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ADMIRALTY.

1. "The Kensington," a steamer transporting passengers from Antwerp to New York, took on board at Antwerp, as such passengers, the petitioners in this case, and, in receiving them and their luggage, gave them a ticket containing, among other things, the following: "(c) The shipowner or agent are not under any circumstances liable for loss, death, injury or delay to the passenger or his luggage arising from the act of God, the public enemies, fire, robbers, thieves of whatever kind, whether on board the steamer or not, perils of the seas, rivers or navigation, accidents to or of machinery, boilers or steam, collisions, strikes, arrest or restraint of princes, courts of law, rulers or people, or from any act, neglect or default of the shipowner's servants, whether on board the steamer or not or on board any other vessel belonging to the shipowner, either in matters aforesaid or otherwise howsoever. Neither the shipowner nor the agent is under any circumstances or for any cause whatever or however arising liable to an amount exceeding 250 francs for death, injury or delay of or to any passenger carried under this ticket. The shipowner will use all reasonable means to send the steamer to sea in a seaworthy state and well-found, but does not warrant her seaworthiness. (d) The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage caried under this ticket beyond the sum of 250 francs at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading, in use from the port of departure. There was no proof specially tending to show that at the time the ticket was issued the attention of the travellers was called to the fact that it embodied exceptional stipulations relieving the company from liability, or that such conditions were agreed to. *Held*: 1. Following the courts below, that the loss must be presumed to have arisen from imperfect stowage: 2. That testing the exemptions in the ticket by the rule of public policy, they were void: 3. That the arbitrary limitation of 250 francs to each passenger, unaccompanied by any right to increase the amount by an adequate and reasonable proportional payment, was void. *The Kensington*, 263.

2. Alexandroff, a conscript in the Russian naval service, was sent as one of a detail of fifty-three men to Philadelphia, to become a part of the crew of a Russian cruiser then under construction at that port. On his ar-

rival at Philadelphia, the vessel was still upon the stocks, but was shortly thereafter launched, and continued for some months in the water still under construction. Alexandroff, who had remained during the winter at Philadelphia in the service and under the pay of the Russian government, deserted the following spring, went to New York, renounced his allegiance to the emperor, declared his intention of becoming a citizen of the United States, and obtained employment. Shortly thereafter, he was arrested as a deserter from a Russian ship of war, and committed to prison, subject to the orders of the Russian Vice Consul or commander of the cruiser. On writ of habeas corpus, it was *held:* (1) that although the cruiser was not a ship when Alexandroff arrived at Philadelphia, she became such upon being launched; (2) that, under the treaty with Russia of 1832, in virtue of which these proceedings were taken, she was a ship of war as distinguished from a merchant vessel, notwithstanding she had not received her equipment or armament, and was still unfinished; (3) that, under her contract of construction, she was from the beginning, and continued to be, the property of the Russian Government, and was, therefore, a Russian ship of war, notwithstanding she had not received her crew on board, nor been commissioned for active service, and was still in process of completion; (4) that Alexandroff, having been detailed to her service, was, from the time she became a ship, a part of her crew within the meaning of the treaty; (5) that the exhibition of official documents, showing that he was a member of her crew, had been waived by his admissions. *Tucker* v. *Alexandroff*, 424.

3. A ship becomes such when she is launched, and continues to be such so long as her identity is preserved: from the moment she takes the water, she becomes the subject of admiralty jurisdiction. *Ib.*

4. A seaman becomes one of the crew of a merchant vessel from the time he signs the shipping articles, and of a man of war from the time he is detailed to her service. *Ib.*

5. A decree in admiralty in the Supreme Court of the Territory of Hawaii, in a case pending in the courts of the Republic of Hawaii at the time of its annexation to the United States, is not subject to an appeal to the United States Circuit Court of Appeals for the Ninth Circuit. *Ex parte Wilder's Steamship Co.*, 545.

6. The trustees of The Sun Association are to be charged with knowledge of the extent of the power usually exerted by its managing editor, and must be held to have acquiesced in the possession by him of such authority, even though they had not expressly delegated it to him, and he is held to have been vested with such power. An authority to charter a yacht for the purpose of collecting news was clearly within the corporate powers of the association. *Sun Printing & Publishing Association* v. *Moore*, 642.

7. It is impossible to assume in this case that the relation of The Sun Association to the hiring of the yacht was simply that of a security for Lord as a hirer of the yacht on his personal account, and the two papers in evidence are in legal effect but one contract, and must be interpreted together. *Ib.*

8. As the trustees of The Sun Association must be presumed to have exercised a supervision over the business of the corporation, they are to be charged with knowledge of the extent of the power usually exercised by its managing editor. *Ib.*
9. The fixing of the value of the vessel in the contract can have but one meaning that the value agreed on was to be paid in case of default in returning. *Ib.*
10. The decision of the court below that the sum due in consequence of a default in the return of the ship was not to be diminished by the amount of the hire which had been paid at the inception of the contract, was correct. *Ib.*
11. The naming of a stipulated sum to be paid for the non-performance of a covenant, is conclusive upon the parties in the absence of fraud or mutual mistake. *Ib.*
12. Parties may, in a case where the damages are of an uncertain nature, estimate and agree upon the measure of damages which may be sustained from the breach of an agreement. *Ib.*
13. The law does not limit an owner of property from affixing his own estimate of its value upon a sale thereof. *Ib.*
14. As the stipulation for value in this case was binding upon the parties, the court rightly refused to consider evidence tending to show that the admitted value was excessive. *Ib.*

See EXTRADITION TREATIES.

BANKRUPTCY.

When a debtor, years before the filing of a petition in bankruptcy, gives to a creditor an irrevocable power of attorney to confess judgment after maturity upon a promissory note of the debtor; and the creditor, within four months before the filing of a petition in bankruptcy against the debtor, obtains such a judgment and execution thereon; and the debtor fails, at least five days before a sale on the execution, to vacate or discharge the judgment, or to file a voluntary petition in bankruptcy; the judgment and execution are a preference "suffered or permitted" by the debtor, within the meaning of the bankrupt act of July 1, 1898, c. 541, § 3, cl. 3, and the debtor's failure to vacate or discharge the preference so obtained is an act of bankruptcy under that act. *Wilson* v. *Nelson*, 191.

CASES AFFIRMED AND FOLLOWED.

