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ABANDONED PROPERTY. See *Captured and Abandoned Property.*

AGENT. See *Contributory Negligence*, 4; *Collateral Security*, 1.

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ALIEN.

1. A sale of lands in Texas, made before her separation from Mexico, by a citizen to a non-resident alien, passed the title to the latter, who thereby acquired a defeasible estate in them, which he could hold until deprived thereof by the supreme authority, upon the official ascertainment of the fact of his non-residence and alienage, or upon the denouncement of a private citizen. *Phillips* v. *Moore*, 208.
2. In the absence of proof that an alien has become a citizen of the United States, his original status is presumed to continue. *Hauenstein* v. *Lynham*, 483.
3. A., a citizen of Switzerland, died in 1861 in Virginia intestate and without issue. For want of an heir capable under the statutes of the State to inherit the lands there situate whereof he died seised in fee, they were sold by the escheator of the proper district. A.'s next of kin, B., a citizen of Switzerland, filed a petition to recover the proceeds of that sale. Upon consideration of the treaty between the United States and the Swiss Confederation of Nov. 25, 1850 (10 Stat. 587), — *Held*, 1. That the treaty is the supreme law of the land, and by its terms the incapacity of B. as an alien was so far removed as to entitle him to recover and sell the lands and "withdraw and export the proceeds thereof." 2. That his rights thus secured are not barred by the lapse of time, inasmuch as no statute of Virginia prescribes the term within which they must be asserted. 3. That where a treaty admits of two constructions, — one restrictive as to the rights that may be claimed under it, and the other liberal, — the latter is to be preferred. 4. That the treaty-making clause of the Constitution is retroactive as well as prospective. 5. That, in view of B.'s rights in the premises, the escheator is entitled only

ALIEN (*continued*).
to the amount allowed by law for making sales of real estate in ordinary cases. 6. That counsel cannot be paid out of the fund in dispute. *Id.*

ALIENATION OF LANDS. See *Lien.*

AMENDMENT. See *Practice.*

AMENDMENTS OF CONSTITUTION U. S. See *Constitutional Law.*

APPEAL. See *Practice.*

ASSISTANT SURGEON-GENERAL, ACTS OF.

1. The acts of the Assistant Surgeon-General, appointed under the act of Congress and located at St. Louis, are the acts of the Surgeon-General, and have the same validity until countermanded or revoked. *Parish* v. *United States*, 500.
2. Where parties in the effort to fulfil an order for a large amount of ice for the use of the government, which by their contract they were bound to furnish, purchased ice which was lost by the *suspension* of the order of the Assistant Surgeon-General by his superior officer, they are entitled to recover the cost of the ice so lost and the expense of the care and attempt to preserve it. *Id.*

ATTORNEY-AT-LAW.
A., an attorney-at-law, employed and paid solely by B. to examine and report on the title of the latter to a certain lot of ground, gave over his signature this certificate, "B.'s title to the lot" (describing it) "is good, and the property is unincumbered." C., with whom A. had no contract or communication, relied upon this certificate as true, and loaned money to B., upon the latter executing by way of security therefor a deed of trust for the lot. B., before employing A., had transferred the lot in fee by a duly recorded conveyance, a fact which A., on examining the records, could have ascertained, had he exercised a reasonable degree of care. The money loaned was not paid, and B. is insolvent. *Held*, 1. That there being neither fraud, collusion, or falsehood by A., nor privity of contract between him and C., he is not liable to the latter for any loss sustained by reason of the certificate. 2. That usage cannot make a contract where none was made by the parties. *Savings Bank* v. *Ward*, 195.

BAGGAGE. See *Passengers, General Carriers of.*

BAILEE. See *National Bank*, 6-10.

BILL OF EXCEPTIONS. See *Exceptions, Bill of.*

BILL OF REVIEW. See *Review, Bill of.*

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Interest*, 2.

1. A creditor who before its maturity accepts a negotiable note, so indorsed that he becomes a party thereto, as collateral security for a pre-existing debt, in consideration of an extension of time granted

BILLS OF EXCHANGE AND PROMISSORY NOTES (*continued*).
to the debtor, is, according to the law merchant, a holder for value, and his rights as such are not affected by equities between antecedent parties of which he had no notice. *Oates* v. *National Bank*, 239.

2. "Bills of exchange and promissory notes, payable in money at a certain place of payment therein designated," are, by an act of the legislature of Alabama, put upon the same basis as to immunity from set-off, discount, or equities as bills and notes payable at a bank or private banking-house. Such declared to be the intention and effect of the act of April 8, 1873, amending sect. 1833 of the Revised Code of that State. *Id.*

3. A bill of exchange drawn by A. to the order of B. on "Messrs. C. & D., New York, N. Y.," was accepted by them without qualification or condition. All the parties then and at its maturity resided in Kentucky. The notary public, after making on the day it matured diligent but unsuccessful inquiry in New York City for C. & D., and for their place of residence or business, presented it and demanded payment, during business hours, at the places frequented by them when in that city. Payment not having been made, he protested the bill, and on the next day, learning from those whom he believed to be informed on the subject the residence of A. and B., transmitted to them there by mail, post paid, notices of such protest. *Held*, 1. That the bill was in law payable at that city. 2. That the presentment and demand were sufficient. 3. That the requisite steps to bind A. and B. were taken. *Cox* v. *National Bank*, 704.

BOND. See *Internal Revenue*, 2; *Internal Revenue, Collector of; Municipal Bonds.*

BONDHOLDERS. See *Trust and Trustee.*

BURDEN OF PROOF. See *Contributory Negligence*, 5; *Court and Jury*, 3; *Life Insurance*, 1.

BURNT CHICORY. See *Customs Duties*, 1,

CALIFORNIA. See *Limitations, Statute of*, 3, 4; *Pre-emption.*

CAPTURED AND ABANDONED PROPERTY.

The proceeds of certain cotton seized under the Confiscation Act as the property of A. were, in July, 1866, by order of the proper District Court, turned over to its clerk, who thereupon deposited them to his credit as such in a national bank which had been duly designated as a depositary of public money. The bank failed, and judgment in the confiscation proceedings having been rendered in favor of A., he brought suit against the United States to recover said proceeds. *Held*, 1. That the deposit by the clerk was not a payment into the treasury of the United States. 2. That said proceeds belonged for the time being to the court, and were, pending the proceedings, held as a trust fund. 3. That A. was not entitled to recover. *Branch* v. *United States*, 673.

CAUSES, JOINDER OF. See *Practice*, 5.

CAUSES, REMOVAL OF. See *Jurisdiction*, 13; *Jury, Waiver of; Practice*, 6.

1. Sect. 643 of the Revised Statutes of the United States, which declares that "when any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law, . . . the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the Circuit Court next to be holden in the district where the same is pending, upon the petition of such defendant to said Circuit Court," &c., is not in conflict with the Constitution of the United States. *Tennessee* v. *Davis*, 257.
2. A. was, in a State court of Tennessee, indicted for murder. In his petition, duly verified, for removal of the prosecution to the Circuit Court of the United States, he stated that, although indicted for murder, no murder was committed; that the killing was done in necessary self-defence, to save his own life; that at the time the alleged act for which he was indicted was committed he was, and still is, an officer of the United States, to wit, a deputy collector of internal revenue ; that the act for which he was indicted was performed in his own necessary self-defence while engaged in the discharge of his duties as deputy collector, and while acting by and under the authority of the internal-revenue laws of the United States; that what he did was done under and by right of his said office; that it was his duty to seize illicit distilleries and the apparatus used for the illicit and unlawful distillation of spirits; and that while so attempting to enforce said laws, as deputy collector as aforesaid, he was assaulted and fired upon by a number of armed men, and that in defence of his life he returned the fire, which is the killing mentioned in the indictment. *Held*, that the petition was in conformity with the statute, and, upon being filed, the prosecution was removed to the Circuit Court of the United States for that district. *Id.*
3. The provision of the Constitution declaring that the judicial power of the United States extends "to *all* cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority," embraces alike civil and criminal cases. Both are equally within that power. *Id.*
4. A case arises under that Constitution not merely where a party comes into court to demand something conferred upon him by the Constitution, a law of the United States, or a treaty, but wherever its correct decision as to the right, privilege, claim, protection, or defence of a party, in whole or in part, depends upon the construction

CAUSES, REMOVAL OF (*continued*).

of either. It is in the power of Congress to give the circuit courts of the United States jurisdiction of such a case, although it may involve other questions of fact or of law. *Id.*

5. If the case, whether civil or criminal, be one to which the judicial power of the United States extends, its removal to the Federal court does not invade State jurisdiction. On the contrary, a denial of the right of the general government to remove, take charge of and try any case arising under the Constitution and laws of the United States, is a denial of its conceded sovereignty over a subject expressly committed to it. It is a denial of a doctrine necessary for the preservation of the acknowledged powers of the government. The exercise of the power to remove criminal prosecutions is seen in the act of Feb. 4, 1815 (3 Stat. 198), again in the third section of the act of March 2, 1833 (4 id. 633), and more recently in the act of July 13, 1866. 14 id. 171. *Id.*

6. Sect. 641 of the Revised Statutes, which declares that "when any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, . . . such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed, for trial, into the next circuit court to be held in the district where it is pending," considered and *held* not to be in conflict with the Constitution of the United States. *Strauder* v. *West Virginia*, 303.

7. Sect. 641 of the Revised Statutes, which provides for the removal into the Federal court of any civil suit or prosecution "commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States," &c., examined in connection with sects. 1977 and 1978. *Held*, that the object of these statutes, as of the Constitution which authorized them, was to place, in respect to civil rights, the colored race upon a level with the white. They made the rights and responsibilities, civil and criminal, of the two races exactly the same. *Virginia* v. *Rives*, 313.

8. The prohibitions of the Fourteenth Amendment have exclusive reference to State action. It is the State which is prohibited from denying to any person within its jurisdiction the equal protection of the laws, and, consequently, the statutes founded upon the amendment, and partially enumerating what civil rights the colored man shall enjoy equally with the white, are intended for protection against State infringement of those rights. Sect. 641 was also intended to protect them against State action, and against that alone. *Id.*

CAUSES, REMOVAL OF (*continued*).

9. A State may exert her authority through different agencies, and those prohibitions extend to her action denying equal protection of the laws, whether it be action by one of these agencies or by another. Congress, by virtue of the fifth section of the Fourteenth Amendment, may enforce the prohibitions whenever they are disregarded by either the Legislative, the Executive, or the Judicial Department of the State. The mode of enforcement is left to its discretion. It may secure the right, that is, enforce its recognition, by removing the case from a State court, in which it is denied, into a Federal court, where it will be acknowledged. *Id.*

10. But the Fourteenth Amendment is broader than sect. 641, as the latter does not apply to *all* cases in which the equal protection of the laws may be denied to a defendant. The removal thereby authorized is before trial or final hearing. But the violation of the constitutional prohibitions, when committed by the judicial action of a State, may be, and generally will be, after the trial or final hearing has commenced. It is during the trial or final hearing the defendant is denied equality of legal protection, and not until then. Nor can he know until then that the equal protection of the laws will not be extended to him. Certainly not until then can he affirm that it is denied. To such a case — that is, to judicial infractions of the constitutional amendment after the trial has commenced — sect. 641 has no applicability. It was not intended to reach such cases. They were left to the revisory power of this court. *Id.*

11. Therefore, the denial or inability to enforce in the judicial tribunals of a State rights secured to a defendant by any law providing for the equal civil rights of all persons citizens of the United States, of which sect. 641 speaks, is primarily, if not exclusively, a denial of such rights, or an inability to enforce them, resulting from the Constitution or laws of the State, rather than a denial made manifest at the trial of the case. In other words, the statute has reference to a legislative denial or an inability resulting from it. By express requirement of the statute, the party must set forth, under oath, the facts upon which he bases his claim to have his case removed, not merely his belief that he cannot enforce his rights at a subsequent stage of the proceedings. But, in the absence of constitutional or legislative impediment, he cannot swear before his case comes to trial that his enjoyment of his civil rights is denied to him. *Id.*

12. The Constitution and laws of Virginia do not exclude colored citizens from service on juries. The petition for removal did not present a case under sect. 641. *Id.*

13. The provision in the first clause of the second section of the act entitled "An Act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875 (18 Stat., part 3, 470), "that any suit of a civil nature, at law or in equity, now pending . . . in any State court, where the matter in dispute exceeds, exclusive of costs, the sum or value of $500, . . . in which

CAUSES, REMOVAL OF (*continued*).

there shall be a controversy between citizens of different States, . . . either party may remove said suit into the Circuit Court of the United States for the proper district," construed, and *held* to mean that when the controversy about which a suit in the State court is brought is between citizens of one or more States on one side, and citizens of other States on the other side, either party to the controversy may remove the suit to the Circuit Court without regard to the position they occupy in the pleadings as plaintiffs or defendants. For the purposes of a removal, the matter in dispute may be ascertained, and according to the facts the parties to the suit arranged on opposite sides of that dispute. If in such an arrangement it appears that those on one side, being all citizens of different States from those on the other, desire a removal, the suit may be removed. *Removal Cases*, 457.

14. Until a case requiring it arises, the court refrains from expressing an opinion upon the second clause of said section. *Id.*
15. The petition for removal (*supra*, p. 463), held to be sufficient in form. *Id.*
16. An application made before trial for the removal to the Circuit Court of a cause pending in a State court at the passage of said act of March 3, 1875, was in time if made at the first term of the court thereafter. *Id.*
17. In order to bar the right of removal, it must appear that the trial in the State court was actually in progress in the orderly course of proceeding when the application was made. *Id.*
18. The ruling in *Insurance Company* v. *Dunn* (19 Wall. 214), that a party who, failing in his efforts to obtain a removal of a suit, is forced to trial loses none of his rights by defending against the action, reaffirmed. *Id.*

CERTIORARI, WRIT OF. See *Habeas Corpus, Writ of*, 1.

CHATTELS, CONTRACT FOR SALE OF.

A. & B. agreed, by a contract in writing, to manufacture for C., at a stipulated price, a quantity of staves, and to pile them on lands adjoining their mill, which were leased to him. The contract provided that, on the staves being counted from week to week, A. & B. were to be entitled to a certain percentage of the price of the number ascertained; that upon such piling and counting the delivery should be deemed complete, and the staves were thenceforth to be absolutely and unconditionally the property of C. Before the day when all were to be furnished, and full payments made, a creditor of A. & B. caused his execution to be levied upon the staves which had been counted and piled, most of them being then upon the leased lands and the remainder upon a contiguous tract. The stipulated percentage had also been paid. The lease and contract were not recorded nor filed, but the contract was made in good faith. *Held*, that the title to the staves was in C., and they were not subject to the execution. *Hatch* v. *Oil Company*, 124.

CHICORY. See *Customs Duties*, 1

CITATION. See *Practice*, 19–21.

CITIZENSHIP. See *Constitutional Law*, 6–10.

CIVIL OFFICE. See *Office*, *Suspension from.*

CIVIL RIGHTS. See *Constitutional Law*, 6–10.

CLAIMS, COURT OF. See *Court of Claims.*

COLLATERAL SECURITY. See *Bills of Exchange and Promissory Notes*, 1 ; *National Bank*, 1, 2.

