INDEX.

ACCOUNTING. See *Assignment*, 2; *Practice*, 9.

ACCOUNTS WITH THE UNITED STATES, SETTLEMENT OF. See *Court of Claims*, 1; *Evidence*, 8.

ADMINISTRATOR. See *Evidence*, 10.

ADMIRALTY.

1. The courts of the United States, as courts of admiralty, have not exclusive jurisdiction of suits *in personam*, growing out of collisions between vessels while navigating the Ohio River. *Schoonmaker* v. *Gilmore*, 118.
2. A small schooner, having no watch on deck, was, in a very dark night, lying at anchor inside the Delaware Breakwater, when vessels were constantly arriving for shelter from an approaching storm. Among them was one well manned, which, in proceeding to a proper anchorage, without any fault of either omission or commission on her part, collided with and sunk the schooner. If a sufficient watch had been on the deck of the latter, the collision might have been avoided. *Held*, that the vessel was not liable. *The "Clara,"* 200.
3. At about ten o'clock in the forenoon, when the weather was clear and fine, a steamship and a schooner were on the ocean. The schooner, having seen the steamship when six or seven miles away, kept steadily on her course. The steamer saw the schooner when three miles off, and from that time until a collision between them occurred both vessels were sailing on courses which crossed each other, so as to involve risk of collision. *Held*, that under the circumstances it was the duty of the steamship to keep out of the way of the schooner, and the latter having held her course, the former is liable for the damages occasioned by the collision. *The "Benefactor,"* 214.
4. The ruling in *The Abbotsford* (98 U. S. 440), that under the act of Feb. 16, 1875 (18 Stat. 315), the finding of facts by the Circuit Court in admiralty cases is conclusive, and that only rulings upon questions of law can be reviewed by bill of exceptions, reaffirmed. *Id.*

ADVERSE POSSESSION. See *Vacant Lands, Entry upon, under Color of Title.*

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ALABAMA. See *Constitutional Law*, 11, 12; *Damages; Municipal Bonds*, 4–6.

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APPEAL.

1. An appeal will be dismissed when it appears from the record, taken as a whole, that the amount actually in controversy is not sufficient to give the court jurisdiction. *Banking Association* v. *Insurance Association*, 121.
2. *Gray* v. *Blanchard* (97 U. S. 564) reaffirmed. *Id.*
3. An appeal is the only mode by which the appellate jurisdiction of this court can be exercised in equity suits, brought in the courts of the United States, and it does not lie before a final decree has been rendered. *Hayes* v. *Fischer*, 121.
4. A proceeding in the court below for contempt cannot be re-examined here on an appeal or a writ of error. *Id.*
5. A bond is not sufficient for the purposes of either an appeal to this court or a *supersedeas*, if the obligors are not thereby bound for the payment of costs, should the appellant fail to make his plea good. *Seward* v. *Corneau*, 161.
6. The Circuit Court in a foreclosure suit appointed a receiver of the rents and profits of the mortgaged land, and ordered that all persons who had come into the possession thereof *pendente lite* should surrender it to him on his demand. On their refusal to do so, a writ was issued commanding the marshal to eject them. They thereupon addressed a petition to one of the judges, praying that the writ be revoked by the court. *Held*, that an appeal does not lie from his order at chambers, denying the petition. *Hentig* v. *Page*, 219.
7. Where no security having been taken at the time of entering an order allowing an appeal from a decree passed by the Supreme Court of the District of Columbia sitting in general term, the appellant, within the time limited by statute, filed with the clerk a bond with sureties, conditioned according to law, and approved by a judge of that court, by whom, on the same day, a citation was signed, — *Held*, that the power of the judge over the appeal and the security was thereupon, in the absence of fraud, exhausted, and that the control of the *supersedeas* as well as of the appeal was transferred to this court. *Draper* v. *Davis*, 370.

ARGOLS OR CRUDE TARTAR. See *Customs Duties*, 1.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy; Stock, Subscription to.*

Where a bankrupt has fraudulently conveyed his property, his assignees in bankruptcy are the only parties to sue for and subject it to the payment of his debts. *Trimble* v. *Woodhead*, 647.

ASSIGNMENT. See *Claims against the United States; Set-off.*

1. The assignment of a judgment, and of all bonds and instruments which, during the progress of the suit wherein it was rendered, were

ASSIGNMENT (*continued*).

taken in connection therewith, transfers to the assignee a bond given by the defendant with surety, whereby he secured the release of his property which had been seized under an attachment issued in the suit. *George* v. *Tait*, 564.

2. A. assigned to the amount of a certain loan his interest in a policy of insurance upon his life to B., his creditor. The latter agreed in writing to make such a settlement with A.'s representatives as the case may require, should he, in the event of A.'s death before the payment of the money, receive from the insurance company the amount due on the policy. Other similar assignments were from time to time made. The last assignment imports an absolute transfer to B. of all A.'s right, title, and interest in the policy and to the payments previously made therefor, and all benefit and advantage to be derived therefrom. Upon consideration of the evidence, — *Held*, that the assignment must be construed as appointing B., upon the death of A., to receive from the company such sum as would then be due on the policy, and after reimbursing himself to the extent of his loans to A., to pay the balance to the persons entitled thereto. *Page* v. *Burnstine*, 664.

ATTORNEY AND CLIENT. See *Bankruptcy*, 1.

BACK-TAX COLLECTOR. See *Municipal Corporations*, 5, 6.

BAD FAITH.

A party who, before its maturity and for a valuable consideration, purchases mercantile paper from the apparent owner thereof acquires a right thereto which can only be defeated by proof of bad faith or of actual notice of such facts as impeach the validity of the transaction. *Swift* v. *Smith*, 442.

BAILMENT. See *Personal Chattels, Sale and Delivery of*, 2.

BANKRUPTCY. See *Assignee in Bankruptcy; National Banks.*

1. A., as attorney for B., procured a judgment by default in favor of the latter against C., of whose insolvency and intent to commit a fraud on the bankrupt law he had knowledge. *Held*, that that knowledge was imputable to B. *Rogers* v. *Palmer*, 263.

2. C. having, with intent to give a preference to B., contributed to the rendition of the judgment at an earlier day than without his aid it could have been rendered, an execution was sued out and levied upon his goods. *Held*, that he thereby procured them to be taken on legal process within the meaning of the thirty-fifth section of the Bankrupt Law of March 2, 1867 (14 Stat. 534), as modified by the act of June 22, 1874. 18 Stat., part 3, pp. 180, 181. *Id.*

3. A., by his bond, acknowledged the receipt from an insurance company of ten shares of its capital stock, and agreed to pay $200 therefor, in instalments, — one-fourth on the receipt of the stock certificate, and the remainder in three equal amounts at three, six, and nine months from Jan. 7, 1871, the date of the bond. He paid on executing

BANKRUPTCY (*continued*).

it $25, and his name was entered as a stockholder on the books of the company. The certificate was not delivered or demanded. In 1872 the company became bankrupt. *Held*, that the assignee is entitled to recover of A. the unpaid instalments. *Hawley* v. *Upton*, 314.