1. *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13, followed. *Dayton Coal & Iron Co.* v. *Barton*, 23.
2. The ruling in *De Lima* v. *Bidwell*, 182 U. S. 1, reaffirmed and applied. *Dooley* v. *United States*, 151.
3. No distinction, so far as the question determined in that case is concerned, can be made between the Philippines and the Island of Porto Rico, after the ratification of the treaty of peace between the United States and Spain, April 11, 1899, and certainly not (*a*) because of the passage by the Senate alone, by a majority, but not two thirds of a *quorum*, of a joint resolution in respect to the intention of the Senate

in the ratification; (*b*) or, because of the armed resistence of the native inhabitants, or of uncivilized tribes, in the Philippines, to the dominion of the United States; (*c*) or, because one of the justices who concurred in the judgment of *De Lima* v. *Bidwell*, also concurred in the judgment in *Downes* v. *Bidwell*, 182 U. S. 244. *Fourteen Diamond Rings*, 176.

4. *Chicago, Rock Island and Pacific Railway Co.* v. *Zernecke*, *ante*, 582, affirmed and followed. *Chicago, Rock Island & Pacific Railway* v. *Eaton*, 589.
5. This case is affirmed on the authority of *Midway Company* v. *Eaton*, *ante*, 602. *Midway Company* v. *Eaton*, 619.
6. The case of *Hewitt* v. *Schultz*, 180 U. S. 139, followed and applied to the facts of this case. *Southern Pacific Railroad Co.* v. *Bell*, 675.
7. This case was argued and submitted with *Southern Pacific Railroad Company* v. *Bell*, *ante*, 675, and by the same counsel, resembles that in all essential particulars, and is controlled by it. *Groeck* v. *Southern Pacific Railroad Co.*, 690.

COMMON CARRIER.

1. This action was brought by defendants in error to recover the value of 187 bales of cotton destroyed in the fire mentioned in *Texas & Pacific Railway Company* v. *Reiss*, *ante*, 621. The facts as to the manner of doing business at Westwego are the same as those stated in that case, and also in the case of the same company v. *Clayton*, 173 U. S. 348. The bill of lading contained the following clauses: "1. No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto by causes beyond its control; . . . or for loss or damage to property of any kind at any place occurring by fire, or from any cause except the negligence of the carrier." "3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee. . . ." "4. . . . Cotton is excepted from any clause herein on the subject of fire, and the carrier shall be liable as at common law for loss or damage of cotton by fire. . . ." "11. No carrier shall be liable for delay, nor in any other respect than as warehousemen, while the said property awaits further conveyance, and in case the whole or any part of the property specified herein be prevented by any cause from going from said port in the first steamer, of the ocean line above stated, leaving after the arrival of such property at said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding steamer of said line, or, if deemed necessary, by any other steamer. 12. This contract is executed and accomplished, and all liability hereunder terminates, on the delivery of the said property to the steamship, her master, agent or servants, or to the steamship company, or on the steamship pier at the said port, and the inland freight charges shall be a first lien, due and payable by the steamship company." *Held:* (1) That the measure of the common law liability between connecting carriers is properly stated in the opinion in the next preced-

ing case, and the cases therein referred to; (2) That under the wording of the fourth clause in the bill of lading the defendant was properly held liable; (3) That there was nothing to go to the jury upon the question of a delivery of the cotton to the steamship company under the twelfth clause of the bill of lading; (4) That upon the facts stated it was clear that at the time when the cotton was lost there had been no delivery, actual or constructive, to the steamship company, so as to divest the defendant of its common law liability for the loss of this cotton. *Texas & Pacific Railway Co.* v. *Callender*, 632.

2. Whatever may generally be the effect of a notice to a connecting carrier, upon the question of terminating or altering the liability of a preceding carrier for the goods, it is quite clear that it has no effect in diminishing the liability until actual delivery in a case where the preceding carrier still continues to have full control over the goods and has a choice as between connecting carriers, and may, notwithstanding such general notice, deliver the goods under certain circumstances to another carrier for further transportation. *Ib.*

CONSTITUTIONAL LAW.

1. The act of the legislature of the State of Tennessee, passed March 17, 1899, Statutes of 1899, c. 11, p. 17, requiring the redemption in cash of store orders or other evidences of indebtedness issued by employers in payment of wages due to employés, does not conflict with any provisions of the Constitution of the United States relating to contracts. *Knoxville Iron Co.* v. *Harbison*, 13.

2. The Statute of Kansas of March 3, 1897, entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act," is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it applies only to the Kansas City Stock Yards Company, and not to other companies or corporations engaged in like business in Kansas, and thereby denies to that company the equal protection of the laws. *Cotting* v. *Kansas City Stock Yards Co. and the State of Kansas*, 79.

3. The Federal Constitution neither grants nor forbids to the governor of a State the right to stay the execution of a sentence of death. *Storti* v. *Massachusetts*, 138.

4. The act of Congress taking effect May 1, 1900, and known as the Foraker act, which requires all merchandise going into Porto Rico from the United States to pay a duty of fifteen per cent of the amount of duties paid upon merchandise imported from foreign countries, is constitutional. *Dooley* v. *United States*, 151.

5. The Constitution, in declaring that no tax or duty shall be laid on articles exported from any State, is limited to articles exported to a foreign country, and has no application to Porto Rico, which, in the case of *De Lima* v. *Bidwell*, 182 U. S. 1, was held not to be a foreign country within the meaning of the general tariff law then in force. *Ib.*

6. The fact that the duties so collected were not covered into the general

fund of the Treasury, but held as a separate fund to be used for the government and benefit of Porto Rico, and were made subject to repeal by the legislative assembly of that island, shows that the tax was not intended as a duty upon exports, and that Congress was undertaking to legislate for the island temporarily, and only until a local government was put in operation. *Ib.*

7. The judgment of the state court in this case was based upon the consideration given by it to all the asserted violations of the statutes jointly, and hence no one of the particular violations can be said, when considered independently, to be alone adequate to sustain the conclusions of the court below that a judgment of ouster should be entered. *Capital City Dairy Co.* v. *Ohio*, 238.
8. The contention that the statutes of Ohio in question are repugnant to the commerce clause of the Constitution is without merit. Those statutes were, the act of 1884, the act of 1886, and the act of 1890, all referred to in the opinion, and all relating to the sale of drugs or articles of food, and especially oleomargarine. *Ib.*
9. The Fifth Amendment of the Constitution operates solely on the National Government, and not on the States. *Ib.*
10. The legislature of Ohio had the lawful power to enact the statutes in question, and so far as they related to the manufacture and sale of oleomargarine within the State of Ohio by a corporation created by the laws of Ohio, they were not repugnant to the Constitution of the United States. *Ib.*
11. The provisions of subdivision 5 of the tax law of the State of New York, which became a law April 16, 1897, are not in violation of the Fourteenth Amendment to the Constitution, nor of section 10 of article 1 of the Constitution. *Orr* v. *Gilman*, 278.
12. The opinion in *Carpenter* v. *Pennsylvania*, 17 How. 456, although decided before the adoption of the Fourteenth Amendment to the Constitution, correctly defines the limits of jurisdiction between the state and the Federal Governments, in respect to the control of the estates of decedents, both as they were regarded before the adoption of the Fourteenth Amendment, and have since been regarded. *Ib.*
13. The holding of the Court of Appeals of New York, that it was the execution of the power of appointment which subjected grantees under it to the transfer tax, is binding upon this court. *Ib.*
14. The Court of Appeals did not err when it held that a transfer or succession tax, not being a direct tax upon property, but a charge upon a privilege, exercised or enjoyed under the laws of the State, does not, when imposed in cases where the property passing consists of securities exempt by statute, impair the obligation of a contract within the meaning of the Constitution of the United States. *Ib.*
15. The view of the Court of Appeals in this case must be accepted by this court as an accurate statement of the law of the State. *Ib.*
16. There is nothing in the Federal Constitution which forbids a State to reach backward and collect taxes from certain kinds of property which were not at the time collected through lack of statutory provision therefor, or in consequence of a misunderstanding as to the law, or

