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APPEAL AND WRIT OF ERROR.

1. A suit involving the consideration of questions relating to the power of Congress, under the Constitution, over the navigable waters of the United States, is one which involves the construction or application of the Constitution of the United States, and an appeal from the final judgment of the Circuit Court in such action can be taken directly to the Supreme Court of the United States under the Act of Congress of March 3, 1891, c. 517. *Cummings* v. *Chicago*, 410.
2. There is no general right to a writ of error from this court to the courts of a State; nor does the mere fact that the action was brought under sections 2325 and 2326 of the Revised Statutes in support of an adverse claim, entitle the defeated party to a writ of error to the state court. There is but a special right to bring such cases, and such cases only, as disclose a Federal question distinctly ruled adversely to the plaintiff in error. Where no title, right, privilege or immunity of a Federal nature was set up and claimed, nor the validity of any Federal statute denied in the state court, nor the validity of any state statute challenged prior to the judgment of affirmance in the highest court of the State, on the ground of its repugnance to paramount Federal law, this court is not justified in taking jurisdiction. *Beals* v. *Cone*, 184.
3. To maintain a writ of error asserted under the third of the classes of

cases enumerated in section 709, Rev. Stat., the right, title, privilege or immunity relied on must not only be specially set up or claimed, but (1) at the proper time, which is in the trial court whenever that is required by the state practice, as it is in California, and (2) in the proper way, by pleading, motion, exception, or other action, part or being made part, of the record, showing that the claim was presented to the court. *Mutual Life Insurance Co.* v. *McGrew*, 291.

4. Where it is claimed that the decision of a state court was against a right, title or immunity claimed under a treaty between the United States and a foreign country and no claim under the treaty was made in the trial court and it is a rule of practice of the highest court of the State that it will not pass on questions raised for the first time in that court and which might and should have been raised in the trial court, the writ of error will be dismissed. *Ib.*
5. The mere pleading of a decree in a foreign country or of a statute of such country and the construction of the same by the courts thereof do not amount to specifically asserting rights under a treaty with that country. *Ib.*
6. Judicial knowledge cannot be resorted to to raise controversies not presented by the record. *Ib.*
7. The raising of a point in this court as to the faith and credit which should be given judicial proceedings of a foreign country, which ceased to be foreign before judgment was rendered in a state supreme court, but was not brought to the attention of that court, comes too late. *Ib.*
8. The construction placed by the highest courts of the State upon a statute providing for paving streets and distributing the assessment therefor is conclusive upon this court. *Schaefer* v. *Werling*, 516.

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See CONGRESS, 7; NATIONAL BANKS;
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BANKRUPTCY.

1. Where a sheriff after selling under an execution and before paying over to the judgment creditor, is enjoined in a state court by another cred-

itor from so doing, and immediately after the state court has set the restraining order aside, and while the money is still in the hands of the sheriff, and within the time allowed for the return of the execution, and before it is returned, a petition in bankruptcy is filed against the judgment debtor, the money does not belong to the judgment creditor but goes, under section 67*f* of the Bankrupt Act of 1898, to the trustee in bankruptcy. *Clarke* v. *Larremore*, 486.

2. One who received money to indemnify him for giving bail bonds for a person subsequently and more than four months thereafter adjudicated a bankrupt, and against whom the judgment creditors in the suits in which he gave the bonds are seeking to enforce execution, holds such money as an adverse claimant within the meaning of section 23, *a* and *b* of the Bankruptcy Act of 1898. *Jaquith* v. *Rowley*, 620.

See JURISDICTION, C, 1, 2.

BILL OF PEACE.

See PLEADING.

BONDS.

An action upon the official bond of a superintendent of the Mint at New Orleans, conditioned among other things that he would "faithfully and diligently perform, execute and discharge all and singular the duties of said office according to the laws of the United States" and "receive and safely keep, until legally withdrawn, all moneys or bullion which shall be for the use or expenses of the Mint." The claim was that the defendant had received and not paid over to the United States $25,000 in treasury notes which had come to his hands. The defence was that the treasury notes had been totally destroyed by fire, without any negligence on the part of the superintendent, except that $1182 of such notes had been recovered in a charred condition and turned over to the United States, being in such condition that they could be identified as to amount and date of issue. *Held:* (1) That the obligations of the superintendent were not determinable by the law of bailment, and the superintendent could not escape responsibility for any treasury notes that came to his hands and which were lost, unless such loss was attributable to overruling necessity or the public enemy; that their loss by reason of fire constituted no defence. (2) No deduction could be allowed on account of the $1182 of charred notes, because no previous application had been made to the proper accounting officers for the allowance of such a credit. (3) The superintendent was liable on his bond for interest at six per cent from the date on which his accounts were stated at the Treasury Department. *Smythe* v. *United States*, 156.

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CASES DISTINGUISHED.

1. *Brown* v. *Houston*, 114 U. S. 622, distinguished from *Kelley* v. *Rhoads*, 1.
2. *Carter* v. *Texas*, 177 U. S. 442, distinguished from *Tarrance* v. *Florida*, 519.
3. *Coe* v. *Errol*, 116 U. S. 317, distinguished from *Kelley* v. *Rhoads*, 1.
4. *Farmers' Loan & Trust Co.* v. *Penn Plate Glass Co.*, 186 U. S. 434, distinguished from *American Ice Co.* v. *Eastern Trust &c. Co.*, 626.
5. *Pittsburg &c. Coal Co.* v. *Bates*, 156 U. S. 57, distinguished from *Kelley* v. *Rhoads*, 1.

CASES FOLLOWED.

1. *Boston & Montana Con. Mining Co.* v. *Montana Ore Co.*, 188 U. S. 632, followed in *Boston & Montana Mining Co.* v. *Chile Gold Mining Co.*, 645.
2. *Coe* v. *Errol*, 116 U. S. 617, followed in *Diamond Match Co.* v. *Ontonagon*, 82.
3. *King* v. *Mullins*, 171 U. S. 404, followed in *Swan* v. *West Virginia*, 739.
4. *Morley* v. *Lake Shore &c. Ry. Co.*, 146 U. S. 162, followed in *Read* v. *Mississippi County*, 739.
5. *Smith* v. *Mississippi*, 162 U. S. 592, followed in *Tarrance* v. *Florida*, 519.
6. *Smyth* v. *Ames*, 169 U. S. 466, followed in *Prout* v. *Starr*, 537.
7. *The Manila Prize Cases*, 254, followed in *The Infanta Maria Teresa*, 283.
8. *Thompson* v. *Whitman*, 18 Wall. 457, followed in *Andrews* v. *Andrews*, 14.
9. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 215, followed in *Andrews* v. *Andrews*, 14.

CAVEAT.

See WILL.

CHALLENGES.

See PRACTICE, 7.

CLOUD ON TITLE.

See EQUITY, 2.

COMMERCE.

See INTERSTATE COMMERCE.

CONGRESS, POWERS OF.

1. The provisions of the corporation laws of the Territory of New Mexico relating to the formation and rights of irrigation companies are not invalid because they assume to dispose of property of the United States without its consent. By the act of July 26, 1866, 14 Stat. 253; Rev. Stat. § 2339, and the act of March 3, 1877, 19 Stat. 377, Congress recognized as respects the public domain and so far as the United States is concerned, the validity of the local customs, laws and deci-

sions in respect to the appropriation of water, and granted the right to appropriate such amount of water as might be necessarily used for the purpose of irrigation and reclamation of desert land, part of the public domain, and as to the surplus, the right of the public to use the same for irrigation, mining and manufacturing purposes subject to existing rights. The purpose of Congress to recognize the legislation of Territories as well as of States in respect to the regulation of the use of public water is evidenced by the act of March 3, 1891, 26 Stat. 1095. The statute of New Mexico is not inconsistent with the legislation of Congress on this subject. *Gutierres* v. *Albuquerque Land, etc., Co.*, 545.

2. The act of March 3, 1877, is not to be construed as an expression of Congress that the surplus public waters on the public domain, and which are within the control of Congress or of a legislative body created by it, must be directly appropriated by the owners of lands upon which a beneficial use of the water is to be made and that consequently a territorial legislature cannot lawfully empower a corporation to become an intermediary for furnishing water to irrigate the lands of third parties. *Ib.*

3. Neither the act of Congress of March 3, 1899, c. 425, nor any previous act relating to the erection of structures in the navigable waters of the United States manifested any purpose on the part of Congress to assert the power to invest private persons with power to erect such structures within a navigable water of the United States, wholly within the territorial limits of a State, without regard to the wishes of the State upon the subject. *Cummings* v. *Chicago*, 410.

