tions and settlements, and to open afresh claims that had been disposed of. The Court of Claims had no right to go behind the final settlement, and attempt to establish the original facts of the case. Its findings of fact, in this respect, were illegal and void. The government has never consented to be sued on this claim, or on any claims similarly situated.

The conclusion of law to which the court came, I think, was correct, and the decree should be affirmed.

ROBINSON ET AL. v. ELLIOTT.

1. Under the Statute of Frauds in Indiana, which enacts in

> "SECTION 10. That no assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, when such goods are not delivered to the mortgagee, or assignee, and retained by him, unless such assignment or mortgage shall be duly recorded—"

And in

> "SECTION 21. That the question of fraudulent intent in all cases shall be deemed a question of fact—"

A mortgagor of chattels personal may, if the transaction be fair and the mortgage made by him be duly recorded, retain possession of personal chattels.

2. But the effect of the statute is not to make every recorded mortgage, which prior to the statute would have been held fraudulent in law, *primâ facie* valid.

3. The recording of the mortgage contemplated by the statute was meant as a substitute for possession, but was not meant to protect a mortgage from all illegal stipulations contained in it.

4. Hence, where a trading firm in a city in Illinois owing money evidenced by a series of notes, coming due from time to time for some months in advance, made a mortgage of their stock of goods, the mortgage containing this clause:

> "And it is hereby expressly agreed, that until default shall be made in the payment of some one of said notes, or some paper in renewal thereof, the parties of the first part may remain in possession of said goods, wares, and merchandise, and may sell the same as heretofore, and supply their places with other goods, and the goods substituted by purchase for those sold shall, upon being put into said store, or any other store in said city where the same may be put for sale by said parties of the first part, be subjected to the lien of this mortgage—"

Statement of the case.

The instrument then concluding with powers to the mortgagee, upon any default, to have the right to enter into said store of the firm and take possession of a sufficient amount of goods to satisfy, pay, and discharge all the paper due, and have full power and authority, upon ten days' public notice, to sell at public auction such amounts of said goods as should be necessary to pay said paper; *Held*—

1. That the court was the proper party to say whether on its face the mortgage was void.
2. That it was so void.

APPEAL from the Circuit Court for the District of Indiana; the case, as appeared by bill and demurrer, being thus:

On the 7th of July, 1871, John and Seth Coolidge, brothers, were partners in the retail dry goods trade in Evansville, Indiana, having been thus in business there since the year 1863. On the day just named they owed to a Mrs. Sloan $3174, for money previously borrowed of her to aid them in their business.

They also owed the First National Bank of Evansville $7600, evidenced by seven promissory notes of the firm—all maturing between the 25th of July and the 6th of October of the year 1871—on which one Robinson was then an accommodation indorser; and to secure to Mrs. Sloan the payment of what was due to her and to indemnify Robinson as indorser, they made to them a chattel mortgage upon their stock of goods then in their rented store, including also the furniture and fixtures connected with the same.

The mortgage, after reciting the liability of the firm to Robinson, on the notes indorsed by him, stated that it was contemplated, that in order to take up the notes, or some of them, it might become necessary to renew the same, or to discount other notes. The recital of the indebtedness to Mrs. Sloan, by note at four months, with interest, was also made with the statement that, if not convenient to the firm to pay it at maturity, it might be renewed from time to time, as the parties should agree.

After these recitals, and that of the mutual understanding of the parties concerning the continuance of the debts, the property was conveyed; the mortgage proceeding thus:

Statement of the case.

"And it is hereby expressly agreed that until default shall be made in the payment of some one of said notes, or some paper in renewal thereof, the parties of the first part may remain in possession of said goods, wares, and merchandise, *and may sell the same as heretofore and supply their places with other goods, and the goods substituted by purchase for those sold shall, upon being put into said store or any other store in said city where the same may be put for sale by said parties of the first part, be subjected to the lien of this mortgage.*"

The instrument concluded with separate powers to the mortgagees, Robinson and Mrs. Sloan, on default in payment of their respective claims, to seize and sell sufficient goods to satisfy the same.

All the debts owing by the firm at the date of the mortgage, other than those secured by it, have been paid, except $3500 due to one Alfred Coolidge, father of the two partners Coolidge, for borrowed money.