4. A bill, filed by the assignee in bankruptcy of an insurance company against its former officers and directors, alleges that they had divided among themselves and friends certain bonds belonging to it, and prays for an accounting and relief. It appears from the proofs that the bonds were never the property of the company, but were, without consideration, borrowed, by some of its officers, for the fraudulent purpose of exhibiting them, as part of its assets, to the official examiners, thus furnishing evidence of its sound condition, and were afterwards returned, according to agreement, to their real owners. *Held*, that the bill was properly dismissed. *Walker* v. *Reister*, 467.
5. A., with a view of giving preference to B., a creditor, transferred to him, Nov. 15, 1873, certain securities. B. accepted them with knowledge that A. was insolvent. Proceedings in bankruptcy were instituted against A. Feb. 7, 1874, and he was declared to be a bankrupt. His assignee brought suit in June, 1875, against B. for the value of the securities. *Held*, that he was entitled to recover. *Auffm'ordt* v. *Rasin*, 620.
6. The tenth section of the act of June 22, 1874 (18 Stat., part 3, 178), whereby, in cases of involuntary or compulsory bankruptcy, the period of four months mentioned in sect. 35 of the Bankrupt Act of March 2, 1867 (14 id. 534), was changed to two months, did not take effect until two months after its passage. It was not intended to destroy previously vested rights of property or of action, nor was it in the nature of a statute of limitations. It merely declared that certain acts thereafter committed, more than two months prior to the institution of proceedings in bankruptcy, should be valid. *Id.*
7. Where the marshal of the United States to whom was directed a warrant of provisional seizure sued out of the proper court sitting in bankruptcy, levied it upon certain goods in the possession of a third party claiming title to them, — *Held*, that they were subject to seizure under the warrant, if they were the property of the person against whom the proceeding in bankruptcy was pending. *Sharpe* v. *Doyle*, 686.
8. The marshal must, in such a case, act at his own risk in regard to the ownership of them and their liability to seizure. *Id.*

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

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Judgment; Lien.*

1. The transfer by indorsement to a creditor of negotiable paper before maturity, merely as security for an antecedent debt, although it is without his express agreement for indulgence, is not an improper

BILLS OF EXCHANGE, &c. (*continued*).

use of such paper, and is as much in the usual course of commercial business as its transfer in payment of the debt. In neither case is the *bona fide* holder affected by equities or defences between prior parties of which he had no notice. *Railroad Company* v. *National Bank*, 14.

2. A party who, before its maturity and for a valuable consideration, purchases mercantile paper from the apparent owner thereof acquires a right thereto which can only be defeated by proof of bad faith or of actual notice of such facts as impeach the validity of the transaction. *Swift* v. *Smith*, 442.

3. Suit by A. against B. as indorser of a protested draft, the indorsement reading, "Pay to A. or order for account of B." The declaration contained a special count on the draft and indorsement, and one for money paid for the use of B. at his request. *Held*, 1. That by the terms of the indorsement A. became merely the agent of B. for the collection of the money. 2. That under the special count parol evidence was not admissible to vary those terms. 3. That under the common count it was competent for A. to show that at the time of the indorsement and delivery of the draft to him he gave B. his check therefor less the discount, and that the latter received and used the money. 4. That under that count A. was entitled to recover from B. either for money paid without consideration, money loaned, or money advanced to him on the faith of the delivery of the draft. *White* v. *National Bank*, 658.

BOND. See *Assignment*, 1; *Contracts*, 5, 6; *Evidence*, 9; *Municipal Bonds; Set-off.*

A bond is not sufficient for the purposes of either an appeal to this court or a *supersedeas*, if the obligors are not thereby bound for the payment of costs should the appellant fail to make his plea good. *Seward* v. *Corneau*, 161.

BOUNDARY, PRIVATE. See *Deceased Persons, Declarations of.*

BRIBERY.

A party who bribes an officer of the United States with money cannot maintain an action to recover it. *Clark* v. *United States*, 322.

CALIFORNIA. See *School Lands.*

CAPITATION TAXES. See *Constitutional Law*, 9.

CARRIER OF PASSENGERS. See *Passengers, Carrier of.*

CASES EXPLAINED, QUALIFIED, OR OVERRULED.

Erwin *v.* United States, 97 U. S. 392. *See* Goodman *v.* Niblack, 556.

Harkness *v.* Hyde, 98 U. S. 476. *See* Langford *v.* Monteith, 145.

Mitchell *v.* Tilghman, 19 Wall. 287. *See* Tilghman *v.* Proctor, 707.

O'Reilly *v.* Morse, 15 How. 62. *See* Id.

Sherman *v.* Buick, 93 U. S. 209. *See* Mining Company *v.* Consolidated Mining Company, 167.

CASES EXPLAINED, &c. (*continued*).
Spofford *v.* Kirk, 97 U. S. 484. *See* Goodman *v.* Niblack, 556.
Water & Mining Company *v.* Bugbey, 96 U. S. 165. *See* Mining Company *v.* Consolidated Mining Company, 167.

CAUSES, REMOVAL OF.
1. A petition for a *mandamus* was filed in one of her courts by the State of Mississippi to compel a railroad company, a corporation existing under the laws of that State, to remove a stationary bridge which it had erected over Pearl River, a navigable stream on the line between Louisiana and Mississippi. Thereupon the company presented its petition, duly verified, praying for the removal of the suit into the Circuit Court of the United States, and alleging that the right to erect, use, and maintain the bridge was vested by the company's charter; that its maintenance over said river was authorized by the act of Congress approved March 2, 1868 (15 Stat. 38); that thereunder it became a part of a post-road over which for several years the mails of the United States have been carried, and that therefore the suit impugns the rights, privileges, and franchises granted by said act. The petition was accompanied by a bond with good and sufficient security, conditioned as required by the act of March 3, 1875. 18 Stat., part 3, p. 471. *Held*, that under the latter act the company was entitled to the removal prayed for. *Railroad Company* v. *Mississippi*, 135.
2. The decisions of this court affirming the jurisdiction of the courts of the United States in cases arising under the laws of the United States, or where a State is a party, cited and commented on. *Id.*
3. The ruling in *Insurance Company* v. *Dunn* (19 Wall. 214) and *Removal Cases* (100 U. S. 457), that a party loses none of his rights who, after failing to obtain its removal, contests a suit on its merits in the State court, reaffirmed. *Id.*
4. Where the Supreme Court of a State reversed, on appeal, a decree dismissing, upon a final hearing, the complainant's bill, and remanded the cause with instructions to refer it to a master to state the accounts between the parties in accordance with the mandate, the suit cannot be removed to the Circuit Court of the United States. *Jifkins* v. *Sweetzer*, 177.
5. *Removal Cases* (100 U. S. 457) cited and approved. *Id.*
6. An action pending in a State court cannot be removed to the Circuit Court, by written stipulation, where there is nothing in the latter or the record to show that, by reason of the subject-matter, or the character of the parties, the latter court can take cognizance of it. *People's Bank* v. *Calhoun*, 256.
7. In a foreclosure suit, the Circuit Court, having jurisdiction of the subject-matter and the parties, appointed a receiver, who, pursuant to its orders, took possession of the mortgaged road. In an action between other parties, subsequently brought in a State court, an attachment was sued out and levied upon the road. Pending an application thereupon made to the Circuit Court, to restrain the