from neglect of administrative officials, without also making provision for collecting the taxes, for the same years, on other property. *Florida Central &c. Railroad* v. *Reynolds*, 471.

17. The question of the validity of the Constitution and laws of Kentucky, under which these proceedings were had, is properly before the court, whose consideration of it must, however, be restricted to its Federal aspect. *Louisville & Nashville Railroad Co.* v. *Kentucky*, 503.
18. This court must accept the meaning of the state enactments to be that found in them by the state courts. *Ib.*
19. A state railroad corporation, voluntarily formed, cannot exempt itself from the control reserved to the State by its constitution, and, if not protected by a valid contract, cannot successfully invoke the interposition of Federal courts, in respect to long haul and short haul clauses in a state constitution, simply on the ground that the railroad is property. *Ib.*
20. A contract of exemption from future general legislation cannot be deemed to exist unless it is given expressly or follows by implication equally clear with express words. *Ib.*
21. A railroad charter is taken and held subject to the power of the State to regulate and control the grant in the interest of the public. *Ib.*
22. Interference with the commercial power of the general government to be unlawful must be direct, and not merely the incidental effect of enforcing the police power of a State. *Ib.*
23. The statute of Massachusetts of 1894, c. 522, sec. 98, imposing a fine on "any person who shall act in any manner in the negotiation or transaction of unlawful insurance with a foreign insurance company not admitted to do business in this Commonwealth," is not contrary to the Constitution of the United States, as applied to an insurance broker who, in Massachusetts, solicits from a resident thereof the business of procuring insurance on his vessel therein, and as agent of a firm in New York, having an office in Massachusetts, secures the authority of such resident to the placing of a contract of insurance for a certain sum in pounds sterling upon the vessel, and transmits an order for that insurance to the New York firm; whereupon that firm, acting according to the usual course of business of the broker, of itself, and of its agents in Liverpool, obtains from an insurance company in London, which has not been admitted to do business in Massachusetts, a policy of insurance for that sum upon the vessel; and the broker afterwards in Massachusetts, receives that policy from the New York firm, and sends it by mail to the owner of the vessel in Massachusetts. *Nutting* v. *Massachusetts*, 553.

See RAILROAD, 1, 2.

CONTRACT.

See ADMIRALTY, 6 to 14.

CORPORATION.

When a corporation is formed in one State, and by the express terms of its charter it is created for doing business in another State, and business

is done in that State, it must be assumed that the charter contract was made with reference to its laws; and the liability which those laws impose will attend the transaction of such business. *Pinney* v. *Nelson*, 144.

COURT MARTIAL.

1. The rule reiterated, that civil tribunals will not revise the proceedings of courts martial, except for the purpose of ascertaining whether they had jurisdiction of the person and of the subject-matter, and whether though having such jurisdiction, they have exceeded their powers in the sentences pronounced. *Carter* v. *McClaughry*, 365.
2. Where the punishment on conviction of any military offence is left to the discretion of the court martial, the limit of punishment, in time of peace, prescribed by the President, applies to the punishment of enlisted men only. *Ib.*
3. Where the jurisdiction of the military court has attached in respect of an officer of the army, this includes not only the power to hear and determine the case, but the power to execute and enforce the sentence. *Ib.*
4. Where the sentence is rendered on findings of guilty of several charges with specifications thereunder, and the President, as the reviewing authority, has disapproved of the findings of guilty of some of the specifications, but approved the findings of guilty of a specification or specifications under each of the charges, and of the charges, and the President does not think proper to remand the case to the court martial for revision, or to mitigate the sentence, or to pardon the accused, but approves the sentence, the judgment so rendered cannot be disturbed on the ground that the disapproval of some of the specifications vitiated the sentence. *Ib.*
5. In this case, Charge I was "Conspiring to defraud the United States, in violation of the 60th article of war." Charge II was "Causing false and fraudulent claims to be made against the United States in violation of the 60th article of war." These are separate and distinct offences and the military court was empowered to punish the accused as to one by fine and as to the other by imprisonment. *Ib.*
6. Charge III was "Conduct unbecoming an officer and a gentleman, in violation of the 61st article of war." This is not the same offence as the offences charged under the 60th article of war. But in view of articles 97 and 100, conviction of Charges I and II involves conviction under article 61, and the officer may be dismissed on conviction under either article. *Ib.*
7. Charge IV was "Embezzlement, as defined in section 5488 of the Revised Statutes, in violation of the 62d article of war." *Held:* (*a*) That the specified crime was not mentioned in the preceding articles. That the offences of which the accused was convicted under the 60th article were distinct from the acts prohibited by section 5488. (*b*) That the crime alleged in this charge was not covered by subdivision 9 of article 60, because the embezzlement charged was not of money "furnished or intended for the military service." (*c*) Nor was the money applied

to a purpose prescribed by law, and it was for the court martial to determine whether the crime charged was "to the prejudice of good order and military discipline." *Ib.*

EXTRADITION TREATIES.

1. While desertion is not a crime provided for in our ordinary extradition treaties with foreign nations, the arrest and return to their ships of deserting seamen is required by our treaty with Russia and by other treaties with foreign nations. Query: Whether in the absence of a treaty, courts have power to order the arrest and return of seamen deserting from foreign ships? *Tucker* v. *Alexandroff*, 424.
2. While foreign troops entering or passing through our territory with the permission of the Executive are exempt from territorial jurisdiction, it is doubtful whether in the absence of a treaty or positive legislation to that effect, there is any power to apprehend or return deserters. *Ib.*
3. The treaty with Russia containing a convention upon that subject, such convention is the only basis upon which the Russian Government can lay a claim for the arrest of deserting seamen. The power contained in the treaty cannot be enlarged upon principles of comity to embrace cases not contemplated by it. *Ib.*
4. A treaty is to be interpreted liberally and in such manner as to carry out its manifest purpose. *Ib.*

HABEAS CORPUS.