The mortgagors remained in possession of the property, and bought and sold as they had been accustomed to do, from the date of the mortgage, to August 7th, 1873, when Seth Coolidge, one of the partners, died. During this interval of twenty-five months the interest and less than $100 of the principal of Mrs. Sloan's debt was paid, and the interest and about one-third of the principal of the bank debt. The note of Mrs. Sloan's was not renewed, but was overdue about twenty-one months. Robinson continued to indorse for the firm. Immediately after the death of Seth Coolidge the property of the firm, consisting of the old stock, goods subsequently purchased, and debts due the firm, was inventoried and appraised, and found to be very little in excess of the debts owing by the firm. This inventory and appraisement was completed on September 15th, and on the following day Robinson and Mrs. Sloan seized the goods and were about to sell them. However, on the 26th of September and before the ten days required by the terms of the mortgage for notice of sale had expired, proceedings in bankruptcy were begun against the surviving partner, Seth Coolidge, and an injunction was got to stay any sale.

Argument in support of the mortgagees.

Coolidge having been decreed a bankrupt, one Elliott, on the 15th of November, 1873, was appointed his assignee, and demanded the goods from Robinson and Mrs. Sloan. They refused to deliver them to him. Hereupon Robinson and Mrs. Sloan filed a bill against Elliott, setting forth the facts as above given, and praying that an account might be taken of what was due to them, and that the goods might be sold to pay it. Elliott, the assignee, demurred, and the court below sustained the demurrer, and rendered a decree dismissing the bill. Robinson and Mrs. Sloan then brought the case here.

The Statute of Frauds* of Indiana makes the following provisions:

"SECTION 10. No assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, when such goods are not delivered to the mortgagee or assignee, and retained by him, unless such assignment or mortgage shall be acknowledged, as provided in cases of deeds of conveyance, and recorded in the recorder's office of the county where the mortgagor resides, within ten days after the execution thereof.

"SECTION 21. The question of fraudulent intent in all cases arising under the provisions of this act, shall be deemed a question of fact, nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers solely upon the ground that it was not founded on a valuable consideration."

Messrs. A. Inglehart and A. L. Robinson, for the appellants:

It is manifest from the tenth and twenty-first sections of the Statute of Frauds of Indiana, that the legislature of that State, while intending to guard against frauds, intended also to permit the use of personal property by way of chattel mortgages as a security for the payment of debts, in the same manner that real estate is used for that purpose, and that questions of fraud, which might arise under the law, should be questions of *fact* and not of *law*.

Previous to the enactment of this statute of registration, it was necessary to the validity of chattel mortgages that

* 1 G. & H. R. 351.

there should be a manual delivery of the mortgaged property to the mortgagee, who should continue to hold the same in his possession, but under this statute the record of the mortgage is substituted for such delivery, and is full and complete notice to all the world of the rights and interests of the parties.*

The questions which present themselves in this case have not, it is true, been fully and clearly determined by the Supreme Court of Indiana. But we submit that the decisions which *have* been made are all in our favor, and settle these propositions:

1. Where the mortgage has been duly recorded in time, the same is *primâ facie* valid.

2. Where the mortgage is recorded and contains such a provision as the one in the mortgage here, it is still *primâ facie* valid, and the question of fraud is a question for the jury. In other words, that there is no such thing recognized in our courts in this class of cases as fraud *per se*.

3. Where a mortgage is made in terms to include after-acquired property, the mortgage will attach to the property when it is acquired, and will operate as a lien upon it in equity.

The case of *Maple* v. *Burnside*† would, indeed, seem to have decided the question under consideration. The main question before the court was, whether Maple, the attachment defendant, had sold, conveyed, or otherwise disposed of his property with the intent to cheat, hinder, or delay any of his creditors. The fact of fraud relied on was the making of a chattel mortgage, permitting the mortgagor to remain in possession of the goods, and deal with them as his own.

The court below, among others, gave the following instruction:

"If, after the mortgage was given, the defendant remained in possession of the property mortgaged, after the time named in

* Wright *v.* Bundy, 11 Indiana, 398; Duke *v.* Strickland, 43 Id. 494.

† 22 Indiana, 139; and see Chissom *v.* Hawkins, 11 Id. 316; Coe *v.* McBrown, 22 Id. 252.

it, using and trading with the property as the owner, it is a fraud, and you must find for the plaintiff."

