INDEX.

ADMIRALTY.

1. After the findings of fact, conclusions of law, and judgment in this case were filed, two successive motions for a new trial were made on behalf of defendant; whereupon the former findings were withdrawn, and new and amended findings and opinion filed. *Held*, that as these amendments were made at defendant's request, the existing conclusions of law and judgment were not thereby disturbed. *United States* v. *St. Louis & Mississippi Valley Transportation Co.*, 247.
2. The evidence adduced shows that the facts found were sufficient to warrant the court below in holding that the collision in the Mississippi River at New Orleans, whereby the Transportation Company lost a vessel, was the result of the negligence of the officers in command of the United States vessels. *Ib.*
3. There was also culpable negligence in the United States officers in anchoring in an unusual and improper position. *Ib.*
4. Upon the findings made the Transportation Company was not chargeable with contributory negligence. *Ib.*

ATTACHMENT.

See JURISDICTION OF THIS COURT, 16, 17, 21, 22.

ATTORNEY'S FEES.

The Supreme Court of Missouri having necessarily decided that the Kansas City Court of Appeals, in passing upon the claim of immunity in this case, was the final court of Missouri where such question could be decided, it follows that the writ of error properly ran to the Kansas City Court of Appeals, and that the claim of absence of jurisdiction was without foundation; and, for the reasons given in the opinion of the court in *Tullock* v. *Mulvane*, *ante*, 497, that there was error committed by the Kansas City Court of Appeals in affirming the action of the trial court in allowing in the judgment rendered by it, attorneys' fees as an element of damage upon the injunction bond, contrary to the controlling rule on this subject enunciated by this court, by which the courts of the United States are governed in requiring the execution of such instruments. *Missouri, Kansas and Texas Railway Company* v. *Elliott*, 530.

BANKRUPTCY.

1. Referees in bankruptcy exercise much of the judicial authority of the court of bankruptcy, and may enter orders to show cause subject to revision by the District Court. *Muller* v. *Nugent*, 1.

2. Commitment until assets of a bankrupt are surrendered pursuant to order does not constitute imprisonment for debt. *Ib.*
3. The bankruptcy court has power to compel the surrender of money or other assets of the bankrupt in his possession, or that of some one for him, on the petition and rule to show cause. *Ib.*
4. The filing of a petition in bankruptcy is a *caveat* to all the world, and in effect an attachment and injunction, and on adjudication and qualification of trustee, the bankrupt's property is placed in the custody of the bankruptcy court, and title becomes vested in the trustee. *Ib.*
5. The refusal to surrender property of the bankrupt does not in itself create an adverse claim at the time the petition is filed. *Ib.*
6. A general assignment for the benefit of creditors had been made under the statutes of Kentucky in that behalf and a suit involving the administration and settlement of the assigned estate was pending in the state Circuit Court, when a petition in bankruptcy was filed against the assignors, to which the assignee was made defendant, although no special relief was prayed for as against him, but an injunction was granted restraining all the defendants from taking any steps affecting the estate, and especially in the suit pending in the state court. The assignee had paid into court in that suit a considerable amount of money, which, on the trustee in bankruptcy becoming a party to the suit, had been paid over to him by order of the state court. *Louisville Trust Co.* v. *Comingor*, 18.
7. Rules were laid on the assignee by the referee in the bankruptcy proceedings to show cause why he should not pay over the sums of $3398.90 and of $3200, alleged to belong to the bankrupt's estate, in response to which the assignee showed as cause that he had paid the $3200 to counsel for services rendered to him as assignee, and had retained and expended the $3398.90 as his own commissions as such, all before the petition was filed, and he also, prior to the final order of the District Court, objected before the referee, and before the District Court, that he could not be proceeded against by summary process for want of jurisdiction. The rules were made absolute by the referee and the assignee ordered to pay over the two sums in question, and that action was affirmed by the District Court. *Held:* (1) That as to these sums the assignee asserted adverse claims existing at the time the petition was filed, which could not be disposed of on summary proceeding. (2) That the bare fact that the assignee was named as one of the defendants to the petition in bankruptcy did not make him a party to the bankruptcy proceedings for all purposes. (3) That in responding to the rules laid on him, the assignee did not voluntarily consent that he might be proceeded against in that manner, and that jurisdiction to do so could not be maintained. *Ib.*

BOND OF A CLERK OF A CIRCUIT COURT.

1. Congress, by the statutes referred to in the opinion of the court, intended the bond of a clerk of a Circuit Court should be for the protection of all suitors, public or private. *Howard* v. *United States*, 676.
2. As the clerk had the right to receive the money in question: as he failed,

to the injury of the suitor from whom he received it, with the sanction of the court in a pending cause, to deposit it as required by law, and appropriated it to his own use; and as his bond was for the protection of private suitors as well as for the Government, there in no sound reason why the plaintiff could not enforce his rights by a suit in the name of the United States for his benefit. *Ib.*

CONSTITUTIONAL LAW.

1. Section 218 of the constitution of the State of Kentucky reads as follows: "It shall be unlawful for any person or corporation, owning or operating a railroad in this State, or any common carrier, to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of property of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier, or person or corporation, owning or operating a railroad in this State, to receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Railroad Commission, such common carrier, or person, or corporation owning or operating a railroad in this State, may in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may, from time to time, prescribe the extent to which such common carrier, or person, or corporation owning or operating a railroad in this State, may be relieved from the operation of this section," as construed by the courts of that State, and so far as it is made applicable to or affects interstate commerce, it is invalid. *Louisville & Nashville Railroad Co.* v. *Eubank*, 27.
2. Under the facts of this case, and the interpretation given of the charter of the city of Portland by the Supreme Court of the State of Oregon, this court is of opinion that the plaintiffs in error have not been deprived of their property without due process of law. *King* v. *Portland City*, 61.
3. The city government of Titusville, in Pennsylvania, imposed a license tax upon persons carrying on certain occupations in that city. This court holds that it was a tax on the privilege of doing business, regulated by the amount of the sales, and was not repugnant to the Constitution of the United States. *Clark* v. *Titusville*, 329.
4. If, looking at all the circumstances which attend, or may ordinarily attend the pursuit of a particular calling, a State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere unless, looking through mere forms and at the substance of the matter, they can say that the statute, enacted professedly to protect the public morals, has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law. *Booth* v. *Illinois*, 425.
5. It must be assumed with regard to section 130 of the Criminal Code of