CAUSES, REMOVAL OF (*continued*).
plaintiff from further proceeding with his attachment, he and the defendant to the action consented to its removal to the Circuit Court, where, upon a finding that the road was not, at the date of the levy of the attachment, the property of that defendant, the writ was dismissed. *Held*, that the Circuit Court had the right to determine upon the conflicting claims to the possession of the road, and that the parties to the action, by consenting to transfer it, did no more, in effect, than that court might have compelled them to do. *Id.*

CHARTER. See *Causes, Removal of*, 1; *Municipal Bonds*, 13.

CHARTER, REPEAL OF. See *Municipal Corporations.*

CHATTELS. See *Personal Chattels, Sale and Delivery of.*

CITY, LIABILITY OF, TO REFUND MONEY PAID INTO HER TREASURY. See *Municipal Bonds*, 10–12.

CLAIMS AGAINST THE UNITED STATES. See *Court of Claims.*
1. A., who had a contract with the United States, agreed with B., in 1847, that the latter should perform it, and that the profits should be equally divided between them. Thereupon they and C. executed an instrument in which the agreement was recited, and A., for the due fulfilment thereof, assigned the contract to C. as trustee. A controversy having arisen as to the amount due upon the contract, Congress, in 1870, authorized C. as such trustee to sue the United States therefor, and subsequently made an appropriation to pay the judgment which he recovered. *Held*, that as the assignment was thus recognized by the government, the parties to the agreement and those claiming under them are precluded from setting up that the contract was not assignable. *Goodman* v. *Niblack*, 556.
2. A. made in 1860 an assignment for the benefit of his creditors, which included all his rights, credits, effects, and property of every description. *Held*, that the assignment, although it covered whatever might be due to him under his contract with the government, was not within the prohibition of the act of Feb. 26, 1853 (10 Stat. 170, re-enacted in sect. 3477, Rev. Stat.), nor in violation of public policy. *Id.*
3. *Spofford* v. *Kirk* (97 U. S. 484) and *Erwin* v. *United States* (id. 392) cited and examined. *Id.*

COLLATERAL SECURITY. See *Bills of Exchange and Promissory Notes*, 1, 3; *Deed of Trust.*

COLLECTOR OF CUSTOMS. See *Foreign Coins, Value of.*

COLLECTOR OF INTERNAL REVENUE. See *Income Tax*, 2.

COLLISION. See *Admiralty*, 1–3.

COLOR OF TITLE. See *Title; Vacant Lands, Entry upon, under Color of Title.*

COMITY.

The courts of the United States are not controlled by the decisions of State courts on questions of general commercial law. *Swift* v. *Tyson* (16 Pet. 1) and *Oates* v. *National Bank* (100 U. S. 239) reaffirmed. *Railroad Company* v. *National Bank*, 14.

COMMERCE.

1. An act of the legislature of Texas, entitled "An Act regulating taxation," approved June 3, 1873, provides in its third section that "there shall be levied on and collected from every firm or association of persons . . . pursuing the occupation of selling spirituous, vinous, malt, and other intoxicating liquors in quantities less than one quart, $200; in quantities of a quart and less than ten gallons, $100; provided that this section shall not be so construed as to include any wines or beer manufactured in this State." A., who was pursuing, in that State, "the occupation of selling spirituous, vinous, malt, and other intoxicating liquors in quantities less than one quart," filed his petition, setting forth than the wines and beer which he was selling were the manufacture, not of that State, but of other States and of foreign nations, and praying that the county treasurer be enjoined from collecting the tax imposed by said act of 1873, on the ground of its repugnance to the Constitution of the United States. *Held*, that, as he was also engaged in selling other liquors, the injunction was properly refused. *Tiernan* v. *Rinker*, 123.
2. That act is inoperative only so far as it discriminates against imported wines or beer. A person cannot, for selling either of them, be subjected to a higher tax than that imposed for selling wines or beer manufactured in the State. *Id.*
3. While navigating the high seas between ports of the same State, a vessel of the United States is, together with the business in which she is engaged, subject to the regulating power of Congress. *Lord* v. *Steamship Company*, 541.
4. The power conferred upon Congress by the commerce clause of the Constitution is exclusive, so far as it relates to matters within its purview which are national in their character, and admit or require uniformity of regulation affecting all the States. That clause was adopted in order to secure such uniformity against discriminating State legislation. *County of Mobile* v. *Kimball*, 691.
5. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. To regulate it, as thus defined, there must be only one system of rules applicable alike to the whole country, which Congress alone can prescribe. *Id.*
6. State legislation is not forbidden touching matters either local in their nature or operation, or intended to be mere aids to commerce, for which special regulations can more effectually provide, such as

COMMERCE (*continued*).

harbor pilotage, beacons, buoys, and the improvement of harbors, bays, and navigable rivers within a State, if their free navigation under the laws of the United States be not thereby impaired. Congress, by its non-action in such matters, virtually declares that, for the time being and until it deems fit to act, they may be controlled by State authority. The act of the State of Alabama, entitled "An Act to provide for the improvement of the river, bay, and harbor of Mobile," approved Feb. 16, 1867, is, therefore, not in conflict with the Constitution. *Id.*

COMMERCIAL PAPER. See *Bills of Exchange and Promissory Notes.*

COMMERCIAL LAW. See *Comity.*

COMMISSIONER OF PATENTS.

The ruling in *Seymour* v. *Osborne* (11 Wall. 516) and *Russell* v. *Dodge* (93 U. S. 460), touching the authority of the Commissioner of Patents in granting a reissue of letters-patent, reaffirmed. *Ball* v. *Langles*, 128.

COMPENSATORY DAMAGES. See *Passengers, Carrier of*, 3, 4.

COMPTROLLER OF THE CURRENCY. See *Stockholders of an Insolvent National Bank, Liability of*, 1.

CONDITIONAL SALE. See *Personal Chattels, Sale and Delivery of*, 2.