4. Under existing legislation, the right to erect a structure in a navigable water of the United States, wholly within the limits of a State, depends upon the concurrent or joint assent of the State and National Governments. *Ib.*

5. Legislation prohibiting the carriage of lottery tickets by independent carriers from one State to another is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress. *Lottery Case*, 321.

6. Such legislation comes within the powers of Congress to regulate commerce among the several States. *Ib.*

7. Congress having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations. Congress having dealt directly with the insolvency of national banks by giving control to the Secretary of the Treasury and the Comptroller of the Currency, who are authorized to suspend the operations of the banks and appoint receivers thereof when they become insolvent, or when they fail to make good any impairment of capital, and full and adequate provision having been made for the protection of creditors of national banks by requiring frequent reports to be made of their condition, and by the power of visitation of Federal officers, it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers

in the exercise of the powers bestowed upon them by the general government. *Easton* v. *Iowa*, 220.

See APPEAL AND WRIT OF ERROR, 1;
CONSTITUTIONAL LAW, 15;
INTERSTATE COMMERCE, 3.

CONGRESS, ACTS OF.

See APPEAL AND WRIT OF ERROR, 1, 2, 3;
CONGRESS, 1, 2, 3, 4;
COPYRIGHT;
EQUITY, 1;
EXTRADITION, 1;
JURISDICTION, A, 1; B, 2, 3, 4, 5; C, 1, 3;
LOTTERIES;
MINERAL LANDS;
PRIZE, 1, 2, 3, 9;
PUBLICATION;
PUBLIC LANDS;
STATUTES, 1, 2, 3, 5;
TAXATION, 1.

CONSPIRACY.

See EVIDENCE, 3.

CONSTITUTIONAL LAW.

1. Within repeated decisions of this court the statute of a State under which the cost of a public improvement may be assessed upon the abutting property in proportion to frontage, such statute, as construed by the state courts, requiring such assessment to conform to the actual special benefits accruing to each of the abutting property owners, is not in conflict with the Constitution of the United States. *Schaefer* v. *Werling*, 516.
2. The Constitution of the United States, with the several amendments thereof, must be regarded as one instrument, all of whose provisions are to be deemed of equal validity. And in an action properly instituted against a state official the Eleventh Amendment is not a barrier to a judicial inquiry as to whether the provisions of the Fourteenth Amendment have been disregarded by state enactments. *Prout* v. *Starr*, 537.
3. By the Laws of Texas of 1883, c. 58, as amended by the Laws of 1885, c. 12, p. 13, a purchaser was bound to pay the notes given in payment for public land as they matured, and it was the duty of the commissioner to issue a patent for the land on payment of the notes and interest. In November, 1885, the laws of Texas did not give the State the right to forfeit lands for non-payment of installments due from purchasers, although at various periods prior thereto there had been provisions in the law to that effect. In 1897 and 1895 laws were enacted providing for forfeiture in case of such non-payment, but giving the purchaser the right to be heard in a court of justice pursuant to certain forms of procedure prescribed in the law upon the question of whether he was actually in default. *Held*, as to a purchaser of lands in 1885 (after the passage of the act of that year) and who from 1893 to December, 1897, (after the passage of the act of that year) had failed to make any of the payments due under his contract, that the act of

1897 was not repugnant to the Federal Constitution on the ground that it impaired the obligation of the contract, as there was no promise expressed in the legislation existing when the land was purchased to the effect that the State would not enlarge the remedy or grant another on account of the violation by the purchaser of his contract, and no such promise is to be implied. There is a plain distinction between the obligation of a contract and a remedy given by the Legislature to enforce that obligation. *Waggoner* v. *Flack*, 595.

4. Section 453, cl. 13, of the Code of 1886, and section 3911, cl. 14, of the Code of 1896 of Alabama taxing stocks of railroads incorporated in other States held by citizens of Alabama are not unconstitutional under the Fourteenth Amendment because no similar tax is imposed on the stock of domestic railroads or of foreign railroads doing business in Alabama; the property of the former class of railroads being untaxed, and that of the latter two classes being taxed, by the State. *Kidd* v. *Alabama*, 730.
5. Although a particular provision of the Constitution may seemingly be applicable, its controlling effect is limited by the essential nature of the powers of government reserved to the States when the Constitution was adopted. *Andrews* v. *Andrews*, 14.
6. As the State of Massachusetts has exclusive jurisdiction over its citizens concerning the marriage tie and its dissolution, and consequently the authority to prohibit them from perpetrating a fraud upon the law of their domicil by temporarily sojourning in another State and there procuring a decree of divorce without acquiring a *bona fide* domicil, a decree of divorce obtained in South Dakota upon grounds which do not permit a divorce in Massachusetts under the conditions stated in the opinion is not rendered by a court of competent jurisdiction and hence the due faith and credit clause of the Constitution does not require the enforcement of such decree in the State of Massachusetts against the public policy of that State as expressed in its statutes. *Ib.*
7. So far as the Federal Constitution is concerned a State may authorize the taking of possession of property for a public use prior to any payment therefor, or even the determination of the amount of compensation, providing adequate provision is made for such compensation. *Williams* v. *Parker*, 491.
8. The statute of Massachusetts of May 23, 1898, providing that no building should be erected within certain limits in the city of Boston of over a certain height, and also providing that any person owning or interested in any building then in course of construction who was damaged thereby, might recover damages in an action commenced within two years from the passage of the act, against the city of Boston for the actual damages sustained by them in the cost of materials and re-arrangement of the design or construction of the buildings, provides a direct and appropriate means of ascertaining and enforcing the amount of such damages, and for their payment by the city of Boston in regard to the solvency whereof no question is raised, and such statute is not in conflict with the Federal Constitution. *Ib.*
9. Act No. 237 of Michigan of 1889 creating a board of registration in medi-

cine is not in conflict with the provisions of the Fourteenth Amendment. *Reetz* v. *Michigan*, 505.

10. There is no provision in the Federal Constitution forbidding the State from granting to a tribunal, whether called a court or a board of registration, the final determination of a legal question. Due process of law is not necessarily judicial process, nor is the right of appeal essential to due process of law. *Ib.*
11. When a statute fixes the time and place of meeting of any board or tribunal no special notice to parties interested is required to constitute due process of law as the statute itself is sufficient notice. *Ib.*
12. A state statute requiring the registration of physicians and prohibiting those who are not so registered from practicing thereafter is not an *ex post facto* law as to a physician who had once engaged in practice, but who was held not to be qualified and whose registration was refused by the board of registration appointed under the statute, such statute not providing any punishment for his having practiced prior to the enactment thereof. *Ib.*
13. Where the government of the United States by the construction of a dam, or other public works, so floods lands belonging to an individual as to totally destroy its value, there is a taking of private property within the scope of the Fifth Amendment. *United States* v. *Lynah*, 445.
14. The proceeding must be regarded as an actual appropriation of the land, including the possession and the fee and, when the amount awarded as compensation is paid, the title, the fee and whatever rights may attach thereto pass to the government which becomes henceforth the full owner. *Ib.*
15. Notwithstanding that the work causing the injury was done in improving the navigability of a navigable river and by the Constitution Congress is given full control over such improvements, the injuries cannot be regarded as purely consequential, and the government cannot appropriate property without being liable to the obligation created by the Fifth Amendment of paying just compensation. *Ib.*
16. The taxation by Kentucky of a franchise, granted by the proper authorities of Indiana to a Kentucky corporation, for maintaining a ferry across the Ohio River from the Indiana shore to the Kentucky shore, (the jurisdiction of Kentucky extending only to low water mark on the northern and western side of the Ohio River), would amount to a deprivation of property without due process of law, in violation of the Fourteenth Amendment. *Louisville & J. Ferry Co.* v. *Kentucky*, 385.
17. The Fourteenth Amendment does not control the power of a State to determine the form of procedure by which legal rights may be ascertained, if the method adopted gives reasonable notice and affords a fair opportunity to be heard. *Hooker* v. *Los Angeles*, 314.
18. The claim that section 2 of the act providing for the taxation of life estates, as construed by the highest courts of the State of Illinois, is in contravention of the Fourteenth Amendment in that the classification of life tenants is arbitrary and unreasonable and denies to life tenants

the equal protection of laws because it taxes one class of life estates where the remainder is to lineals and expressly exempts life estates where the remainder is to collaterals or to strangers in blood, cannot be sustained. *Billings* v. *Illinois*, 97.