Section 761 of the Revised Statutes provides as to *habeas corpus* cases that "the court or justice or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require;" and this mandate is applicable to this court, whether exercising original or appellate jurisdiction. *Storti* v. *Massachusetts*, 138.

INDIANS.

See PUBLIC LAND, 17.

INSURANCE (FIRE).

1. The Potomac Company insured Mitchell in a sum not exceeding five thousand dollars on his stock of stoves and their findings, tins and tinware, tools of trade, etc., kept for sale in a first-class retail stove and tin store in Georgetown, D. C., with a privilege granted to keep not more than five barrels of gasoline or other oil or vapor. The policy also contained the following provisions: "It being covenanted as conditions of this contract that this company . . . shall not be liable . . . for loss caused by lightning or explosions of any kind unless fire ensues, and then for the loss or damage by fire only." "Or if gunpowder, phosphorus, naphtha, benzine, or crude earth or coal oils are kept on the premises, or if camphene, burning fluid, or refined coal or earth oils are kept for sale, stored or used on the premises, in quantities exceeding one barrel at any one time without written consent, or if the risk be increased by any means within the control . . . of the assured, this policy shall be void." An extra premium was charged

for this gasoline privilege. A fire took place in which the damage to the insured stock amounted to $4568.50. This fire was due to an explosion which caused the falling of the building and the crushing of the stock. Mitchell claimed that there was evidence of a fire in the back cellar which caused that explosion, and that the explosion was therefore but an incident in the progress of the fire, and that the company was therefore liable on the policy. The court instructed the jury that if there existed upon the premises a fire, and that the explosion, if there was an explosion, followed as an incident to that fire, then the loss to the plaintiff would be really occasioned by the fire, for the explosion would be nothing but an incident to fire; but if the explosion were not an incident to a precedent fire, but was the origin and the direct cause of the loss, then there was no destruction by fire, and the plaintiff was not entitled to recover anything from the defendant. *Held:* (1) That it was not important to inquire whether there was any evidence tending to prove the existence of the alleged fire in the front cellar because the submission of the question to the jury was all that the plaintiff could ask, and the verdict negatives its existence. (2) That there was no evidence of any fire in the back cellar preceding the lighting of the match in the front cellar. (3) That the instructions in regard to gasoline as more fully set forth in the opinion of this court were correct. *Mitchell* v. *Potomac Insurance Co.*, 42.

2. The court further charged the jury: (1) That if the loss was caused solely by an explosion or ignition of explosive matter, not caused by a precedent fire, the plaintiff cannot recover; (2) that if an explosion occurred from contact of escaping vapor with a match lighted and held by an employé of the plaintiff, and the loss resulted solely from such explosion, the verdict must be for the defendant; (3) that a match lighted and held by an employé of the plaintiff coming in contact with vapor and causing an explosion, is not to be considered as "fire" within the meaning of the policy. *Held*, that each of these instructions was correct. *Ib.*
3. There is no error in the other extracts from the charge set forth in the opinion of this court. *Ib.*
4. Over insurance by concurrent policies on the same property tends to cause carelessness and fraud; and a clause in a policy rendering them void in case other insurance had been or should be made upon the property and not consented to by the insurer, is customary and reasonable. *Northern Assurance Co.* v. *Grand View Building Association*, 308.
5. In this case such a provision was expressly and in unambiguous terms contained in the policy sued on, and it was shown in the proofs of loss furnished by the insured, and it was found by the jury, that there was a policy in another company outstanding when the one sued upon in this case was issued; and hence the question in this case is reduced to one of waiver. *Ib.*
6. It is a fundamental rule in courts both of law and equity, that parol contemporaneous evidence is inadmissible to contradict or vary the terms of a valid written instrument, unless in cases where the contracts are vitiated by fraud or mutual mistake. *Ib.*

7. Where a policy provides that notice shall be given of any prior or subsequent insurance, otherwise the policy to be void, such a provision is reasonable, and constitutes a condition, the breach of which will avoid the policy. *Ib.*
8. Where the policy provides that notice of prior or subsequent insurance must be given by indorsement upon the policy, or by other writing, such provision is reasonable and one competent for the parties to agree upon, and constitutes a condition, the breach of which will avoid the policy. *Ib.*
9. Contracts in writing, if in unambiguous terms, must be permitted to speak for themselves, and cannot, by the courts at the instance of one of the parties, be altered or contradicted by parol evidence, unless in case of fraud or mutual mistake of facts, and this principle is applicable to cases of insurance contracts. *Ib.*
10. Provisions contained in fire insurance policies that such a policy shall be void and of no effect if other insurance is placed on the property in other companies without the knowledge and consent of the insuring company, are usual and reasonable. *Ib.*
11. It is reasonable and competent for the parties to agree that such knowledge and consent shall be manifested in writing, either by indorsement upon the policy, or by other writing. *Ib.*
12. It is competent and reasonable for insurance companies to make it matter of condition in their policies that their agents shall not be deemed to have authority to alter or contradict the express terms of the policies as executed and delivered. *Ib.*
13. Where fire insurance policies contain provisions whereby agents may, by writing indorsed upon the policy or by writing attached thereto, express the company's assent to other insurance, such limited grant of authority is the measure of the agent's power. *Ib.*
14. Where such limitation is expressed in the policy, the assured is presumed to be aware of such limitation. *Ib.*
15. Insurance companies may waive forfeiture caused by non-observance of such conditions. *Ib.*
16. Where waiver is relied upon, the plaintiff must show that the company, with knowledge of the facts that occasioned the forfeiture, dispensed with the observance of the condition. *Ib.*
17. Where the waiver relied on is the act of an agent, it must be shown either that the agent had express authority from the company, to make the waiver, or that the company, subsequently, with knowledge of the facts, ratified the action of the agent. *Ib.*

INSURANCE (LIFE).