1. A., in order to secure the payment of his note to B., pledged to the latter certain shares of the capital stock of a national bank in Louisiana, with authority to sell them in default of such payment. Default having been made, B. sold them, and in March, 1873, applied to the cashier of the bank to have them transferred on its books. That officer refused to allow the transfer, on the ground that A. was indebted to the bank. Before the transfer could be enforced, the bank failed, and C. was appointed a receiver, against whom B., Feb. 24, 1876, brought this action to recover damages for the loss sustained by him. It does not appear that the bank ever adopted any by-law providing for a lien on the shares of a stockholder indebted to it, or that A.'s debt to it had been contracted before his stock was pledged to B. *Held*, 1. That the action is not prescribed by the limitation of one year. 2. That the cashier having been intrusted by the directors of the bank with the transfers of stock, his refusal to permit the transfer was the refusal of the bank. 3. That judgment having been rendered, the court below had power to order C. to pay the claim, or certify it to the comptroller. *Case* v. *Bank*, 446.
2. A statement in a contract between a railroad company and a construction company, that the former would pay the latter out of a certain fund, — the subscription of a particular county along the road — is not, within the meaning of the laws of Iowa, such a taking by the latter company of a collateral security as to vitiate its lien. *Removal Cases*, 457.

COMITY. See *Corporations*, 1.

1. Where no Federal question is involved, this court will follow the construction which has been uniformly given to the Constitution or the laws of a State by its highest court. *Fairfield* v. *County of Gallatin*, 47.
2. Cases affirming this principle cited and examined. *Id.*
3. This court accepts as binding the decision of the Supreme Court of Illinois in *Chicago & Iowa Railroad Co.* v. *Pinckney* (74 Ill. 277) and subsequent cases, construing the section of the Constitution of that State in force July 2, 1870, which provides that "no county, city, town, township, or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of, such corporation: *Provided*, *however*, that the adoption of this article shall not be con-

COMITY (*continued*).

strued as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption;" and holding that such previous donations, if sanctioned by a popular vote, under pre-existing laws, were not forbidden, but were in like manner, as subscriptions, excepted by the proviso from the general prohibitory terms of the section. *Id.*

4. Where, therefore, pursuant to the authority conferred by a legislative enactment, such a donation was voted by a county in Illinois before the adoption of that Constitution, the donation may be thereafter completed by the issue of the requisite bonds. *Id.*

5. *Chicago & Iowa Railroad Co.* v. *Pinckney* (*supra*) was decided before, but not reported until after, the ruling in *Town of Concord* v. *Portsmouth Savings Bank* (92 U. S. 625), involving the construction of that section, and the attention of this court was not called to it; but as it established in Illinois a rule of property which has been since maintained, the latter case, so far as it conflicts therewith, is overruled. *Id.*

6. The courts of the United States are not bound by the decisions of State courts upon questions of general commercial law. *Oates* v. *National Bank*, 239.

COMMERCE. See *Constitutional Law*, 35, 36, 39–42, 46; *Trade-marks*, 3–5.

COMMERCIAL LAW. See *Comity*, 6.

COMPTROLLER OF THE CURRENCY. See *National Bank*, 2.

CONDITION, BREACH OF. See *Deed*, 2, 3, 4; *Swamp and Overflowed Lands*, 4.

CONDITION PRECEDENT. See *Passengers*, *General Carriers of*, 2.

CONFISCATION ACT. See *Captured and Abandoned Property*.

CONSTITUTIONAL LAW. See *Alien*, 3; *Comity*, 1–3; *Federal Question*; *Municipal Bonds*, 1; *Trade-marks*, 1–5.

1. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and the people of the States. While limited in the number of its powers, it is, so far as its sovereignty extends, supreme. No State can exclude it from exercising them, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which the Constitution has committed to it. *Tennessee* v. *Davis*, 257.

2. The general government must cease to exist whenever it cannot enforce the exercise of its constitutional powers within the States by the instrumentality of its officers and agents. If, when thus acting, within the scope of their authority, they can be arrested and brought to trial in a State court, for an alleged offence against the law of the State, yet warranted by the Federal authority they possess, and if the general government is powerless to interfere at

CONSTITUTIONAL LAW (*continued*).

once for their protection, — if their protection must be left to the action of the State court, — the operations of the general government may at any time be arrested at the will of one of the States. No such element of weakness is to be found in the Constitution. *Id.*

3. The provision of the Constitution declaring that the judicial power of the United States extends "to *all* cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority," embraces alike civil and criminal cases. Both are equally within that power. *Id.*

4. A case arises under that Constitution not merely where a party comes into court to demand something conferred upon him by the Constitution, a law of the United States, or a treaty, but wherever its correct decision as to the right, privilege, claim, protection, or defence of a party, in whole or in part, depends upon the construction of either. It is in the power of Congress to give the circuit courts of the United States jurisdiction of such a case, although it may involve other questions of fact or of law. *Id.*

5. If the case, whether civil or criminal, be one to which the judicial power of the United States extends, its removal to the Federal court does not invade State jurisdiction. On the contrary, a denial of the right of the general government to remove, take charge of and try any case arising under the Constitution and laws of the United States, is a denial of its conceded sovereignty over a subject expressly committed to it. It is a denial of a doctrine necessary for the preservation of the acknowledged powers of the government. The exercise of the power to remove criminal prosecutions is seen in the act of Feb. 4, 1815, (3 Stat. 198), again in the third section of the act of March 2, 1833 (4 id. 633), and more recently in the act of July 13, 1866. 14 id. 171. *Id.*

6. The Fourteenth Amendment of the Constitution of the United States considered, and *held* to be one of a series of constitutional provisions having a common purpose; namely, to secure to a recently emancipated race, which had been held in slavery through many generations, all the civil rights that the superior race enjoy, and to give to it the protection of the general government, in the enjoyment of such rights, whenever they should be denied by the States. Whether the amendment had other, and if so what, purposes, not decided. *Strauder* v. *West Virginia*, 303.

7. The amendment not only gave citizenship and the privileges of citizenship to persons of color, but denied to any State the power to withhold from them the equal protection of the laws, and invested Congress with power, by appropriate legislation, to enforce its provisions. *Id.*

8. The amendment, although prohibitory in terms, confers by necessary implication a positive immunity, or right, most valuable to persons of the colored race, — the right to exemption from unfriendly legislation against them distinctly as colored, — exemption from discriminations, imposed by public authority, which imply legal

CONSTITUTIONAL LAW (*continued*).

inferiority in civil society, lessen the security of their rights, and are steps towards reducing them to the condition of a subject race. *Id.*

9. The statute of West Virginia, which, in effect, singles out and denies to colored citizens the right and privilege of participating in the administration of the law, as jurors, because of their color, though qualified in all other respects, is, practically, a brand upon them, and a discrimination against them which is forbidden by the amendment. It denies to such citizens the equal protection of the laws, since the constitution of juries is a very essential part of the protection which the trial by jury is intended to secure. The very idea of a jury is that it is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine ; that is, of persons having the same legal status in society as that which he holds. *Id.*

10. Where, as here, the State statute secures to every white man the right of trial by jury selected from, and without discrimination against, his race, and at the same time permits or requires such discrimination against the colored man because of his race, the latter is not equally protected by law with the former. *Id.*

11. Sect. 641 of the Revised Statutes, which declares that "when any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, . . . such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed, for trial, into the next circuit court to be held in the district where it is pending," considered, and *held* not to be in conflict with the Constitution of the United States. *Id.*

12. Sect. 641 of the Revised Statutes, which provides for the removal into the Federal court of any civil suit or prosecution "commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States," &c., examined in connection with sects. 1977 and 1978. *Held*, that the object of these statutes, as of the Constitution which authorized them, was to place, in respect to civil rights, the colored race upon a level with the white. They made the rights and responsibilities, civil and criminal, of the two races exactly the same. *Virginia* v. *Rives*, 313.

13. The prohibitions of the Fourteenth Amendment have exclusive reference to State action. It is the State which is prohibited from denying to any person within its jurisdiction the equal protection of

CONSTITUTIONAL LAW (*continued*).
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14. A State may exert her authority through different agencies, and those prohibitions extend to her action denying equal protection of the laws, whether it be action by one of these agencies or by another. Congress, by virtue of the fifth section of the Fourteenth Amendment, may enforce the prohibitions whenever they are disregarded by either the Legislative, the Executive, or the Judicial Department of the State. The mode of enforcement is left to its discretion. It may secure the right, that is, enforce its recognition, by removing the case from a State court, in which it is denied, into a Federal court, where it will be acknowledged. *Id.*

15. But the Fourteenth Amendment is broader than sect. 641, as the latter does not apply to *all* cases in which the equal protection of the laws may be denied to a defendant. The removal thereby authorized is before trial or final hearing. But the violation of the constitutional prohibitions, when committed by the judicial action of a State, may be, and generally will be, after the trial or final hearing has commenced. It is during the trial or final hearing the defendant is denied equality of legal protection, and not until then. Nor can he know until then that the equal protection of the laws will not be extended to him. Certainly not until then can he affirm that it is denied. To such a case — that is, to judicial infractions of the constitutional amendment after the trial has commenced — sect. 641 has no applicability. It was not intended to reach such cases. They were left to the revisory power of this court. *Id.*

16. Therefore, the denial or inability to enforce in the judicial tribunals of a State rights secured to a defendant by any law providing for the equal civil rights of all persons citizens of the United States, of which sect. 641 speaks, is primarily, if not exclusively, a denial of such rights, or an inability to enforce them, resulting from the Constitution or laws of the State, rather than a denial made manifest at the trial of the case. In other words, the statute has reference to a legislative denial or an inability resulting from it. By express requirement of the statute, the party must set forth, under oath, the facts upon which he bases his claim to have his case removed, not merely his belief that he cannot enforce his rights at a subsequent stage of the proceedings. But, in the absence of constitutional or legislative impediment, he cannot swear before his case comes to trial that his enjoyment of his civil rights is denied to him. *Id.*

17. The Constitution and laws of Virginia do not exclude colored citizens from service on juries. *Id.*

18. The defendant moved in the State court that the *venire* be so modified that one-third or some portion of the jury should be composed of his own race. The denial of that motion was not a denial of a right

CONSTITUTIONAL LAW (*continued*).

secured to him by any law providing for the equal civil rights of citizens of the United States, or by any statute, or by the Fourteenth Amendment. A mixed jury in a particular case is not essential to the equal protection of the laws. It *is* a right to which any colored man is entitled, that, in the selection of jurors to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them, because of his color. But that is a different thing from that which was claimed, as of right, and denied in the State court; viz., a right to have the jury composed in part of colored men. *Id.*

19. A., a judge of a county court in Virginia, charged by the law of that State with the selection of jurors to serve for the year 1878 in the circuit and county courts of his county, was, in the District Court of the United States for the Western District of Virginia, indicted for excluding and failing to select as grand jurors and petit jurors certain citizens of his county, of African race and black color, who, possessing all other qualifications prescribed by law, were excluded from the jury lists made out by him as such officer, on account of their race, color, and previous condition of servitude, and for no other reason, against the peace, &c., of the United States, and against the form of the statute in such case made and provided. Being in custody under that indictment, he presented to this court his petition for a writ of *habeas corpus* and a writ of *certiorari* to bring up the record of the inferior court, that he might be discharged, averring that the finding of the indictment, and his arrest and imprisonment thereunder, were unwarranted by the Constitution of the United States, in violation of his rights and the rights of the State of Virginia, whose judicial officer he is, and that the inferior court had no jurisdiction to proceed against him. A similar petition was presented by Virginia. *Held*, that while a writ of *habeas corpus* cannot generally be made to subserve the purposes of a writ of error, yet when a prisoner is held without any lawful authority, and by an order which an inferior court of the United States had no jurisdiction to make, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all. *Ex parte Virginia*, 339.

20. The section of the act entitled "An Act to protect all citizens in their civil and legal rights," approved March 1, 1875 (18 Stat., part 3, 336), which enacts that "no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified from service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person, charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than $5,000," examined, and *held* to be authorized by the Thirteenth and Fourteenth Amendments of the Constitution. *Id.*

CONSTITUTIONAL LAW (*continued*).

21. The inhibition contained in the Fourteenth Amendment means that no agency of the State, or of the officers or agents by whom her powers are exerted, shall deny to any person within her jurisdiction the equal protection of the laws. Whoever by virtue of his public position under a State government deprives another of life, liberty, or property, without due process of law, or denies or takes away the equal protection of the laws, violates that inhibition; and as he acts in the name of and for the State, and is clothed with her power, his act is her act. Otherwise, the inhibition has no meaning, and the State has clothed one of her agents with power to annul or evade it. *Id.*

22. That amendment was ordained to secure equal rights to all persons. To render its purpose effectual, Congress is vested with power to enforce its provisions by appropriate legislation. Such legislation must act, not upon the abstract thing denominated a State, but upon the persons who are its agents in the denial of the rights which were intended to be secured. Such is said act of March 1, 1875, and it is fully authorized by the Constitution. *Id.*

23. The act of A. in selecting jurors was ministerial, not judicial, and, although he derived his authority from the State, he was bound, in the discharge of that duty, to obey the Federal Constitution and the laws passed in pursuance thereof. *Id.*

24. Certain judges of election in the city of Baltimore, appointed under State laws, were convicted in the Circuit Court of the United States, under sects. 5515 and 5522 of the Revised Statutes of the United States, for interfering with and resisting the supervisors of election and deputy marshals of the United States in the performance of their duty at an election of representatives to Congress, under sects. 2016, 2017, 2021, 2022, title xxvi., of the Revised Statutes. *Held*, that the question of the constitutionality of said laws is good ground for the issue by this court of a writ of *habeas corpus* to inquire into the legality of the imprisonment under such conviction; and if the laws are determined to be unconstitutional, the prisoner should be discharged. *Ex parte Siebold*, 371.