In delivering the opinion of the court, Hanna, J., says:

"It appears to us this instruction was calculated to confuse and mislead the jury to the prejudice of the defendant. . . . If it was intended to say that the defendant could not hold possession after the date of the mortgage, it is certainly erroneous. If some other point of time was intended to be indicated at which the possession of the defendant should cease to be rightful, it should have been more specific, especially in view of the fact that the date when the debts secured by the mortgage were to become due is not stated particularly, and the right to retain said possession was to remain in the mortgagor until the maturity and failure to pay said debts."

The case was reversed for the error contained in the instruction given.

It must be admitted that this opinion of the Supreme Court, in which the judge undertakes to state the case, is wanting in perspicuity in the statement of the facts. But the record clearly shows that the validity of the mortgage was in question; and that the Circuit Court had assumed in its instruction, just as the circuit judge has decided here, that if the mortgagor after the mortgage was executed, kept possession of the goods and sold and dealt with them as his own, the mortgage would be fraudulent and void.

If we are right as to what is the law in Indiana on this question, and if the validity of the mortgage is to be settled, as of course it is to be, by that law, we may rest the argument here. As for the authority of cases decided in other States of the Union that the mortgage is invalid, it is enough to say that the opinion of the Supreme Court of Maine,* the Supreme Court of Massachusetts, with Shaw as its chief,† the Supreme Court of Michigan, with Cooley as its chief,‡ the Supreme Court of Iowa, with Dillon as its chief,§

* Abbott *v.* Goodwin, 20 Maine.

† Macomber *v.* Parker, 14 Pickering, 497.

‡ Oliver *v.* Eaton, 7 Michigan, 108; Gray *v.* Bidwell, Ib. 520.

§ Torbert *v.* Hayden, 11 Iowa, 435; Hughes *v.* Cory, 20 Id. 399.

the Circuit Court of the United States for the first circuit, Story, J., presiding;* and the Supreme Court of Indiana, the State where, and under whose statutes the question arises, are arrayed against the vacillating and unsatisfactory rulings of New York, rendered under peculiar constructions of their statutes, against the cases in Illinois, under their very peculiar statutes, and the cases in Ohio, and perhaps Wisconsin and Missouri, following the same line of argument.

Mr. W. E. Niblack, contra, contended—

That no question about the respective domains of law and fact could arise in this case; the proceeding being by bill in chancery, and the case being made by a demurrer to it.

That while in *Maple* v. *Burnside*, relied on by the other side, the case was so confusedly stated, that it was difficult to say exactly what it was, there was nothing in the report to show that the mortgage contained any provision permitting the mortgagee to remain in possession and deal with the goods, and that the judgment established no right in a mortgagor of chattels even in Illinois to do so.

That the tenth section of the statute of Indiana did not change this rule of the common law, and that the argument of the plaintiff in error went to the extent of allowing the enactment, that a mortgage of chattels, where possession did not accompany the title, should nevertheless be valid when *recorded*, to set up as valid every fraudulent device which under the aspect of a mortgage might be put on record in pursuance of the statute.

That from the case of *Grantham* v. *Hawley*, decided so far back as the time of Hobart,† it had been settled that a mortgage was void as to after-acquired property except where the mortgagor had a present actual interest in it or concerning it; that there must be something *in præsenti* of which the thing *in futuro* was to be the product, or with which it was to be connected as necessary for its use, or as incident to it,

* Mitchell *v.* Winslow, 2 Story, 630.

† Hobart, 132*.

constituting a tangible, existing basis for the contract. The future property must be an accretion to the property already owned by the mortgagor, either by adding the future to the present, or by growth. Thus, to take Hobart's illustration, that while one might mortgage all the wool which should grow for a term of years on any number of sheep *owned by him* at the time, he could not mortgage the wool to be grown on any sheep at all *if he did not own them;* a position for the principle of which the counsel cited cases from nearly every State in the Union.

And in short, that although the question might appear, to some extent, an open one in Indiana, a reference to the notes, English and American, upon Twyne's case in Smith's Leading Cases,* would show that the judicial mind of both England and the United States had ascertained and fixed the rule that after-acquired chattels were not subject to lien by way of mortgage; that this rule was moreover a wise one, since to sanction a contrary rule and so to give effect to transactions like the one under consideration, would open a door to frauds innumerable and of the most extensive sort.