The policies sued on provided for forfeiture on nonpayment of premiums, and as to payments subsequent to the first, which were payable in advance, for a grace of one month, the unpaid premiums to bear interest and to be deducted from the amount of the insurance if death ensued during the month. The applications, which were part of the policies, were dated December 12, 1893, and by them McMaster applied, in the customary way, for insurance on the ordinary life table, the premiums

to be paid annually; the company assented and fixed the annual premium at $21, on payment of which, and not before, the policies were to go into effect. After the applications were filled out and signed, and without McMaster's knowledge or assent, the company's agent inserted therein: "Please date policy same as application;" the policies were issued and dated December 18, 1893, and recited that their pecuniary consideration was the payment in advance of the first annual premiums, "and of the payment of a like sum on the twelfth day of December in every year thereafter during the continuance of this policy." They were tendered to McMaster by the company's agent, December 26, 1893, but McMaster's attention was not called to the terms of this provision, and on the contrary he "asked the agent if the policies were as represented, and if they would insure him for the period of thirteen months, to which the agent replied that they did so insure him and thereupon McMaster paid the agent the full first annual premium or the sum of twenty-one dollars on each policy and without reading the policies he received them and placed them away." McMaster died January 18, 1895, not having paid any further premiums, and the company defended on the ground that the policies became forfeited January 12, 1895, being twelve months from December 12, 1893, with the month of grace added. *Held* that, (1) the statutes of Iowa where the insurance was solicited, the applications signed, the premiums paid and the policies delivered, govern the relation of the solicitor to the parties. (2) Under the circumstances plaintiff was not estopped to deny that McMaster requested that the policies should be in force December 12, 1893, or, by accepting the policies, agreed that the insurance might be forfeited within thirteen months from December 12, 1893. (3) The rule in respect of forfeiture that if policies of insurance are so framed as to be fairly open to construction that view should be adopted, if possible, which will sustain rather than forfeit the contract is applicable. (4) Tested by that rule these policies were not in force earlier than December 18, 1893, and as the annual premiums had been paid up to December 18, 1894, forfeiture could not be insisted on for any part of that year or of the month of grace also secured by the contracts. *McMaster* v. *New York Life Insurance Co.*, 25.

JUDGMENT.

The judgment of the Supreme Court of a State reversing that of the court below, and remanding the case for further proceedings to be had therein, is not a final judgment, nor is this court at liberty to consider whether such judgment was an actual final disposition of the merits of the case. The face of the judgment is the test of its finality. *Haseltine* v. *Central Bank*, 130.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

Removal of Cause.

1. The act of June 16, 1880, c. 243, gave the Court of Claims jurisdiction of

claims against the District of Columbia like the one which forms the subject of this action. This case was duly heard by the Court of Claims, and final judgment was entered in favor of the claimants. The District of Columbia appealed to this court, and later moved to set aside the judgment, and to grant a new trial, pending the decision upon which Congress repealed the act of June 16, 1880, and enacted that all proceedings under it should be vacated, and that no judgment rendered in pursuance of that act should be paid. *Held*, that this appeal must be dismissed for want of jurisdiction, and without any determination of the rights of the parties. *District of Columbia* v. *Eslin*, 62.

2. Although the certificate of the chief justice of a state supreme court that a Federal question was raised is insufficient to give this court jurisdiction, where such question does not appear in the record, it may be resorted to, in the absence of an opinion, to show that a Federal question, which is otherwise raised in the record, was actually passed upon by the court. *Gulf & Ship Island Railroad Co.* v. *Hewes*, 66.

3. A charter of a railroad company incorporated by an act of the legislature of Mississippi, passed in 1882, contained an exemption from all taxation for twenty years. The state constitution adopted in 1869 provided that the property of all corporations for pecuniary profit, should be subject to taxation, the same as that of individuals, and that taxation should be equal and uniform throughout the State. Prior to the incorporation of the railroad company, the supreme court of the State had constructed this provision of the constitution as authorizing exemptions from taxation, but had declared that such exemptions were repealable. *Held*, That this court was bound by this construction of the Constitution, and, therefore, that the railroad company could not claim an irrepealable exemption in its charter. *Held*, also, That the exemption being repealable, the question whether it had in fact been repealed was a local and not a Federal question. *Ib.*

4. A ruling of a state supreme court that a repealable exemption has been in fact repealed by a subsequent statute, is one which turns upon the construction of a state law, and is not reviewable here, although if the exemption were irrepealable and thus constituted a contract, it would be the duty of this court to decide for itself whether the subsequent act did repeal it or impair its obligation. *Ib.*

5. This suit was brought in the Circuit Court of the United States for the Southern District of Georgia, by citizens of New York against the Southern Express Company, a corporation of Georgia, and the Railroad Commission of that State, to prevent the company from applying any of its moneys to meet the requirements of the War Revenue Act of June 13, 1898, in relation to adhesive stamps to be placed on bills of lading, etc. The Circuit Court having enjoined the commission from proceedings, appeal was taken to the Circuit Court of Appeals, which reversed that decree, and ordered the case to be dismissed. The case was then brought to this court and submitted here on February 25, 1901. On the 2d of March, 1901, an act was passed, (to take effect July 1, 1901), excluding express companies from the operation of the War Revenue Act of 1898. *Held:* (1) That no actual controversy now remains or

can arise between the parties. (2) That as the order of the Circuit Court of Appeals, directing the dismissal of the suit, accomplishes a result that is appropriate in view of the act of 1901, this court need not consider the grounds upon which the court below proceeded, nor any of the questions determined by it or by the Circuit Court, and that the judgment must be affirmed without costs in this court. *Dinsmore* v. *Southern Express Co.*, 115.

6. The rights asserted by the claimants are embraced in three propositions, stated in the opinion of the court. The first of these propositions does not involve a Federal question, and is not reviewed in the opinion of the court. The second and third are as follows: "2. A claim that in virtue of the sale made in the mechanics' lien suit after the decision of the Circuit Court of Appeals in the creditors' suit and the final entry and execution of the mandate, the Pipe Works became the owner of the Water Works' plant, entitled to the possession of the same, with a right, however, in the defendant, as a junior lien holder, to redeem by paying the indebtedness due the Pipe Works; and, 3. An assertion that if the Pipe Works had not become the owner of the Water Works' plant in virtue of the sale made as stated in the opinion of the court, that corporation, in any event, in virtue of its asserted mechanics' lien, had been vested with a paramount right as against the Water Supply Company, which it was the duty of a court of equity to enforce by compelling payment by the defendant," present Federal questions, which it is the duty of this court to determine. *National Foundry & Pipe Works* v. *Oconto Water Supply Co.*, 216.
7. It is elementary that if from the decree in a cause there be uncertainty as to what was really decided, resort may be had to the pleadings and to the opinion of the court, in order to throw light upon the subject. *Ib.*
8. Every claim of a Federal right asserted in this case is without merit, and the court below did not err. *Ib.*
9. The Circuit Court simply declined, in drawing the decree, to construe the opinions of the Circuit Court of Appeals, and deemed that it discharged its duty by obeying the mandate to dismiss the bill for want of equity, without adding any provision which might be construed as adding to or taking away from either of the parties to the record any right which had been established in virtue of the judgment of the Circuit Court of Appeals. *Ib.*
10. The validity of the title claimed by Andrews & Whitcomb to have resulted from the sale to them in the mortgage foreclosure suit having been an issue and decided in the creditors' suit, all other grounds supposed to establish the invalidity of such title should have been presented in the creditors' suit, and such as were not must be deemed to have been waived, and were concluded and foreclosed by the judgment rendered in such issue. *Ib.*
11. This court, on error to a state court, cannot consider an alleged Federal question, when it appears that the Federal right thus relied upon had not been, by adequate specification, called to the attention of the state court, and had not been considered by it, it not being necessarily involved in the determination of the cause. *Capital City Dairy Co.* v. *Ohio*, 238.