19. The Constitution of the United States confers no power whatever upon the government of the United States to regulate marriage or its dissolution in the States. *Andrews* v. *Andrews*, 14.
20. The constitutional inhibition against the impairment of contracts applies only to legislative enactments of the States and not to the judicial decisions or acts of the state tribunals or officers, under statutes in force at the time of the making of the contract, the obligation of which is alleged to have been impaired. *Weber* v. *Rogan*, 10.
21. Where a state law imposing a tax upon transfer is in force before the funds come within the State the tax does not impair the obligation of any contract, deny full faith or credit to a judgment taxing the inheritance in another State, or deprive the executrix and legatees of the decedent of any privilege or immunity as citizens of the taxing State, nor is it contrary to the Fourteenth Amendment. *Blackstone* v. *Miller*, 189.

See DIVORCE, 2;
TAXATION, 6.

CONSTRUCTION OF STATUTES.

See APPEAL AND WRIT OF ERROR; MINERAL LANDS; PUBLICATION; STATUTES.

CONTRACTS.

1. Where land is owned by three trustees under a trust requiring an exercise of the judgment and discretion of all the trustees and there is no evidence of authority for one of them to act alone, the execution of what purports to be a lease for five years by one of the trustees does not make a valid lease of the property, nor does it affect the share of the trustee executing it as in the case of ordinary joint tenants; and where all the trustees do not join in the execution of an instrument, the burden is on the grantee to prove the deaths of those not joining therein. Recognition or ratification by the other trustees cannot be assumed unless it is shown to have been founded upon full knowledge of all the facts. *Winslow* v. *Baltimore & Ohio R. R. Co.*, 646.
2. The receipt of rent by the beneficiary under the trust directly from the tenant will not amount to a part performance of the contract in such manner as to make it binding upon the trustees not signing when it appears that the check received for such rent was not endorsed by the trustee and there is no proof that the beneficiary knew there was no binding lease in existence, but it does appear that subsequently rent was refused and only accepted under an agreement that the acceptance was without prejudice. *Ib.*
3. Where a lease contains an option to the lessee to purchase at a price named in the lease during the continuance thereof and the trustees

making the lease have no general or absolute power of sale, specific performance of that portion of the contract should be denied. *Ib.*

See CONSTITUTIONAL LAW, 3, 20, 21; FEDERAL QUESTION, 3, 4; EMINENT DOMAIN; JURISDICTION, B, 1; LEASE.

COPYRIGHT.

Chromolithographs representing actual groups of persons and things, which have been designed from hints or descriptions of the scenes represented, and which are to be used as advertisements for a circus are "pictorial illustrations" within the meaning of Rev. Stat. § 4952, allowing a copyright to the "author, designer, or proprietor . . . of any engraving, cut, print, . . . or chromo" as affected by the act of 1874, chap. 301, § 3, 18 Stat. 78, 79. And on complying with all the statutory requirements the proprietors are entitled to the protection of the copyright laws. *Bleistein* v. *Donaldson Lithographing Co.*, 239.

CORPORATIONS.

See LOCAL LAW, 4; RECEIVER, 1, 2, 3; STOCKHOLDER.

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See JURISDICTION, A, 1; C, 2; PRACTICE, 5, 6; RECEIVER, 1, 2, 3.

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See LEASE; MORTGAGE.

CUSTOMS DUTIES.

See JURISDICTIONS, C, 3; STATUTES, 1.

DISTRICT OF COLUMBIA.

See LEASE; PUBLICATION; WILL.

DIVORCE.

1. A State may forbid the enforcement within its borders of a decree of divorce procured by its own citizens who, whilst retaining their domicil in the prohibiting State, have gone into another State to procure a divorce in fraud of the law of the domicil. *Andrews* v. *Andrews*, 14.
2. The statute of Massachusetts which provides that a divorce decreed in another State or county by a court having jurisdiction of the cause and both the parties shall be valid and effectual in the Commonwealth;

but if an inhabitant of Massachusetts goes into another State or country to obtain a divorce for a cause which occurred in Massachusetts, while the parties resided there, or for a cause which would not authorize a divorce by the laws of Massachusetts, a divorce so obtained shall have no force or effect in that Commonwealth, is an expression of the public policy of that State in regard to a matter wholly under its control and does not conflict with the Constitution of the United States or violate the full faith and credit clause thereof. And the courts of Massachusetts are not obliged to enforce a decree of divorce obtained in another State as to persons domiciled in Massachusetts and who go into such other State with the purpose of practicing a fraud upon the laws of the State of their domicil ; that is, to procure a divorce without obtaining a *bona fide* domicil in such other State. *Ib.*

See CONSTITUTIONAL LAW, 6;
MARRIAGE AND DIVORCE.

DOMICIL.

See CONSTITUTIONAL LAW, 6.

EJECTMENT.

See PLEADING.

EMINENT DOMAIN.

All private property is held subject to the necessities of government and the right of eminent domain underlies all such rights of property. When the United States government appropriates property which it does not claim as its own, it does so under an implied contract that it will pay the value of the property it so appropriates. *United States* v. *Lynah*, 445.

See CONSTITUTIONAL LAW, 7, 8, 13, 14;
INJUNCTION;
JURISDICTION, B, 4.

EQUAL PROTECTION OF LAWS.

An actual discrimination by the officers charged with the administration of statutes unobjectionable in themselves against the race of a negro on trial for a crime by purposely excluding negroes from the grand and petit juries of the county, will not be presumed but must be proved. An affidavit of the persons under indictment, annexed to a motion to quash the indictment on the ground of such discrimination, stating that the facts set up in the motion are true "to their best knowledge, information and belief" is not evidence of the facts stated. *Smith* v. *Mississippi*, 162 U. S. 592, followed; *Carter* v. *Texas*, 177 U. S. 442, distinguished. *Tarrance* v. *Florida*, 519.

EQUITY.

1. Where the United States holds lands in trust for Indians under an Act of Congress known as the Indian General Allotment Act, (February 8,

1887, c. 119), which provides that at the expiration of the period of trust, the United States will convey the said lands in fee, free from all charges and incumbrances; a suit by the United States to protect the Indians against local and state taxation is properly brought in equity, the remedy at law not being as adequate and efficacious as is necessary. *United States* v. *Rickert*, 432.

2. The assessment of certain taxes against an Indiana corporation pursuant to a law of that State, does not, in the absence of any statute making the assessment a lien on real estate and in the absence of any averment that the corporation owned any real estate, does not constitute a cloud upon title and is not sufficient to sustain a bill in equity to enjoin the collection of such taxes as illegal. *Indiana Manufacturing Co.* v. *Koehne*, 681.

3. Equitable jurisdiction of a Federal court cannot be maintained except on a ground recognized by the Federal courts, and the mere fact that the action involved the taxing of letters patent does not give the Federal courts jurisdiction in equity where no such recognized ground appears. *Ib.*

4. Where a plain and adequate remedy at law is given for the recovery of taxes illegally assessed, no irreparable injury to sustain a suit in equity to enjoin the collection of such taxes can be inferred from general statements in the absence of the averment of specific facts from which the court can see that irreparable injury would be a natural and probable result. *Ib.*

See INJUNCTION;
RECEIVER, 1, 3;
TAXATION, 1.

ESTOPPEL.

A party who in response to a published notice appears and goes to trial without objection or seeking further time cannot thereafter be heard to question the sufficiency of the notice. *Leach* v. *Burr*, 510.

See FEDERAL QUESTION, 1, 6;
PRACTICE, 7.

EVIDENCE.

1. Cross, who was president of a bank and had been misusing its funds, gave to Martindale two instruments of assignment, providing that Martindale should pay himself for any paper on which Cross and Martindale were mutually makers or indorsers. The bank and other parties held such paper. Cross killed himself the day after the assignment was given. There was an earlier assignment to Martindale as trustee. The receiver of the bank alleged that the earlier assignment was made to protect the bank. Martindale was the only witness as to delivery of the assignment and admitted that it was for the benefit of the bank but only to a limited amount. *Held*, in an action in which other holders of paper made by Cross and Martindale sought to obtain the proceeds of sale of the property assigned, that it was not error to admit testimony that Martindale had stated that the earlier assignment

had been made to secure the bank generally for Cross's liability thereto. *Fourth National Bank* v. *Albaugh*, 734.