CONDITION PRECEDENT. See *Municipal Bonds*, 1.

The charter of A., a mutual life insurance company, provides that "every person who shall become a member of the corporation, by effecting insurance therein, shall, the first time he effects insurance and before he receives his policy, pay the rates that shall be fixed upon and determined by the trustees." In August, 1872, C., A.'s agent, received from B. an application for a policy upon his life for $6,000, duly made out upon a printed form furnished previously by C. A policy was issued by A., August 24, and forwarded to C. It contains a proviso that it shall "not take effect and become binding on the company until the premium be actually paid, during the lifetime of the person whose life is assured, to the company or to some person authorized to receive it, who shall countersign the policy on receipt of the premium." The premium to be paid by B. amounted to $302.52. The policy not having been called for, C. returned it, October 2, to A., and it was thereupon cancelled. Nothing beyond the delivery of the application to C. was done by B., or by any one in his behalf. He died September 4. His administrator tendered the first premium to C., who declined to act in the matter. Thereupon he transmitted the proofs of B.'s death to A., and on the refusal of the latter to accept the premium and deliver the policy brought this suit against A. *Held*, that the suit cannot be maintained, the payment of the premium in the lifetime of B. being a condition precedent to A.'s liability. *Giddings* v. *Insurance Company*, 108.

CONFISCATION.

1. A.'s lands in Louisiana were, May 6, 1865, duly forfeited to the United States by a decree of the proper court in the exercise of the jurisdiction conferred by the Confiscation Act of July 17, 1862 (12 Stat. 589), as modified by the joint resolution of even date therewith. Id. 627. A. purchased them under the decree, and, on receiving from the marshal a deed therefor, bargained and sold them to B. in fee, by an authentic act of sale, with all legal warranties. On the death of A., his heirs-at-law sued B. for the possession of the lands. *Held*, that they were entitled to recover. *French* v. *Wade*, 132.
2. *Wallach et al.* v. *Van Riswick* (92 U. S. 202) reaffirmed. *Id.*

CONSTITUTIONAL LAW. See *Causes, Removal of*, 1; *Commerce*, 3–6, *Contracts*, 5, 6; *Lands sold for the Non-payment of Taxes*, 2.

1. The act of the legislature of Texas, entitled "An Act regulating taxation," approved June 3, 1873, which provides in its third section that "there shall be levied on and collected from every firm or association of persons . . . pursuing the occupation of selling spirituous, vinous, malt, and other intoxicating liquors in quantities less than one quart, $200; in quantities of a quart and less than ten gallons, $100; provided that this section shall not be so construed as to include any wines or beer manufactured in this State," is inoperative only so far as it discriminates against imported wines or beer. A person cannot, for selling either of them, be subjected to a higher tax than that imposed for selling wines or beer manufactured in the State. *Tiernan* v. *Rinker*, 123.
2. The second section of the act of the General Assembly of Iowa, entitled "An Act in relation to riparian owners on the Mississippi and Missouri Rivers," approved March 18, 1874, is not in conflict with any statute of the United States. Where, therefore, the owner of lands on the Mississippi had made an embankment in front of them, and at its outer end beyond low-water mark erected, without the direction or consent of the Secretary of War, a stone pier or crib, this court affirms the judgment of the Supreme Court of that State, declaring that under that section a railway company cannot construct its road over the embankment between high and low water mark, unless the damages to such owner shall first be ascertained and paid. *Railway Company* v. *Renwick*, 180.
3. The obligation of contracts is impaired by such legislation as lessens the efficacy of the remedy which the law in force at the time they were made provided for enforcing them. *Louisiana* v. *New Orleans*, 203.
4. A. recovered judgment, in 1874, against New Orleans, upon certain bonds issued by the city in 1854, and sued out an execution, which was returned *nulla bona*. The Act No. 5 of the legislature of Louisiana of 1870 requires that a plaintiff, having an executory judgment against the city, must file a certified copy thereof in the office of the controller, and imposes upon the latter the duty of

CONSTITUTIONAL LAW (*continued*).

causing the same to be registered, and of issuing a warrant upon the treasurer for the amount due thereon, without any specific appropriation therefor, &c. *Held*, that so much of said act as requires such filing and registration before A. can procure a warrant in his favor for the amount due, or resort to other means to enforce the payment thereof, does not render less effective his pre-existing remedies, and is therefore not in conflict with the contract clause of the Constitution. *Id.*

5. The provision of the act of March 3, 1863 (12 Stat. 765; Rev. Stat., sects. 1059–1061), authorizing the Court of Claims, without the intervention of a jury, to hear and determine claims against the government, and also any set-off, counter-claim, claim for damages, or other demand on the part of the government against the claimant, does not violate the Seventh Amendment of the Constitution. *McElrath* v. *United States*, 426.
6. Sect. 4283 of the Revised Statutes, as limited in its application by sect. 4289, is not unconstitutional. *Lord* v. *Steamship Company*, 541.
7. The pilot laws of the State of New York are not in conflict with the Constitution of the United States. *Ex parte McNiel* (13 Wall. 236) and *Cooley* v. *Board of Wardens of Port of Philadelphia* (12 How. 299) cited and reaffirmed. *Wilson* v. *McNamee*, 572.
8. Congress, in the exercise of its power "to lay and collect taxes, duties, imposts, and excises," may, to enforce their payment, authorize the distraint and sale of either real or personal property. The owner of the property so distrained and sold is not thereby deprived of it without due process of law. *Springer* v. *United States*, 586.
9. Direct taxes, within the meaning of the Constitution, are only capitation taxes as expressed in that instrument, and taxes on real estate. *Id.*
10. The duty which the internal revenue acts provided should be assessed, collected, and paid upon gains, profits, and incomes was an excise or duty, and not a direct tax, within the meaning of the Constitution. *Id.*
11. The act of the State of Alabama, entitled "An Act to provide for the improvement of the river, bay, and harbor of Mobile," approved Feb. 16, 1867, is not in conflict with the Constitution of the United States. *County of Mobile* v. *Kimball*, 691.
12. The provision in that act for issuing county bonds by the president and commissioners of revenue of Mobile County is not a taking of private property for public use, within the meaning of the Constitution of Alabama, nor can it be declared invalid, although it may impose upon one county the expense of an improvement in which the whole State is interested. *Id.*

CONSTRUCTIVE SEISIN. See *Vacant Lands, Entry upon, under Color of Title.*

CONTEMPT, PROCEEDING FOR.

A proceeding in the court below for contempt cannot be re-examined here on an appeal or a writ of error. *Hayes* v. *Fischer*, 121.

CONTRACTS. See *Claims against the United States; Damages; Evidence*, 1; *Personal Chattels, Sale and Delivery of*, 2.