12. This court cannot interfere with the administration of justice in the State of Georgia because it is not within the power of the courts of that State to compel the attendance of witnesses who are beyond the limits of the State, or because the taking or use of depositions of witnesses so situated in criminal cases on behalf of defendants is not provided for by statute and may not be recognized in Georgia. *Minder* v. *Georgia*, 559.

See REMOVAL OF CAUSES, 1.

B. JURISDICTION OF UNITED STATES CIRCUIT COURTS.

See ADMIRALTY, 5.

C. JURISDICTION OF STATE COURTS.

The question whether, under a state statute a convicted party has a year in which to file a motion for a new trial, and that therefore no sentence can be executed on him until that time, is a question to be determined by the courts of the State. *Storti* v. *Massachusetts*, 138.

LIABILITY OR GUARANTY INSURANCE.

1. Where a bond insuring a bank against such pecuniary loss as it might sustain by reason of the fraudulent acts of its teller, contained a provision that the company would notify the insuring company on "becoming aware" of the teller "being engaged in speculation or gambling," it is the duty of the bank to give such notice, when informed that the teller is speculating, although, while confessing the fact of speculating, he asserts that he has ceased to do so. *Guarantee Company* v. *Mechanics' Savings Bank*, 402.
2. When the teller is in fact engaged in speculation and the bank is so informed, it cannot recover on such a bond for losses occurring through his fraudulent acts after the information is received, when it has not notified the company of what it has heard, or made any investigation, but has accepted the teller's assurance of present innocence as sufficient, on the mere ground that it had confidence in his integrity. *Ib.*
3. When at the time the teller's bond was renewed, the books of the bank showed that he was a defaulter in the sum of $19,600 understated liabilities, and of $3765.44 abstracted from bills receivable, both of which could have been detected by the taking of a trial balance or a mere comparison between the books kept by him and the individual ledger kept by another person, and by a correct footing of the notes, the bank is open to the charge of laches, and a certificate that the accounts of the teller had been examined and verified is not truthful. *Ib.*
4. Where it is known to the president of the bank that the insuring company regards engagements in speculation as unfavorable to an employé's habits, and he is informed that the employé is speculating, a representation by the president that he has not known or heard anything unfavorable to the employé's habits, past or present, or of any matters concerning him, about which the president deems it advisable for the company to make inquiry, is a misrepresentation. *Ib.*

NEWSPAPERS.

See ADMIRALTY, 6 to 14.

PATENT FOR INVENTION.

Patent No. 501, 537, for an improved method of repairing asphalt pavements, which forms the subject of controversy in this suit in this court was anticipated in invention, by a patent issued in France to Paul Crochet, June 11, 1880. *United States Repair and Guarantee Co.* v. *Assyrian Asphalt Co.*, 591.

PHILIPPINES.

See CASES AFFIRMED AND FOLLOWED, 3.

PRACTICE.

1. An agreed statement of facts which is so defective as to present, in addition to certain ultimate facts, other and evidential facts upon which a material ultimate fact might have been but which was not agreed upon or found, cannot be regarded as a substantial compliance with the requirements of Rev. Stat. § 649, and of Rev. Stat. § 700. *Wilson* v. *Merchants' Loan & Trust Co.*, 121.
2. An agreed statement of facts may be the equivalent of a special verdict, or a finding of facts upon which a reviewing court may declare the applicable law if said agreed statement is of the ultimate facts, but if it be merely a recital of testimony, or evidential fact, it brings nothing before an appellate court for consideration. *U. S. Trust Co.* v. *New Mexico*, 535.
3. The certified statement of facts is insufficient, and presents nothing for examination. *Ib.*
4. There is no prejudicial error in the ruling of the court below on the admission of testimony. *McKinley Creek Mining Co.* v. *Alaska Mining Co.*, 563.
5. Assignments of error cannot be based upon instructions given or refused in an equity suit. *Ib.*

PUBLIC LAND.

1. The deed of an Indian, who has received a patent of land providing that it should never be sold or conveyed by the patentee or his heirs without the consent of the Secretary of the Interior, is void, and the statutes of limitation do not run against the Indian or his heirs so long as the condition of incompetency remains; but where it appeared that by treaty subsequent to the deed, all restrictions upon the sales of land by incompetent Indians or their heirs, were removed, it was *held* that from this time the statute of limitations began to run against the grantor and his heirs. *Schrimpscher* v. *Stockton*, 290.
2. Even if Indians while maintaining their tribal relations are not chargeable with laches, or failure to assert their claims within the time prescribed by the statutes, they lose their immunity when their relations with their tribe are dissolved and they are declared to be citizens of the United States. *Ib.*
3. A deed, valid upon its face, made by one having title to the land, and containing the usual covenants of warranty, when received by one pur-

chasing the land in good faith, with no actual notice of a defect in the title of the grantor, constitutes color of title; and in Kansas, possession without a paper title seems to be sufficient to enable the possessor to set up the statute of limitations. *Ib.*

4. The fact that the Secretary of the Interior might thereafter declare the deed to be void, does not *ipso facto* prevent the statute from running. *Ib.*
5. The title of the Southern Pacific Railroad Company to the lands in controversy in this suit was acquired by virtue of the act of July 27, 1866, 14 Stat. 292, and the construction of the road was made under such circumstances as entitle the company to the benefit of the grant made by the eighteenth section of the act. *Southern Pacific Railroad* v. *United States*, 519.
6. The settled rule of construction is that where by the same act, or by acts of the same date, grants of land are made to two separate companies, in so far as the limits of their grants conflict by crossing or lapping, each company takes an equal undivided moiety of the lands within the conflict, and neither acquires all by priority of location or priority of construction. *Ib.*
7. It is well settled that Congress has power to grant to a corporation created by a State additional franchises, at least of a similar nature. *Ib.*
8. The grant to the Southern Pacific and that to the Atlantic and Pacific both took effect, and both being *in præsenti*, when maps were filed and approved, they took effect by relation as of the date of the act. *Ib.*
9. The United States having by the forfeiture act of July 6, 1886, become possessed of all the rights and interests of the Atlantic and Pacific Company in this grant within the limits of California, had an equal undivided moiety in all the odd-numbered sections which lie within the conflicting place-limits of the grant to the Atlantic and Pacific Company and of that made to the Southern Pacific Company by the act of July 27, 1866, and the Southern Pacific Company holds the other equal undivided moiety thereof. *Ib.*
10. The locations are valid so far as they depend upon the discovery of gold. *McKinley Creek Mining Co.* v. *Alaska Mining Co.*, 563.
11. The notices as set forth in the opinion of the court constituted a sufficient location. *Ib.*
12. Grantees of public land take by purchase. *Ib.*
13. In *Manuel* v. *Wolff*, 152 U. S. 505, it was decided that a location by an alien was voidable, not void, and was free from attack by any one except the Government. *Ib.*
14. The sole authority to the General Land Office to issue the patent for the land in dispute in this case was the act of March 3, 1869, 15 Stat. 342; the patent was issued under that authority, and it does not admit of controversy that it must issue to the confirmee of Congress, viz.: the town of Las Vegas. *Maese* v. *Herman*, 572.
15. This court cannot assume that Congress approved the report of the Surveyor General unadvisedly, used the name of the town of Las Vegas unadvisedly, or intended primarily some other confirmee. *Ib.*
16. The town and its inhabitants having been recognized by Congress as