2. If a witness upon cross-examination is interrogated with regard to an affidavit made by him in direct conflict with his testimony, and the affidavit be subsequently put in evidence by the opposite party without limitation as to its purpose in so doing, it becomes a part of its evidence in the case, and its adversary is entitled to an instruction that such affidavit may be considered as independent evidence to be weighed in connection with the deposition of the witness, and not merely as impeaching his creditability. *Connecticut Mutual Life Ins. Co.* v. *Hillmon*, 208.
3. Where the defendant in an insurance case relies upon a conspiracy to substitute the dead body of another for that of the insured, and *prima facie* evidence to that effect had been produced, it is error to exclude evidence of declarations made by the alleged conspirators to third parties, tending to show the plans of the conspirators. *Ib.*

See CONTRACTS;
EQUAL PROTECTION OF LAWS;
PRACTICE, 2.

EXEMPTIONS.

See LOCAL LAW, 1.

EX POST FACTO LAW.

See CONSTITUTIONAL LAW, 12.

EXTRADITION.

1. A person, for whose delivery a demand has been made by executive authority of one State upon the executive authority of another State under clause 2 of section 2 of Article IV of the Constitution, and who shows conclusively, and upon conceded facts, that he was not within the demanding State at the time stated in the indictment, nor at any time when the acts were, if ever, committed, is not a fugitive from justice within the meaning of Rev. Stat. sec. 5278, and the Federal statute upon the subject of interstate extradition and rendition. *Hyatt* v. *Corkran*, 691.
2. If the governor of the State upon whom the demand is made issues a warrant for the apprehension and delivery of such a person, the warrant is but *prima facie* sufficient to hold the accused, and it is open to him, on *habaes corpus* proceedings, to show that the charge upon which his delivery is demanded assumes that he was absent from the demanding State at the time the crime alleged was, if ever, committed. *Ib.*

FEDERAL QUESTION.

1. Where a person attacking the validity of an assessment claims that the city is estopped from proceeding to collect the benefits assessed upon lots, the owner whereof objected in writing, and which objections were placed on file by the common council, the question, so far as

such estoppel is concerned, is purely state, and not Federal. *Schaefer* v. *Werling*, 516.

2. Where the controversy in the state court does not involve the construction of the treaty of 1848 with Mexico, but only the validity of the title of certain Mexican and Spanish grants made prior to the treaty, no Federal question is involved. *Hooker* v. *Los Angeles*, 314.
3. Where a right to recover as the result of a judicial sale made under decrees, both of the courts of the United States and of a State other than that in which the action is brought, is unquestionably set up in the complaint, Federal questions exist in the record and a motion to dismiss must be denied. *Commercial Publishing Co.* v. *Beckwith*, 567.
4. Questions involved in the construction of a contract for the advancement of money and its repayment and the effect of the lien which the lender has on the accounts pledged as security for such repayment, are not Federal in their nature, and this court must assume that the construction given by the highest court of the State in which the action was brought is correct. *Ib.*
5. The Supreme Court of the State of Texas having decided that the statute of that State, Acts of 1897, c. 129, providing that certain lands *may be sold* at a specified price under certain conditions by the Commissioner of the General Land Office was not mandatory, but that it was discretionary with the Commissioner whether to sell such lands or not, no Federal question arises which this court can consider in a proceeding brought to compel the Commissioner to convey certain lands under such act to a person offering to purchase the same at the price specified in the act. *Weber* v. *Rogan*, 10.
6. Generally speaking estoppel and *res judicata* present questions of local, and not of Federal law. *Beals* v. *Cone*, 184.

See APPEAL AND WRIT OF ERROR.

FUGITIVE FROM JUSTICE.

See EXTRADITION.

GRANTS.

See EQUITY, 1; MINERAL LANDS;
FEDERAL QUESTION, 2; PUBLIC LANDS;
STATUTES, 4.

HABEAS CORPUS.

See EXTRADITION.

HOMESTEADS.

See PUBLIC LANDS.

INDIANS.

See EQUITY, 1;
TAXATION, 1.

INDIAN GENERAL ALLOTMENT ACT.

See EQUITY, 1.

INHERITANCE TAX.

Inheritance tax laws are based upon the power of a State over testate and intestate dispositions of property, to limit and create estates, and to impose conditions upon their transfer or devolution. This court has already decided in regard to this law that such power could be exercised by distinguishing between the lineal and collateral relatives of a testator. Whether the amount of the tax depends upon him who immediately receives, or upon him who ultimately receives, makes no difference with the power of the State. No discrimination being exercised in the creation of the class, equality is observed. *Magoun* v. *Illinois Trust and Savings Bank*, 170 U. S. 283, followed. *Billings* v. *Illinois*, 97.

See CONSTITUTIONAL LAW, 21;
TAXATION, 5, 6, 7.

INJUNCTION.

Where a railroad company has built its line on land upon which it has entered under a lease and the owners of the property have commenced an action to recover rent for the period of occupancy subsequent to the expiration of the lease, and also to recover possession of the property, there is no ground for an injunction against the prosecution of the action as to the recovery of the rent; it is proper, however, for this court to enjoin for a reasonable period, in order to permit condemnation proceedings to be instituted and prosecuted, that portion of the action which is an attempt to oust the railroad company from land upon which it has entered with a view to its purchase and constructed its road thereon for public purposes under the sanction of public authority and over which the public have rights which should not be obstructed or destroyed either by the company itself or by antagonistic parties claiming ownership as a result of a private agreement. *Winslow* v. *Baltimore & Ohio R. R. Co.*, 646.

See EQUITY, 2, 4;
JURISDICTION, B, 1.

INSOLVENCY.

See TRANSFER OF STOCK.

INSTRUCTIONS TO JURY.

1. The company defended an action on a policy of life insurance on the ground that statements of the insured as to his use of liquor and spirits in the application and in the declaration to the medical examiner were false and amounted to a breach of warranty; but it appeared that the warranty did not extend to the medical declaration; the jury were instructed that if they found either that before the insured made application he drank liquors either freely or to excess, or at the time

that he made the application he had a habit of drinking liquor, they were to find for the company, the declaration and the application thus being put on the same footing; the jury found for the plaintiff; *Held* that the jury must be taken to have found categorically that all of the answers were correct, and the question whether they were warranties or not became immaterial, and the verdict could not be reviewed except for improper instructions duly accepted to. *Home Life Insurance Co.* v. *Fisher*, 726.

2. An instruction to a jury that a bank cashier's authority to draw a draft in his official capacity in his individual favor may be inferred from the general manner in which, for a period sufficiently long to establish a settled course of business, he has been allowed, without interference, to conduct the affairs of the bank, is error which requires the reversal of a judgment sustaining the right of a collecting bank to retain the proceeds in payment of his individual debt, where such draft was in fact not drawn to his individual order, but to his order as cashier and indorsed for deposit to his credit as such. *Rankin* v. *Chase National Bank*, 557.

See EVIDENCE, 2.

INSURANCE.

See INSTRUCTIONS TO JURY, 1;
MORTGAGE.

INTENTION OF CONGRESS.

See CONGRESS, 1, 2.

INTERSTATE COMMERCE.

1. There may be an interior movement of property within the State which does not constitute interstate commerce though the property come from or be destined to another State; and where one hundred and eighty million feet of logs are cut, hauled and put into the Ontonagon River during two seasons for the purpose of saving, protecting and preserving the same, and the owner cannot use more than twenty to forty million in any year, and it was not the intention to take all the logs down at the opening of the streams but only to take down each season the number that could be used, the logs in the sorting gap cannot be regarded as property engaged in interstate commerce so as to be exempted from taxation under the laws of Michigan. *Coe* v. *Errol*, 116 U. S. 617, followed. *Diamond Match Co.* v. *Ontonagon*, 82.

2. A herd of sheep driven at a reasonable rate of speed from a point in Utah, across the State of Wyoming, a distance of about five hundred miles, to a point in Nebraska, for the purpose of shipment by rail from the latter point, is property engaged in interstate commerce to such an extent as to be exempt from taxation by the State of Wyoming under a statute taxing all live stock brought into the State "for the purpose of being grazed;" and this notwithstanding that the sheep were maintained by grazing along the route and that the owner could have shipped them to their ultimate destination from a point on the

same railroad, which could have been reached from the starting point without entering the State of Wyoming. *Brown* v. *Houston*, 114 U. S. 622; *Pittsburg &c. Coal Co.* v. *Bates*, 156 U. S. 57; *Coe* v. *Errol*, 116 U. S. 317, distinguished. *Kelley* v. *Rhoads*, 1.