Illinois touching options to sell or buy grain or other property at a future time, that the legislature of the State was of opinion that an effectual mode to suppress gambling grain contracts was to declare illegal all options to sell or buy at a future time; and this court cannot say that the means employed were not appropriate to the end sought to be attained and which it was competent for the State to accomplish. *Ib.*

6. This court cannot adjudge that the legislature of Illinois transcended the limits of constitutional authority, when it enacted the statute in question. *Ib.*
7. Where a statute providing for the opening of streets requires notice to the parties whose land is to be taken for the street, the fact that it makes no provision for giving notice to the owners of land liable to be assessed for the improvement, does not deprive such owners of their property without due process of law, and is not otherwise obnoxious to the Fourteenth Amendment. *Goodrich* v. *Detroit*, 432.
8. The interest of neighboring property owners, who may possibly thereafter be assessed for the benefit to their property accruing from opening a street, is too remote to require notice of such improvement, in which they have no direct interest. *Ib.*
9. No notice is required to be given to individual property owners of a resolution fixing an assessment district and levying a gross amount thereon for benefits, where the statute provides for a hearing in relation to the proportion each piece of property shall bear to the whole cost of the improvement, and an opportunity is given to the owner of the land to be heard upon the question of the benefit derived by him from the improvement. *Ib.*
10. The fact that certain parcels of land condemned for the improvement are defectively described, is no defence to a proceeding to assess benefits upon other property. *Ib.*
11. An unconstitutional law cannot be held valid as to particular parties on the ground of estoppel, and executed as a law. *O'Brien* v. *Wheelock*, 450.
12. In accordance with a certain act of the General Assembly of Illinois, bonds had been issued by commissioners appointed for the purpose of constructing a levee, and assessments had been made to pay for them against lands alleged to have been benefited; some of the land owners contested judgment on the assessments, and the act was adjudged by the Supreme Court of the State to be unconstitutional; the bonds and the assessments fell with the act, and the land owners were not estopped from denying its validity. *Ib.*
13. A party who has received the full benefit of proceedings under a law found to be unconstitutional may, on occasion, be compelled to respond on the theory of implied contract. *Ib.*
14. But in this case the land owners had not received and could not receive the benefits contemplated. The scheme embraced not only the construction but the maintenance of the levee, and its maintenance by compulsory process failed with the law; the consideration was indivisible and incapable of apportionment, and the evidence showed that by the

breaking of the levee, the land owners had sustained losses in excess of the amount of the bonds. *Ib.*

15. If any ground of relief as on implied contract had ever existed, the want of diligence presented an insuperable bar to its assertion. *Ib.*
16. Bond holders had filed a bill against the commissioners to compel the collection of assessments, to which the land owners were not parties, which went to a decree July 7, 1880, finding certain amounts due to complainants, without prejudice, and giving them leave to file "a bill or bills, original, supplemental, or otherwise," against the land owners for the recovery of the amounts due, but no bill was filed until April 22, 1889. *Ib.*
17. The act under which the proceedings were taken was held to be unconstitutional at January term, 1876 of the state Supreme Court. *Held:* That the present bill was an original bill as to the land owners, and not having been filed until thirteen years after the act was declared to be unconstitutional and nearly nine years after the leave granted, there had been such laches as precluded granting the relief sought, the conditions of the property and the relations of the parties having in the meantime greatly changed as detailed in the opinion. *Ib.*
18. The propositions in this case involving Federal questions were duly raised below. *Tullock* v. *Mulvane*, 497.
19. Previous to the bringing of the suit in the state court upon the bond, by stipulation filed in the equity cause in the United States court, upon which an order of the court was entered, the bill of complaint had been dismissed as to all the defendants but Mulvane, and it was expressly agreed that all demand for relief by way of specific performance should be withdrawn. *Ib.*
20. The Circuit Court of Appeals correctly decided that the necessary effect of this agreement was to withdraw from the case all controversy on the subject of the injunction. As by the stipulation Mulvane had not waived any rights of action by reason of damages caused by the injunction, if any, but on the contrary his rights were expressly saved, and as the stipulation was made the basis of an order of the court which had the necessary effect to dismiss from the cause all the grounds upon which alone the rightfulness of the injunction could have been asserted, we think there was a final decision, within the import of the condition of the bond, that the injunction ought not to have been granted. *Ib.*
21. The claim of immunity from liability for attorney's fees as one of the elements of damage under the injunction bond presented a Federal question, which was incorrectly decided by the court below in holding that it was proper to award the amount of such fees in enforcing the bond. *Ib.*
22. A bond given in pursuance of a law of the United States is governed, as to its construction, not by the local law of a particular State, but by the principles of law as determined by this court, and operative throughout the courts of the United States. *Ib.*
23. A case arises under the Constitution of the United States, when the

right of either party depends on the validity of an act of Congress, which is the fact in this case. *Patton* v. *Brady*, 608.

24. In this case the cause of action survived the death of the defendant, and was rightfully revived in the name of his executrix. *Ib.*

CONTRACT.