1. A., being indebted to B., proposed, in consideration of a further loan of money, to deliver, in payment of both sums, a certain quantity of wood at a stipulated price per cord. B. accepted the proposal, C. agreeing to receive the wood from him at that price. The loan was made, and A., pursuant to the agreement of the parties, delivered the wood upon the premises of C. *Held*, that A.'s title passed by that delivery, and that the wood was not subject to levy under executions thereafter issued by his creditors. *National Bank* v. *Dayton*, 59.
2. The conduct of one party to a contract which prevents the other from performing his part is an excuse for non-performance. *United States* v. *Peck*, 64.
3. By the law of Louisiana, a party to a synallagmatic contract has no right to rescind it by reason of the failure of performance by the other party, unless he returns to the latter what was received from him, so as to put him in the same situation in which he was before. *Gay* v. *Alter*, 79.
4. The obligation of contracts is impaired by such legislation as lessens the efficacy of the remedy which the law in force at the time they were made provided for enforcing them. *Louisiana* v. *New Orleans*, 203.
5. In the adjustment of her debt by the State of Virginia, her bonds, payable to order or bearer, with coupons annexed to them payable to bearer, were issued under the act of March 30, 1871, known as the "Funding Act," which declares that the coupons "shall be receivable at and after maturity for all taxes, debts, dues, and demands due the State," and that this shall be expressed on their face. Where, therefore, a creditor took, as in that act provided, such bonds for two-thirds of the amount of the old bonds he surrendered, and a certificate for the balance, a contract was consummated between the State and the holder of the bonds and the holder of the coupons, from which, without their consent, she could not be released. *Hartman* v. *Greenhow*, 672.
6. A subsequent enactment requiring the tax on the bonds issued under that act to be deducted from the coupons originally attached to them, when tendered in payment of taxes or other dues to the State, cannot be applied to coupons separated from the bonds, and held by a different owner, without impairing the contract. Such an owner is therefore entitled to a *mandamus* to compel the proper officer to receive for their full amount the coupons so tendered. *Id.*

CORPORATIONS. See *Municipal Corporations*.

1. Where a corporation, solvent at the time, and having no actual intent to defraud creditors, disposes of its lands for an inadequate

CORPORATIONS (*continued*).
consideration or by a voluntary conveyance, its subsequent creditors cannot question the transaction. *Graham* v. *Railroad Company*, 148.
2. *Semble*, that where a corporation has waived, or omitted to exercise, the right to institute proceedings to recover lands of which it has been defrauded, such right does not inure to the benefit of subsequent creditors or purchasers. *Id.*

COSTS. See *Public Money*, *Person accountable for*, 2.
1. A patentee is not, in an action for an infringement of his letters-patent, entitled to reimbursement for expenses incurred by him other than his taxable costs. *Parks* v. *Booth*, 96.
2. A bond is not sufficient for the purposes of either an appeal to this court or a *supersedeas*, if the obligors are not thereby bound for the payment of costs, should the appellant fail to make his plea good. *Seward* v. *Corneau*, 161.

COUNSEL FEES.
A patentee is not, in an action for an infringement of his letters-patent, entitled to reimbursement for counsel fees paid by him. *Parks* v. *Booth*, 96.

COUNTER-CLAIM. See *Court of Claims*, 2.

COURT AND JURY.
1. Neither the charge of the court below, if no exception was taken thereto before the final submission of the case to the jury, nor the granting or the refusing a new trial, is subject to review here. *Railway Company* v. *Heck*, 120.
2. Certain articles were imported by A. from Liverpool, Nov. 14, 1871, upon which the collector of the port of New York exacted the duty of six cents per pound, imposed by sect. 5 of the act of July 14, 1862 (12 Stat. 547), upon "argols or crude tartar." A. claimed that they were "argols crude," and, as such, were, by sect. 22 of the act of July 14, 1870 (16 id. 266), exempt from duty. A. paid the duty under protest, and brought suit against the collector to recover it. The court instructed the jury that it was for them to determine from the evidence whether the argols in question were "argols crude," then known as such to commerce or to science, or whether they were argols that were more or less refined. *Held*, that the instruction was proper, and covered the entire ground of the controversy. *Recknagel* v. *Murphy*, 197.
3. Where, before the final submission of the case to the jury, irrelevant evidence, which had been admitted, was withdrawn, and they were instructed to disregard it, — *Held*, that an exception to the action of the court will not be sustained, the presumption being, so far as this court is concerned, that, under such circumstances, the jury based their verdict upon legal evidence only. *Pennsylvania Company* v. *Roy*, 451.

COURT OF CLAIMS.

1. Upon the settlement of his accounts by the accounting officers of the treasury, B., while announcing that he would not be concluded thereby, and protesting that the allowance was insufficient, received it, and brought suit in the Court of Claims to recover the balance claimed. *Held*, that the United States is not bound by the settlement, but for any moneys improperly paid him in pursuance thereof is entitled to judgment. *McElrath* v. *United States*, 426.
2. The provision of the act of March 3, 1863 (12 Stat. 765 ; Rev. Stat., sects. 1059–1061), authorizing that court, without the intervention of a jury, to hear and determine claims against the government, and also any set-off, counter-claim, claim for damages, or other demand on the part of the government against the claimant, does not violate the Seventh Amendment of the Constitution. *Id.*

COURTS OF THE UNITED STATES. See *Comity; Jurisdiction*, 13, 14.

COVENANT TO RECONVEY.

Where a party, on receiving an absolute deed, covenants with his grantor to reconvey the lands, when the money which it was given to secure shall be paid, both instruments must be taken together as constituting a mortgage. *Lanahan* v. *Sears*, 318.

CREDITORS. See *Contracts*, 5, 6 ; *Corporations*.

CRIMINAL LAW. See *Estoppel*, 5.

Quære, whether the only mode for the recovery of the penalty prescribed by sect. 3296 of the Revised Statutes is not by indictment. *United States* v. *Chouteau*, 603.

CRUDE TARTAR. See *Customs Duties*, 1.

CUSTOMS DUTIES. See *Foreign Coins, Value of.*

1. Certain articles were imported by A. from Liverpool, Nov. 14, 1871, upon which the collector of the port of New York exacted the duty of six cents per pound, imposed by sect. 5 of the act of July 14, 1862 (12 Stat. 547), upon "argols or crude tartar." A. claimed that they were "argols crude," and, as such, were, by sect. 22 of the act of July 14, 1870 (16 id. 266), exempt from duty. A. paid the duty under protest, and brought suit against the collector to recover it. The court instructed the jury that it was for them to determine from the evidence whether the argols in question were "argols crude," then known as such to commerce or to science, or whether they were argols that were more or less refined. *Held*, that the instruction was proper, and covered the entire ground of the controversy. *Recknagel* v. *Murphy*, 197.
2. Imported goods composed of cotton and silk, the latter being the component part of chief value, were, by the act of June 30, 1864 (13 Stat. 202), subject to a duty of fifty per cent *ad valorem*. *Solomon* v. *Arthur*, 208.