25. Congress had power by the Constitution to enact sect. 5515 of the Revised Statutes, which makes it a penal offence against the United States for any officer of election, at an election held for a representative in Congress, to neglect to perform, or to violate, any duty in regard to such election, whether required by a law of the State or of the United States, or knowingly to do any act unauthorized by any such law, with intent to affect such election, or to make a fraudulent certificate of the result, &c.; and sect. 5522, which makes it a penal offence for any officer or other person, with or without process, to obstruct, hinder, bribe, or interfere with a supervisor of election, or marshal, or deputy marshal, in the performance of any duty required of them by any law of the United States, or to prevent their free attendance at the places of registration or election, &c.; also, sects. 2011, 2012, 2016, 2017, 2021, 2022, title

CONSTITUTIONAL LAW (*continued*).

xxvi., which authorize the circuit courts to appoint supervisors of such elections, and the marshal to appoint special deputies to aid and assist them, and which prescribe the duties of such supervisors and deputy marshals, — these being the laws provided in the Enforcement Act of May 31, 1870, and the supplement thereto of Feb. 28, 1871, for supervising the elections of representatives, and for preventing frauds therein. *Id.*

26. In making regulations for the election of representatives, it is not necessary that Congress should assume entire and exclusive control thereof. By virtue of that clause of the Constitution which declares that "the times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing senators," Congress has a supervisory power over the subject, and may either make entirely new regulations, or add to, alter, or modify the regulations made by the State. *Id.*

27. In the exercise of such supervisory power, Congress may impose new duties on the officers of election, or additional penalties for breach of duty, or for the perpetration of fraud; or provide for the attendance of officers to prevent frauds, and see that the elections are legally and fairly conducted. *Id.*

28. The exercise of such power can properly cause no collision of regulations or jurisdiction, because the authority of Congress over the subject is paramount, and any regulations it may make necessarily supersede inconsistent regulations of the State. This is involved in the power to "make or alter." *Id.*

29. There is nothing in the relation of the State and the national sovereignties to preclude the co-operation of both in the matter of elections of representatives. If both were equal in authority over the subject, collisions of jurisdiction might ensue; but the authority of the national government being paramount, collisions can only occur from unfounded jealousy of such authority. *Id.*

30. The provision which authorizes the deputy marshals to keep the peace at the elections is not unconstitutional. The national government has the right to use physical force in any part of the United States to compel obedience to its laws, and to carry into execution the powers conferred upon it by the Constitution. *Id.*

31. The concurrent jurisdiction of the national government with that of the States, which it has in the exercise of its powers of sovereignty in every part of the United States, is distinct from that exclusive jurisdiction which it has by the Constitution in the District of Columbia, and in those places acquired for the erection of forts, magazines, arsenals, &c. *Id.*

32. The provisions adopted for compelling the State officers of election to observe the State laws regulating elections of representatives, not altered by Congress, are within the supervisory powers of Congress over such elections. The duties to be performed in this behalf are

CONSTITUTIONAL LAW (*continued*).

owed to the United States as well as to the State; and their violation is an offence against the United States which Congress may rightfully inhibit and punish. This necessarily follows from the direct interest which the national government has in the due election of its representatives, and from the power which the Constitution gives to Congress over this particular subject. *Id.*

33. Congress had power by the Constitution to vest in the circuit courts the appointment of supervisors of election. It is expressly declared that "Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." Whilst, as a question of propriety, the appointment of officers whose duties appertain to one department ought not to be lodged in another, the matter is nevertheless left to the discretion of Congress. *Id.*

34. An officer of election, at an election for a representative to Congress in the city of Cincinnati, was convicted of a misdemeanor in the Circuit Court of the United States, under sect. 5515 of the Revised Statutes, for a violation of the law of Ohio, in not conveying the ballot-box, after it had been sealed up and delivered to him for that purpose, to the county clerk, and for allowing it to be broken open. *Held*, according to the decision in *Ex parte Siebold* (*supra*, p. 371), that Congress had power to pass the law under which the conviction was had, and that the Circuit Court had jurisdiction of the offence. *Ex parte Clarke*, 399.

35. A municipal corporation, owning improved wharves and other artificial means which it maintains, at its own cost, for the benefit of those engaged in commerce upon the public navigable waters of the United States, is not prohibited by the Constitution of the United States from charging and collecting from parties using its wharves and facilities such reasonable fees as will fairly remunerate it for the use of the property. *Packet Company* v. *St. Louis*, 423.

36. *Packet Company* v. *Keokuk* (95 U. S. 80) affirmed. *Id.*

37. The ordinance of the city of Vicksburg passed July 12, 1865, entitled "An ordinance establishing the rate of wharfage to be collected from steamboats and other water-craft landing and lying at the City of Vicksburg," is not in conflict with the Constitution of the United States. *Vicksburg* v. *Tobin*, 430.

38. *Packet Company* v. *St. Louis* (*supra*, p. 423), affirmed. *Id.*

39 A State cannot, in the exercise of her taxing power, impose upon the products of another State, brought within her limits for sale or use, a more onerous burden or tax than upon like products of her own territory, nor discriminate against a citizen by reason of his being engaged in thus bringing or in selling them. *Guy* v. *Baltimore*, 434.

40. An ordinance of Baltimore, whereunder vessels laden with the products of other States, are required to pay for the use of the public wharves of that city, fees which are not exacted from vessels

CONSTITUTIONAL LAW (*continued*).

landing thereat with the products of Maryland, is in conflict with the Constitution of the United States. *Id.*

41. Such fees, so exacted, must be regarded not as a compensation for the use of the city's property, but as a mere expedient or device to foster the domestic commerce of Maryland by means of unequal and oppressive burdens upon the industry and business of other States. *Id.*

42. So far as it may be necessary to protect the products of other States and countries from discrimination by reason of their foreign origin, the power of the national government over commerce with foreign nations and among the several States reaches the interior of every State of the Union. *Id.*

43. This court can afford the citizen of a State no relief from the enforcement of her laws prescribing the mode and subjects of taxation, if they neither trench upon Federal authority nor violate any right recognized or secured by the Constitution of the United States. *Kirtland* v. *Hotchkiss*, 491.

44. The Constitution does not prohibit a State from taxing her resident citizens for debts held by them against a non-resident evidenced by his bonds, payment whereof is secured by his deeds of trust or mortgages upon real estate situate in another State. *Id.*

45. By an act of the legislature of Ohio, passed Feb. 16, 1846, it was provided that, upon the fulfilment of certain terms and conditions by the proprietors or citizens of the town of Canfield, in Mahoning County, the county seat should be "permanently established" at that town. Those terms and conditions having been complied with, the county seat was established accordingly. On April 9, 1874, the legislature passed an act providing for the removal of the county seat to Youngstown. Certain citizens of Canfield thereupon filed their bill setting forth that the act of 1846, and the proceedings thereunder, constituted, within the meaning of the Constitution, an executed contract the obligation of which was impaired by the later act, and praying for a perpetual injunction against the contemplated removal. *Held*, 1. That no such contract existed. 2. That the act of 1846 was a public law relating to a public subject with respect to which the legislature which enacted it had no power to bind a subsequent one. 3. That if that act and the proceedings under it constituted a contract, it was satisfied on the part of the State by establishing the county seat at Canfield, with the intent that it should remain there. 4. That there was no stipulation that the county seat should remain there in perpetuity. 5. That the practical interpretation of the phrase "permanently established," which has been in long and frequent use in the statutes of Ohio with respect to county seats established otherwise than temporarily, is, though by no means conclusive, entitled to consideration. *Newton* v. *Commissioners*, 548.

46. The Supreme Court of Tennessee having decided that the law of that State imposing an annual tax upon "all pedlers of sewing-

CONSTITUTIONAL LAW (*continued*).

machines and selling by sample," levies such " tax upon all pedlers of sewing-machines, without regard to the place of growth or produce of material or of manufacture," that law, so construed, is not in violation of the Constitution of the United States. *Machine Company* v. *Gage*, 676.

CONSTRUCTIVE NOTICE. See *Lis Pendens.*

CONTRACTS. See *Assistant Surgeon-General, Acts of; Court of Claims*, 1; *Court and Jury*, 2; *Swamp and Overflowed Lands.*

1. Usage cannot make a contract where none was made by the parties. *Savings Bank* v. *Ward*, 195.
2. By an act of the legislature of Ohio, passed Feb. 16, 1846, it was provided that, upon the fulfilment of certain terms and conditions by the proprietors or citizens of the town of Canfield, in Mahoning County, the county seat should be "permanently established" at that town. Those terms and conditions having been complied with, the county seat was established accordingly. On April 9, 1874, the legislature passed an act providing for the removal of the county seat to Youngstown. Certain citizens of Canfield thereupon filed their bill setting forth that the act of 1846, and the proceedings thereunder, constituted, within the meaning of the Constitution, an executed contract the obligation of which was impaired by the later act, and praying for a perpetual injunction against the contemplated removal. *Held*, 1. That no such contract existed. 2. That the act of 1846 was a public law relating to a public subject with respect to which the legislature which enacted it had no power to bind a subsequent one. 3. That if that act and the proceedings under it constituted a contract, it was satisfied on the part of the State by establishing the county seat at Canfield, with the intent that it should remain there. 4. That there was no stipulation that the county seat should remain there in perpetuity. 5. That the practical interpretation of the phrase "permanently established," which has been in long and frequent use in the statutes of Ohio with respect to county seats established otherwise than temporarily, is, though by no means conclusive, entitled to consideration. *Newton* v. *Commissioners*, 548.

CONTRIBUTORY NEGLIGENCE.

1. The general rule exempting the common master, whether a natural person or a corporation, from liability to a servant for injuries caused by the negligence of a fellow-servant recognized and considered. *Hough* v. *Railway Company*, 213.
2. To that rule there are well-defined exceptions, one of which arises from the obligation of the master not to expose the servants, when conducting his business, to perils or hazards against which they may be guarded by proper diligence upon his part. *Id.*
3. Therefore, although his liability to them is not that of a guarantor of the absolute safety or perfection of the machinery or other apparatus provided for their use, he is bound to exercise the care which

CONTRIBUTORY NEGLIGENCE (*continued*).
the exigency reasonably requires, in furnishing such as is adequate and suitable. *Id.*

4. A railroad company is liable when its officers or agents who are invested with a controlling or superior duty in that regard are, in discharging it, guilty of negligence, from which injury to an innocent party results. *Id.*
5. If the servant of such a company who has knowledge of defects in machinery gives notice thereof to the proper officer, and is promised that they shall be remedied, his subsequent use of it, in the well-grounded belief that it will be put in proper condition within a reasonable time, does not necessarily, or as a matter of law, make him guilty of contributory negligence. It is a question for the jury whether, in relying upon such promise and using the machinery after he knew its defective or insufficient condition, he was in the exercise of due care. The burden of proof, in such a case, is upon the company to show contributory negligence. *Id.*

CONVEYANCE. See *Mining Claim*, 4; *Deed.*

CORPORATIONS. See *Excise Tax; Nevada, Statute of Limitations of.*

1. By the general comity which, in the absence of positive direction to the contrary, obtains through the States and Territories of the United States, corporations created in one State or Territory are permitted to carry on any lawful business in another, and to acquire, hold, and transfer property there equally as individuals. *Cowell* v. *Springs Company*, 55.
2. When a corporation is authorized by statute to hold real property necessary to enable it to carry on its business, the inquiry whether any particular real property is necessary for that business is a matter between the State and the corporation, which does not concern third parties. *Id.*
3. The doctrine of *ultra vires* has no application in favor of corporations for wrongs committed by them. *National Bank* v. *Graham*, 699.

COSTS. See *Practice*, 6, 7.

COUNSEL.
This court will not allow counsel to be paid out of the fund in dispute. *Hanuenstein* v. *Lynham*, 483.

COUNTY SEATS, REMOVAL OF. See *Constitutional Law*, 45.

COUPONS. See *Internal Revenue*, 2.

COURT AND JURY. See *Customs Duties.*

1. In an action against a collector of customs, to recover duties alleged to have been wrongfully exacted upon chicory imported in 1873, it was not error for the court to charge the jury that ground chicory was the same thing as burnt chicory, and to submit to them to determine from the evidence, as a matter of fact, whether the imported article in question was a new preparation, something other than ground chicory. *Arthur* v. *Herold*, 75.
2. A contract between A. and an insurance company stipulated that for

COURT AND JURY (*continued*).

his services as its agent the company would pay him twenty per cent on the ordinary premiums upon all policies for the first year, and "seven and one-half per cent for the second and subsequent years of assurance," said allowance to continue for twenty-five years, should the policies remain so long in force. It was also stipulated that he should apoint sub-agents, that all moneys should be promptly remitted to the company on or before the fifteenth day of each month, and that his "commissions should accrue only as the premiums were paid to the company." The company having discharged him from its service June 2, 1871, brought this suit to recover its moneys in his hands, and introduced evidence that he was indebted to it in a certain amount, and had been properly removed. Among other defences, he offered to show that a set-off existed in his favor for commissions collected and received by the company from May 1, 1871, to Dec. 23, 1871, and interest thereon. After having made proof of notice to the company to produce the books and papers necessary to show the amount of renewal premiums received by it from policies obtained through his agency during the period mentioned, and the books and papers not being produced, he testified that on June 2, 1871, there were policies in force upon which the annual premiums would be $87,000, as it appeared in his accounts with his sub-agencies, that his annual commissions upon the premiums would amount to $8,391.14, and that computing the amount which would be due to him, accruing between that date and Dec. 23, 1871, they amounted to about $4,754.97. No direct proof was given that any of the policies in force on May 1, 1871, or on June 2, 1871, had been renewed or extended, or that any of the annual premiums becoming payable after those dates had been paid to the company or received by it. The court instructed the jury, in effect, that if A. had been removed from his agency without just cause, they might find from this evidence what amount the company should have received of renewal premiums, but if they found that he had been justifiably removed, there was no proof for their consideration of the amount of renewal premiums received or collected, in the hands of the company, upon which he was entitled to commissions. *Held*, 1. That A. had no just ground of exception to the charge. 2. That the burden was on him to prove that the premiums had been *actually paid* to the company. *Manning* v. *Insurance Company*, 693.

3. It is error to submit to the jury to find a fact of which there is no competent evidence. *Id.*
4. The only presumptions of fact which the law recognizes are immediate inferences from the facts proved. *Id.*

COURT FILES AND PAPERS. See *Practice*, 10–12.

COURT OF CLAIMS.

1. Where the claim of a party for loss and damage growing out of the alleged failure of the United States to perform its contracts with

COURT OF CLAIMS (*continued*).

him, as to time and manner of payment, is, by a special act of Congress, referred to the Court of Claims, "to investigate the same, and to ascertain, determine, and adjudge the amount equitably due, if any, for such loss and damage," — *Held*, that the rules of law applicable to the adjudication of claims by that court in the exercise of its general jurisdiction must govern, and that interest, not having been stipulated for in the contracts, cannot be allowed thereon. *Tillson* v. *United States*, 43.

2. The limitation prescribed by the act of March 3, 1863 (12 Stat. 765), amendatory of an act establishing the Court of Claims, does not bar in that court claims referred to it for determination by the head of an executive department, provided they were presented for settlement at the proper department within six years after they had first accrued. *United States* v. *Lippitt*, 663.

3. Pursuant to orders, the colonel of a regiment reported, July 25, 1863, to the head-quarters of a department, there to "await further orders." While awaiting them, he was not furnished fuel or quarters. *Held*, that he is entitled to recover their commuted value. *Id.*

COURT-MARTIAL. See *Naval Court-Martial.*

COVENANTS. See *Swamp and Overflowed Lands*, 4.

CREDITORS. See *Municipal Corporations*, 3.

CRIMINAL LAW. See *Constitutional Law*, 2-5; *Limitations, Statute of*, 1.

A conspiracy to defraud the United States of the duties on certain imported goods is not "a crime arising under the revenue laws," and the persons charged therewith cannot be prosecuted therefor unless they be indicted within three years next after the alleged committing thereof. *United States* v. *Hirsch*, 33.

CROSS-EXAMINATION. See *Practice*, 15.

CUSTOMS DUTIES. See *Limitations, Statute of*, 1, 2.

1. In an action against a collector of customs, to recover duties alleged to have been wrongfully exacted upon chicory imported in 1873, it was not error for the court to charge the jury that ground chicory was the same thing as burnt chicory, and to submit to them to determine from the evidence, as a matter of fact, whether the imported article in question was a new preparation something other than ground chicory. *Arthur* v. *Herold*, 75.

2. In September, 1872, A. imported from India a product known as "jute rejections," upon which the collector of the port of Boston imposed a duty of ten per cent *ad valorem* under sect. 24 of the Tariff Act of March 2, 1861 (12 Stat. 196), as a non-enumerated manufactured article, and of five dollars per ton under sect. 11 of the act of July 14, 1862 (id. 554), as a vegetable substance not enumerated. A. paid the duty under protest and brought suit against the collector to recover the specific duty, five dollars per ton. The jury were

CUSTOMS DUTIES (*continued*).

instructed that it was for them to find "whether or not jute rejections were of a class of non-enumerated vegetable substances similar to the enumerated articles in sect. 11 of the act of July 14, 1862. If they were, then the duty was properly assessed; if not, then their verdict must be for the plaintiff." *Held*, that the instruction was proper. *Wills* v. *Russell*, 621.