Mr. Justice DAVIS delivered the opinion of the court.

There are few subjects which have been more discussed in the courts of this country, with less uniformity of decision, than that of sales and mortgages of personal goods, without delivery of possession. In Indiana the statute of 13th Elizabeth has been adopted, and two provisions applicable to this case engrafted on it. The first declares that "no assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, when such goods are not delivered to the mortgagee, or assignee, and retained by him, unless such assignment or mortgage" shall be duly recorded. And the second says, "that the question of fraudulent intent in all cases shall be deemed a question of fact."

Prior to the incorporation of these provisions in the statute it was necessary to the validity of chattel mortgages in

* Seventh American edition, vol. 1, p. 7.

Indiana that there should be a manual delivery of the mortgaged property to the mortgagee, who should continue to hold the same in his possession. These provisions changed the law in this particular, and permitted the retention of the possession of personal property by the mortgagor in a chattel mortgage given as a security for the payment of debts. And there can be no question that in Indiana a mortgage, which simply allows the mortgagor to retain the possession and use of the property until breach of the condition is, when duly recorded, *primâ facie* valid. But it is insisted that the effect of these provisions is also to make a mortgage of a stock of goods, containing a provision authorizing the mortgagor to retain possession for the purpose of selling in the usual course of trade, *primâ facie* valid, and that the court cannot, as a matter of law, pronounce it fraudulent. This, we think, is going beyond what the legislature intended. If registration was intended, as we think it was, as a substitute for delivery of possession, it was not meant to be a protection for all the other stipulations contained in a mortgage. If so, it could be used as a cover for any fraudulent transaction, which would have to be treated, on the theory advanced, as valid, until the contrary was shown.

It is true the law conferred on the parties the right to agree that the possession of the property could remain with the mortgagor, provided the mortgage be recorded; but if the mortgage contains other provisions, which, on legal principles, vitiates the whole instrument, it is difficult to see how recording it could make it even *primâ facie* valid. The Bill of Sales Registration Act in England makes void all bills of sale not filed as required, if unaccompanied by possession. An eminent writer in speaking of this act says: "Of course the mere fact of due registration of a bill of sale, under this act, does not necessarily make it good against creditors. The act was not passed with a view of making good a title which was not good before, but for the protection of creditors."* And to the same effect is *Wood* v. *Lowry*.†

* May on Fraudulent Conveyances, p. 120. † 17 Wendell, 495–6.

It is argued, however, that there can be no such thing in this class of cases as constructive fraud, because under the statute the question of fraudulent intent is one of fact. But the Supreme Court of Indiana has decided the question differently. The statute of that State for the prevention of frauds embraces twenty-two sections. The tenth relates to the registration of chattel mortgages; the seventeenth enacts that every assignment, &c., of any estate in lands, or of goods, made with intent to hinder, delay, or defraud creditors, shall be void; and the twenty-first declares that the question of fraudulent intent, in all cases arising under the provisions of this act, shall be deemed a question of fact. It will thus be seen that the last section applies to conveyances of land as well as to assignments of goods by way of mortgage. In *Jenners and others* v. *Doe on the demise of Pomeroy and others*,* the question was whether a deed of trust on certain lands was void as to creditors who did not consent to it. The court of original jurisdiction held the deed void upon its face as a question of law. It was contended that this ruling was erroneous, and that in all cases the instrument must be referred to the jury in connection with the facts. But the Supreme Court held the ruling to be correct. They say that the provisions embraced in the seventeenth and twenty-first sections of the statute have declared, not changed, the law on the subject; that the court must, in the first instance, determine upon the legal effect of a written instrument, and if that be to delay creditors it is rejected. If, however, on its face it conforms to the law, it is received in evidence, and the question of the intent with which it was executed is an open one for the jury. It would seem to be the view of the court in this case, as well as in the preceding one in the same volume, of *Nutter* v. *Harris*, that the twenty-first section applies to cases of actual or meditated and intentional fraud, and is not applicable to written instruments which the law adjudges to be fraudulent on their face and consequently void.

There is, therefore, nothing in the way of the considera-

* 9 Indiana, 461.

tion of the main question involved in this controversy on its merits.