1. Under the contract with the United States for the construction of a dry dock which is set forth and referred to in the statement of facts and in the opinion of the court, the decision of the engineer in charge of the work upon the quality of the sandstone employed by the constructor was final when properly exercised, but it could not be exercised in advance of the work, and forestall his judgment of stone furnished or about to be used, or the judgment of any other competent officer, or person, or persons who might be designated by the Navy Department. *United States* v. *Barlow*, 123.
2. The Court of Claims did not pass upon the issue raised as to the quality of the stone furnished, but accepted the decision of the engineer as final as matter of law. This court limits the recovery of claimants to the price of stone inspected and approved. *Ib.*
3. There was nothing in the contract or in the specifications which required the contractors to experiment with the water jet system; their obligation was to drive the piles in the construction of the dock to a sufficient depth, and it is not found that the depth when the Secretary of the Navy interfered was not sufficient. *Ib.*
4. The measure of damages adopted by the Court of Claims was correct. *Ib.*
5. On April 5, 1887, the village of Skaneateles granted a franchise to the waterworks company to maintain and operate within the village a system of waterworks for furnishing pure and wholesome water to the village and its inhabitants, under which the company constructed its works, and on February 1, 1891, contracted to supply water to the village and its inhabitants for the period of five years. At the expiration of the term of this contract some differences arose about the terms of its continuation, which resulted in the construction of an independent system of waterworks by the village authorities. In an action brought by the water company to restrain the village authorities from proceeding with the construction of that system or any other system for the village, it was held by the New York court (1) that the village was not required to institute proceedings to condemn the property of the plaintiff before commencing the construction of a waterworks system for the use of the village; (2) That the waterworks company under the contract did not acquire the exclusive right to furnish the village with water; (3) That subsequently to the termination of the contract no contractual relations existed between the water company and the village: *Held*, (1) That the power of this court to review the judgment of the New York Court of Appeals is limited to a consideration of whether any right of the plaintiff's protected by the Federal Constitution has been denied; (2) That the water company, in applying to the village and filing its certificate with the Secretary of State under the act of

1873, acquired no contract right, express or implied, to any exclusive privilege of using the streets of the village for supplying it with water; (3) That by virtue of its incorporation it secured simply the right to be a corporation and the authority to lay its water pipes in any of the streets and avenues or public streets of the village of Skaneateles; (4) That when the contract for five years had expired there was nothing in the state legislation upon which to base an implied contract; (5) That the decrease in the value of the property of the waterworks company, caused by the exercise by the village of its right to build and operate its own plant, furnishes no foundation for the plaintiff's claim. *Skaneateles Waterworks Co.* v. *Skaneateles*, 354.

6. The approval of the Chief of Engineers was necessary to the legal consummation of the contract in this case. *Monroe* v. *United States*, 524.
7. A final reviewing and approving judgment was given to the Chief of Engineers, by a covenant so expressed as to constitute a condition precedent to the taking effect of the contract. *Ib.*
8. The contract was not approved, and the legal consequence of that cannot be escaped. *Ib.*

ESTOPPEL.

See MUNICIPAL BONDS.

EXTRADITION.

1. Extradition proceedings before a committing magistrate thereto duly authorized, where jurisdiction exists, and there is competent legal evidence tending to establish the criminality alleged, cannot be interfered with by *habeas corpus*. *Terlinder* v. *Ames*, 270.
2. In this case the writ of *habeas corpus* was issued before the examination by the commissioners was entered upon, and the inquiry was confined to the question of his jurisdiction. He had jurisdiction if there was a treaty between this and the demanding country, and the commissioner of extraditable offences was charged. *Ib.*
3. Offences were charged to have been committed "contrary to the laws of Prussia," and although the violated laws were prescribed by imperial authority, they were nevertheless the laws of Prussia and were being administered as such by the Royal Prussian Circuit Court before which the charges were pending. *Ib.*
4. As the German Government has officially recognized, and continues to recognize, the treaty between the United States and the Kingdom of Prussia of June 16, 1852, as still in force, and not terminated because of impossibility of performance, and the Executive Department of this Government has accepted that view and proceeded accordingly, it is not for our courts to question the correctness of the conclusions of the German Government as to the effect of the adoption of the constitution of the German Empire. *Ib.*
5. The question whether power remains in a foreign State to carry out its treaty obligations is in its nature political and it is not within the province of the court to interfere with the conclusions of the political department in that regard. *Ib.*

ILLINOIS CENTRAL RAILROAD COMPANY.

1. This case was before this court in *Illinois Central Railroad Company* v. *Illinois*, 146 U. S. 387, and in that case the history of the litigation relating to the property involved is fully disclosed, and the court found that the structures made in the lake by the Railroad Company did not extend beyond the point of practical navagability; and upon the return of this cause to the Circuit Court, nothing was before that court except to inquire whether the structures erected by the Railroad Company extended into the lake beyond the point of practical navagability. *Illinois* v. *Illinois Central Railroad Co.*, 77.
2. There was no error in holding that, in view of the manner in which commerce was conducted on the lake during the period of the investigation below, the structures erected by the Railroad Company did not extend into the water beyond the point of practical navagability. *Ib.*
3. The Circuit Court and the Circuit Court of Appeals having concurred in finding that the structures in question did not extend into the lake beyond the point of practical navagability, the decree below should not be disturbed, unless it was clearly in conflict with the evidence. *Ib.*

JURISDICTION OF THIS COURT.

1. Whether a bill in equity, filed in the name of a State, seeking to prevent by injunction a corporation organized under the laws of another State, with power to acquire and hold shares of the capital stock of any other corporation, from obtaining and exercising ownership and control of two or more competing railroad companies of the State, so as to evade and defeat its laws and policy forbidding the consolidation of such railroads when parallel and competing is a controversy of which this court has jurisdiction. *Minnesota* v. *Northern Securities Co.*, 199.
2. The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it; and the established practice of courts of equity to dismiss the plaintiffs' bill if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit, is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings, or suggested by counsel. *Ib.*
3. The bill discloses that the parties to be affected by the decision of this controversy are—directly the State of Minnesota, the Great Northern Railway Company, and the Northern Pacific Railway Company, corporations of that State, and the Northern Securities Company, a corporation of the State of New Jersey—and, indirectly, the stockholders and bondholders of those corporations, and of the numerous railway companies whose lines are alleged to be owned, managed or controlled by the Great Northern and Northern Pacific Railway Companies, and it is obvious that the rights of the minority of stockholders of the two railroad companies are not represented by the Northern Securities Company. *Ib.*
4. When it appears to a court of equity that a case, otherwise presenting ground for its action, cannot be dealt with because of the absence of

essential parties; and it further appears that necessary and indispensable parties are beyond the reach of the jurisdiction of the court, or that, as in this case, when made parties, the jurisdiction of the court will thereby be defeated, it would be useless for the court to grant leave to amend. *Ib.*

