointed by a Federal court to take charge of a railroad, to operate it according to the laws of the State in which it is situated, and he is liable to suit in a court other than that by which

he was appointed, even in a state court, for a disregard of official duty which causes injury to the party suing. *Ib.*

9. A city, when authorized by the legislature, may regulate the speed of trains within its limits, and this extends to interstate trains in the absence of congressional action on the subject. *Ib.*
10. The Interstate Transit Railway is a railway connecting Kansas City, Missouri, with Kansas City, Kansas, and the exception of its trains from the general provision in the city ordinance respecting the speed of trains in the city was an exception entirely within the power of the legislature to make. *Ib.*
11. All questions arising under the Constitution and laws of Kansas are, for the purposes of this case, foreclosed by the decisions of the state courts. *Ib.*
12. It is the duty of a receiver appointed by a Federal court to take charge of a railroad, to operate it according to the laws of the State in which it is situated, and he is liable to suit in a court other than that by which he was appointed, even in a state court, for a disregard of official duty which causes injury to the party suing. *Ib.*
13. A city, when authorized by the legislature, may regulate the speed of trains within its limits, and this extends to interstate trains in the absence of congressional action on the subject. *Ib.*
14. The Interstate Transit Railway is a railway connecting Kansas City, Missouri, with Kansas City, Kansas, and the exception of its trains from the general provision in the city ordinance respecting the speed of trains in the city was an exception entirely within the power of the legislature to make. *Ib.*

See EVIDENCE;
NORTHERN PACIFIC RAILWAY.

RES JUDICATA.

Plaintiff's intestate, a married woman, filed a bill in the District Court of the United States against her husband's assignee in bankruptcy and the purchaser of a lot of land at the assignee's sale, setting forth her equitable claim to the property, and praying that the purchaser be required to convey to her. A decree was entered in her favor and an appeal taken to the Circuit Court by Campbell, the purchaser. Plaintiff did not press the appeal, but began a new action in ejectment in a state court against the defendant, Campbell, who set up a new title in himself and recovered a judgment. Thereupon, and sixteen years after the decree in her favor in the District Court, plaintiff moved to dismiss the appeal to the Circuit Court. This motion was denied. Thereupon she set up the decree in her favor, although it had not been pleaded by either party in the state court. *Held*, (1) That the plaintiff having abandoned her suit in the District Court, it was too late to move to dismiss the appeal; (2) that the decree not having been pleaded in the state court could not now be resuscitated; (3) that the judgment of the state court was *res judicata* of all the issues between the parties, and that the decrees of the Circuit Court and Circuit Court of Appeals

reversing the decree of the District Court and dismissing plaintiff's bill should be affirmed. *Bryar* v. *Campbell*, 649.

SALARY.

The act of February 16, 1897, c. 235, for the relief of Commander Quackenbush enacted "that the provisions of law regulating appointments in the Navy by promotion in the line, and limiting the number of commanders to be appointed in the United States naval service, are hereby suspended for the purpose of this act only, and only so far as they affect John N. Quackenbush; and the President of the United States is hereby authorized, in the exercise of his discretion and judgment, to nominate and, by and with the advice and consent of the Senate, to appoint said John N. Quackenbush, late a commander in the Navy of the United States, to the same grade and rank of commander in the United States Navy as of the date of August first, eighteen hundred and eighty-three, and to place him on the retired list of the Navy, as of the date of June first, eighteen hundred and ninety-five: *Provided*, That he shall receive no pay or emoluments except from the date of such reappointment." *Held*, (1) That its only apparent office was to forbid the allowance of pay or emoluments from August 1, 1883, by limiting such allowance to the date of the reappointment, which, in that view, must be regarded as the date of appointment under the act; (2) that it was remedial in its character, and should be construed as ratifying prior payments which the Government in its counter-claim was seeking to recover back. *Quackenbush* v. *United States*, 20.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See ADMINISTRATION OF PERSONAL PROPERTY, 4;
ADMIRALTY, 1;
CORPORATION, 1;
EXPRESS;
INTERNAL REVENUE;
JURISDICTION, A, 5, 14, 15, B, 1; D;
MANDAMUS, 2;
MEXICAN GRANT, 1;
MINING CLAIMS, 1;
NATIONAL BANK, 5;
NAVIGABLE WATERS, 1;
NORTHERN PACIFIC RAILWAY, 1, 4;
PUBLIC LAND, 1;
RAILROAD, 1;
SALARY, 5.

B. STATUTES OF STATE AND TERRITORIES.

Arizona. *See* MUNICIPAL CORPORATION, 3.
Indiana. *See* CONSTITUTIONAL LAW, 3.
Minnesota. *See* CONSTITUTIONAL LAW, 1; RAILROAD, 3.
Pennsylvania. *See* CORPORATION, 4.
Texas. *See* CORPORATION, 3; JURISDICTION, B, 6: PARTNERSHIP, 1.
Virginia. *See* FERRY.

TAX AND TAXATION.