3. Lottery tickets are subjects of traffic among those who choose to buy and sell them, and their carriage by independent carriers from one State to another is therefore interstate commerce which Congress may prohibit under its power to regulate commerce among the several States. *Lottery Case*, 321.

See CONGRESS, 5, 6.

IRRIGATION.

See CONGRESS, 1, 2.

JURISDICTION.

A. OF THE SUPREME COURT.

1. When rights based on a judgment obtained in one State, are asserted in the courts of another State under the due faith and credit clause of the Federal Constitution, the power exists in the state court in which they are asserted to look back of the judgment and ascertain whether the claim which had entered into it was one susceptible of being enforced in another State (*Wisconsin* v. *Pelican Insurance Company*, 127 U. S. 215; *Thompson* v. *Whitman*, 18 Wall. 457). And where such rights are in due time asserted, the power to decide whether the Federal question so raised was rightly disposed of in the court below exists in, and involves the exercise of jurisdiction by, this court. *Andrews* v. *Andrews*, 14.
2. Where the validity, on account of repugnancy to the Federal Constitution, of statutes of California as to the paramount right of the City of Los Angeles to the surface and subterranean waters of the Los Angeles River is not drawn in question in the trial or in the Supreme Court of the State, the decisions of the state courts will not be reviewed in this court. *Hooker* v. *Los Angeles*, 314.
3. Although the jurisdiction of the United States Circuit Court be originally invoked on the ground of diverse citizenship, the attribute of finality cannot be impressed upon the judgment of the Circuit Court of Appeals unless it appear that the original jurisdiction was dependent *entirely* upon such diversity of citizenship, and where the case made by the plaintiff depends upon the proper construction of an act of Congress with the contingency of being sustained by one construction, and defeated by another, it is one arising under the laws of the United States, and this court has jurisdiction thereof under section 1 of the act of 1888. *Northern Pacific Ry. Co.* v. *Soderberg*, 526.

B. OF CIRCUIT COURTS.

1. An Illinois corporation transferred to a New Jersey corporation contracts of employment containing stipulations that the employés would not accept employment from any other person during specified periods and would never divulge the secrets of the trade. The New Jersey com-

pany by consent of all parties became substituted as a party to such contracts and instructed the employés, who accepted the employment, in valuable trade secrets. The employés who were not citizens of New Jersey then entered into an arrangement to work for a rival Illinois corporation. *Held*, that as whatever claim the New Jersey corporation had was based on the promise made directly to it upon a consideration furnished by it, it was not prevented from maintaining an action in the Circuit Court of the United States for the Northern District of Illinois against such employés and the Illinois corporation to restrain the employés from working for, or divulging such secrets to, the Illinois corporation on the ground that the action was to recover the contents of a chose in action in favor of an assignee, the assignor being a citizen of Illinois. *American Colortype Co.* v. *Continental Co.*, 104.

2. The plaintiffs by their complaint asserted a right, under the Constitution of the United States and certain acts of Congress and a permit of the Secretary of War, issued in conformity with those acts, to construct a dock in the Calumet River, a navigable water of the United States within the limits of the city of Chicago. The bill showed that this right was denied by the city of Chicago, upon the ground that the plaintiffs had not complied with its ordinances requiring a permit from its Department of Public Works before any such structure could be erected within the limits of that city. *Held:* That the suit was one arising under the Constitution and laws of the United States, and was therefore one of which, under the act of August 13, 1888, c. 866, the Circuit Court of the United States could take jurisdiction, without reference to the citizenship of the parties. *Cummings* v. *Chicago*, 410.

3. There is no contract, express or implied, which can be made the basis for jurisdiction by a United States Circuit Court under the act of Congress of March 3, 1887, known as the Tucker Act, between the United States and a person who, while properly in a government building, sustains injuries by the fall of an elevator operated by a government employé. An action brought against the United States to recover damages for such injuries is necessarily one sounding in tort and is not maintainable in any court. *Bigby* v. *United States*, 400.

4. When it is alleged in an action that the Government of the United States in the exercise of its powers of eminent domain and regulation of commerce, through officers and agents duly empowered thereto by acts of Congress, places dams, training walls and other obstructions in the Savannah River in such manner as to hinder its natural flow and to raise the water so as to overflow the land of plaintiff along the banks to such an extent as to cause a total destruction of its value, and the government does not deny the ownership, admits that the work was done by authority of Congress, and simply denies that the work has produced the alleged injury and destruction, the Circuit Court of the United States has jurisdiction to inquire whether the acts done by the officers of the United States under the direction of Congress have resulted in such an overflow and injury of the land as to render it absolutely valueless and, if thereby the property was, in contemplation of law, taken and appropriated by the government, to render judgment

against it for the value of the property so taken and appropriated. *United States* v. *Lynah*, 445.

5. To give the Circuit Court jurisdiction under section 1 of the act of March 3, 1887, as corrected by the act of August 13, 1888, Federal questions must appear necessarily in the statement of the plaintiff's cause of action and not as mere allegations in the plaintiff's bill of the defence which the defendants intend to set up or which they rely upon. And if it further appear from defendant's answer that no such defence is set up, no jurisdiction exists to try questions not of the kind coming within the statute, and the Circuit Court should dismiss the bill for want of jurisdiction. *Boston &c. Mining Co.* v. *Montana Ore Co.*, 632.

C. OF DISTRICT COURTS.

1. One who received money to indemnify him for giving bail bonds for a person subsequently and more than four months thereafter adjudicated a bankrupt, and against whom the judgment creditors in the suits in which he gave the bonds are seeking to enforce execution, holds such money as an adverse claimant within the meaning of section 23, *a* and *b* of the bankruptcy act of 1898, and the District Court of the United States does not have jurisdiction in a summary proceeding on the petition of the trustee to compel him to turn such money over to the trustee in bankruptcy. *Jaquith* v. *Rowley*, 620.
2. It makes no difference as to this question of jurisdiction whether the judgment creditors have or have not proved their claims before the referee in bankruptcy. Such creditors have the right to obtain and enforce their judgments in the state courts. *Ib.*
3. The District Court has exclusive jurisdiction of a suit brought by the United States to recover the additional duties imposed under section 7 of the customs administrative act of 1890, and the Circuit Court has no jurisdiction of such suit. *Helwig* v. *United States*, 605.

See EQUITY, 3;
APPEAL AND WRIT OF ERROR;
TAXATION, 7.

JURY.

See EQUAL PROTECTION OF LAWS;
PRACTICE, 1.

LAND DEPARTMENT.

See FEDERAL QUESTION, 5;
PUBLIC LANDS.

LAND GRANTS.

See EQUITY, 1;
MINERAL LANDS;
PUBLIC LANDS;
STATUTES, 4.

LEASE.

A lease containing a covenant to renew at its expiration with covenants,

terms and conditions similar to those contained in the original lease, is fully carried out by one renewal without the insertion of another covenant to renew. Otherwise a perpetuity is provided for, and this the court will not presume in the absence of plain and peculiar language. *Winslow* v. *Baltimore & Ohio R. R. Co.*, 646.

See CONTRACTS.

LEGISLATION.

See APPEAL AND WRIT OF ERROR, 1; CONSTITUTIONAL LAW, 15; CONGRESS; INTERSTATE COMMERCE, 3; LOCAL LAW, 3.

LOCAL LAW.

1. Section 5 of the act of 1855 of the General Assembly of Illinois incorporating the plaintiff provides, "That the property of whatever kind or description belonging or appertaining to said seminary shall be forever free and exempt from all taxation for all purposes whatever." Section 2 provides, "That the seminary shall be located in or near the city of Chicago." Property of the incorporation other than the seminary buildings was taxed under the general taxing law of 1872. The Supreme Court of Illinois construed the statute of 1855 as meaning that the exemption was limited to property used in immediate connection with the seminary and did not refer to other property held by the institution for investment, although the income was used solely for school purposes. *Held*, that as the rule of the Supreme Court of Illinois in construing an act exempting property from taxation under legislative property is that the exemption must be plainly and unmistakably granted and cannot exist by implication only—a doubt being fatal to the claim—and as the construction placed on the act is not such an unnatural, strained or unreasonable construction as shows it to be erroneous, this court will affirm the judgment even though it might be otherwise construed so as to affect a total exemption. The act incorporating the seminary also provided that "It shall be deemed a public act and be construed liberally in all courts for the purposes therein expressed." *Held*, that such provision should not be construed as a complete overthrow of the canon of construction adopted by the Supreme Court of Illinois in regard to exemption of property from taxation. *Chicago Theological Seminary* v. *Illinois*, 662.
2. The village of Ontonagon, Michigan, has power, either under its charter or under the statute of 1899 of Michigan, to assess logs in the boom or sorting boom in the Ontonagon River belonging to plaintiff in error. *Diamond Match Co.* v. *Ontonagon*, 82.
3. The legislature of Michigan could confer by statute upon the village of Ontonagon the power to tax logs in transit to Ontonagon as provided in the act of 1899 for taxing personal property; and property which was in transit through the Ontonagon River, and then by the Chicago, Milwaukee & St. Paul Railway was properly assessed at Ontonagon, that being the place in the State nearest to the last boom or sorting gap of the stream in or bordering on the State in which said property nat-

urally would be and was intended to be last floated during the transit thereof. *Ib.*

4. As construed by the highest court of Minnesota the statutes of that State do not provide that a receiver of an insolvent corporation can recover the amount of the added liability of non-resident shareholders of the corporation; nor do they provide that such liability shall be an asset of the corporation, to be recovered by the receiver and payable to its creditors when such liability is enforced and the money recovered. *Hale* v. *Allinson*, 56.