5. By the act of March 3, 1891, the judgments and decrees of the Circuit Courts of Appeals are made final in all cases in which the jurisdiction of the Circuit Court as originally invoked, is dependent entirely on diversity of citizenship. *Huguley Mfg. Co.* v. *Galeton Cotton Mills*, 290.
6. If after the jurisdiction has attached on that ground, issues are raised and decided, bringing the case within either of the classes defined in section five of the act, the case may be brought directly to this court, although it may be carried to the Circuit Court of Appeals, in which event the final judgment of that court cannot be reviewed in this court as of right. *Ib.*
7. If the jurisdiction of the Circuit Court rests solely on the ground that the suit arose under the Constitution, laws or treaties of the United States, then the jurisdiction of this court is exclusive, but if it is placed on diverse citizenship, and also on grounds independent of that, then if carried to the Circuit Court of Appeals, the decision of that court would not be made final by the statute. *Ib.*
8. The use of the words "or otherwise" in the statute, when it provides that cases in which the decrees or judgments of the Circuit Court of Appeals are made final, may be brought here by "certiorari or otherwise," adds nothing to the power of this court, to so direct, as any order or writ in that behalf must be *ejusdem generis* with certiorari. *Ib.*
9. Pending this appeal, appellants applied for certiorari to perfect the record, on jurisdiction suggested, which was granted, and the omissions supplied. *Ib.*
10. This auxiliary writ did not operate to bring the case before the court or in itself to add any support to the appeal. *Ib.*
11. Appellants took no appeal from the Circuit Court directly to this court, even assuming that this could have been done. The sole ground on which the jurisdiction of the Circuit Court was invoked was diversity of citizenship and the decree of the Circuit Court of Appeals was made final by the statute. This appeal therefore could not be sustained. *Ib.*
12. Where there is a plain and adequate remedy by appeal, a writ of prohibition or mandamus will not be granted. *Huguley Mfg. Co. et al., Petitioner*, 297.
13. Prohibition or mandamus was applied for in this case in respect of an interlocutory order of the Circuit Court granting an injunction, on the ground of want of jurisdiction. *Held*, That a plain and adequate remedy by appeal to the Circuit Court of Appeals was provided for by the act of Congress of June 6, 1900, and the issue of either of the writs applied for was denied. *Ib.*
14. A motion being made to dismiss the writ of error in this case on the ground that no Federal question was raised in the Superior Court of

Massachusetts this court holds that as Federal questions were raised on writ of error to the Supreme Court of that State, that was sufficient to give this court jurisdiction. *Rothschilds* v. *Knight*, 334.

15. The objection that the writ of error should have been directed to the Supreme Court, and not to the Superior Court, is answered by *McDonald* v. *Massachusetts*, 180 U. S. 311. *Ib.*
16. To what actions the remedy of attachment may be given is for the legislature of a State to determine: the power of counsel extends to consenting to amendments authorized by the law of the State. *Ib.*
17. The contention that the debts due to plaintiffs in error by certain citizens of Massachusetts were not subject to attachment in that State because their situs was in New York cannot be maintained. *Ib.*
18. The preference given by McKeon to plaintiffs in error was consummated in Massachusetts; and therefore the proceedings had in New York were immaterial. *Ib.*
19. This court, when reviewing the final judgment of a state court upholding a state enactment alleged to be in violation of the contract clause of the Constitution, possesses paramount authority to determine for itself the existence or the non-existence of the contract set up, and whether its obligation has been impaired by the state enactment; but it is the duty of this court to follow the decision of the state court when the question is one of doubt and uncertainty. *Wilson* v. *Standefer*, 399.
20. The sole question for the consideration of this court in this case is, whether the Supreme Court of Texas erred in overruling the contention of the plaintiff in error that the State was precluded by contract from changing its mode of procedure in respect to purchasers in default; and this court agrees with the Supreme Court of Texas that no contract rights of a purchaser under the act of July 8, 1879, were impaired by the subsequent act of August 20, 1897; that the 12th section of the act of 1879, was not, in legal contemplation a stipulation by the State that the only remedy which might be resorted to by the State was the one therein provided for; that the distinction between the obligation of a contract and a remedy given by the legislature to enforce that obligation exists in the nature of things, and, without impairing the obligation of the contract, the remedy may be modified as the wisdom of the nation may direct. *Ib.*
21. The propositions in this case involving Federal questions were duly raised below. *Tullock* v. *Mulvane*, 497.
22. Previous to the bringing of the suit in the state court upon the bond, by stipulation filed in the equity cause in the United States court, upon which an order of the court was entered, the bill of complaint had been dismissed as to all the defendants but Mulvane, and it was expressly agreed that all demand for relief by way of specific performance should be withdrawn. *Ib.*
23. The Circuit Court of Appeals correctly decided that the necessary effect of this agreement was to withdraw from the case all controversy on the subject of the injunction. As by the stipulation Mulvane had not waived any right of action by reason of damages caused by the

injunction if any, but on the contrary his rights were expressly saved, and as the stipulation was made the basis of an order of the court which had the necessary effect to dismiss from the cause all the grounds upon which alone the rightfulness of the injunction could have been asserted, there was a final decision, within the import of the condition of the bond, that the injunction ought not to have been granted. *Ib.*