1. The personal property of a citizen of and resident in one State, invested in bonds and mortgages in another State, is subject to taxation in the latter State; and the amount of the tax is a claim against the property of the person taxed which is a debt that may, in case of death of the person taxed, be proved against his estate in the State where the mortgages and loans are contracted, subject to the statutes of limitations of the State. *Bristol* v. *Washington County*, 133.
2. Cars of the Union Refrigerator Transit Company, a corporation of Kentucky, engaged in furnishing to shippers refrigerator cars for the transportation of perishable freight, and which were employed in the State of Utah for that purpose, were subject to taxation by that State. *Union Refrigerator Transit Co.* v. *Lynch*, 149.

TREASURY WARRANTS.

1. The treasury warrants in question in this case cannot be said upon the evidence to have violated the Constitution of the United States, or of the State of Texas. *Houston & Texas Central Railroad Co.* v. *Texas*, 66.
2. A warrant, drawn by the authorities of a State in payment of an appropriation made by the legislature, payable upon presentation if there be funds in the treasury, and issued to an individual in payment of a debt of the State to him, cannot be properly called a bill of credit, or a treasury warrant intended to circulate as money. *Ib.*
3. A deliberate intention on the part of a legislative body to violate the organic law of the State under which it exists, and to which the members have sworn obedience, is not to be lightly indulged; and it cannot properly be held that the receipt of the warrants issued in pursuance of legislative authority in Texas, and in payment of an indebtedness due the State from the individual paying them, is an illegal transaction, and amounts in law to no payment whatever. *Ib.*

VIRGINIA AND TENNESSEE BOUNDARY.

A decree is entered, ordering the appointment of commissioners to ascertain, re-trace, re-mark and reëstablish the boundary line between the States of Virginia and Tennessee, as established by the decree of this court in *Virginia* v. *Tennessee*, 148 U. S. 503, but without authority to run or establish any other or new line. *Tennessee* v. *Virginia*, 501.

WATER RIGHTS.

See CONTRACT, 10.

WILL.

Thomas W. Means died in 1890, leaving a large estate, and a will made some ten years before his death, containing, among other provisions, the following: "Item 4. I give, devise and bequeath all the residue and remainder of my estate, personal, real and mixed, wherever situated or located, of which I shall die possessed, to be equally divided among my four children, John Means, William Means, Mary A. Adams,

and Margaret A. Means, and my grandson, Thomas M. Culbertson (son and sole heir of my deceased daughter Sarah J. Culbertson) who shall be living at the time of my decease, and the issue of any child now living, and of said grandson, who may then have deceased, such issue taking the share to which such child or grandson would be entitled if living. But said share given, devised and bequeathed to said grandson or his issue is to be held in trust as hereinafter provided, and to be subject to the provisions hereinafter contained as to said grandson's share. "Item 5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts. I desire the equal provision, herein made for said children, and the provision for said grandson, to be a provision for them respectively, in addition to said advances made and that may hereafter be made, and that in the division, distribution and settlement of my said estate, said advances made and that may hereafter be made, be treated not as advances, but as gifts not in any manner to be accounted for by my said children and grandson, or any of them or the issue of any of them." He was in the habit of advancing money to his children, the amounts advanced to each individually being entered against him in the father's books. At the date of the will the several amounts so advanced were as follows: John, $79,214.36; William, $58,409.54; Mrs. Adams, $51,207.48; Margaret, $39,120.78; Mrs. Culbertson, $29,609.82. Subsequently, in 1898, William becoming involved, the amount advanced to him was largely increased in manner as set forth in the statement of the case and opinion of the court. After the death of the father a claim was made that the money thus paid out for William was to be held to be a part of his share of his father's estate. *Held*, (1) that in the absence of some absolute and controlling rule to the contrary, the intentions of a testator, as deduced from the language of the will, construed in the light of the circumstances surrounding him at the date of its execution, always control as to the disposition of the estate; (2) that the testator believed that after he had done in his lifetime what, in his judgment, his children severally required, there would be an abundance of his estate left for distribution, and intended that all dealings between himself and each of his children should be wiped out, and that what was left after having discharged to each his paternal obligation should be distributed equally. *Adams* v. *Cowen*, 471.

After the probate of his father's will, William gave to the administrators of the estate with the will annexed, an acknowledgment of the receipt from them of $136,035.75 in his own notes to his father as part of his distributive share of his father's estate. At the time when this was done he was in straitened circumstances, was broken in spirit and was wavering in his purposes. *Held*, that while a man in the full possession of his faculties, and under no duress may give away his property, and equity will not recall the gift, yet it looks with careful scrutiny upon all transactions between trustee and beneficiary, and if it appears

that the trustee has taken advantage of the situation of the beneficiary, and has obtained from him, even for only the benefit of other beneficiaries, large property without consideration, it will refuse to uphold the transaction thus accomplished; and that the conclusions of the Circuit Court of Appeals in this case must be sustained, and its decree affirmed. *Ib.*