DEBT, SITUS OF.

For the purposes of taxation, a debt has its *situs* at the residence of the creditor, and may be there taxed. *Kirtland* v. *Hotchkiss*, 491.

DEED. See *Mining Claim*, 4.

1. Where a trustee's sale is valid, the title passing thereunder should be conveyed to the purchaser by a deed properly made and acknowledged. *Clark* v. *Trust Company*, 149.
2. A condition in a deed conveying land that intoxicating liquors shall never be manufactured, sold, or otherwise disposed of as a beverage in any place of public resort thereon, and that if this condition be broken by the grantee, his assigns or legal representatives, the deed shall become null and void, and the title to the premises revert to the grantor, is not repugnant to the estate granted, nor is it unlawful or against public policy. *Cowell* v. *Springs Company*, 55.
3. Upon breach of the condition, the grantor has a right to treat the estate as having reverted, and, under a statute of Colorado, can maintain ejectment without a previous entry or a demand. *Id.*
4. In such a suit, the grantee is estopped from denying the validity of the title conveyed by the deed whereunder he took possession of the land. *Id.*

DEMAND. See *Bills of Exchange and Promissory Notes*, 3; *Official Bond, Action on.*

DEPARTMENTS, EXECUTIVE. See *Executive Departments, Clerks and Employés in.*

DEPUTY MARSHAL. See *Constitutional Law*, 25–33.

DISCOUNT. See *Bills of Exchange and Promissory Notes*, 2.

DISMISS, MOTION TO. See *Practice*, 4.

DISTRICT OF COLUMBIA.

1. In the District of Columbia, the legal rate of interest is six per cent per annum, but parties may, in writing, stipulate for any other rate not exceeding ten. *Holden* v. *Trust Company*, 72.
2. Where a party made there his promissory note, whereby he promised to pay a certain sum therein named, "with ten per cent interest," — *Held*, that interest should be computed at that rate up to the maturity of the note, and thereafter at six per cent. *Id.*

DISTRICT OF COLUMBIA, SUPREME COURT OF. See *Jurisdiction*, 3, 4.

EJECTMENT. See *Mandamus*, 1; *Mining Claim.*

ELECTION, SUPERVISOR OF. See *Constitutional Law*, 25-33.

ENFORCEMENT ACT. See *Constitutional Law*, 25-33.

EQUITY. See *Bills of Exchange and Promissory Notes*, 2; *Municipal Corporations*, 3; *Swamp and Overflowed Lands*, 3.

ESTOPPEL. See *Deed*, 4; *Lands, Action for Possession of.*

A., the owner in fee of lands in Michigan, died in February, 1853, leaving his two children B. and C. his only heirs-at-law. On March 3, C. and her husband conveyed the lands by warranty deed to D., who put it upon record March 6, 1854, and entered into possession of them April 1 of that year. D. learning of the existence of B., and that he lived in California, wrote to him, inquiring whether he made any claim to the premises. On April 1, 1856, the latter addressed from California to his sister C., in Michigan, a letter, wherein he said, "You can tell D. for me he need not fear any thing from me. . . . You can claim all there. This letter will be enough for him. I intended to give you and yours all my property there, and more if you need it." The contents of that letter becoming known to D., he, for a valuable consideration and by deeds with covenants of warranty, conveyed in fee the lands to E. and others, who thereunder have ever since occupied and improved them. July 9, 1865, B. conveyed the undivided half of them by quitclaim deed to F., who, March 6, 1873, brought ejectment. *Held*, 1. That B.'s letter of April 1, 1856, operates as an estoppel *in pais* which precludes him from setting up a claim to them, and is an available defence to the action. 2. That F. was not a *bona fide* purchaser, and that whatever title he acquired was subject to the legal and equitable rights of D. and those claiming under the latter. *Dickerson* v. *Colgrove*, 578.

EVIDENCE. See *Court and Jury*, 2; *Internal Revenue, Collector of.*

The admission of immaterial and irrelevant evidence, which it is manifest could not have affected injuriously the case of the plaintiff in error, does not entitle him to a reversal of the judgment. *Mining Company* v. *Taylor*, 37.

EXCEPTION. See *Exceptions, Bill of.*

EXCEPTIONS, BILL OF.

1. Where a party moving for a new trial assigns as reasons therefor that the verdict is not sustained by the evidence, and that the court erred in giving certain instructions and in refusing others, — *Held*, that, as he did not at the time except to the ruling of the court in regard to the instructions, they cannot be reviewed by the appellate court, although they are incorporated in the bill of exceptions allowed on the refusal of the court of original jurisdiction to grant a new trial. *Railway Company* v. *Twombly*, 78.
2. The Supreme Court of the Territory of Colorado, therefore, properly held that such a bill of exceptions only presented for review the refusal of the District Court, on the motion for a new trial, to set aside the verdict on the ground that it was not sustained by the

EXCEPTIONS, BILL OF (*continued*).
evidence. Such a question cannot be re-examined here on a writ of error. *Id.*

EXCISE TAX.
1. The tax on interest paid by corporations under sect. 122 of the internal-revenue law, as amended by the act of July 13, 1866 (14 Stat. 138), is an excise tax on their business, to be paid by them out of their earnings, income, and profits. *Railroad Company* v. *Collector*, 595.
2. In order that its payment might be secured, this tax was laid on the subjects to which these earnings were applied in the usual course of business of such corporations; namely, dividends, interest on funded debt, construction, or some reserve fund held by the company. *Id.*
3. Such a tax is not invalidated by the provision that the amount of it may be withheld from the dividend or the interest due or payable to the stockholder or the bondholder, who is a citizen or a subject of a foreign government, with no residence in this country. *Id.*

EXECUTION. See *Chattels, Contract for Sale of.*

EXECUTIVE DEPARTMENTS, CLERKS AND EMPLOYÉS IN.
1. Owing to the partial exhaustion of the appropriation, A., a clerk in the Treasury Department, was granted leave of absence without pay for five months from Feb. 1, 1874. He performed no service thereafter. His name was continued on the rolls to allow his transfer to some other bureau, should an opportunity offer. He was, June 30, informed in writing by the Secretary of the Treasury that his services had terminated January 31. *Held*, that he has no claim against the United States after the last-mentioned date. *United States* v. *Murray*, 536.
2. The joint resolution approved June 23, 1874 (18 Stat., part 3, p. 289), providing for two months' pay to clerks and employés of the executive departments at Washington, applied to such only as should be discharged at the close of the fiscal year by reason of the reductions made necessary by the legislation of that session of Congress. *Id.*

FACTS, AGREED STATEMENT OF. See *Jurisdiction*, 1.

FEDERAL QUESTION.
The decision of the Court of Appeals of the State of New York, that, in the absence of fraud or intentional wrong, the members of the board of assessors for the city of Albany are not personally liable in damages to a party for any error they commit in officially assessing his shares of national bank stock, does not present a Federal question, and cannot be reviewed here. *Williams* v. *Weaver*, 547.

FIRST AUDITOR OF THE TREASURY. See *Internal Revenue, Collector of.*

FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. See *Constitutional Law*, 6–9, 13–23.

FRANCHISES, ASSIGNMENT OF. See *Municipal Bonds*, 1, 2.

FRAUD. See *Practice*, 16, 17; *Passengers, General Carriers of*, 4.

Gross negligence on the part of a gratuitous bailee, though not a fraud, is in legal effect the same thing. *National Bank* v. *Graham*, 699.

FRIENDLY INDIANS, LIABILITY OF THE UNITED STATES TO, FOR PROPERTY STOLEN.

1. An Indian, whose property within the Indian country is stolen by a negro, is not entitled to any payment therefor out of the treasury of the United States. *United States* v. *Perryman*, 235.
2. The legislation touching the liability of the United States for the property of friendly Indians which is taken, injured, or destroyed, examined. *Id.*

FUEL, COMMUTATION OF.

Pursuant to orders, the colonel of a regiment reported, July 25, 1863, to the head-quarters of a department, there to "await further orders." While awaiting them, he was not furnished fuel or quarters. *Held*, that he is entitled to recover their commuted value. *United States* v. *Lippitt*, 663.

GAUGER. See *Internal Revenue, Collector of.*

GENERAL COURT-MARTIAL. See *Naval Court-martial.*

GRAND JURORS. See *Constitutional Law*, 20.

GRANT. See *Swamp and Overflowed Lands.*

GROUND CHICORY. See *Customs Duties*, 1.

GUADALUPE HIDALGO, TREATY OF. See *Pueblo Lands*, 2.

GUARANTY.

On the afternoon of Feb. 23, 1875, A. executed to a national bank in Cincinnati, Ohio, an instrument whereby he stipulated to guarantee and make good to said bank any sum or sums which might thereafter be held against B. to an amount not exceeding $50,000, and waived notice from time to time of the amount and extent of such indebtedness. On the morning of that day C. had presented for deposit therein a check to his order drawn on said bank by B. The bank, claiming that said check was within the terms of the guaranty, brought suit against A. to recover the amount thereof. The evidence of the plaintiff tending to show that pursuant to a general and notorious usage among the banks in Cincinnati, by which checks left in the morning by depositors were held until after business hours for the purpose of examining the accounts of the drawers, B.'s check was placed aside by the teller for such examination, and C. informed that it would not be placed to his credit unless found good, and that, on the part of the defendant, no such usage existed, and that C. had no knowledge or understanding in regard to said check except that it was received as a deposit by the bank when left there by him, — the court charged the jury that it was for them to determine whether

GUARANTY (*continued*).

at the time said check was left at the bank by C. it was offered as a deposit and so received. The jury so found. *Held*, 1. That the charge was not erroneous. 2. That the jury having found that said check was so offered and received, it was not a debt due by B. within the meaning of A.'s undertaking. 3. That in view of such finding the question of usage was immaterial. *National Bank* v. *Burkhardt*, 686.

HABEAS CORPUS, WRIT OF. See *Jurisdiction*, 6–10; *Naval Court-martial*, 2.

1. A., a judge of a county court in Virginia, charged by the law of that State with the selection of jurors to serve for the year 1878 in the circuit and county courts of his county, was, in the District Court of the United States for the Western District of Virginia, indicted for excluding and failing to select as grand jurors and petit jurors certain citizens of his county, of African race and black color, who, possessing all other qualifications prescribed by law, were excluded from the jury lists made out by him as such officer, on account of their race, color, and previous condition of servitude, and for no other reason, against the peace, &c., of the United States, and against the form of the statute in such case made and provided. Being in custody under that indictment, he presented to this court his petition for a writ of *habeas corpus* and a writ of *certiorari* to bring up the record of the inferior court, that he might be discharged, averring that the finding of the indictment, and his arrest and imprisonment thereunder, were unwarranted by the Constitution of the United States, in violation of his rights and the rights of the State of Virginia, whose judicial officer he is, and that the inferior court had no jurisdiction to proceed against him. A similar petition was presented by Virginia. *Held*, that while a writ of *habeas corpus* cannot generally be made to subserve the purposes of a writ of error, yet when a prisoner is held without any lawful authority, and by an order which an inferior court of the United States had no jurisdiction to make, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all. *Ex parte Virginia*, 339.
2. The appellate jurisdiction of this court, exercisible by the writ of *habeas corpus*, extends to a case of imprisonment upon conviction and sentence of a party by an inferior court of the United States, under and by virtue of an unconstitutional act of Congress, whether this court has jurisdiction to review the judgment of conviction by writ of error or not. *Ex parte Siebold*, 371.
3. The jurisdiction of this court by *habeas corpus*, when not restrained by some special law, extends generally to imprisonment pursuant to the judgment of an inferior tribunal of the United States which has no jurisdiction of the cause, or whose proceedings are otherwise void and not merely erroneous; and such a case occurs when the proceedings are had under an unconstitutional act. *Id.*

HABEAS CORPUS, WRIT OF (*continued*).

4. But when the court below has jurisdiction of the cause, and the matter charged is indictable under a constitutional law, any errors committed by the inferior court can only be reviewed by writ of error, and, of course, cannot be reviewed at all if no writ of error lies. *Id.*
5. Where personal liberty is concerned, the judgment of an inferior court affecting it is not so conclusive but that the question of its authority to try and imprison the party may be reviewed on *habeas corpus* by a superior court or judge having power to award the writ. *Id.*
6. Certain judges of election in the city of Baltimore, appointed under State laws, were convicted in the Circuit Court of the United States, under sects. 5515 and 5522 of the Revised Statutes of the United States, for interfering with and resisting the supervisors of election and deputy marshals of the United States in the performance of their duty at an election of representatives to Congress, under sects. 2016, 2017, 2021, 2022, title xxiv., of the Revised Statutes. *Held*, that the question of the constitutionality of said laws is good ground for the issue by this court of a writ of *habeas corpus* to inquire into the legality of the imprisonment under such conviction; and if the laws are determined to be unconstitutional, the prisoner should be discharged. *Id.*
7. The circuit courts have jurisdiction of indictments under these laws, and a sentence in pursuance of a verdict of condemnation is lawful cause of imprisonment, from which this court has no power to relieve on *habeas corpus*. *Id.*

HOLDER FOR VALUE. See *Bills of Exchange and Promissory Notes*, 1; *Municipal Bonds*, 4; *National Bank*, 1.

A creditor who before its maturity accepts a negotiable note, so indorsed that he becomes a party thereto, as collateral security for a pre-existing debt, in consideration of an extension of time granted to the debtor, is a holder for value, and his rights as such are not affected by equities between antecedent parties of which he had no notice. *Oates* v. *National Bank*, 239.

ILLINOIS. See *Comity*, 2–5.

IMPORTS, DUTIES ON. See *Customs Duties.*

INDIAN. See *Friendly Indians, Liability of the United States to, for Property Stolen.*

INDICTMENT. See *Causes, Removal of*, 2; *Constitutional Law*, 19–23 *Jurisdiction*, 6–9.

INFERENCE. See *Presumption.*

INSANITY. See *Life Insurance*, 1.

INSURANCE. See *Life Insurance*

INSURER. See *Passengers, General Carriers of.*

INTEREST. See *Court of Claims*, 1; *Official Bond, Action on; Receiver, National Bank*, 1.