24. The claim of immunity from liability for attorney's fees as one of the elements of damage under the injunction bond presented a Federal question, which was incorrectly decided by the court below in holding that it was proper to award the amount of such fees in enforcing the bond. *Ib.*
25. A bond given in pursuance of the law of the United States is governed, as to its construction, not by the local law of a particular State, but by the principles of law as determined by this court, and operative throughout the courts of the United States. *Ib.*
26. The Supreme Court of Missouri having necessarily decided that the Kansas City Court of Appeals, in passing upon the claim of the minority in this case, was the final court of Missouri where such question could be decided, it follows that the writ of error properly ran to the Kansas City Court of Appeals, and that the claim of absence of jurisdiction was without foundation. *Missouri, Kansas & Texas Railway Co.* v. *Elliott*, 530.
27. For the reasons given in the opinion of the court in *Tullock* v. *Mulvane*, *ante*, 497, that there was error committed by the Kansas City Court of Appeals, in affirming the action of the trial court in allowing in the judgment rendered by it, attorneys' fees as an element of damage upon the injunction bond, contrary to the controlling rule on this subject enunciated by this court, by which the courts of the United States are governed in requiring the execution of such instruments. *Ib.*
28. If a claim is made in the Circuit Court that a state enactment is invalid under the Constitution of the United States, and that a claim is sustained or rejected, this court may review the judgment, at the instance of the unsuccessful party. *Connolly* v. *Union Sewer Pipe Co.*, 540.
29. If the alleged combination in this case was illegal, it would not follow that they could, at common law, refuse to pay for pipes bought for them under special contracts. *Ib.*
30. The contracts between the plaintiff and the respective defendants were collateral to the agreement between the plaintiff and other corporations, etc., whereby an illegal combination was formed for the sale of sewer pipe. *Ib.*
31. The first special defence in this case, based alone upon the principles of the common law, was properly overruled. *Ib.*
32. The special defence, based upon the act of Congress of July 2, 1890, 26 Stat. 209, was also properly rejected. That act does not declare illegal or void any sale made by such combination or its agents of property acquired for the purpose of being sold, such property not being at

the time in the course of transportation from one State to another, or to a foreign country; and the buyer could not refuse to comply with his contract of purchase upon the ground that the seller was an illegal combination, which might be restrained or suppressed in the mode prescribed by the act of Congress. *Ib.*

33. This suit was upon a bond taken by a Circuit Court of the United States from its clerk, to secure the proper performance of his duties, and the Circuit Court could take cognizance of it, independently of the citizenship of the real parties in interest, as it was a suit arising under the laws of the United States, of which the Circuit Court was entitled to take original cognizance, concurrently with the courts of the State, even if the parties had been citizens of the same State; and, although the petition shows a case of diverse citizenship, jurisdiction was not dependent upon such citizenship. *Howard* v. *United States*, 676.
34. That the clerk of the court was authorized, with the sanction or by order of the court, to receive money paid into court in a pending cause, is clearly to be implied from the legislation of Congress referred to in the opinion of the court. *Ib.*

JURISDICTION, SURVIVAL OF.

1. A tort by which the estate of the defendant was not increased, and the estate of the plaintiff damaged only as an indirect consequence of the alleged wrongful act of the defendant, does not, either at common law or by the statutes of Virginia, survive the death of the wrongdoer. *Iron Gate Bank* v. *Brady*, 665.
2. The plaintiff elected to go into court on an action sounding in tort, and it must abide by its election. *Ib.*
3. A decree of the District Court of the United States for the Northern District of California, rendered in 1855, was affirmed by this court, and remanded to the District Court, where a final decree was entered in 1859. Subsequently in 1899, after a large amount of intermediate litigation, a petition of intervention was filed in the District Court in the original case, praying that the decree of 1859 might be ordered to be executed, the proceedings having been originally begun in 1852 before the Board of Land Commissioners of California. A demurrer was filed to this petition, which was sustained and the petition dismissed. This was followed by another similar petition filed in 1900 which was also dismissed, and an appeal taken to this court. *Held:* that the appeal originally allowed to this court by the act of 1851 was repealed in 1864, and an appeal allowed to the Circuit Court of the United States; that this act was repealed by the act of 1891, which provided for an appeal to the Circuit Court of Appeals, and that the appeal to this court must therefore be dismissed. *Gwin* v. *United States*, 669.

JURISDICTION OF CIRCUIT COURT.

LICENSE TAX.

See CONSTITUTIONAL LAW, 3.

LIMITATIONS (STATUTE OF).

1. To a bill in equity by a receiver of a national bank to recover an assessment made by the Comptroller of the Currency to the amount of the par value of the shares formerly owned by one of the stockholders, defendant pleaded the statute of limitations. The statute provided that actions upon contracts in writing should be brought within five years, but that actions brought upon contracts not in writing or upon liabilities created by statute should be brought within four years. *Held*, That a bill to recover the assessment in question was not brought upon a contract in writing, but upon an implied contract not in writing, or upon a liability created by statute, and that the suit was barred. *McDonald* v. *Thompson*, 71.

MANDAMUS.

See JURISDICTION OF THIS COURT, 12, 13.

MUNICIPAL BONDS.

1. On the facts, as stated in the opinion of the court, the city of Santa Cruz is estopped to dispute the truth of the recitals in the bonds in suit in this case, which stated that they were issued in pursuance of the act of California of 1893, as well as in conformity with the constitution of California, authorizing it to incur indebtedness or liability with the assent of two thirds of the qualified voters at an election held for that purpose, and that all acts, conditions and things required to be done precedent to issuing the bonds had been properly done and performed in due and lawful form as required by law. *Waite* v. *Santa Cruz*, 302.
2. The Circuit Court having correctly found that the parties who placed said bonds in the plaintiff's hands were *bona fide* purchasers, without notice of anything affecting the truth of the recitals in them, the city cannot escape liability by reason of the fact, disclosed by its ordinances, that the eighty-nine first mortgage bonds of the Water Company assumed by the city, were included in its refunding scheme. *Ib.*
3. As to the question whether the person who signed said bonds was or was not, at the time of the signature, the rightful mayor of Santa Cruz, this court holds—(1) that the acts of a *de facto* officer are valid as to the public and third persons, although it is sometimes difficult to determine whether the evidence is such as to warrant a finding that a particular act or acts, the legality of which may be in issue, were those of a *de facto* officer; (2) That a *de facto* officer may be defined as one whose title is not good in law, but who is, in fact, in the unobstructed possession of an office, and discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of being an intruder or usurper; (3) That in such a case third persons, having occasion to deal with him in his capacity as such officer, are not required to investigate his title, but may safely deal with him upon the assumption that he is a rightful officer; (4) That if they see him publicly exercising such authority, and if they ascertain that it is generally acquiesced in, they are entitled to treat him as such officer, and, if they employ him as such, they ought not to

be subjected to the danger of having his acts collaterally called in question. *Ib.*

4. As the plaintiff does not own the bonds or coupons in suit in this case, but holds them for collection only, the Circuit Court was without jurisdiction to render judgment upon any such claim or claims. *Ib.*

NATIONAL BANK.