If chattel mortgages were formerly, in most of the States, treated as invalid unless actual possession was surrendered to the mortgagee, it is not so now, for modern legislation has, as a general thing (the cases to the contrary being exceptional) conceded the right to the mortgagor to retain possession, if the transaction is on good consideration and *bonâ fide*. This concession is in obedience to the wants of trade, which deem it beneficial to the community that the owners of personal property should be able to make *bonâ fide* mortgages of it, to secure creditors, without any actual change of possession.

But the creditor must take care in making his contract that it does not contain provisions of no advantage to him, but which benefit the debtor, and were designed to do so, and are injurious to other creditors. The law will not sanction a proceeding of this kind. It will not allow the creditor to make use of his debt for any other purpose than his own indemnity. If he goes beyond this, and puts into the contract stipulations which have the effect to shield the property of his debtor, so that creditors are delayed in the collection of their debts, a court of equity will not lend its aid to enforce the contract. These principles are not disputed, but the courts of the country are not agreed in their application to mortgages, with somewhat analogous provisions to the one under consideration. The cases cannot be reconciled, by any process of reasoning, or on any principle of law. As the question has never before been presented to this court, we are at liberty to adopt that rule on the subject which seems to us the safest and wisest. It is not difficult to see that the mere retention and use of personal property until default is altogether a different thing from the retention of possession accompanied with a power to dispose of it for the benefit of the mortgagor alone. The former is permitted by the laws of Indiana, is consistent with the idea of security, and may be for the accommodation of the mortgagee; but the latter is inconsistent with the nature and

character of a mortgage, is no protection to the mortgagee, and of itself furnishes a pretty effectual shield to a dishonest debtor. We are not prepared to say that a mortgage under the Indiana statute would not be sustained which allows a stock of goods to be retained by the mortgagor, and sold by him at retail for the express purpose of applying the proceeds to the payment of the mortgage debt. Indeed, it would seem that such an arrangement, if honestly carried out, would be for the mutual advantage of the mortgagee and the unpreferred creditors. But there are features engrafted on this mortgage which are not only to the prejudice of creditors, but which show that other considerations than the security of the mortgagees, or their accommodation even, entered into the contract. Both the possession and right of disposition remain with the mortgagors. They are to deal with the property as their own, sell it at retail, and use the money thus obtained to replenish their stock. There is no covenant to account with the mortgagees, nor any recognition that the property is sold for their benefit. Instead of the mortgage being directed solely to the *bonâ fide* security of the debts then existing, and their payment at maturity, it is based on the idea that they may be indefinitely prolonged. As long as the bank paper could be renewed, Robinson consented to be bound, and in Mrs. Sloan's case it was not expected that the debt would be paid at maturity, but that it would be renewed from time to time, as the parties might agree. It is very clear that the instrument was executed on the theory that the business could be carried on as formerly by the continued indorsement of Robinson, and that Mrs. Sloan was indifferent about prompt payment. The correctness of this theory is proved by the subsequent conduct of the parties, for the mortgagees remained in possession of the property, and bought and sold and traded in the manner of retail dry-goods merchants, from July 7th, 1871, to August 7th, 1873. During this period of twenty-five months Robinson indorsed as usual, and Mrs. Sloan was content with the payment of a small portion of the principal of her debt. Instead of getting it

renewed, as contemplated by the mortgage, she seems to have been willing to let it remain dishonored, and the fair inference from the averments of the bill is that Robinson would have continued to indorse, and Mrs. Sloan exhibit the same easy indifference on the subject of her indebtedness, if the death of Seth Coolidge had not dissolved the firm and compelled an inventory and appraisement, showing the desperate condition of the mortgagors. It hardly need be said that a mortgage which, by its very terms, authorizes the parties to accomplish such objects is, to say the least of it, constructively fraudulent.

Manifestly it was executed to enable the mortgagors to continue their business and appear to the world as the absolute owners of the goods, and enjoy all the advantages resulting therefrom. It is idle to say that a resort to the record would have shown the existence of the mortgage, for men get credit by what they apparently own and possess, and this ownership and possession had existed without interruption for ten years. There was nothing to put creditors on their guard. On the contrary, this long-continued possession and apparent ownership were well calculated to create confidence and disarm suspicion. But apart from this, security was not the leading object. If so, why does Mrs. Sloan's note remain overdue for twenty-one months, and why does Robinson continue to indorse? This conduct is the result of trust and confidence, which, as Lord Coke tells us, are ever found to constitute the apparel and cover of fraud.