DAMAGES. See *Constitutional Law*, 2; *Court of Claims*, 2; *Land, Liability of Owner of; Passengers, Carrier of*, 4.

Where, by an act of the State of Alabama of Feb. 16, 1867, entitled "An Act for the improvement of the river, harbor, and bay of Mobile," a harbor board was created and authorized to provide for the contemplated improvement by entering into a contract therefor binding upon the county, payment for the work to be made in the bonds of the county at a stipulated rate, — *Held*, that if specific performance cannot for any reason be enforced in favor of the party who is thereunto entitled, on his completion of the work under the contract, a court of equity will adjudge that compensation in damages be made to him by the county. *County of Mobile* v. *Kimball*, 691.

DECEASED PERSONS, DECLARATIONS OF.

In questions of private boundary, the declaration of a deceased person of particular facts, as distinguished from reputation, is not admissible unless it be shown that he had knowledge of that whereof he spoke, and was then on the land, or in possession of it, and was pointing out and marking the boundary, or discharging some duty in relation thereto. A declaration, merely reciting something past, is within the rule which excludes hearsay evidence. *Hunnicutt* v. *Peyton*, 333.

DECREE. See *Practice*, 9.

DECREE, BILL TO SET ASIDE A. See *Pleading*, 1.

DEED. See *Confiscation*, 1; *Deed of Trust; Mortgage*, 2.

DEED, DISAFFIRMANCE OF.

1. An infant *feme covert*, to whom lands in Indiana were conveyed, executed with her husband, May 20, 1847, a deed in fee therefor, for a valuable consideration paid by the grantee to him. She was, on her petition, divorced from him, Feb. 14, 1870. Within less than two months thereafter she gave due notice of her disaffirmance of the deed, and demanded possession of the lands, which was refused. She thereupon brought suit. *Held*, that, as she did nothing during her coverture to confirm the deed, her notice and suit avoided it. *Sims* v. *Everhardt*, 300.
2. An estoppel *in pais* not being applicable to an infant, she was not estopped from alleging her infancy, by any declaration which, at the time of executing the deed, she made in regard to her age. *Id.*

DEED OF TRUST. See *Lien; Mortgaged Lands in Illinois, Redemption of; Personal Chattels, Sale and Delivery of.*

Where a deed of trust of lands to secure a promissory note was released by the trustee without the surrender or payment of the note or the express authority of the holder thereof, a subsequent purchaser with notice takes them subject to the equitable rights of such holder. *Insurance Company* v. *Eldredge*, 545.

DELIVERY. See *Contracts*, 1.

DEMURRER. See *Jurisdiction*, 12.

DIRECT TAXES.

1. Direct taxes, within the meaning of the Constitution, are only capitation taxes as expressed in that instrument, and taxes on real estate. *Springer* v. *United States*, 586.
2. The duty which the internal revenue act of June 30, 1864 (13 Stat. 218), as amended by the act of March 3, 1865 (id. 469), provided should be assessed, collected, and paid upon gains, profits, and incomes was an excise or duty, and not a direct tax, within the meaning of the Constitution. *Id.*

DISSEISIN. See *Vacant Lands, Entry upon, under Color of Title.*

DISTILLER. See *Estoppel*, 5.

While the act of July 28, 1868 (15 Stat. 125), was in force, A., the owner of two distilleries, applied to the Commissioner of Internal Revenue for Tice meters for them, and deposited the price with the collector of the proper district to be paid to the manufacturer. The latter delivered them and received the money. In one distillery the meters were not used, and in the other they never worked properly. A. sued the United States for the money so paid. *Held*, that he was not entitled to recover. *Finch* v. *United States*, 269.

DISTRAINT. See *Constitutional Law*, 8.

DISTRICT OF COLUMBIA, SUPREME COURT OF.

1. The Supreme Court of the District of Columbia is authorized to issue the writ of *mandamus* as an original process in cases where, by the principles of the common law, the petitioner is entitled to it. *United States* v. *Schurz*, 378.
2. Sect. 858 of the Revised Statutes of the United States, which declares "that in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court," applies to the courts of the District of Columbia as fully as to the Circuit and District Courts of the United States. *Page* v. *Burnstine*, 664.

DIVIDED COURT, JUDGMENT BY. See *State Courts, Re-examination of the Final Judgments and Decrees of*, 4.

DUE PROCESS OF LAW. See *Constitutional Law*, 8.

DUTIES. See *Constitutional Law*, 8, 10; *Customs Duties.*

EJECTMENT. See *Appeal*, 6; *Confiscation*; *Estoppel*, 1; *Income Tax*, 1.

The mortgagee of a homestead in Texas cannot maintain ejectment therefor, if the "forced sale" thereof be prohibited by the Constitution of the State which was in force at the date of the mortgage. *Lanahan* v. *Sears*, 318.

ENTRY, RIGHT OF. See *Lands sold for the Non-payment of Taxes.*

EQUITABLE ESTOPPEL. See *Estoppel*, 1.

EQUITY. See *Damages; Deed of Trust; Municipal Corporations*, 4.

1. A bill in chancery to set aside a judgment or a decree of a court of competent jurisdiction on the ground of fraud must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the court or the party injured was misled or imposed on. *United States* v. *Atherton*, 372.
2. A bill to set aside or annul a patent of the United States for public lands, or to correct it on account of fraud or mistake, must show, by like averments, the particulars of the fraud, and the character of the mistake and how it occurred. *Id.*

EQUIVALENTS. See *Letters-patent*, 11.

ESTOPPEL. See *Claims against the United States; Court of Claims*, 1; *Deed, Disaffirmance of*, 2; *Foreign Coins, Value of; Judgment; Municipal Bonds*, 1, 8, 9.