1. To a bill in equity by a receiver of a national bank to recover an assessment made by the Comptroller of the Currency to the amount of the par value of the shares formerly owned by one of the stockholders, defendant pleaded the statute of limitations. The statute provided that actions upon contracts in writing should be brought within five years, but that actions brought upon contracts not in writing or upon liabilities created by statute should be brought within four years. *Held:* That a bill to recover the assessment in question was not brought upon a contract in writing, but upon an implied contract not in writing, or upon a liability created by statute, and that the suit was barred. *McDonald* v. *Thompson*, 71.
2. The single question for the determination of the court in this case is, whether the Comptroller of the Currency, acting under the national banking laws, can validly make more than one assessment upon the shareholders of an insolvent national banking association, and it is held that he can, the language of the statutes on that subject being plain and free from doubt. *Studebaker* v. *Perry*, 258.

See LIMITATIONS, STATUTES OF.

PATENT FOR INVENTION.

1. The appellees' contention as to jurisdiction in this case is not justified for reasons expressed in *Clark* v. *Wooster*, 119 U. S. 322, and *Beedle* v. *Bennett*, 122 U. S. 71. *Busch* v. *Jones*, 598.
2. This was an action to recover for infringements of a patent. The lower courts found as a fact that all the claims of the patent had been infringed by appellant, and the evidence sustains the finding. The accounting in the lower court, however, was had upon the basis of the validity of the process, and therefore the judgment of the Court of Appeals must be reversed and the cause remanded with directions to that court to reverse the judgment and decree of the Supreme Court, and remand the cause to the latter court for further proceedings in accordance with this opinion. *Ib.*

POSTMASTERS.

Construing the act of March 3, 1883, c. 119, 22 Stat. 587, and the act of June 12, 1886, 14 Stat. 59, both relating to the salaries of postmasters, as their terms require, the judgment of the Court of Claims in this case is erroneous; but the charges of misconduct, maladministration and fraud against the officers of the Post Office Department, so freely scattered through the briefs of counsel for appellee, are entirely unwarranted by anything contained in the record. *United States* v. *Ewing*, 140.

PROHIBITION.

See JURISDICTION OF THIS COURT, 12, 13.

PRACTICE.

1. It is the settled doctrine of this court that the concurrent decisions of two courts upon a question of fact will be followed, unless shown to be clearly erroneous; and in this case, after examining the evidence, it seems to this court that the findings of the court below were justified by it. *Brainard* v. *Buck*, 99.
2. It is contended by appellants that the decree in the Circuit Court against them ought to be set aside because they have not had the hearing in that court to which they were entitled by law; that they were not served with process; that counsel unauthorized by them entered their appearance, and after having wrongfully entered their appearance failed to take the proper steps for the protection of their rights. It is also contended by other parties than the appellants, that there was no real controversy between the parties nominally opposed to each other, and that the litigation was in fact carried on under the direction and control of the plaintiff. *Held*, that questions of this kind may be examined, upon motion supported by affidavits, and that it is the duty of a court to make such inquiry. *Hatfield* v. *King*, 162.
3. Before any proceedings could rightfully be taken against the defendants, it was essential that they be brought into court by service of process, or that a lawful appearance be made in their behalf; and, in this case, it is quite clear that the counsel was not authorized to appear for Mr. Browning. *Ib.*
4. It is fitting that this investigation should be had, in the first place, in the court where the wrong is charged to have been done, and before the judge who, if the charges are correct, has been imposed upon by counsel; and it may be wise that both examination and cross-examination be had in his presence. *Ib.*
5. The motion made in the court below on behalf of the United States for a continuance of this cause and the application for a rehearing were addressed to the discretion of the trial court, and this court cannot reverse the decree below merely upon the ground that the trial court erred in its denial of those motions; but, as it is quite clear that the record does not contain evidence of a material character, and that the absence of such evidence is due to the action of the trial court in not giving sufficient time to the Government to prepare its case, this court cannot resist the conviction that if it proceeds to a final decree upon the present record great wrong may be done; and it reverses the decree below, without considering the merits, and remands the case with orders that leave should be granted to both sides to adduce further evidence. *United States* v. *Rio Grande Irrigation Company*, 416.

See TAXATION, 3.

PUBLIC LAND.

1. This case is a continuation of *Southern Pacific Railroad Company* v. *United States*, 168 U. S. 1, brought to quiet the title of the Government

to lands within the limits of the forfeited grant to the Atlantic and Pacific Railroad Company. The questions in this case arise between the United States and parties holding title or claiming rights to lands by deed from or contract with the railroad company. The title of the company having been adjudged void, the acts of March 3, 1887, 24 Stat. 556; of February 12, 1896, 29 Stat. 6; of March 2, 1896, 28 Stat. 42, were passed for the purpose of upholding the titles of parties who, in good faith, had purchased lands from railroad companies which, though supposed to be part of their grants, proved not to be so. The first section of the act of March 2, 1896, reads: "But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed." *Held:* 1. That the facts bring this case within the provisions of that section; and that the Circuit Court rightly confirmed the title to lands patented under it; 2. That the unpatented lands were so situated with reference to the constructed road of the Southern Pacific, as to be within the scope of its grant, and that the act was not intended to be limited to cases of purchases from the railroad company prior to its date; 3. That while the act was remedial, and to be liberally construed, yet to sustain the purchase in controversy in this case as one made in good faith, would ignore the plainest provisions of law in respect to *bona fide* purchasers, and would uphold almost any kind of speculative purchase. *United States* v. *Southern Pacific Railroad Co.*, 49.

2. It having been settled by *Lomax* v. *Pickering*, 173 U. S. 26, that when the consent of the Secretary of the Interior is necessary to give effect to a deed of public land, that approval may be retroactive, and take effect by way of relation as of the date of the deed, and it appearing from the fact of the approval by the Secretary in this case that the Indian grantor received full payment for his land, and was in no manner imposed upon in the conveyance, and as the plaintiffs have no equitable rights superior to those of the grantee in that deed, *Held* that the title conveyed by the deed must be upheld. *Lykins* v. *McGrath*, 169.