having rights, and such rights having been ordered to be authenticated by a patent of the United States, it is the duty of the Land Office to issue that patent, to give the town and its inhabitants the benefit of that authentication, and to remit all controversies about it to other tribunals. *Ib.*

17. Under the act of July 17, 1854, c. 83, 10 Stat. 304, Sioux half-breed certificates were issued to Orillie Stram, a female half-breed, authorizing her to select and take one hundred and sixty acres of the public lands of the United States, of the classes mentioned in said act. In June, 1883, she, through Eaton, her attorney in fact, applied at the local land office to locate the same on public lands of the United States, in that district, then unsurveyed, and filed a diagram of the desired lands sufficient to designate them. Those lands were not reserved by the Government. Subsequently they were surveyed, and the scrip was located upon them, and the locations were allowed, and certificates of entry were issued. In 1886, Orillie Stram and her husband conveyed seven-ninths of the land to Eaton, the defendant in error. In 1889, an opposing claim to the land having been set up, the Secretary of the Interior held, for reasons stated in the opinion of this court in this case, that the opposing claimants had no valid claim to the lands; that the improvements made upon the land when it was unsurveyed, not having been made under the personal supervision of Orillie Stram, she had not the personal contact with the land required by law; that the power given to Eaton to locate the land, and the power given to sell it, as they operated as an assignment of the scrip, were in violation of the act of July 17, 1854, and that it followed that the entry of the lands was not for the benefit of Orillie Stram; that the location and adjustment of the scrip to the lands were ineffectual; that Orillie Stram had no power to alienate or contract for the alienation of the lands, before location of the scrip, and that the lands were still public lands and open to entry. This was an action to quiet the title, the plaintiff in error claiming adversely to Eaton. The scrip locations were adjudged by the district court and by the Supreme Court of the State of Minnesota to be valid. This court sustains that judgment. *Midway Company* v. *Eaton*, 602.

18. The Atlantic and Pacific Railroad Company took no title to lands within the indemnity limits of its grant until the deficiency in the place limits had been ascertained, and the company had exercised its right of selection. *Southern Pacific Railroad Company* v. *Bell*, 675.

19. The Secretary of the Interior had no authority upon the filing of a plat in the office of the Commissioner of the General Land Office, to withdraw lands lying within the indemnity limits of the grant from sale or preemption; and a patent issued to a settler under the land laws, prior to the selection made by the railroad company, of the land in dispute as lieu lands, was held to be valid, notwithstanding the lands lay within the forty-mile strip ordered by the act to be surveyed, after the general route of the road had been fixed. *Ib.*

RAILROAD.

1. By the decrees in these cases, the Railroad Commissioner of the Common-

wealth of Kentucky was enjoined from proceeding to fix rates under a certain act of the General Assembly charged to be unconstitutional, the ground of equity jurisdiction being threatened multiplicity of suits, and irreparable injury. *McChord* v. *Louisville & Nashville Railroad Co.*, 483.

2. This court, being of opinion that under the Kentucky statutes the duty of enforcing the rates it might fix vested in the Railroad Commission, *held* that none of the alleged consequences could be availed of as threatened before the rates were fixed at all. *Ib.*
3. Section 3 of the Compiled Laws of Nebraska of 1889, c. 72, providing for the incorporation of railroad companies, is as follows: "Every railroad company, as aforesaid, shall be liable for all damages inflicted upon the person of passengers while being transported over its road, except in cases where the injury done arises from the criminal negligence of the person injured, or when the injury complained of shall be the violation of some express rule or regulation of said road actually brought to his or her notice." *Held* that the plaintiff in error, being a domestic corporation of Nebraska, accepted with its incorporation the liability so imposed by the laws of that State, and cannot now complain of it. *Chicago, Rock Island & Pacific Railway* v. *Zernecke*, 582.
4. Where goods are carried by connecting railways, as between intermediate carriers, the duty of the one in possession at the end of his route is to deliver the goods to the succeeding carrier, or notify him of their arrival, and the former is not relieved of responsibility by unloading the goods at the end of his route and storing them in his warehouse without delivery or notice to or any attempt to deliver to his successor. *Texas & Pacific Railway* v. *Reiss*, 621.
5. In this case it cannot be claimed that the defendant had either actually or constructively delivered the cotton to the steamship company at the time of the fire. *Ib.*
6. If there be any doubt from the language used in a bill of lading, as to its proper meaning or construction, the words should be construed most strongly against the issuer of the bill. *Ib.*
7. In such a bill if there be any doubt arising from the language used as to its proper meaning and construction, the words should be construed most strongly against the companies. *Ib.*
8. It cannot reasonably be said that within the meaning of this contract the property awaits further conveyance the moment it has been unloaded from the cars. *Ib.*
9. The defendant at the time of the fire was under obligation as a common carrier, and was liable for the destruction of the cotton. *Ib.*

See CONSTITUTIONAL LAW, 19, 21.

REMOVAL OF CAUSES.

1. When a state court refuses permission to remove to a Federal court a case pending before the state court, and the Federal court orders its removal, this court has jurisdiction to determine whether there was error on the part of the state court in retaining the case. *Missouri, Kansas & Texas Railway Co.* v. *Missouri Railroad and Warehouse Commissioners*, 53.