1. In 1859, M. & Co., judgment creditors of A., filed their bill in the Circuit Court of the District of Columbia, against him and others, setting forth that he had, without consideration and with intent to defraud his creditors, conveyed to the other defendants his real estate in that district. It was adjudged, May 30, 1860, that certain lots of ground be sold by a trustee to pay M. & Co. and such other creditors as might come in according to the practice of the court. The trustee subsequently reported that, having sold a part of the lots and realized more than sufficient to pay M. & Co., he had discontinued the sale. His report was confirmed Nov. 28, 1862. An order of the court, Nov. 14, 1863, recites that certain other creditors of A. had filed petitions in support of their claims, and directs that he being then a non-resident, notice of the character and object of the petitions be given him by publication. Publication was made accordingly, and the defendants failing to appear, the bill was taken as confessed. The case was referred to an auditor, who reported that the claims were in excess of the proceeds of the sale remaining in the hands of the trustee. His report was confirmed. Thereupon the trustee, without any order other than that entered May 30, 1860, proceeded to sell the remainder of the lots to B. for $950. The sale was confirmed, and the cause referred to an auditor to state the accounts of the trustee and report a distribution. A. appeared before the auditor and objected to the allowance of the simple-contract debts. The report of the auditor was confirmed, and the lots were conveyed by the trustee's deed bearing date Dec. 14, 1865, to B., who entered thereon, and made improvements to the value of $4,000. A., who then resided upon a lot adjoining the premises, asserted no claim to them except as to three feet for an alley, and he afterwards admitted that even in regard to that part he was mistaken. A., Dec. 21, 1872, claiming that the trustee's sale was void and passed no title, and having obtained a deed from the party to whom he had

ESTOPPEL (*continued*).

in trust previously conveyed the lots so purchased by B., brought ejectment against the latter. *Held*, that, without affirming that the sale to B. was valid in the absence of a special direction by the court to the trustee to sell after the first order had been executed, A.'s failure to object to its validity and apply to the court to set it aside, and his not asserting any title to the premises although he had knowledge that B., claiming them under a judicial sale confirmed by a court of general jurisdiction, was expending money and making improvements thereon, constituted an equitable estoppel which precludes the maintenance of the action. *Kirk* v. *Hamilton*, 68.

2. *Dickerson* v. *Colgrove* (100 U. S. 578) cited and approved. *Id.*
3. The convention of the State of Virginia passed, April 13, 1861, an ordinance entitled "An Ordinance to provide against the sacrifice of property and to suspend proceedings in certain cases," whereby, if a debtor, against whom there was an execution in the hands of an officer, offered bond and security for the payment of debt, interest, and costs, when the operation of the ordinance should cease, his property should be restored to him. If he offered no bond, the property was to be restored to him without lien, unless it would bring its appraised value as of the date of Nov. 6, 1860. No executions were, after the date of the ordinance, to be issued against residents except in favor of the State. The convention passed, April 18, 1861, an ordinance of secession. A., against whom an execution was issued March 21 of that year, availed himself of the provisions of the ordinance of April 13, by giving the requisite bond and security. The judgment against him remaining unpaid and the ordinance having ceased to operate, suit was brought on the bond. *Held*, that the obligors are estopped from setting up that, by reason of anything contained in the ordinance, the bond is invalid. *Daniels* v. *Tearney*, 415.
4. *Home Insurance Co.* v. *City Council of Augusta* (93 U. S. 116) and *United States* v. *Hodson* (10 Wall. 395) cited and approved. *Id.*
5. In an action by the United States upon a bond executed by A., a distiller, and his sureties, the breaches of the condition assigned in the declaration or complaint were, first, that by omitting to make certain entries in a book which he, by sect. 3303, Rev. Stat., was required to keep, he was enabled to defraud, and did defraud, the United States of the tax imposed by law upon the spirits produced at his distillery; and, second, that in violation of sect. 3296 he had removed spirits produced at his distillery to a place other than the distillery warehouse, without the tax thereon having been first paid. To the first assignment the defendants answered by denying its allegations, and averring that whatever fraud was committed was effected through other means than those charged. To the second they answered, that, before the suit was brought, two bills of indictment, for the same removals of spirits now complained of, were found against A., one containing counts upon said section and upon sections 3281 and 5440, and that upon the recommendation of the Attorney-General and the advice of the Secretary of the Treasury the

ESTOPPEL (*continued*).

Commissioner of Internal Revenue accepted from him a specified sum, in a compromise, satisfaction, and settlement of the indictments, which were thereupon dismissed and abandoned by the United States. Upon a demurrer to the answer, — *Held*, that the answer was a bar to the action. *United States* v. *Chouteau*, 603.

6. A decree dismissing a bill *without prejudice* is not a bar to a subsequent suit for the same cause of action. *County of Mobile* v. *Kimball*, 691.

EVIDENCE. See *Bills of Exchange and Promissory Notes*, 2, 3; *Court and Jury*, 3; *Foreign Coins, Value of; Income Tax*, 1.

1. Parol evidence of the surrounding circumstances is admissible to show the subject-matter of a contract. *United States* v. *Peck*, 64.
2. In an action against an executor in his representative capacity, A., who was interested in the issue but not a party thereto, was, against the objection of the defendant, introduced as a witness by the plaintiff, and permitted to testify to statements of the testator touching the subject-matter in controversy. *Held*, that the witness was competent and the evidence admissible. *Potter* v. *National Bank*, 163.
3. Where, upon a bill to foreclose a mortgage upon a railroad, a creditor who had sued out an attachment against A., former owner of the road, and caused it to be levied thereon, was made a party defendant, — *Held*, that A.'s deed transferring his interest in the road to the trustees named in the mortgage and to the railroad company bearing date before the attachment against him was sued out, but not recorded until thereafter, was admissible in evidence. *People's Bank* v. *Calhoun*, 256.
4. In determining whether the constitutional limit of the indebtedness of a city in Illinois had been exceeded by the issue of certain bonds, the court permitted — there having been no separate assessment of the property within the city for the preceding year made or required by law — the introduction of the assessments for State and county taxes embracing all taxable property within the county and townships of which the city formed a part, from which, in connection with a map, the location and taxable value of all the property within the limits of the city for that year could be readily ascertained. *Held*, that the evidence, being the best which the law afforded, was properly admitted. *Buchanan* v. *Litchfield*, 278.
5. In questions of private boundary, the declaration of a deceased person of particular facts, as distinguished from reputation, is not admissible unless it be shown that he had knowledge of that whereof he spoke, and was then on the land, or in possession of it, and was pointing out and marking the boundary, or discharging some duty in relation thereto. A declaration, merely reciting something past, is within the rule which excludes hearsay evidence. *Hunnicutt* v. *Peyton*, 333.

6 The decisions of the Supreme Court of Texas examined, and *held* to be in harmony with this ruling. *Id.*

EVIDENCE (*continued*).

7. Where a party is entitled to merely compensatory damages for injuries to his person, evidence as to his poverty, or the number and ages of his children, is irrelevant. *Pennsylvania Company* v. *Roy*, 451.
8. The account of a delinquent revenue officer or other person accountable for public money, as finally adjusted by the proper officers of the Treasury Department, is not admissible as evidence under sect. 886, Rev. Stat., unless it be certified and authenticated to be a transcript from the books and proceedings of that department. A certificate, therefore, which states that the transcript, to which it is annexed, is a copy of the original on file is not sufficient, that being the form used in reference to mere copies of bonds, contracts, or other papers connected with the final adjustment. *United States* v. *Pinson*, 548.
9. When, in an action at law upon his bond, the defendant sets up that it was procured from him by fraud, no evidence in support of the plea is admissible, except that which relates to the execution of the instrument. *George* v. *Tait*, 564.
10. Sect. 858 of the Revised Statutes of the United States, which declares "that in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with, or statement by, the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court," applies to the courts of the District of Columbia as fully as to the Circuit and District Courts of the United States. *Page* v. *Burnstine*, 664.