3. Under the Court of Private Land Claims' Act a party holding from the Spanish or Mexican Government a title that was complete and perfect at the date of the treaty, may apply for a confirmation of such title upon condition that, if any portion of such lands has been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid; and in such case the grantee may obtain judgment against the United States for the value of lands so granted. *United States* v. *Martinez*, 441.

4. Though the act requires that the petitioners shall set forth in their original petition the names of such adverse patentees, or persons in possession, if it be admitted that such adverse possessors or claimants do hold under grants from the United States, and there is no dispute as to boundaries, they need not be made parties, as they could not be affected by the decree. *Ib.*

5. So while the act contemplates that notice shall be given such adverse holders, and the claim for a money judgment incorporated in the original petition, relief would not be refused solely upon that ground, if

sufficient excuse were shown for the omission to make these grantees parties. *Ib.*

6 But where the original petition for confirmation alleged that there were no such adverse holders or claimants, and no effort appears to have been made to ascertain the facts for more than seven years after such petition was filed, although it appeared such facts were easily ascertainable, it was held that some excuse should be set forth for this long delay, and that a supplemental petition for the value of the lands patented would not be entertained. *Ib.*

7. *Ainsa* v. *United States*, 161 U. S. 208, reaffirmed. *Reloj Cattle Co.* v. *United States*, 624.

8. The grant asked to be confirmed was a grant by quantity according to the laws when it was made. *Ib.*

9. As the lawful area of the grant was south of the boundary line between the United States and Mexico, there could be no confirmation in this country, and moreover, the owners had obtained full satisfaction therefor from Mexico before this petition was filed, and no legal or equitable claim therefor existed against the United States. *Ib.*

10. Claims for *demasias* or overplus, in respect of which the conditions were unfulfilled, are imperfect claims, and such a claim as set up in this case was barred by limitation. *Ib.*

11. This case is governed by *Reloj Cattle Company* v. *United States*, just decided. *Ainsa* v. *United States*, 639.

12. The grant was a grant by quantity, and the lawful area was south of the international boundary line, and had been set off to the owners by Mexico. *Ib.*

13. The right to acquire *demasias* or overplus was not a vested right, and where the conditions were unfulfilled in accordance with the terms of the grant at the time of the cession, claims to *demasias* cannot be confirmed. *Ib.*

14. From its examination of the evidence in this case this court concurs in the view of the Court of Private Land Claims that a definite location and possession of the grant here in question, prior to the date of the Gadsden treaty, are shown with reasonable certainty, and affirms the decree of that court confirming the claim to the extent of the four sitios granted and paid for. *United States* v. *Camou*, 572.

15. The decree of the Court of Private Land Claims denying confirmation of the grant involved in this case, on the ground of uncertainty, affirmed. *Arivaca Land & Cattle Co.* v. *United States*, 649.

16. Claims to *demasias*, the conditions to acquiring, which were unperformed at the time of the date fixed in the Gadsden treaty, are not open to confirmation by the Court of Private Land Claims. *Ib.*

17. Under the act of Congress of March 3, 1891, c. 539, the Court of Private Land Claims has no jurisdiction to confirm or reject, or to pass upon the merits of a claim to any land, the right to which has been lawfully acted upon and decided by Congress. *United States* v. *Baca*, 653.

18. While a contest over a preëmption entry was pending, Congress passed an act confirming the entry and directing the patent to issue, which was done. *Held*, That the act was within the power of Congress, and

that its operation could not be defeated by a contestant who had never made an entry on the land, nor perfected the right to do so. *Emblen* v. *Lincoln Land Company*, 660.

RAILROAD.

This was an action to recover from the railway company the value of plaintiffs' cotton destroyed by fire while in the company's cars on its tracks near its terminal wharf. On the facts *Held:* 1. That the obvious danger resulting from the use of locomotives about so easily ignitible a material as cotton was clear and the jury would have been reasonably justified in drawing the inference that it had caused the fire; 2. That the proof showed negligence in the care of the property; 3. That the jury would have had reasonable ground to infer negligence from the inadequacy of the fire apparatus, and from the want of instructions as to its use, or competent men to handle it. *Marande* v. *Texas & Pacific Railway Co.*, 173.

See CONSTITUTIONAL LAW, 1.
ILLINOIS CENTRAL RAILROAD COMPANY.

STREET RAILWAY.

The Detroit Citizens' Street Railway Company, at the time this action was commenced, was operating upwards of one hundred and thirty-five miles of street railways in Detroit, under grants and permissions made by the city government of Detroit, and by the statutes of Michigan set forth in the statement of facts and in the opinion of the court in this case. This litigation arises out of the different constructions placed by the parties upon the statutes of Michigan, called respectively the Tram-railway Act, and the Street-railway Act, both in force when said company acquired its powers. The provisions made by those statutes are summed up in the statement of facts. *Held:* (1) That this was not such a case as on its face equity could have no jurisdiction over, and that, considering the public interests involved, a case is made out for following the general rule that a defence of want of equity jurisdiction will not be recognized where it has not been taken by answer, or in any other manner, and is not insisted upon on the hearing before the court; (2) That there can be no question in this court as to the competency of a state legislature, unless prohibited by constitutional provisions, to authorize a municipal corporation to contract with a street railway company as to the rate of fares, and so to bind, during the specified period, any future common council from altering or in any way interfering with such contract; (3) That such a contract having once been made, the power of the city over the subject, so far as altering the rates of fare or other matters properly involved in and being a part of the contract, is suspended for the period of the running of the contract; (4) That binding agreements had been made and entered into, between the city on the one side and the companies on the other, relating to rates of fare, and such agreements could not be altered without the consent of both sides; (5) That those binding agreements constituted a contract as to the rates, equally binding with that

in regard to taxes; (6) That the rate of fare having been fixed by positive agreement, under express legislative authority, the subject was not open to alteration thereafter by the common council alone, under the right to prescribe from time to time the rules and regulations for the running and operation of the road; (7) That the language of the ordinance which provides that the rate of fare for one passenger shall not be more than five cents does not give any right to the city to reduce it below the rate of five cents established by the company; (8) That the provisions in the Tram-railway Act and Street-railway Act referred to are entirely harmonious, and may be fully carried out, so as to involve neither incongruity nor inconsistency; (9) That the extension of the terms of the city's consent beyond the limits of the corporate life of the companies was not illegal and void; (10) That the fixing of rates, being among the vital portions of the agreement between the parties, it cannot be supposed that there was any intention to permit the common council, in its discretion, to make an alteration which might be fatal to the pecuniary success of the company. *Detroit* v. *Detroit Citizens' Street Railway Company*, 368.