See CONGRESS, 1;
CONSTITUTIONAL LAW, 3, 6, 7, 8, 9, 11, 12;
DIVORCE;
EQUITY, 2;
FEDERAL QUESTION, 5, 6;
JURISDICTION, B, 2;
PRACTICE, 1;
TAXATION, 5.

LOTTERIES.

A slip retained by the agent of a lottery which is the duplicate of a slip retained by the purchaser, indicating the numbers selected by him, is not a paper, certificate or interest purporting to be or to represent chances, shares and interest in the prizes thereafter to be awarded by lot in the drawings of a lottery commonly known as the game of policy within the meaning of the act of Congress of March 2, 1895, c. 191, 28 Stat. 963. *Francis* v. *United States*, 375.

See INTERSTATE COMMERCE, 3.

MARRIAGE AND DIVORCE.

Although marriage, viewed solely as a civil relation, possesses elements of contract, it is so interwoven with the very fabric of society that it cannot be entered into except as authorized by law, and it may not, when once entered into, be dissolved by the mere consent of the parties. *Andrews* v. *Andrews*, 14.

See CONSTITUTIONAL LAW, 6, 19.

MINERAL LANDS.

Lands valuable solely or chiefly for granite quarries are mineral lands within the exception and the meaning of the provisions of the act of Congress of July 2, 1864, granting, under conditions therein stated, every alternate odd-numbered section of public land *not mineral* to the amount of twenty alternate sections per mile on each side of its line to the Northern Pacific Railroad Company. The word mineral need not be construed as synonymous with metalliferous. *Northern Pacific Ry. Co.* v. *Soderberg*, 526.

MORTGAGE.

Although, as held in *Farmers' Loan & Trust Company* v. *Penn Plate Glass Co.*, 186 U. S. 434, a covenant in a mortgage to keep the property insured does not run with the land so that an actual grantee taking subject to the mortgage comes under a primary obligation to insure, the case is different under the peculiar language of the mortgage herein,

and where the mortgagor after failing to insure in accordance with the covenant transfers the property to a voluntary assignee. In such case the insurance taken out by the assignee, who stands in the shoes of the assignor, must be assumed to be taken out in fulfillment of the mortgagor's covenant, and in the event of loss the amount collected under the policies inures to the benefit of the mortgagee, and cannot be retained by the assignee as representing his interest, or that of general unsecured creditors, in the equity of the property. *American Ice Co.* v. *Eastern Trust, etc., Co.*, 626.

NATIONAL BANKS.

1. The mere reduction of the reserve of a national bank below the legal limit does not affect with a legal presumption of bad faith, all transactions made with or concerning the bank during the period whilst the reserve is impaired. *Earle* v. *Carson*, 42.
2. It is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with National Banks or their officers in the exercise of the powers bestowed upon them by the General Government. *Easton* v. *Iowa*, 220.

See CONGRESS, 7; STATES, 2; STOCKHOLDER; TRANSFER OF STOCK.

NAVIGABLE WATERS.

See CONGRESS, 3, 4; CONSTITUTIONAL LAW, 13, 14, 15; JURISDICTION, B, 4.

NEGROES.

See EQUAL PROTECTION OF LAWS.

NORTHERN PACIFIC RAILROAD.

See MINERAL LANDS; PUBLIC LAND.

OFFICIAL BOND.

See BONDS.

PARTIES.

See PRACTICE, 3.

PAYMENT.

One who has in good faith and in payment of an existing debt, received currency, cannot be compelled to repay the same even though it subsequently develops that it had been embezzled by the one who made the payment, and the burden of showing fraud is on the person claiming the repayment. *Rankin* v. *Chase National Bank*, 557.

PLEADING.

1. In order for a party in possession to maintain a bill of peace for the purpose of quieting his title to land against a single adverse claimant in-

effectually seeking to establish a legal title by repeated actions of ejectment, it is necessary for the bill to aver that complainant's title has been established by at least one successful trial at law; and where it appears from the bill that an action at law involving the same questions has been commenced, but has not been tried, it is a fatal defect. *Boston &c. Mining Co.* v. *Montana Ore Co.*, 632.

2. To maintain a bill of peace in the Federal courts there must be an allegation that the complainant is in possession, or that both parties are out of possession. *Ib.*

POWERS OF CONGRESS.

See APPEAL AND WRIT OF ERROR, 1; CONGRESS, 3, 4; CONSTITUTIONAL LAW, 15; INTERSTATE COMMERCE, 3.

PRACTICE.

1. Under the decisions of the Supreme Court of Florida objections to the panels of grand juries not appearing of record must be taken by plea in abatement of, and not by motion to quash, the indictment. *Tarrance* v. *Florida*, 519.

2. It is competent and proper for all the parties to an action to agree to dispense with taking evidence, to accept the evidence taken in other cases in which the allegations of fact and the contentions of law are the same, and to abide by decrees to be entered therein. And, where the decrees entered in such other cases have been affirmed by this court, the Circuit Court in which the cases are pending should enter a similar decree in the case in which the agreement is made. *Prout* v. *Starr*, 537.

3. Such agreement when made by the attorney general of the State as a party to any action is binding upon his successors in office who have been properly substituted as parties to the action in his place. *Ib.*

4. The question whether the appropriation of water interferes with the rights of other appropriators below the mouth of a proposed new irrigation canal cannot be raised by parties who are strangers to such other appropriators not parties to the action. *Gutierres* v. *Albuquerque Land, etc., Co.*, 545.

5. Where the highest court of a State has construed decrees made by a United States court and a state court of another State authorizing the sale of certain accounts by a receiver as merely authorizing a sale of the receiver's right, title and interest in such accounts, and that such right, title and interest was subject to the lien of one who had advanced money on the faith of a contract authorizing him to collect such accounts and repay himself thereout, such construction is not an unreasonable one, and the burden rests upon the plaintiff in error to show that such construction is in violation of the due faith and credit clause of the Federal Constitution. And the judgment will be affirmed unless the record shows with certainty that such construction did deny due faith and credit to the decrees in question. *Commercial Publishing Co.* v. *Beckwith*, 567.

6. While this court is not bound by the construction placed by the state court upon statutes of that State when the impairment of the contract

clause of the Constitution is invoked, yet when the true construction of a particular statute is not free from doubt considering former legislation of the State upon the same subject, this court feels that it will best perform its duty in such case by following the decisions of the state court upon the precise question, although doubts as to its correctness may have been uttered by the same court in some subsequent case. *Waggoner* v. *Flack*, 595.

7. Where two cases, brought by the same plaintiff, against different defendants, consolidated for trial, each of the defendants is entitled to three peremptory challenges. But the weight of authority is that the right of the plaintiff is not correspondingly multiplied, and that she is entitled to but three. But if the defendants do not exhaust their right to peremptory challenges, they cannot complain that the plaintiff was allowed more than the number to which she was entitled. *Connecticut Mutual Life Ins. Co.* v. *Hillmon*, 208.

See APPEAL AND WRIT OF ERROR; JURISDICTION, B, 5; EQUAL PROTECTION OF LAWS; PLEADING.

PRESUMPTION.

See EQUAL PROTECTION OF LAWS; NATIONAL BANKS, 1.

PRIZE.