1. In the District of Columbia, the legal rate of interest is six per cent per annum, but parties may, in writing, stipulate for any other rate not exceeding ten. *Holden* v. *Trust Company*, 72.
2. Where a party made there his promissory note, whereby he promised to pay a certain sum therein named, "with ten per cent interest," —*Held*, that interest per annum at that rate should be computed up to the maturity of the note, and thereafter at six per cent. *Id.*

INTERNAL REVENUE. See *Excise Tax.*

1. Manufactured tobacco shipped in bond from the manufactory and stored in an export bonded warehouse on the 14th of June, 1872, was subject to the tax of thirty-two cents per pound, prescribed by the Internal Revenue Act of July 20, 1868. 15 Stat. 152. *Jones* v. *Blackwell*, 599.
2. The "Argilite Mining and Manufacturing Company" was incorporated by an act of the General Assembly of Kentucky passed March 4, 1865. Its name, by an amendment to the charter, was changed to the "Kentucky Improvement Company," and it was authorized to "construct one or more rail tracks from any lands owned or improved by said corporation to convenient points on the Ohio or Little Sandy River, or both, or to connect with other railways, and to maintain said track or tracks, and to draw cars over the same by suitable motive power." For the "construction and convenient and proper use and maintenance of such railroads" the company was authorized to condemn and appropriate the necessary lands and materials. Pursuant to said authority, the company built and equipped a railroad, and on Aug. 15, 1866, issued in payment therefor its six per cent coupon bonds to the amount of $500,000, secured by mortgage on its landed property and improvements. The road was finished in June, 1868, and thereafter the company transported over it its own freight, officers, and agents, and in addition thereto, though not in terms so authorized by the charter, from time to time other passengers and freight for hire. *Held*, that the company was, within the meaning of the ninth section of the act of July 13, 1866 (14 Stat. 138), a railroad company, and as such, for the year 1870, liable to the tax of five per cent on coupons thereby imposed. *Improvement Company* v. *Slack*, 648.

INTERNAL REVENUE, COLLECTOR OF.

Debt on the bond of a collector of internal revenue, bearing date Jan. 12, 1867. *Held*, 1. That the audit of his accounts was the duty of the First Auditor. 2. That the settlement of them, as the same appears by the transcript from the books of the Treasury Department, duly certified and authenticated, is *prima facie* evidence of the balance thereby shown, and it is competent for the accounting officer to correct mistakes and restate the balance. 3. That the

INTERNAL REVENUE, COLLECTOR OF (*continued*).

sureties are liable for the gauger's fees received by the collector.
4. Where a bond given by the latter is objectionable in point of form, the direction of the Commissioner of Internal Revenue to execute a new one must be considered as that of the Secretary of the Treasury, and the bond given in compliance therewith cannot be considered as having been extorted from the collector and his sureties contrary to the statute. *Soule* v. *United States*, 8.

INVALID PENSIONERS. See *Soldiers' Home.*

IOWA. See *Swamp and Overflowed Lands.*

Under the laws of Iowa, a mechanic's lien for work done under a contract takes precedence of all incumbrances put on the property by mortgage or otherwise, after the work was commenced. *Removal Cases*, 457.

JUDGMENT. See *Judicial Mortgage.*

JUDICIAL COMITY. See *Comity.*

JUDICIAL DISCRETION. See *Mandamus*, 2; *Review, Bill of.*

JUDICIAL MORTGAGE.

In Louisiana, if a person dies pending suit against him, and the proceedings are continued by his heirs becoming parties, the judgment should be against his succession or them; if, without reference to the revival of the suit, it be entered only against the deceased *eo nomine*, and be so recorded, it is, as a judicial mortgage, void against third persons. *Montgomery* v. *Sawyer*, 571.

JURISDICTION. See *Federal Question*, 3; *Habeas Corpus, Writ of*, 1; *Jury, Waiver of; Officer of the Army*, 3; *Naval Court-martial*, 2; *New Trial*, 2; *Writ of Error*, 2.

I. OF THE SUPREME COURT.

1. Where, by an agreed statement of facts in the nature of a special verdict, the plaintiff's claim was admitted by the defendant, except $3,134.20, — *Held*, that that sum was the amount actually in dispute, and although judgment was entered below for the entire claim, exceeding $5,000, the writ of error from this court must be dismissed for want of jurisdiction. *Tintsman* v. *National Bank*, 6.
2. This court cannot on writ of error re-examine the decision of the Supreme Court of the Territory of Colorado that the only question presented there for review by the bill of exceptions, was the refusal of the District Court, on the motion for a new trial, to set aside the verdict, on the ground that it was not sustained by the evidence. *Railway Company* v. *Twombly*, 78.
3. Where a judgment for the recovery of money, affirmed in the Supreme Court of the District of Columbia, is brought here for re-examination, the amount thereof, without adding interest or costs, determines the value of "the matter in dispute," under the act of Feb. 25, 1879

JURISDICTION (*continued*).

(20 Stat. 320), and, if it does not exceed $2,500, this court has no jurisdiction. *Railroad Company* v. *Trook*, 112.

4. A bill filed in the Supreme Court of the District of Columbia by A. against B. and C., alleging that each held certificates of indebtedness belonging to him, was, on final hearing, dismissed, and he appealed. *Held*, that, as the recovery, if any, must be against the defendants severally, and as the amount claimed from each does not exceed $2,500, this court has no jurisdiction. *Paving Company* v. *Mulford*, 147.

5. On the trial of a cause, when the judges of the Circuit Court are opposed in opinion on a material question of law, the opinion of the presiding judge prevails; but the judgment rendered conformably thereto may, without regard to its amount, be reviewed on a writ of error, upon their certificate stating such question. *Dow* v. *Johnson*, 158.

6. The appellate jurisdiction of this court, exercisible by the writ of *habeas corpus*, extends to a case of imprisonment upon conviction and sentence of a party by an inferior court of the United States, under and by virtue of an unconstitutional act of Congress, whether this court has jurisdiction to review the judgment of conviction by writ of error or not. *Ex parte Siebold*, 371.

7. The jurisdiction of this court by *habeas corpus*, when not restrained by some special law, extends generally to imprisonment pursuant to the judgment of an inferior tribunal of the United States which has no jurisdiction of the cause, or whose proceedings are otherwise void and not merely erroneous; and such a case occurs when the proceedings are had under an unconstitutional act. *Id.*

8. But when the court below has jurisdiction of the cause, and the matter charged is indictable under a constitutional law, any errors committed by the inferior court can only be reviewed by writ of error; and, of course, cannot be reviewed at all if no writ of error lies. *Id.*

9. Where personal liberty is concerned, the judgment of an inferior court affecting it is not so conclusive but that the question of its authority to try and imprison the party may be reviewed on *habeas ocrpus* by a superior court or judge having power to award the writ. *Id.*

10. An officer of election, at an election for a representative to Congress in the city of Cincinnati, was convicted of a misdemeanor in the Circuit Court of the United States, under sect. 5515 of the Revised Statutes, for a violation of the law of Ohio, in not conveying the ballot-box, after it had been sealed up and delivered to him for that purpose, to the county clerk, and for allowing it to be broken open. *Held*, 1. That, in such a case, a *habeas corpus* for discharge from imprisonment under the conviction was rightfully issued by a justice of this court, returnable before himself; and he had the right, if it could be done without injury to the prisoner, to refer the matter to this court for its determination, it being a case which involved the exercise of appellate jurisdiction. 2. That had the case involved

JURISDICTION (*continued*).

original jurisdiction only, this court could not have taken jurisdiction of it. *Ex parte Clarke*, 399.

11. Where in replevin judgment was rendered in favor of the plaintiff for a portion of the property delivered under the writ, and in favor of the defendant for a return of the residue, or its value, the same not being $5,000, and the plaintiff sued out a writ of error to this court, — *Held*, that the writ must be dismissed for want of jurisdiction. *Pierce* v. *Wade*, 444.
12. This court has no jurisdiction to review the judgment of the Supreme Court of the Territory of Wyoming, unless the record shows that the matter actually in dispute exceeds $1,000 *Nagle* v. *Rutledge*, 675.

II. Of the Circuit Courts.

13. A receiver appointed by a State court in a suit which, under the act of March 3, 1875 (18 Stat., part 3, 470), was subsequently removed to the Circuit Court of the United States, reported to the latter, stating the amount of the fund in his hands, and asking for an order to pay therefrom certain liabilities. *Held*, that the Circuit Court had authority to require him to account for the fund, and that he is chargeable with interest on so much thereof as he on receiving deposited in a bank to his credit as receiver, and then withdrew and deposited on his private account in another bank, he declining to explain the transaction, when he was examined as a witness by the master to whom the court had referred his accounts. *Hinckley* v. *Railroad Company*, 153.
14. The Circuit Courts have jurisdiction of indictments under sects. 2011, 2012, 2016, 2017, 2021, 2022, 5515, and 5522 of the Revised Statutes, these being the laws provided in the Enforcement Act of May 31, 1870, and the supplement thereto of Feb. 28, 1871, for supervising the elections of representatives, and for preventing frauds therein. *Ex parte Siebold*, 371.

JURORS. See *Constitutional Law*, 18, 19, 20, 23.

JURY, WAIVER OF.

The concluding clause of the third section of the act entitled "An Act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875 (18 Stat., part 3, 470), does not repeal the provision of the Revised Statutes authorizing the court to try, upon the stipulation of parties, issues of fact without the intervention of a jury. *Phillips* v. *Moore*, 208.

LANDS, ACTION FOR POSSESSION OF.

1. By the law of Texas, a judgment against a plaintiff in an action for the possession of lands is conclusive, unless he commence a second action within a year. *Held*, that, in an action for the same lands commenced within the year by the former defendant against the grantees of the former plaintiff, the latter are not precluded by that

LANDS, ACTION FOR POSSESSION OF (*continued*).

judgment from setting up their claim to them. *Brownsville* v. *Cavazos*, 138.

2. Where, up to the commencement of the action, a mixed possession of the land, and a continued litigation respecting it, existed, and there was no actual occupation of a large portion of it, — *Held*, that no prescription could be maintained by either party, and that the case must be determined on the documentary evidence of title. *Id.*

LANDS, ALIENATION OF. See *Lien.*

LANDS, PATENT OF THE UNITED STATES FOR. See *Patent of the United States for Lands.*

LANDS, SALE OF, BY TRUSTEE.

1. If duly advertised, and fairly and properly conducted, a trustee's public sale of lands to a corporation which was the payee of the note secured by the deed of trust will not be set aside merely upon the ground that they brought a grossly inadequate price, and that he then and at the date of the deed was the actuary of the corporation, if the deed was made to him as an individual, and he, as such, and not in his official capacity, accepted and executed the trust thereby conferred. *Clark* v. *Trust Company*, 149.

2. Where a trustee's sale is valid, the title passing thereunder should be conveyed to the purchaser by a deed properly made and acknowledged. *Id.*

LAW MERCHANT. See *Bills of Exchange and Promissory Notes*, 1.

LEGISLATIVE INTENT. See *Statutes, Construction of*, 1.

LETTERS-PATENT. See *Practice*, 12.

1. Where letters-patent expired before the final determination of the suit brought by the patentee complaining of the infringement of them, and praying for an injunction and an account, and the court below, by its decree, sustained their validity and awarded him costs, but neither damages nor profits, and the defendant appealed here, this court, as the only question now involved is that of costs, affirms the decree without examining the merits. *Elastic Fabrics Company* v. *Smith*, 110.

2. Where such letters had been reissued in separate divisions, and the patentee filed in the Patent Office a disclaimer in regard to one of them, after bringing a suit for the infringement of the others, the validity of which was sustained, and the fact of infringement found by the court below, — *Held*, that sect. 4922, Rev. Stat., has no application to the case, and that he is entitled to costs. *Id.*

3. A. held letters-patent for making side-saddle trees. The tree, composed of side-bars, cantle behind, and crook before, is first made, and the seat constructed separately on a rim and fastened to the tree by screws, resting on the crook, and on supports attached to the side-bars in the middle and at the rear. This construction, it was claimed, simplifies and cheapens the manufacture, and leaves

LETTERS-PATENT (*continued*).

a space for air under the seat. The claim is as follows: "As a new article of manufacture, a side-saddle tree, having the side-bars and seat made separate and then united, substantially as and for the purpose shown and specified." The side-saddle tree constructed according to the letters-patent subsequently granted to B. does not have the side-bars and seat made separate and then united. Tough strips of wood, steamed and bent to a proper shape, are attached to the tree, as a part thereof, forming side-rails for the seat; that on the right or off side extending from the cantle to the crook, and that on the left or near side, from the cantle to a point on the near side-bar some distance back of the crook. The seat is stretched over these strips or side-rails. *Held*, that the advantage of separate construction claimed by A. was not attained by B.'s letters-patent, and that the invention of the latter is not an infringement of A.'s letters-patent. *Burns* v. *Meyer*, 671.

4. Courts should not by construction enlarge the claim which the Patent Office has admitted, and the patentee acquiesced in, beyond the fair interpretation of its terms. *Id.*

LIEN. *See Collateral Security*, 2; *Mechanic's Lien; National Bank*, 2.

1. Where real estate bound by a judgment or a mortgage has been alienated in separate parcels to various persons at different times, such parcels should be subjected to the satisfaction of the lien in the inverse order of their alienation. *Savings Bank* v. *Creswell*, 630.
2. The English and the American authorities on the subject considered and reviewed. *Id.*

LIFE INSURANCE.

1. An application made by A. to an insurance company, upon which a policy on his life was issued for the benefit of his wife, contains a stipulation that his statements therein "shall form the basis of the contract," and that any untrue or fraudulent answers, any suppression of facts in regard to his health, habits, or circumstances material to the risk, "shall vitiate the policy and forfeit all payments thereon." In reply to a question as to whether certain of his relatives had any hereditary disease, he answered, "No hereditary taint of any kind in family on either side of house, to my knowledge." A. having died, his widow brought suit and made out her case. The company then proved that B., an uncle of A., had been insane for more that a year preceding his death, and had died in an insane asylum upwards of twenty years before the date of A.'s application. The jury were instructed to find for the plaintiff. *Held*, 1. That the instruction was proper. 2. That, to maintain its defence, the company was bound to prove, not only the insanity of B., but that it was hereditary, and that both facts were known to A. when he answered the question. *Insurance Company* v. *Gridley*, 614.
2. *National Bank* v. *Insurance Company* (95 U. S. 673) cited and approved. *Id.*

LIMITATIONS, STATUTE OF. See *Court of Claims*, 2; *Lands, Action for Possession of; Mining Claim*, 2; *National Bank*, 2; *Nevada, Statute of Limitations of.*

1. A period of less than five years will not bar a prosecution for effecting an entry of goods at the custom-house by a fraudulent invoice of them, and a false classification as to their quality and value. *United States* v. *Hirsch*, 33.
2. A conspiracy to defraud the United States of the duties on certain imported goods is not "a crime arising under the revenue laws," and the persons charged therewith cannot be prosecuted therefor unless they be indicted within three years next after the alleged committing thereof. *Id.*
3. The statute of California which provides that no action for the recovery of real estate sold by order of a probate court "shall be maintained by any heir or other person claiming under the intestate," unless brought within three years after such sale, applies to the administrator who made the sale as well as to the heirs. *Meeks* v. *Olpherts*, 564.
4. When by lapse of time the action is barred against him, it is also barred against them, because the right of possession is, by the law of California, in him, and he represents their interests. *Id.*

LIS PENDENS.

A *bona fide* purchaser of negotiable securities before their maturity is not affected with constructive notice of a suit respecting them. *County of Warren* v. *Marcy* (97 U. S. 107) cited on this point and approved. *County of Cass* v. *Gillett*, 585.

LOUISIANA. See *Judicial Mortgage*.

MANDAMUS.