2. The plaintiffs were citizens of the State of Missouri, in which this action was brought. The railway company was a citizen of the State of Kansas. On the face of the record there was therefore diverse citizenship, authorizing, on proper proceedings being taken to bring it about, the removal of the action from the state court to the Federal court; and the State of Missouri is not shown to have such an interest in the result as would warrant the conclusion that the State was the real party in interest, and the consequent refusal of the motion for removal. *Ib.*
3. The test of the right to remove a case from a state court into the Circuit Court of the United States under section two of the act of March 3, 1887, as corrected by the act of August 13, 1888, is that it must be a case over which the Circuit Court might have exercised original jurisdiction under section one of that act. *Arkansas* v. *Kansas & Texas Coal Co.*, 185.
4. A case cannot be removed on the ground that it is one arising under the Constitution, laws or treaties of the United States unless that appears by plaintiff's statement of his own claim, and if it does not so appear, the want of it cannot be supplied by any statement of the petition for removal or in the subsequent pleadings, or by taking judicial notice of facts not relied on and regularly brought into controversy. *Ib.*
5. Although it appears from plaintiff's statement of his claim that it cannot be maintained at all because inconsistent with the Constitution or laws of the United States, it does not follow that the case arises under that Constitution or those laws. *Ib.*
6. A fair interpretation of the language used by the District Judge in the court below in granting the application for a warrant of removal from New York to Georgia shows that from the evidence he was of opinion that there existed probable cause, and that the defendants should therefore be removed for trial before the court in which the indictment was found. *Greene* v. *Henkel*, 249.
7. In proceedings touching the removal of a person indicted in another State from that in which he is found to that in which the indictment is found this court must assume, in the absence of the evidence before the court below, that its finding of probable cause was sustained by competent evidence. *Ib.*
8. It is not a condition precedent to taking action under Rev. Stat. § 1014 that an indictment for the offence should have been found. *Ib.*
9. The finding of an indictment does not preclude the Government, under Rev. Stat. § 1014, from giving evidence of a certain and definite character concerning the commission of the offence by the defendants in regard to acts, times, and circumstances which are stated in the indictment itself with less minuteness and detail. *Ib.*
10. Upon this writ the point to be decided is, whether the judge who made the order for the removal of the defendants had jurisdiction to make it; and if he had the question whether upon the merits he ought to have made it is not one which can be reviewed by means of a writ of *habeas corpus*. *Ib.*
11. The indictment in this case is *prima facie* good, and when a copy of it is certified by the proper officer, a magistrate acting pursuant to Rev.

Stat. § 1014, is justified in treating the instrument as an indictment found by a competent grand jury, and is not authorized to go into evidence which may show or tend to show violations of the United States statutes in the drawing of the jurors composing the grand jury which found the indictment. *Ib.*

12. By a removal such as was made in this case the constitutional rights of the defendants were in no way taken from them. *Ib.*

SET-OFF.

See USURY, 1.

STATUTES.

A. STATUTES OF THE UNITED STATES.

See BANKRUPTCY;
CONSTITUTIONAL LAW, 4;
COURT MARTIAL, 5;
HABEAS CORPUS;
JURISDICTION OF THE SUPREME COURT, 5;
PRACTICE, 1;
PUBLIC LAND, 5, 14, 17;
REMOVAL OF CAUSE, 3.

B. STATE STATUTES.

Tennessee. *See* CONSTITUTIONAL LAW, 1.
Kansas. *See* CONSTITUTIONAL LAW, 2.
Ohio. *See* CONSTITUTIONAL LAW, 8.
New York. *See* CONSTITUTIONAL LAW, 11.
Massachusetts. *See* CONSTITUTIONAL LAW, 23.
Kentucky. *See* CONSTITUTIONAL LAW, 17; RAILROAD, 2.

TAX AND TAXATION.

1. A privilege tax upon a railroad corporation is a tax upon property. *Gulf & Ship Island Railroad Co.* v. *Hewes*, 62.

2. Edward P. Gallup, a resident in the State of New Hampshire, acted as the executor of the will of William P. Gallup, deceased, of the county of Marion in the State of Indiana. He was served with notice, under sections 8560 and 8587 of the Revised Statutes of Indiana, of an intention of the county auditor in that county to add to the list of the taxable personal property in his possession as executor, and was required to appear and show cause why that should not be done. The Supreme Court of Indiana held, against his objection, that he was at the time that the proceeding by the auditor began, an official resident of Marion County, and was therefore within the express terms of the statute. *Held* that this was a construction or application of the statute to the case in hand which was binding on this court. *Gallup* v. *Schmidt*, 300.

3. The method followed by the auditor in assessing the additional taxes was, perhaps, open to criticism, but was approved by the Circuit and Supreme Courts of the State, and presents no question over which this court has jurisdiction. *Ib.*

4. There was no invalidity in the fact of additional assessments. *U. S. Trust Co.* v. *New Mexico*, 535.
5. The filing of the intervening petition and the final adjudication thereon were in time. *Ib.*
6. That the receiver had been discharged before final proceedings were had, is immaterial. *Ib.*
7. The Santa Fé Company cannot claim that it was misled, in any way, as to its liability for these taxes. *Ib.*
8. No order was necessary for retaking possession. *Ib.*
9. The property was sufficiently described in the decree, and it must be assumed that the testimony warranted the description. *Ib.*
10. Until there was an identification of the property subject to taxation, and a determination of the amount of taxes due, it would be inequitable to charge penalties for non-payment. *Ib.*
11. There was no error in refusing interest prior to the decree. *Ib.*

See CONSTITUTIONAL LAW, 16.

TRADE-MARK.

This was a controversy relating to a trade-mark for protective paint for ship's bottoms. The court *held:* (1) That no valid trade-mark was proved on the part of the Rahtjen's Company in connection with paint sent from Germany to their agents in the United States, prior to 1873, when they procured a patent in England for their composition; (2) That no right to a trade-mark which includes the word "patent," and which describes the article as "patented," can arise when there has been no patent; (3) That a symbol or label claimed as a trade-mark, so constituted or worded as to make or contain a distinct assertion which is false, will not be recognized, and no right to its exclusive use can be maintained; (4) That of necessity when the right to manufacture became public, the right to use the only word descriptive of the article manufactured became public also; (5) That no right to the exclusive use in the United States of the words "Rahtjen's Compositions" has been shown. *Holzapfel's Compositions Co.* v. *Rahtjen's American Composition Co.*, 1.

TREATIES.

The treaty of February 26, 1871, between the United States and Italy only requires equality of treatment, and that the same rights and privileges be accorded to a citizen of Italy that are given to a citizen of the United States under like circumstances, and there is nothing in the petition tending to show such lack of equality. *Storti* v. *Massachusetts*, 138.

See EXTRADITION TREATIES.

USURY.

1. In an action upon a note given to a national bank, the maker cannot set off, or obtain credit for, usurious interest paid in cash upon the renewals of such note, and others of which it was a consolidation. *Haseltine* v. *Central Bank* (*No. 2*), 132.

2. In cases arising under the second clause of Rev. Stat. sec. 5198, the person by whom the usurious interest has been paid can only recover the same back in an action in the nature of an action of debt. The remedy given by the statute is exclusive. *Ib.*

WAGES.

See CONSTITUTIONAL LAW, 1.