1. Vessels more than five miles apart *held* not to be within signal distance so as to be entitled to share in prize under the circumstances of this case. Vessels not within signal distance are not "vessels making the capture" within Rev. St. § 4630, although they may have contributed remotely to this result. They cannot be taken into account in estimating the relative force of capture and prize. In estimating the relative strength of the captured and capturing vessels, the means possessed by the captured vessel, and not the use made of them must be considered. *The Mangrove Prize Money*, 720.
2. While the right of the citizen to demand condemnation of vessels or property as prize for his benefit must be derived from acts of Congress, and their scope is not to be enlarged in his favor by construction, where there is no controversy in respect to the existence of the grant, a more liberal construction may be applied in carrying the intention of Congress into effect. *The Manila Prize Cases*, 254.
3. Vessels lying on the bottom in shallow water in such condition, as the result of a naval engagement, that they cannot be floated by any of the means possessed by the naval force overcoming them, but which are afterwards, by the independent means of the Government, raised and repaired and appropriated to its own use are not to be regarded as sunk or destroyed within the meaning of sec. 4635, Rev. Stat., but they may be regarded as within the provisions of secs. 4624 and 4625, and their money value may stand in place of prize and be so adjudicated. *Ib.*
4. The legal status of property taken from vessels in such condition must be regarded as the same as the vessel to which it belongs. *Ib.*

5. Naval stores—public enemy property—designed for hostile uses, stored on the sea shore, in an establishment for facilitating naval warfare, when taken by a naval force, as a result of a naval engagement, can be adjudged as prize for the benefit of the captors. *Ib.*

6. As the right of the government of the capturing naval force is supreme, it may when in its judgment the public interest demands it, restore a prize; and the courts cannot proceed to condemnation as to captured property restored under a treaty of peace before decree. The strength of the capturing naval force under Admiral Dewey's command at Manila was superior to that of the Spanish fleet on May 1, 1898. *Ib.*

7. Cascoes, or native boats, and certain floating derricks, property of private persons in the Philippine Islands, were rightly held by the District Court not to be subject to condemnation as prize. *Ib.*

8. Vessels performing the functions of colliers and not in a condition to render effective aid, if required, during a naval engagement and the masters and crews thereof who have been shipped, but who are not commissioned or enlisted men in the United States Navy, are not entitled to participate in prize money or bounty resulting from the capture and destruction of the enemy's vessels. *Ib.*

9. The Spanish war vessel Infanta Maria Teresa at the engagement at Santiago on July 3, 1898, was so far sunk and destroyed that she could not be sent in for adjudication, and no survey was had nor was any sale directed by the commanding officer, nor was she taken by and appropriated for the use of the United States and the value deposited under sec. 4625, Rev. Stat. Subsequently she was raised by a wrecking company under a contract with the Government and taken as far as Guantanamo, whence, after certain temporary repairs were made, it being impossible to completely repair her at that port, she proceeded in tow and partially under her own steam to Norfolk, the nearest government navy yard and the nearest point where permanent repairs could be made. On the way she was lost at Cat Island as a result of inability to withstand the storm on account of injuries received in the action at Santiago, became a total wreck, and was abandoned. The commanding officer concurred with the Government in the effort at salvage. *Held*, that as the salvage was not actually accomplished, there was no appropriation to its use by the Government in the meaning of the statute and the captors were entitled to bounty only and not to prize money. *Held*, that the disposition of the property taken from the vessel must follow the rule laid down in *The Manila Prize Cases*, *ante*, p. 254. *The Infanta Maria Teresa*, 283.

PROBATE.

See WILL.

PUBLICATION.

Where an order is made on Friday by the Supreme Court of the District of Columbia in pursuance of the act of June 8, 1898, 30 Stat. 434, which requires publication of a notice at least twice a week for a period of not less than four weeks, two publications in each successive seven

days, commencing on the day of the entry of the order, is sufficient. Such an order does not require two publications for four weeks, each of which commences Sunday and ends Saturday. *Leach* v. *Burr*, 510.

PUBLIC IMPROVEMENTS.

See CONSTITUTIONAL LAW, 1.

PUBLIC LANDS.

The grant of public lands made by the act of July 2, 1864, c. 217, to the Northern Pacific Railroad Company, embraced only the odd-numbered alternate sections of which the United States had at the time of definite location "full title, not reserved, sold, granted or otherwise appropriated, and free from preëmption or other claims or rights," provided that whenever prior to such definite location any sections or parts of sections had been granted, sold, reserved, "occupied by homestead settlers" or preëmpted or otherwise disposed of, other lands should be selected by the company "in lieu thereof" not more than ten miles beyond the limits of the alternate sections. By the same act the president was directed to cause the lands to be surveyed forty miles in width on both sides of the entire line of road after the general route was fixed and as fast as might be required by the construction of the road; and it was provided that the odd sections of land "hereby granted" should not be liable to sale or entry or preëmption before or after they were surveyed, except by the company as provided in the act. The general route of the road was fixed in 1873, and in the same year the land office directed the local officers to withhold from "sale or entry" all odd-numbered sections falling within the forty-mile limits of the grant along the line of road. In 1880 Congress passed an act for the relief of settlers on the public lands. In 1881 Nelson, qualified to enter public lands under the homestead acts, with the intention in good faith to avail himself of the benefit of the homestead acts, went upon the tract in question and thereafter continuously occupied it as his residence. In 1884 the railroad company definitely located its line of road, and by November 18, 1886, had completed a section of forty miles coterminous with the land here in controversy. The land, when occupied by Nelson as a residence, was unsurveyed, and was not surveyed until 1893; but as soon as surveyed, he attempted to enter it under the homestead laws; but his application was rejected by the local land officers. In 1895 the railroad company was given a patent to the land in question. *Held:* (1) That although the company held a patent for the land in controversy, the occupant was entitled to judgment if it appeared that he was equitably entitled to possession as against the company. (2) The occupancy of Nelson, as a homestead settler was protected by the act of Congress of 1864, although prior to such occupancy the land office had issued an order of withdrawal from entry or sale, based upon the map of general route. (3) The railroad company acquired no vested interest in the land prior to definite location; and as Nelson was in the occupancy of the land as a homestead settler at the time of definite location, the land did not pass by the

grant to the railroad company, and his title was the better one. (4) The title of Nelson, if not otherwise protected, was protected by the third section of the act of May 14, 1880, c. 89, which contains a confirmation of the rights of qualified settlers on public lands, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws. (5) The order of withdrawal directing the local land office to withhold from "sale or entry" the odd-numbered sections within the limits of the general route could not prevent the occupancy of one of those sections prior to definite location by one who in good faith intended to claim the benefit of the homestead law; such right of occupancy being distinctly recognized by the act of 1864, and such order of withdrawal not being required by that act. But if this were not so, the act of 1880, in its application to public lands, which had not become already vested in some company or person, must be held to have so modified the order of withdrawal based merely on general route, that such order would not affect any occupancy or settlement made in good faith, as in the case of Nelson, after the passage of the act of 1880 and prior to definite location. *Nelson* v. *Northern Pacific Ry. Co.*, 108.

See CONGRESS, 1; FEDERAL QUESTION, 5; CONSTITUTIONAL LAW, 3; TAXATION, 1.

PUBLIC OFFICERS.

See BONDS.

PUBLIC POLICY.

See CONSTITUTIONAL LAW, 6; DIVORCE, 2.

PUBLIC WATERS.

See CONGRESS, 1, 2.

RAILROADS.

See CONSTITUTIONAL LAW, 4; INJUNCTION; PUBLIC LANDS.

RECEIVER.

1. A receiver, appointed by a Minnesota Court of Equity, in the exercise of its general jurisdiction, of the assets of an insolvent Minnesota corporation, who has no title to the fund but simply acts as the arm of the court, cannot by virtue of his appointment, or of directions contained in the decree appointing him, maintain an action in equity in a foreign State against non-resident stockholders of a corporation to enforce their double liability, nor can he maintain such an action in a Circuit Court of the United States in a District outside of Minnesota. *Hale* v. *Allinson*, 56.
2. The question of comity cannot avail in a case where the courts of the State in which the receiver was appointed hold that an action similar

to the one brought in the foreign jurisdiction cannot be maintained by him in the courts of the State of his appointment. *Ib.*

3. A single action in equity cannot be maintained in the Circuit Court of the United States in Pennsylvania by such receiver against all of the Pennsylvania stockholders of an insolvent Minnesota corporation for the statutory liability of each defendant as a stockholder, on the ground that a single action would prevent a multiplicity of suits; nor can such an action be maintained on the ground that it is an ancillary or auxiliary proceeding brought in aid of, and to enforce, an equitable decree in an action brought in Minnesota, in which the Pennsylvania stockholders had been named as defendants with all the other stockholders, the receiver contending that such decree was conclusive as to the amount of indebtedness and the assets of the corporation, and the defendants were concluded as to the necessity of a resort to the stockholders' liability, and the only question left open was the special liability of each stockholder (the Pennsylvania stockholders, however, not having been served, and not having appeared). *Ib.*

See LOCAL LAW, 4.