1. In ejectment, where A., B., and the other defendants were respectively in the separate possession of specific parcels of the land, judgment was rendered against them for the recovery thereof and costs of suit, and also against each for damages for withholding the parcel whereof he was in possession, which exceed in the aggregate $6,000. A writ of error was sued out by all the defendants. A. and B., to render it a *supersedeas* of the judgment against them, severally gave a bond, which was duly approved and accepted. The court below thereupon ordered that the proceedings on the judgment as to A. and B. be stayed, and that a writ of restitution and execution be issued against the remaining defendants. *Held*, that a *mandamus* directing that the judgment be carried into execution against all the defendants would not lie. *Ex parte French*, 1.
2. A *mandamus* does not lie to control judicial discretion, except when that discretion has been abused. But it may be used as a remedy where the case is outside of that discretion and outside the jurisdiction of the court or officer to which or to whom the writ is directed. One of its peculiar and more common uses is to restrain inferior courts, and keep them within their lawful bounds. *Virginia* v. *Rives*, 313.

MANUFACTURED TOBACCO.

Manufactured tobacco shipped in bond from the manufactory and stored in an export bonded warehouse on the 14th of June, 1872, was subject to the tax of thirty-two cents per pound, prescribed by the internal-revenue act of July 20, 1868. 15 Stat. 152. *Jones* v *Blackwell*, 599.

MARSHAL. See *Constitutional Law*, 25–33.

MASTER AND SERVANT.

1. The general rule exempting the common master, whether a natural person or a corporation, from liability to a servant for injuries caused by the negligence of a fellow-servant recognized and considered. *Hough* v. *Railway Company*, 213.
2. To that rule there are well-defined exceptions, one of which arises from the obligation of the master not to expose the servants, when conducting his business, to perils or hazards against which they may be guarded by proper diligence upon his part. *Id.*
3. Therefore, although his liability to them is not that of a guarantor of the absolute safety or perfection of the machinery or other apparatus provided for their use, he is bound to exercise the care which the exigency reasonably requires, in furnishing such as is adequate and suitable. *Id.*
4. A railroad company is liable when its officers or agents who are invested with a controlling or superior duty in that regard are, in discharging it, guilty of negligence, from which injury to an innocent party results. *Id.*
5. If the servant of such a company who has knowledge of defects in machinery gives notice thereof to the proper officer, and is promised that they shall be remedied, his subsequent use of it, in the well-grounded belief that it will be put in proper condition within a reasonable time, does not necessarily, or as matter of law, make him guilty of contributory negligence. It is a question for the jury whether, in relying upon such promise, and using the machinery after he knew its defective or insufficient condition, he was in the exercise of due care. The burden of proof, in such a case, is upon the company to show contributory negligence. *Id.*

MECHANIC'S LIEN. See *Collateral Security*, 2.

Under the laws of Iowa, a mechanic's lien for work done under a contract takes precedence of all incumbrances put on the property by mortgage or otherwise, after the work was commenced. *Removal Cases*, 457.

MEXICO. See *Pueblo Lands; Texas, Sale of Lands in.*

MINING CLAIM.

1. In ejectment for an undivided interest in a mining claim in Nevada, where both parties derive title from the original owner, the validity

MINING CLAIM (*continued*).

and regularity of his location are not in question. ***Mining Company*** v. *Taylor*, 37.

2. Where the plaintiff was a tenant in common with the defendants, their possession of the claim was his possession until he was ousted. The Statute of Limitations would then run against him, but not bar his recovery, unless, after such ouster, their adverse possession was maintained two years before the commencement of the suit. *Id.*
3. Where the Circuit Court, under a written stipulation of the parties, tries the issue, its special finding should set forth the ultimate facts, and not the evidence establishing them. Where, therefore, both parties claimed under A., and the court found his ownership, the chain of conveyances by which he acquired it need not be set forth. *Id.*
4. A conveyance in writing is not necessary to the valid transfer of a mining claim. *Id.*

MISSOURI, CONSTITUTION OF. See *Municipal Bonds*, 1.

MORTGAGE. See *Mechanic's Lien; Trust and Trustee; Vessel, Mortgage of.*

MUNICIPAL BONDS. See *Comity*, 3-5.

1. The court adheres to its ruling in *County of Henry* v. *Nicolay* (95 U. S. 619), that the provisions of sect. 14, art. 11, of the Constitution adopted by Missouri in 1865, which require the assent of two-thirds of the qualified voters of a county to a subscription on its behalf for stock in a corporation, do not apply to cases where such subscription is made for stock in a railroad company pursuant to the power conferred by its charter granted prior to the adoption of that Constitution, notwithstanding the contemplated road is a branch road, the construction of which, although authorized by such charter, is undertaken as an independent enterprise under the act of March 21, 1868, entitled " An Act to aid in the building of branch railroads in the State of Missouri." *County of Cass* v. *Gillett*, 585.
2. Where the company authorized a committee to take charge of the construction of such road, and solicit subscriptions in the name of the company to the use of such branch, and it subsequently assigned a portion of its franchises to another company, — *Held*, that the branch being thus organized and invested with the powers and privileges conferred by the charter of the company to enable it to prosecute the work, a subscription by a county through which such road passed is not rendered invalid by the fact that when made such partial assignment by the company of its franchises had taken place. *Id.*
3. Where the county court made an order to subscribe to the capital stock of the company for the use of one of its branches, and issued county bonds which were accepted by the construction committee,

MUNICIPAL BONDS (*continued*).

in payment, — *Held*, that an actual manual subscription on the books of the company was not necessary to entitle the county to the stock, or to bind it as a subscriber thereto. *Id.*

4. A *bona fide* purchaser of negotiable securities before their maturity is not affected with constructive notice of a suit respecting them. *County of Warren* v. *Marcy* (97 U. S. 107) cited on this point and approved. *Id.*

MUNICIPAL CORPORATIONS.

1. Where no constitutional restriction is imposed, the corporate existence and powers of counties, cities, and towns are subject to the legislative control of the State creating them. *Mount Pleasant* v. *Beckwith*, 514.
2. Where a municipal corporation is legislated out of existence and its territory annexed to other corporations, the latter, unless the legislature otherwise provides, become entitled to all its property and immunities, and severally liable for a proportionate share of all its then subsisting legal debts, and are vested with its power to raise revenue wherewith to pay them by levying taxes upon the property transferred and the persons residing thereon. *Id.*
3. The remedy of the creditors of the extinguished corporation is in equity against the corporations succeeding to its property and powers. *Id.*

NATIONAL BANK. See *Federal Question.*

1. At the request of its debtor, a national bank in Alabama gave him further time, in consideration of his transferring, before maturity, a negotiable note, as collateral security, and paying in advance usurious interest, for the period of extension. The note was so indorsed as to make the bank a party to the instrument, responsible for its due presentation, and for due notice of non-payment. The consideration being in part legal and in part vicious, it was *held*, 1st, that the former was itself sufficient to sustain the contract of extension and transfer, and to constitute the bank a holder for value; 2d, that the National Banking Act subjects the bank to liability for taking usurious interest, but does not declare the contract of indorsement void, and that no such penalty being prescribed, the courts cannot superadd it. *Oates* v. *National Bank*, 239.
2. A., in order to secure the payment of his note to B., pledged to the latter certain shares of the capital stock of a national bank in Louisiana, with authority to sell them in default of such payment. Default having been made, B. sold them, and in March, 1873, applied to the cashier of the bank to have them transferred on its books. That officer refused to allow the transfer, on the ground that A. was indebted to the bank. Before the transfer could be enforced, the bank failed, and C. was appointed a receiver, against whom B., Feb. 24, 1876, brought this action to recover damages for the loss sustained by him. It does not appear that the bank ever adopted any by-law providing for a lien on the shares of a stockholder in-

NATIONAL BANK (*continued*).

debted to it, or that A.'s debt to it had been contracted before his stock was pledged to B. *Held*, 1. That the action is not prescribed by the limitation of one year. 2. That the cashier having been intrusted by the directors of the bank with the transfers of stock, his refusal to permit the transfer was the refusal of the bank. 3. That judgment having been rendered, the court below had power to order C. to pay the claim, or certify it to the comptroller. *Case* v. *Bank*, 446.

3. The provision in sect. 5219 of the Revised Statutes of the United States, that State taxation on the shares of any national banking association shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of the State, has reference to the entire process of assessment, and includes the valuation of the shares as well as the rate of percentage charged thereon. *People* v. *Weaver*, 539.
4. The statute of a State, therefore, which establishes a mode of assessment by which such shares are valued higher in proportion to their real value than other moneyed capital, is in conflict with that section, although no greater percentage is levied on such valuation than on that of other moneyed capital. *Id.*
5. The statutes of New York which permit a party to deduct his just debts from the valuation of all his personal property, except so much thereof as consists of such shares, tax them at a greater rate than other moneyed capital, and are, therefore, void as to them. *Id.*
6. A national bank is liable for damages occasioned by the loss, through gross negligence, of a special deposit made in it with the knowledge and acquiescence of its officers and directors. *National Bank* v. *Graham*, 699.
7. Gross negligence on the part of a gratuitous bailee, though not a fraud, is in legal effect the same thing. *Id.*
8. The doctrine of *ultra vires* has no application in favor of corporations for wrongs committed by them. *Id.*
9. Sect. 5228 of the Revised Statutes, which provides that it shall be lawful for a national bank after its failure to "deliver special deposits," is as effectual a recognition of its power to receive them as an express declaration to that effect would have been. *Id.*
10. The phrase "special deposits," so employed, embraces the public securities of the United States. *Id.*

NAVAL COURT-MARTIAL.

1. Where, pursuant to the "regulations for the administration of law and justice" in the naval service, a general court-martial is duly ordered, the officer clothed with the revising authority may, before it is dissolved, direct it to reconsider its proceedings and sentence; and if it, upon being reconvened, renders a sentence which he approves, such sentence cannot be collaterally impeached for mere errors or irregularities, if any such were committed by the court while acting within the sphere of its authority. *Ex parte Reed*. 13

NAVAL COURT-MARTIAL (*continued*).

2. A., the clerk of a paymaster in the navy, was, by a court-martial, found guilty of certain charges and specifications of malfeasance in the discharge of his official duties. Sentence was passed upon him, and transmitted, with the record, to the revising officer, who returned it with a letter stating that the finding was in accordance with the evidence, but that he differed with the court as to the adequacy of the sentence. The court proceeded to revise it, and, after revoking it, substituted another, which he approved, inflicting upon A. a severer punishment. A., who was imprisoned pursuant thereto, alleging that it was illegal and void, and that he was thereby unlawfully deprived of his liberty, prayed for a writ of *habeas corpus*. *Held*, that the court-martial had jurisdiction of the person and of the subject-matter, and was competent to pass the sentence whereof A. complained. *Id.*

NAVAL PAYMASTER, CLERK OF. See *Naval Court-martial*, 2.

The regularly appointed clerk of a paymaster in the navy is a "person in the naval service of the United States," within the meaning of art. 14, sect. 1624, of the Revised Statutes, and, for a violation of its provisions, is subject to be tried, convicted, and sentenced by a naval general court-martial. *Ex parte Reed*, 13.

NAVY.

The "regulations for the administration of law and justice" in the naval service, established by the Secretary of the Navy with the approval of the President, have the force of law. *Ex parte Reed*, 13.

NEGLIGENCE. See *Master and Servant; National Bank*, 6, 7.

NEGOTIABLE SECURITIES. See *Bills of Exchange and Promissory Notes; Lis Pendens.*

NEGRO, PROPERTY OF FRIENDLY INDIANS STOLEN BY. See *Friendly Indians, Liability of the United States to, for Property stolen.*

NEVADA. See *Mining Claim.*

NEVADA, STATUTE OF LIMITATIONS OF. See *Mining Claim*, 2.

The Statute of Limitations of Nevada, as construed by the Supreme Court of the State, excepts from its protection a foreign corporation *Mining Company* v. *Taylor*, 37.

NEW TRIAL.

1. Where a party moving for a new trial assigns as reasons therefor that the verdict is not sustained by the evidence, and that the court erred in giving certain instructions and in refusing others, — *Held*, that, as he did not at the time except to the ruling of the court in regard to the instructions, they cannot be reviewed by the appellate court, although they are incorporated in the bill of exceptions allowed on the refusal of the court of original jurisdiction to grant a new trial. *Railway Company* v. *Twombly*, 78.

NEW TRIAL (*continued*).

2. The Supreme Court of the Territory of Colorado, therefore, properly held that such a bill of exceptions only presented for review the refusal of the District Court, on the motion for a new trial, to set aside the verdict on the ground that it was not sustained by the evidence. Such a question cannot be re-examined here on a writ of error. *Id.*

NEW YORK. See *Taxation*, 5, 6.

NOTARY, DEMAND OF PAYMENT BY. See *Bills of Exchange and Promissory Notes*, 3.

NOTICE. See *Bills of Exchange and Promissory Notes*, 3; *Lis Pendens.*

OFFICE, SUSPENSION FROM.

April 20, 1867, the President duly commissioned A. as deputy postmaster at Nashville, Tenn., for the term of four years, "subject to the conditions prescribed by law," and May 5, 1869, under the act of April 5, 1869 (16 Stat. 6), signed an order suspending him from office until the end of the next session of the Senate, and designating B. to perform the duties of that office. A. delivered the office to B. May 27, 1869. The nomination of B. was sent to the Senate at its next session, which terminated July 15, 1870, and on that date it was rejected. Pursuant to instructions from the Post-office Department, A. took possession of said office July 25, 1870. B., when holding the office, received the salary. A. brought suit therefor against the United States. *Held*, that he was not entitled to recover. *Embry* v. *United States*, 680.

OFFICER OF THE ARMY.

1. An officer of the army of the United States, whilst serving in the enemy's country during the rebellion, was not liable to an action in the courts of that country for injuries resulting from his military orders or acts; nor could he be required to justify or explain them in a civil tribunal upon any allegation of the injured party that they were not justified by military necessity. He was subject to the laws of war, and amenable only to his own government. *Dow* v. *Johnson*, 158.
2. When any portion of the insurgent States was in the military occupation of the United States during the rebellion, their municipal laws, if not suspended or superseded, were generally administered by the ordinary tribunals for the protection and benefit of the inhabitants and others not in the military service. Their continued enforcement was not for the protection or control of officers or soldiers of the army. *Id.*
3. A district court of Louisiana — continued in existence after the military occupation of the country by the United States, and authorized by the commanding general to hear causes between parties — summoned a brigadier-general of the army of the United States to answer a petition filed therein, setting forth that a military company

OFFICER OF THE ARMY (*continued*).

had, pursuant to his order, seized and carried off certain personal property of the plaintiff, who alleged that the seizure was unauthorized by the necessities of war, or martial law, or by the superiors of that officer. Judgment by default was rendered April 9, 1863, against him for the value of the property. When sued in the Circuit Court of the United States, upon the judgment, he pleaded that the property was taken to supply the army. *Held*, on demurrer to the plea, that the State court had no jurisdiction of the alleged cause of action, and that its judgment was void. *Id.*

OFFICIAL BOND, ACTION ON.

The United States, in an action against the sureties of a paymaster in the army, assigned as the breach of the conditions of his official bond that he did not, when thereunto required, refund $3,320.02, with interest. He rendered his account Nov. 30, 1865, when he left the service, and shortly thereafter died. On the subsequent adjustment of his account at the Treasury Department, that sum was found to be due at said date. No demand therefor was made of his personal representatives, and the sureties had no notice of the claim before the service of the writ in the action. The adjustment was the only evidence of the sum due. *Held*, that the United States is entitled to recover that sum, but with interest only from the date of such service. *United States* v. *Curtis*, 119.

PARTIES. See *Trust and Trustee.*

PASSENGERS, GENERAL CARRIERS OF.