In truth, the mortgage, if it can be so called, is but an expression of confidence, for there can be no real security where there is no certain lien.

Whatever may have been the motive which actuated the parties to this instrument, it is manifest that the necessary result of what they did do was to allow the mortgagors, under cover of the mortgage, to sell the goods as their own, and appropriate the proceeds to their own purposes; and this, too, for an indefinite length of time. A mortgage which, in its very terms, contemplates such results, besides

being no security to the mortgagees, operates in the most effectual manner to ward off other creditors; and where the instrument on its face shows that the legal effect of it is to delay creditors, the law imputes to it a fraudulent purpose. The views we have taken of this case harmonize with the English common-law doctrine, and are sustained by a number of American decisions. In the American editor's note to Twyne's case,* most of the cases in this country on the subject are collected and classified.†

It is contended by the appellants that the rulings of the Indiana courts are in favor of the validity of this mortgage, and the main case relied on to support this position is *Maple* v. *Burnside.* The facts of this case are stated in the opinion of the court in a way to render it difficult for any practitioner outside of the State to understand the application to them of the legal rules which are discussed, but there is nothing to show that the mortgage there considered contained any provision permitting the mortgagor to remain in possession of the property and deal with it as his own, nor does the judgment of the court involve any such question. The case would seem to be chiefly valuable as an authoritative exposition of certain points of nisi prius practice. Although we have been unable to find any case from Indiana of similar facts with the one at bar, yet the decision in the *New Albany Insurance Company* v. *Wilcoxson*,‡ would seem to imply that when such a case did arise it would be decided in accordance with the views we have presented. The point ruled in that case is, that if a mortgage is executed merely to protect property in the hands of the mortgagor from his creditors other than the mortgagee, the mortgagor retaining possession and the right of disposition, and these facts appear upon the face of the mortgage, it would be fraudulent and void as against other creditors, and should be so declared by the court. And the court, to sustain this proposition,

* In Smith's Leading Cases, vol. i, p. 52, 7th American edition.

† See, also, Mittnacht *v.* Kelly, 3 Keyes, 407; Yates *v.* Olmsted, 65 Barbour, 43; Barnet *v.* Fergus, 51 Illinois, 352; Re Manly, 2 Bond, 261; Re Kahley, 2 Bissell, 383.

‡ 21 Indiana, 355.

refer to *Freeman* v. *Rawson*,* a standard authority in this class of cases, for the views we have advanced on this subject.

Finally, it is insisted if the mortgage is held void in law, still the delivery of the goods in pledge vests a sufficient lien, *primâ facie*, to enable the appellants to enforce their lien in equity.

The answer to this is, that the case made by the bill does not proceed upon such a delivery at all, but upon the mortgage and seizure under it. Besides, if the appellants could turn the proceeding into a voluntary pledge by the debtors, it would not help them, for it would violate the preference clause of the Bankrupt Act, as they got the goods only twelve days before the petition in bankruptcy was filed.

DECREE AFFIRMED.

TUCKER *v.* FERGUSON ET AL.

1. Congress, by act of 1857, granted public lands to a State, to be "held" by it, to aid in the construction of a railroad through the State, the road, when made, to be and remain a public highway for the use of the government of the United States, free from toll or other charges upon the transportation of property or troops of the United States; the government to have a right also to carry the mails thereon.

   The lands were to be exclusively applied in the construction of the road, disposed of only as the work progressed, and applied to no other purpose whatsoever. The act prescribed that the mode of disposition should be by sale made from time to time as the road advanced.

   The State, by act of its legislature, accepted the lands "with the restrictions and upon the terms and conditions contained in the said act of Congress," and by the same act, in which the acceptance was made, vested in a then recently organized railroad company the lands "fully and completely, according to the act of Congress relating thereto and the direction of the board of control" of the State (a body appointed by its governor and Senate), and "*whose* duty" it was made by the act "to manage and dispose of the lands" in aid of the construction; the company being made, moreover, subject to such rules and regulations as the legislature of the State might from time to time enact and pro-

* 5 Ohio State, 1.