TAXATION.

1. What the constitution of the State of Ohio requires or what the statutes of that State require as to taxation, must be left in this case to be decided by the Supreme Court of the State, and its decision is not open to review or objection here. *Cleveland Trust Co.* v. *Lander*, 111.
2. The manner of taxation in this case being legal under the statutes of the United States, its effect cannot be complained of in Federal tribunals. *Ib.*
3. The Supreme Court of the State of Michigan having decided that the amount of taxes in a case like the present which may be assessed upon a district, or upon any given parcel of land therein cannot exceed the benefits, on a hearing given him the property owner could have shown that there was a violation of that rule, if it had been violated, and such violation would have relieved his land from the tax; but he was not entitled to a notice of every step in the proceeding. *Voight* v. *Detroit City*, 115.
4. A State may adopt new remedies for the collection of taxes, and apply those remedies to taxes already delinquent, without any violation of the Federal Constitution. *League* v. *Texas*, 156.
5. That in the new remedy in the case at bar, as well as in the change from the old to the new, there was no violation of the constitution of the State of Texas, is settled for this court by the decisions of the highest court of that State. *Ib.*
6. Whether the title on this case which passed by the sale was conditioned or absolute, the State may waive the rights obtained by such sale and prescribed the terms upon which it will waive them. *Ib.*
7. A delinquent taxpayer who fails to discharge his obligation to the State, compelling it to go into court to enforce payment of the taxes due on his land, has no ground of complaint because he is charged with the ordinary fees and expenses of a law suit. *Ib.*

8. The Fourteenth Amendment contains no prohibition of retrospective legislation as such, and therefore, now, as before, the mere fact that a statute is retroactive in its operation does not make it repugnant to the Federal Constitution. *Ib.*
9. Congress is bound to express its intention to tax in clear and unambiguous language, and a liberal construction should be given to words of exception confining the operation of the duty. *Eidman* v. *Martinez*, 578.
10. The war tax law of 1898 imposing a tax upon legacies or distributive shares arising from personal property passing "from any person possessed of such property, either by will or by the intestate laws of any State or Territory," does not apply to the intangible personal property in this country, of an alien domiciled abroad, whose property passed to his son, also an alien domiciled abroad, partly by will and partly by the intestate laws of such foreign country. *Ib.*
11. The act does not make the duty payable, when the person possessed of such property dies testate, if it would not be payable, if such person had died intestate; and the words "passing by will" are limited to wills executed in a State or Territory under whose laws the property would pass, if the owner had died intestate. *Ib.*
12. The war tax law of 1898 does not apply to intangible personal property located in this country and passing by the will of an alien domiciled abroad, to a daughter who is also an alien domiciled abroad, although the will was executed in this country during a temporary sojourn here. *Moore* v. *Ruckgaber*, 593.
13. As the tax is not imposed upon the property but upon the succession to the property, the law of the country in which the succession takes place determines the liability to taxation. *Ib.*
14. The law does not apply to property passing under a will, if it would not apply in case the testator had died intestate, and as in this case the property would have passed under the intestate laws of France, the succession is not subject to a tax here, although the will was executed in this country. *Ib.*
15. The tax on manufactured tobacco is a tax on an article manufactured for consumption, and imposed at a period intermediate the commencement of manufacture and the final consumption of the article. *Patton* v. *Brady*, 608.
16. The tax which is levied thereby is an excise. *Ib.*
17. Taxation may run *pari passu* with expenditure, and the courts cannot revise the action of Congress in this respect. *Ib.*
18. A general tax may be charged upon property once charged with an excise; and the power to tax it as property, subject to constitutional limitations as to the mode of taxing property, is not defeated by the fact that it has already paid an excise. *Ib.*
19. The legislative determination as to the reasonableness of an excise in amount or as to the property to which it is applied, is final. *Ib.*
20. It is within the power of Congress to increase an excise, at least while the property is held for sale, and before it has passed into the hands of the consumer. *Ib.*

TERRITORIAL BONDS.

1. The act of Congress of June 6, 1896, c. 339, 29 Stat. 262, authorizing the refunding of outstanding obligations of the Territory of Arizona, was within the power of Congress to pass, and by it the bonds therein described were made valid. *Schuerman* v. *Arizona*, 342.
2. Under the territorial funding act of Arizona, approved March 19, 1891, it was sufficient for the holder of the bonds to make the demand for the exchange, and it was not necessary that the demand should be made by the municipal authorities. *Ib.*
3. It was the intent of Congress under the said act of June 6, 1896, to provide that there should be no funding of bonds or other indebtedness which arose subsequently to January 1, 1897; and the statute was not intended to limit the mere process of exchanging one bond for the other to the time specified. *Ib.*
4. The territorial statute of Arizona of 1887 is the foundation for the appointment of the loan commissioners; and the body thus created comes directly within its provisions. *Ib.*

USURIOUS INTEREST.

The provision in Rev. Stat. § 5198, that "in case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of debts, twice the amount of the interest thus paid," on the one hand causes a forfeiture of the entire interest to result from the taking, receiving, reserving or charging a rate greater than is allowed by law, and on the other subjects the creditor to pay twice the amount of the interest illegally exacted if, by persistence in wrongdoing, he subjects the debtor to the necessity of suing to recover. *Lake Benton First National Bank* v. *Watt*, 151.

VILLAGE WATER WORKS.

See CONTRACT, 5.