1. It is competent for general carriers of passengers, by specific regulations, distinctly brought to the knowledge of the passenger, which are reasonable, and not inconsistent with a statute or their duties to the public, to protect themselves against liability, as insurers of his baggage which exceeds a fixed amount in value, except upon additional compensation proportioned to the risk. *Railroad Company* v. *Fraloff*, 24.
2. As a condition precedent to a contract for its transportation, they may require information from him as to its value, and demand *extra* compensation for any excess beyond that which he may reasonably demand to be transported as baggage under the contract to carry the person. *Id.*
3 They may be discharged from liability for its full value, if he, by any device or artifice, evades inquiry as to such value, whereby a responsibility is imposed upon them beyond what they are bound to assume in consideration of the ordinary fare charged for the transportation of the person. *Id.*
4. In the absence of legislation, or of special regulations by the carriers, or of conduct by him misleading them as to such value, his failure to disclose it when no inquiry is made of him, is not, in itself, a fraud upon them. *Id.*
5. To the extent that articles taken by him for his personal use when travelling exceed in quantity and value such as are ordinarily o

PASSENGERS, GENERAL CARRIERS OF (*continued*).
usually taken by passengers of like station and pursuing like journeys, they are not baggage for which the carriers are, by general law, responsible as insurers. *Id.*
6. Whether he has taken such an excess of baggage is a question not of law for the sole or the final determination of the court, but of fact for the jury, under proper guidance as to the law of the case. Their determination of it upon the evidence — no error of law appearing — is not subject to re-examination here. *Id.*
7. Sect. 4281, Rev. Stat., has no reference to the liability of carriers by land for the baggage of passengers. *Id.*

PATENT OFFICE, REGISTRATION OF TRADE-MARKS IN.
See *Trade-marks.*

PATENT OF THE UNITED STATES FOR LANDS.
When a patent issued by the United States adds to the name of the patentee the word "trustee," without mention of any trust upon which he is to hold the land, such addition does not prevent the legal title from passing by the patentee's conveyance. If a trust be in fact created, it is for the *cestui que trust*, and no one else, to complain of the non-execution thereof. *Cowell* v. *Springs Company*, 55.

PAYMASTER IN THE ARMY. See *Official Bond, Action on.*

PAYMENT, DEMAND OF. See *Bills of Exchange and Promissory Notes*, 3; *Official Bond, Action on.*

PLEADING. See *Practice*, 5; *Rebellion, The*, 3.

POSSESSION, DELIVERY OF. See *Chattels, Contract for Sale of.*

PRACTICE. See *Comity*, 1, 2; *Court and Jury; Habeas Corpus, Writ of*, 1; *Jurisdiction*, 2–5; *New Trial; Review, Bill of.*
1. For the purposes of an appeal to, or a writ of error from, this court, the transcript of the record is sufficiently authenticated, if it be sealed with the seal of the court below, and signed by the deputy clerk thereof in the name of and for his principal. *Garneau* v. *Dozier*, 7.
2. Where the Circuit Court, under a written stipulation of the parties, tries the issue, its special finding should set forth the ultimate facts, and not the evidence establishing them. *Mining Company* v. *Taylor*, 37.
3. The admission of immaterial and irrelevant evidence, which it is manifest could not have affected injuriously the case of the plaintiff in error, does not entitle him to a reversal of the judgment. *Id.*
4. Where the record has not been printed, a motion to dismiss an appeal or a writ of error will not be considered where there is any question about the facts on which the motion rests. *National Bank* v. *Insurance Company*, 43.
5. In the courts of the United States, the union of equitable and legal causes of action in one suit is forbidden by the second section of the Process Act of May 8, 1792 (1 Stat. 276), which is substan-

PRACTICE (*continued*).

tially re-enacted in sect. 913, Rev. Stat. *So held*, in a case removed, under the act of Congress, to the Circuit Court from a court of Texas, where such a union is, by the laws of that State, allowed. *Hurt* v. *Hollingsworth*, 100.

6. Where letters-patent expired before the final determination of the suit brought by the patentee complaining of the infringement of them, and praying for an injunction and an account, and the court below, by its decree, sustained their validity and awarded him costs, but neither damages nor profits, and the defendant appealed, this court, as the only question now involved is that of costs, affirms the decree without examining the merits. *Elastic Fabrics Company* v. *Smith*, 110.

7. Where such letters had been reissued in separate divisions, and the patentee filed in the Patent Office a disclaimer in regard to one of them, after bringing a suit for the infringement of the others, the validity of which was sustained, and the fact of infringement found by the court below, — *Held*, that sect. 4922, Rev. Stat., has no application to the case, and that he is entitled to costs. *Id.*

8. Where the record shows who are the members of a partnership, and an appeal has been taken in the name of the firm, — *Held*, that the defect may, under sect. 1005, Rev. Stat., be cured by an amendment substituting their names. *Moore* v. *Simonds*, 145.

9. The court below properly allowed the plaintiff to file in the case a new petition, not differing in any substantial particular from the original, which was lost, without his fault. *Phillips* v. *Moore*, 208.

10. Papers properly belonging to the files of a court should not be removed therefrom, except in cases of positive necessity. When, therefore, an appeal is taken, no order for transmitting such papers ought to be made, unless the actual inspection of them as originals is required to enable the appellate court to give them their just and full effect in the determination of the suit. *Craig* v. *Smith*, 226.

11. Where, on an appeal, papers have been improperly sent here, the order of the court below will be closely examined, to determine whether they are included in its terms. *Id.*

12. Where, in a case involving the infringement and validity of letters-patent, the Circuit Court, on the allowance of an appeal from its final decree, directed its clerk to transmit with the transcript "the original exhibits, patent certificates, schedules, drawings, and models on file, along with and as part of the record and transcript," — *Held*, that certain affidavits sent here, but not copied into the transcript, although they had been filed as "exhibits" with the bill and the answer thereto, and by consent treated and read as depositions on the hearing below, cannot be considered here as proofs in the cause, as they are not embraced by the order, the purpose of which was to send what had been *exhibited* below, as contradistinguished from what had been *read*. *Id.*

13. Allowing, under a bill of review, the introduction of newly discovered evidence to prove facts in issue on the former hearing rests in the

PRACTICE (*continued*).
sound discretion of the court, to be exercised cautiously and sparingly, and only under circumstances which render it indispensable to the merits and justice of the cause. *Id.*
14. The courts of the United States are not bound by the decisions of State courts upon questions of general commercial law. *Oates* v. *National Bank*, 239.
15. Where it appears that no injury resulted to the plaintiff in error, a judgment will not be reversed merely because the court, at the trial, permitted a witness on his cross-examination to be interrogated as to matters pertinent to the issue, but about which he had not testified in chief. *Wills* v. *Russell*, 621.
16. A *supersedeas* will be vacated when the approval of the bond therefor was obtained by fraud and perjury. *Railroad Company* v. *Schutte*, 644.
17. If it appears that the appellant had knowledge of such fraud and perjury, a new bond will not be accepted. *Id.*
18. The record in this case not being complete or properly certified, the court orders that unless appellant causes the omissions to be supplied on or before a specified day, the appeal be dismissed. *Id.*
19. A citation is not required when the appeal is taken and perfected in open court during the term at which the decree complained of is rendered; *aliter*, where, at a subsequent term, the appeal is allowed, although the solicitors of the appellee be present. *Railroad Company* v. *Blair*, 661.
20. The appeal will not, however, be dismissed in the latter case, but terms will be imposed upon the appellant. *Id.*
21. *Dayton* v. *Lash* (94 U. S. 112) cited and approved. *Id.*

PRE-EMPTION.
1. A settler upon unsurveyed public lands in California, who filed no declaratory statement after the return of the plat of the survey to the proper local land-office, could not, under the act of March 3, 1853 (10 Stat. 244), acquire by his settlement a right of pre-emption. *Lansdale* v. *Daniels*, 113.
2. A party cannot initiate a pre-emption right to public land by intrusion upon the actual possession of another; nor by settling upon land in California, a claim to which, under a foreign title, is at the time pending before the tribunals of the United States for confirmation. *Trenouth* v. *San Francisco*, 271.

PRESCRIPTION. See *Lands, Action for Possession of; National Bank*, 2

PRESUMPTION. See *Alien*, 2.
The only presumptions of fact which the law recognizes are immediate inferences from the facts proved. *Manning* v. *Insurance Company*, 693.

PRINCIPAL AND AGENT. See *Master and Servant; National Bank*, 2

PRIORITY. See *Time, Computation of.*

PRIVITY. See *Attorney-at-law.*

PROMISSORY NOTES. See *Bills of Exchange and Promissory Notes; Interest*, 2.

PUBLIC LANDS. See *Pre-emption; Swamp and Overflowed Lands.*

PUBLIC POLICY. See *Deed, Condition in*, 1.

PUBLIC SECURITIES OF THE UNITED STATES. See *National Bank*, 9, 10.

PUEBLO LANDS.

1. By the laws of Mexico in force in 1826, a pueblo or town, when recognized as such by public authority, became entitled to certain lands, which to the extent of four square leagues, embracing its site and the adjoining territory, were to be measured and assigned to it. *Brownsville* v. *Cavazos*, 138.
2. By the Constitution of Tamaulipas, one of the States of Mexico, in force in 1826, the land of an individual could not be expropriated — that is, divested of its private character — for an object of common recognized utility, without previous compensation, the amount of which could be estimated only by arbiters appointed by him and the State. If such compensation was not made, though the failure to make it was caused by his refusal to appoint an arbiter, his title was not divested, and he and his grantees could recover the land after the jurisdiction over the country had been transferred by the treaty of Guadalupe Hidalgo. *Id.*

QUARTERS, COMMUTATION OF. See *Fuel, Commutation of.*

RAILROAD COMPANY. See *Internal Revenue*, 2; *Master and Servant, Municipal Bonds*, 1-3; *Trust and Trustee.*

REAL ESTATE BOUND BY JUDGMENT OR MORTGAGE. See *Lien.*

REBELLION, THE.

1. An officer of the army of the United States, whilst serving in the enemy's country during the rebellion, was not liable to an action in the courts of that country for injuries resulting from his military orders or acts; nor could he be required by a civil tribunal to justify or explain them upon any allegation of the injured party that they were not justified by military necessity. He was subject to the laws of war, and amenable only to his own government. *Dow* v. *Johnson*, 158.
2. When any portion of the insurgent States was in the occupation of the forces of the United States during the rebellion, the municipal laws, if not suspended or superseded, were generally administered there by the ordinary tribunals for the protection and benefit of persons not in the military service. Their continued enforcement was not for the protection or the control of officers or soldiers of the army. *Id.*
3. A district court of Louisiana — continued in existence after the military occupation of the State by the United States, and authorized by the commanding general to hear causes between parties — sum

REBELLION, THE (*continued*).

moned a brigadier-general of the army of the United States to answer a petition filed therein, setting forth that a military company had, pursuant to his orders, seized and carried off certain personal property of the plaintiff, who alleged that the seizure was unauthorized by the necessities of war, or martial law, or by the superiors of that officer. Judgment by default was rendered April 9, 1863, against him for the value of the property. When sued in the Circuit Court of the United States, upon the judgment, he pleaded that the property was taken to supply the army. *Held*, on demurrer to the plea, that the State court had no jurisdiction of the cause of action, and that the judgment was void. *Id.*

RECEIVER.

A receiver appointed by a State court in a suit which, under the act of March 3, 1875 (18 Stat., part 3, 470), was subsequently removed to the Circuit Court of the United States, reported to the latter, stating the amount of the fund in his hands, and asking for an order to pay therefrom certain liabilities. *Held*, that the Circuit Court had authority to require him to account for the fund, and that he is chargeable with interest on so much thereof as he on receiving deposited in a bank to his credit as receiver, and then withdrew and deposited on his private account in another bank, he declining to explain the transaction, when he was examined as a witness by the master to whom the court had referred his accounts. *Hinckley* v. *Railroad Company*, 153.

RECORD. See *Practice*, 4, 8, 18.

REMOVAL OF CAUSES. See *Causes*, *Removal of*.

REPRESENTATIVES IN CONGRESS, ELECTION OF. See *Constitutional Law*, 25-33.

REVIEW, BILL OF. See *Practice*, 13; *Trust and Trustee*, 2.

Upon a bill of foreclosure against A. and the parties to whom, after mortgaging the land, he respectively conveyed separate parcels thereof, at different times, the only question raised was as to the order in which the court should direct the parcels to be sold to satisfy the debt. From the decree rendered June 5, 1875, finding the sum due, and prescribing such order, B., one of the defendants, appealed. The decree was affirmed. Thereupon C., another defendant, filed a petition below, May 21, 1879, for leave to file a bill of review for alleged errors of law, being the same as those passed upon by this court on the appeal, and for newly discovered evidence; but, although the decree was in full force, he neither offered to pay the same or any part thereof, nor alleged any reason for not doing so. *Held*, that leave to file the bill rested in the discretion of the court below, and was properly refused. *Ricker* v. *Powell*, 104.

REVISED STATUTES OF THE UNITED STATES.

1. The Revised Statutes of the United States must be accepted as the law on the subjects which they embrace as it existed on the first day

REVISED STATUTES OF THE UNITED STATES (*continued*).
of December, 1873. When their meaning is plain, the court cannot recur to the original statutes to see if errors were committed in revising them, but it may do so when necessary to construe doubtful language used in the revision. *United States* v. *Bowen*, 508.

2. Sect. 4820 of the Revised Statutes admits of no other reasonable construction than that only the invalid pensioners who had *not* contributed to the funds of the Soldiers' Home were bound to surrender to it their pensions while receiving its benefits. There is no occasion, therefore, to look at the pre-existing law on the subject. *Id.*

The following sections referred to and explained: —
Sect. 641. See *Causes, Removal of*, 6–8, 10–12.
Sect. 643. See *Causes, Removal of*, 1.
Sect. 913. See *Practice*, 5.
Sect. 1005. See *Practice*, 8.
Sect. 1624. See *Naval Paymaster, Clerk of.*
Sect. 1977. See *Causes, Removal of*, 7.
Sect. 1978. See *Causes, Removal of*, 7.
Sect. 2011. See *Constitutional Law*, 25.
Sect. 2012. See *Constitutional Law*, 25.
Sect. 2016. See *Constitutional Law*, 24, 25.
Sect. 2017. See *Constitutional Law*, 24, 25.
Sect. 2021. See *Constitutional Law*, 24, 25.
Sect. 2022. See *Constitutional Law*, 24, 25.
Sect. 4281. See *Passengers, General Carriers of*, 7.
Sect. 4922. See *Letters-patent*, 2.
Sect. 5219. See *National Bank*, 3.
Sect. 5228. See *National Bank*, 9, 10.
Sect. 5515. See *Constitutional Law*, 24, 25, 34.
Sect. 5522. See *Constitutional Law*, 24, 25.

SALE, CONDITION OF. See *Swamp and Overflowed Lands*, 4.

SALE, CONTRACT OF. See *Chattels, Contract for Sale of.*

SAN FRANCISCO, MUNICIPAL LANDS OF.