RES JUDICATA.

See FEDERAL QUESTION, 6.

SALE.

See TRANSFER OF STOCK.

SALVAGE.

See PRIZE, 9.

STATES.

1. A State has power to make reasonable provisions for determining the qualifications of those engaged in the practice of medicine and for punishing those who attempt to engage therein in defiance of such statutory provisions. *Reetz* v. *Michigan*, 505.
2. While a State has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction, and it may declare, by special laws, certain acts to be criminal offences when committed by officers and agents of its own banks and institutions, it is without lawful power to make such special laws applicable to banks organized and operated under the laws of the United States. *Easton* v. *Iowa*, 220.

See CONGRESS, 3, 4, 7; CONSTITUTIONAL LAW, 5, 6, 7, 8, 10, 17; DIVORCE; INHERITANCE TAX; NATIONAL BANKS, 2; TAXATION, 2, 3.

STATUTES.

A. CONSTRUCTION OF.

1. That part of section 7 of the customs administrative act of 1890 which

provides that where the appraised value of any article of imported merchandise shall exceed by more than ten per centum the value declared in the entry, there shall be levied, collected and paid in addition to the regular duties a further sum equal to two per centum of the total appraised value for each one per centum that such appraised value exceeds the value declared in the entry, is penal in its nature and the additional duties imposed are a penalty. *Helwig* v. *United States*, 605.

2. The provisions in the sundry civil appropriation act of June 11, 1896, and in the prior acts of Congress referred to in the opinion, in regard to leaves of absence to the employés of the Government Printing Office, and for *pro rata* extra pay to those not receiving leaves of absence, relate only to permanent employés, or employés *regularly* employed on the Congressional Record and do not relate to temporary employés. *United States* v. *Barringer*, 577.
3. This construction of the statutes referred to is in accord with the interpretation placed thereon by the Public Printer and also by Congress in appropriating for the payment of such extra pay allowed in lieu of such leaves of absence. *Ib.*
4. Land grant statutes should receive a strict construction, and one which supports the contention of the government rather than that of the individual—the sovereign rather than the grantee. Nothing passes by implication. *Northern Pacific Ry Co.* v. *Soderberg*, 526.
5. The act of Congress of March 3, 1877, is not to be construed as an expression of Congress that the surplus public waters on the public domain, and which are within the control of Congress or of a legislative body created by it, must be directly appropriated by the owners of lands upon which a beneficial use of the water is to be made, and that consequently a territorial legislature cannot lawfully empower a corporation to become an intermediary for furnishing water to irrigate the lands of third parties. *Gutierres* v. *Albuquerque Land, etc., Co.*, 545.

See APPEAL AND WRIT OF ERROR; CONGRESS; LOTTERIES; MINERAL LANDS.

B. OF THE UNITED STATES.

See APPEAL AND WRIT OF ERROR, 1, 2, 3; CONGRESS, 1, 2, 3, 4; COPYRIGHT; EQUITY, 1; EXTRADITION, 1; JURISDICTION, A, 1; B, 2, 3, 4, 5; C, 1, 3; LOTTERIES; MINERAL LANDS; PRIZE, 1, 2, 3, 9; PUBLICATION; PUBLIC LANDS; TAXATION, 1.

C. OF STATES AND TERRITORIES.

Alabama. *See* CONSTITUTIONAL LAW, 4.
California. *See* JURISDICTION, A, 2.
Illinois. *See* CONSTITUTIONAL LAW, 18; LOCAL LAW, 1.

Massachusetts. *See* CONSTITUTIONAL LAW, 8; DIVORCE.
Michigan. *See* CONSTITUTIONAL LAW, 9, 11, 12; LOCAL LAW, 2, 3.
Minnesota. *See* LOCAL LAW, 4.
Texas. *See* CONSTITUTIONAL LAW, 3; FEDERAL QUESTION, 5.
Wyoming. *See* INTERSTATE COMMERCE, 2.

STOCKHOLDER.

The presumption of liability of a stockholder of a national bank begotten by the presence of her name on the stock register may be rebutted if the jury finds the fact to be that a *bona fide* sale of her stock had been made and she had performed every duty which the law imposed on her in order to secure a transfer on the registry of the bank. *Earle* v. *Carson*, 42.

See LOCAL LAW, 4;
RECEIVER, 1, 3;
TRANSFER OF STOCK.

TAXATION.

1. By the act of Congress of February 8, 1887, c. 119, known as the Indian General Allotment Act it was provided: "That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare, that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted, as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void. *Held:* (1) That neither the lands allotted nor the permanent improvements thereon nor the personal property obtained from the United States and used by the Indians on the lands allotted to them, are subject to state or local taxation during the period of the trust provided by the above act of 1887. (2) The United States has such an interest in the question of such taxation as to entitle it to maintain a suit to protect the Indians against such local or state taxation. (3) This suit was properly brought in equity and not at law, the remedy at law not being as adequate and efficacious as was necessary. *United States* v. *Rickert*, 432.
2. A franchise granted by the proper authorities of Indiana, for maintain-

ing a ferry across the Ohio river from the Indiana shore to the Kentucky shore, is an incorporeal hereditament derived from, and having its legal *situs* for purposes of taxation, in Indiana. *Louisville, etc., Ferry Co.* v. *Kentucky*, 385.

3. The fact that such franchise was granted to a Kentucky corporation, which held a Kentucky franchise to carry on the ferry business from the Kentucky shore to the Indiana shore (the jurisdiction of Kentucky extending only to low water mark on the northern and western side of the Ohio River), does not bring the Indiana franchise within the jurisdiction of Kentucky for purposes of taxation. *Ib.*
4. Where a deposit made by a citizen of Illinois in a Trust Company in the City of New York remains there fourteen months, the property is delayed within the jurisdiction of New York long enough to justify the finding of the state court that it was not *in transitu* in such a sense as to withdraw it from the power of the State if it were otherwise taxable, even though the depositor intended to withdraw the funds for investment. *Blackstone* v. *Miller*, 189.
5. Under the laws of New York such deposit is subject to the transfer tax, notwithstanding that the whole succession had been taxed in Illinois, including this deposit. *Ib.*
6. The fact that two States, dealing each with its own law of succession, both of which have to be invoked by the person claiming rights, have taxed the right which they respectively confer, gives no ground for complaint on constitutional grounds. *Ib.*
7. Power over the person of the debtor confers jurisdiction, and a State has an equal right to impose a succession tax on debts owed by its citizens as upon tangible assets found within the State at the time of the death. *Ib.*

See CONSTITUTIONAL LAW, 1, 4, 16, 21;
EQUITY, 1, 2, 3, 4;
INHERITANCE TAX;
INTERSTATE COMMERCE, 1, 2;
LOCAL LAW, 1, 2, 3.

TERRITORIAL LAWS.

See CONGRESS, 1;
STATUTES, 5.

TRANSFER OF STOCK.

The power of a stockholder to transfer her stock in a national bank, like other personal property, is not limited by the mere fact that at the time of the transfer the bank, which was a going concern, was insolvent in the sense that its assets, if liquidated, would not discharge its liabilities, unless it be shown that the seller was aware of the facts and had sold her stock in order to avoid the impending double liability. Nor is such a *bona fide* sale void if the person to whom the stock is sold is, owing to his insolvency, unable to respond to the double liability, if the fact of such insolvency was unknown to the seller. *Earle* v. *Carson*, 42.

TREATIES.

See FEDERAL QUESTION, 2.

TRUSTEES.

See CONTRACTS.

VERDICT.

See INSTRUCTIONS TO JURY, 1;
WILL.

WILL.

On a proceeding to probate a will in the Supreme Court of the District of Columbia the burden of proof is on the caveators and if they fail to sustain this burden and but one conclusion can be drawn from the testimony, the trial court has power to direct a verdict. When that court has done so and its action has been approved by the unanimous judgment of the Court of Appeals, this court will rightfully pay deference to such action and opinion. *Leach* v. *Burr*, 510.

WITNESS.

See EVIDENCE, 2.