1. The history of the title of San Francisco to her municipal lands stated. *Trenouth* v. *San Francisco*, 251.
2. The act entitled "An Act to quiet the title to certain lands within the corporate limits of the city of San Francisco," approved March 8, 1866 (14 Stat. 4), confirmed her claim, in trust that certain lands should be disposed of and conveyed to parties in the *bona fide* actual possession thereof, by themselves or tenants, on the passage of the act. *Held*, that trespassers then in possession of the lands, who were afterwards ejected therefrom at the suit of those upon whose prior possession they had intruded, are not beneficiaries under the act; but that the parties who so recovered the possession are entitled to a conveyance from the city. *Id.*

SECRETARY OF THE NAVY. See *Navy.*

SECURITIES OF THE UNITED STATES. See *National Bank*, **9, 10**.

SET-OFF. See *Bills of Exchange and Promissory Notes*, 2.

SOLDIERS' HOME.

Under sect. 4820 of the Revised Statutes, only the invalid pensioners who have *not* contributed to the funds of the Soldiers' Home are bound to surrender to it their pensions while receiving its benefits. *United States* v. *Bowen*, 508.

SPECIAL DEPOSITS. See *National Bank*, 1, 2.

1. Sect. 5228 of the Revised Statutes, which provides that it shall be lawful for a national bank after its failure to "deliver special deposits," is as effectual a recognition of its power to receive them as an express declaration to that effect would have been. *National Bank* v. *Graham*, 699.
2. The phrase "special deposits," so employed, embraces the public securities of the United States. *Id.*

SPECIAL VERDICT. See *Jurisdiction*, 1.

STATUTE OF LIMITATIONS. See *Limitations, Statute of.*

STATUTES, CONSTRUCTION OF.

1. The legislative intent, clearly expressed, should not be defeated by too rigid an adherence to the mere letter of the statute, nor an interpretation adopted which leads to absurd consequences. *Oates* v. *National Bank*, 239.
2. In the interpretation of statutes like that passed by the legislature of Ohio Feb. 16, 1846, providing for the location of the county seat of Mahoning County, the rule is that, as against the State, nothing is to be taken as conceded but what is given in express and explicit terms, or by an implication equally clear. *Newton* v. *Commissioners*, 548.

STATUTES OF THE UNITED STATES. See *Revised Statutes of the United States.*

The following, among others, referred to, commented on, and explained: —

1792. May 8. See *Practice*, 5.
1815. Feb. 4. See *Causes, Removal of*, 5.
1833. March 2. See *Causes, Removal of*, 5.
1850. Sept. 28. See *Swamp and Overflowed Lands.*
1853. March 3. See *Pre-emption.*
1861. March 2. See *Customs Duties*, 2.
1862. July 14. See *Customs Duties*, 2.
1863. March 3. See *Court of Claims*, 2.
1866, March 8. See *San Francisco, Municipal Lands of*, **2.**
1866. July 13. See *Causes, Removal of*, 5.
1866. July 13. See *Excise Tax*, 1; *Internal Revenue*, **2.**
1866. July 20. See *Internal Revenue*, 1.
1869. April 5. See *Office, Suspension from.*

STATUTES OF THE UNITED STATES (*continued*).
1870. May 31. See *Constitutional Law*, 25.
1874. June 23. See *Executive Departments, Clerks and Employés in*, 2.
1875. March 1. See *Constitutional Law*, 20, 22.
1875. March 3. See *Causes, Removal of*, 13; *Jury, Waiver of.*
1875. March 3. See *Jurisdiction*, 13.
1879. Feb. 25. See *Jurisdiction*, 3.

STOCK, SUBSCRIPTION TO. See *Municipal Bonds.*

SUPERSEDEAS. See *Mandamus*, 1; *Practice*, 16, 17.

SUPERVISORS OF ELECTION. See *Constitutional Law*, 25–33.

SURETY. See *Internal Revenue, Collector of.*

SUSPENSION FROM OFFICE. See *Office, Suspension from.*

SWAMP AND OVERFLOWED LANDS.

1. Though the grant by the act of Congress of Sept. 28, 1850 (9 Stat. 519), of the swamp and overflowed lands to the States in which they lie, is declared to be made for the exclusive purpose of enabling such States, with the proceeds thereof, to reclaim the lands by means of levees and drains, it is questionable whether the security for the due application of the proceeds does not wholly rest upon the good faith of the several States, and whether they may not exercise their discretion in this behalf without being liable to be called to account, and without affecting the title to the lands: at all events, it seems that Congress alone has the power, in a clear case of violation of the trust, to enforce the conditions of the grant, by revocation or otherwise; and since, by the act, the proceeds are to be applied to the designated persons only "as far as necessary," each State has, at least, a large discretion as to the "necessity" of employing the proceeds to the reclamation of the lands. *Emigrant Company* v. *County of Adams*, 61.
2. A grant, subject to the conditions of that act, made by a State of its swamp and overflowed lands to the several counties in which they are situated, to be disposed of for general county purposes, is valid, and the county which has disposed of them in pursuance of the State grant cannot rescind its contract on the ground of its being a violation of the act of Congress. *Id.*
3. In Iowa, such a contract, if approved by a vote of the people of the county, under the act of the legislature of that State passed in 1858, is valid, though the lands be disposed of for less than one dollar and a quarter per acre; and, if it includes also a sale of the claim of the county against the United States for indemnity for swamp lands sold by the latter, the county cannot maintain a bill in equity to set it aside, though such sale be within the law prohibiting the assignment of claims against the government. *Id.*
4. If the purchaser from the county under such a contract was bound thereby to do certain acts, such as to introduce a certain number of

SWAMP AND OVERFLOWED LANDS (*continued*).
settlers within a certain period, or to reclaim the lands, his obligation, if not made a condition of the sale, lies in covenant merely, and, if unperformed, does not avoid the sale. It is only when covenants are mutual and dependent, or when their performance is made an express condition, that a breach of them involves an avoidance of the contract. *Id.*

SWISS CONFEDERATION, TREATY WITH. See *Alien*, 3.

TAMAULIPAS, CONSTITUTION OF. See *Pueblo Lands*, 2.

TAXATION. See *Constitutional Law*, 39–44, 46; *Excise Tax; Federal Question.*

1. This court can afford the citizen of a State no relief from the enforcement of her laws prescribing the mode and subjects of taxation, if they neither trench upon Federal authority nor violate any right recognized or secured by the Constitution of the United States. *Kirtland* v. *Hotchkiss*, 491.
2. The Constitution does not prohibit a State from taxing her resident citizens for debts held by them against a non-resident, evidenced by his bonds, payment whereof is secured by his deeds of trust or mortgages upon real estate situate in another State. *Id.*
3. For the purposes of taxation, a debt has its *situs* at the residence of the creditor, and may be there taxed. *Id.*
4. The provision in sect. 5219 of the Revised Statutes of the United States, that State taxation on the shares of any national banking association shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of the State, has reference to the entire process of assessment, and includes the valuation of the shares as well as the rate of percentage charged thereon. *People* v. *Weaver*, 539.
5. The statute of a State, therefore, which establishes a mode of assessment by which such shares are valued higher in proportion to their real value than other moneyed capital, is in conflict with that section, although no greater percentage is levied on such valuation than on that of other moneyed capital. *Id.*
6. The statutes of New York which permit a party to deduct his just debts from the valuation of all his personal property, except so much thereof as consists of such shares, tax them at a greater rate than other moneyed capital, and are, therefore, void as to them. *Id.*

TENANT IN COMMON. See *Mining Claim.*

TEXAS. See *Lands, Action for Possession of; Practice*, 5; *Pueblo Lands.*

TEXAS, SALE OF LANDS IN.
A sale of lands in Texas, made before her separation from Mexico, by a citizen to a non-resident alien, passed the title to the latter, who thereby acquired a defeasible estate in them, which he could hold until deprived thereof by the supreme authority, upon the official ascertainment of the fact of his non-residence and alienage, or upon the denouncement of a private citizen. *Phillips* v. *Moore*, 208.

THIRTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. See *Constitutional Law*, 20.

TIME, COMPUTATION OF.

When the priority of one legal right over another, depending upon the order of events occurring on the same day, is involved, the rule that for most purposes the law regards the entire day as an indivisible unit is necessarily departed from. *National Bank* v. *Burkhardt*, 686.

TITLE, CERTIFICATE OF. See *Attorney-at-law.*

TRADE-MARKS.

1. Property in trade-marks has long been recognized and protected by the common law and by the statutes of the several States, and does not derive its existence from the act of Congress providing for the registration of them in the Patent Office. *Trade-mark Cases*, 82.
2. A trade-mark is neither an invention, a discovery, nor a writing, within the meaning of the eighth clause of the eighth section of the first article of the Constitution, which confers on Congress power to secure for limited times to authors and inventors the exclusive right to their respective writings and discoveries. *Id.*
3. If an act of Congress can in any case be extended, as a regulation of commerce, to trade-marks, it must be limited to their use in "commerce with foreign nations, and among the several States, and with the Indian tribes." *Id.*
4. The legislation of Congress in regard to trade-marks is not, in its terms or essential character, a regulation thus limited, but in its language embraces, and was intended to embrace, all commerce, including that between citizens of the same State. *Id.*
5. That legislation is void for want of constitutional authority, inasmuch as it is so framed that its provisions are applicable to all commerce, and cannot be confined to that which is subject to the control of Congress. *Id.*
6. The owner of a trade-mark which is affixed to articles manufactured at his establishment may, in selling the latter, lawfully transfer therewith to the purchaser the right to use the trade-mark. *Kidd* v. *Johnson*, 617.

TREASURY, FIRST AUDITOR OF. See *Internal Revenue, Collector of.*

TREATY. See *Alien*, 3; *Pueblo Lands*, 2.

TRIAL BY JURY. See *Constitutional Law*, 9, 10.

TRUST AND TRUSTEE. See *Captured and Abandoned Property*; *Lands, Sale of, by Trustee*, 1; *Patent of the United States for Lands.*

1. The trustee to whom a railroad company executed a mortgage upon its property, to secure the payment of its bonds, represents the bondholders in all legal proceedings carried on by him affecting his trust, to which they are not actual parties, and whatever binds

TRUST AND TRUSTEE (*continued*).

him, if he acts in good faith, binds them. *Shaw* v. *Railroad Company*, 605.

2. If bondholders not parties to the suit in which a decree was rendered in favor of the trustee can, under any circumstances, bring a bill of review, they can only have such relief as he would be entitled to in the same form of proceeding. To avoid what he has done in their behalf, they must proceed in some other way than by bill of review. *Id.*

3. Except under extraordinary circumstances, the power of the court ought never to be exercised in enabling the trustees, where the railroad is unfinished, to borrow money by means of a receiver's certificates which create a paramount lien upon the property, in order to complete the work. *Id.*

4. Upon a bill filed by the trustees to foreclose mortgages executed by a railroad company in Arkansas, one upon its road and the other upon its land grant, to secure its bonds the court found that they were valid and subsisting liens, that the whole amount of the bonds was due and unpaid, and decreed that in default of payment of principal and interest, at a specified date, the mortgaged property be sold and the proceeds thereof divided among the bondholders. A large majority in interest of the latter held, subsequently to the decree, and upon full notice, a meeting, at which a committee was appointed to purchase the property for the benefit of the bondholders. The committee accordingly purchased it at the sale. The sale was duly reported to the court, when the purchasers appeared therein and declared, and desired it to be so recorded, that it was their intention to organize a corporation under the laws of the State, to own, hold, and manage the property, and that any bondholder might, within sixty days from such organization, transfer to it his bonds and right to the proceeds of the sale, and become entitled to his proportional interest in the stock of the new corporation upon the same terms and stipulations as any other bondholder; but that said new corporation was not to be prevented thereby from requiring from any bondholder the payment of his proportion of the expenses attending the sale and purchase, and such other sums not exceeding five per cent of the principal of the bonds as it might deem for its interests to require as a condition on which such stock should be delivered, provided that the same requirement should be made of all the other bondholders; and, further, that the stipulation should not limit the power of the purchasers to organize the corporation without notice, or of the corporation so organized to mortgage its property or reserve for its own use not exceeding ten per cent of its capital stock. At the same time, the trustees in the mortgages appeared in court and consented to an approval and confirmation of the sale, upon the agreement that the stipulation of the purchasers be embodied in the decree. Thereupon a decree was passed accordingly. The proper conveyance was made, and, as part of the consideration therefor, the decree also provided for the payment or compromise by the new corporation of

TRUST AND TRUSTEE (*continued*).

certain claims against the old company. *Held*, 1. That the fact that some of the trustees were bondholders was not of itself sufficient to render them incompetent to consent to the decree. 2. That a bill filed by two bondholders not impugning the good faith of the trustees, but praying that the decree be reviewed and set aside, was properly dismissed. *Id.*

ULTRA VIRES.

The doctrine of *ultra vires* has no application in favor of corporations for wrongs committed by them. *National Bank* v. *Graham*, 699.

USAGE. See *Guaranty.*

Usage cannot make a contract where none was made by the parties. *Savings Bank* v. *Ward*, 195.

USURY. See *National Bank*, 1.

VESSEL, MORTGAGE OF.

A mortgage of a vessel of the United States is not, as against the parties, and such persons as have actual notice thereof, rendered invalid by the failure to record it. *Moore* v. *Simonds*, 145.

VIRGINIA, CONSTITUTION OF.

The Constitution and laws of Virginia do not exclude colored citizens from service on juries. *Virginia* v. *Rives*, 313.

WHARFAGE.

1. A municipal corporation, owning improved wharves and other artificial means which it maintains, at its own cost, for the benefit of those engaged in commerce upon the public navigable waters of the United States, is not prohibited by the Constitution of the United States from charging and collecting from parties using its wharves and facilities such reasonable fees as will fairly remunerate it for the use of the property. *Packet Company* v. *St. Louis*, 423.
2. *Packet Company* v. *Keokuk* (95 U. S. 80), affirmed. *Id.*
3. The ordinance of the city of Vicksburg passed July 12, 1865, entitled "an ordinance establishing the rate of wharfage to be collected from steamboats and other water-craft landing and lying at the city of Vicksburg," is not in conflict with the Constitution of the United States. *Vicksburg* v. *Tobin*, 430.
4. *Packet Company* v. *St. Louis* (*supra*, p. 423), affirmed. *Id.*
5. An ordinance of Baltimore, whereunder vessels laden with the products of other States are required to pay for the use of the public wharves of that city fees which are not exacted from vessels landing thereat with the products of Maryland, is in conflict with the Constitution of the United States. *Guy* v. *Baltimore*, 434.
6. Such fees, so exacted, must be regarded not as a compensation for the use of the city's property, but as a mere expedient or device to foster the domestic commerce of Maryland by means of unequal and oppressive burdens upon the industry and business of other States. *Id*

WORDS.
"Permanently established." See *Constitutional Law*, 45.
"Special deposits." See *National Bank*, 9, 10.

WRIT OF ERROR. See *Exceptions, Bill of*, 2; *Habeas Corpus, Writ of, Mandamus*, 1; *New Trial*, 2; *Practice*, 1.
1. The administratrix of A. recovered judgment for damages by reason of his death, caused by the negligence of B., who thereupon sued out of this court a writ of error. During its pendency, the statute authorizing such a suit was repealed. *Held*, that the judgment was not vacated by the writ, and that it must be affirmed, no error appearing in the proceedings below. *Railway Company* v. *Twombly*, 78.
2. On the trial of an action at law, when the judges of the Circuit Court are opposed in opinion on a material question of law, the opinion of the presiding judge prevails; but the judgment rendered comformably thereto may, without regard to its amount, be reviewed on a writ of error, upon their certificate stating such question. *Dow* v. *Johnson*, 158.