EXCEPTIONS, BILL OF. See *Jurisdiction*, 1, 6; *Practice*, 3, 4.

EXCISE. See *Constitutional Law*, 10.

EXECUTION. See *Contracts*, 1.

EXECUTOR, ACTION AGAINST. See *Evidence*, 2, 10.

FACT, FINDINGS OF. See *Jurisdiction*, 6.

1. Where, under the practice established in Utah, issues are tried by the court, its findings of fact should be announced and filed before the entry of the judgment. *Kahn* v. *Smelting Company*, 641.
2. After such entry, an additional finding, made at the request of either party without notice to the other, forms no part of the record. *Id.*
3. In a suit to compel an account for the proceeds of a mining claim, a finding by the court that there was no such co-tenancy between the parties in the mine in controversy as to entitle the plaintiff to an accounting is a mere legal inference, and not a sufficient finding of fact upon which to base a decree. *Id.*

FEDERAL QUESTION. See *Jurisdiction*, 7–9.

FEE BOND. See *Appeal*, 5; *Practice*, 6.

FEME COVERT. See *Deed, Disaffirmance of.*

FIRM NAME. See *Partnership.*

FORCED SALE. See *Ejectment.*

FORECLOSURE. See *Appeal; Evidence; Mortgaged Lands in Illinois, Redemption of.*

FOREIGN COINS, VALUE OF.

1. The valuation of foreign standard coins, which the act of March 3, 1873, c. 268 (17 Stat. 602; Rev. Stat., sect. 3564), requires the director of the mint to estimate annually, and the Secretary of the Treasury to proclaim on the first day of January, is as binding on collectors of customs and importers, as if declared by statute; and evidence is not receivable to show that it is inaccurate. *The Collector* v. *Richards* (23 Wall. 246) cited and reaffirmed. *Cramer* v. *Arthur*, 612.
2. Pursuant to sect. 2903 of the Revised Statutes, providing for the case of invoices made out in a depreciated currency issued and circulated under authority of any foreign government, regulations were established declaring that where the standard value of a foreign currency has been proclaimed by the Secretary of the Treasury, in the manner provided by law, such value shall control in estimating customs duties, unless collectors have been otherwise instructed, or unless a depreciation of the value of that currency, "expressed in an invoice from the standard of that currency, shall be shown by consular certificate thereto attached." *Held*, that the proclamation and certificate are conclusive. *Id.*

FOREIGN COMMERCE. See *Commerce*, 5.

FORMER RECOVERY. See *Estoppel*, 5.

FRANCHISE. See *Taxation.*

FRAUD. See *Appeal*, 7; *Corporations; Pleading.*

FRAUDULENT PREFERENCE. See *Assignee in Bankruptcy; Bankruptcy*, 1, 5, 6.

GRANT, ACCEPTANCE OF. See *Patent of the United States for Land*, 5.

GUARDIAN. See *Evidence*, 10.

HEARSAY. See *Deceased Person, Declarations of.*

HOMESTEAD, MORTGAGEE OF, IN TEXAS. See *Ejectment.*

HUSBAND AND WIFE. See *Deed, Disaffirmance of.*

ILLINOIS. See *Income Tax*, 2; *Mortgaged Lands in Illinois, Redemption of; Municipal Bonds*, 7–11.

IMMUNITY. See *Taxation.*

IMPORTS, DUTIES ON. See *Customs Duties.*

IMPOSTS. See *Constitutional Law*, 8

INADEQUATE CONSIDERATION. See *Corporations.*

INCOMES, TAX ON. See *Income Tax.*

INCOME TAX.

1. Certain lands of A. were distrained and sold by reason of his refusal to pay the income tax assessed against him under the act of June 30, 1864 (13 Stat. 218), as amended by the act of March 3, 1865 (id. 469), he having no goods or chattels known to the proper officers out of which the tax and penalty could have been made. The United States became the purchaser of the lands, received a deed therefor, and brought ejectment against him. *Held*, that he cannot raise the question here that the deed, inasmuch as it refers to the act of March 30 instead of that of June 30, should, on the trial, have been excluded from the jury, as that objection to its admissibility in evidence was not made in the court of original jurisdiction. *Springer* v. *United States*, 586.
2. Where the collector acted in good faith, it was not improper for him, in the exercise of his discretion, to sell as an entirety the lands, consisting of two town lots which were enclosed and occupied as a single homestead, a dwelling-house being upon one of them and a barn on the other. The statute of Illinois under which they were separately assessed for State taxation has no application to his proceedings. *Id.*
3. Congress, in the exercise of its power "to lay and collect taxes, duties, imposts, and excises," may, to enforce their payment, authorize the distraint and sale of either real or personal property. The owner of the property so distrained and sold is not thereby deprived of it without due process of law. *Id.*
4. The duty which the internal revenue acts provided should be assessed, collected, and paid upon gains, profits, and incomes was an excise or duty, and not a direct tax, within the meaning of the Constitution. *Id.*

INDIANA. See *Lands, Partition of*, 1.

INDIAN TRIBES, LANDS IN POSSESSION OF.

Where an act of Congress admitting a State into the Union, or organizing a territorial government, provides, in accordance with a treaty stipulation, that the lands in the possession of an Indian tribe shall not be a part of such State or Territory, the new government has no jurisdiction over them. *Harkness* v. *Hyde* (98 U. S. 476) qualified and explained. *Langford* v. *Monteith*, 145.

INDICTMENT. See *Criminal Law.*

INDIVIDUALS, PRIVATE PROPERTY OF. See *Municipal Corporations*, 2.

INDORSEMENT. See *Bills of Exchange and Promissory Notes*, 3.

INDORSER. See *Bills of Exchange and Promissory Notes*, 1, 3; *Judgment*, 1.

INFANT. See *Deed, Disaffirmance of.*

INFERENCE. See *Practice*, 9.

INFRINGEMENT. See *Letters-patent*, 3, 10, 14, 16.

INSTRUCTIONS TO JURY. See *Court and Jury.*

INSURANCE, POLICY OF. See *Assignment*, 2.

INTEREST.

A patentee is not, in an action for the infringement of his letters-patent, entitled to interest on the profits realized by the infringer. *Parks* v. *Booth*, 96.

INTERNAL REVENUE. See *Income Tax; Public Money, Person accountable for.*

INTER-STATE COMMERCE. See *Commerce*, 5.

IOWA. See *Constitutional Law*, 2; *Lands sold for the Non-payment of Taxes; Mortgage*, 1.

JUDGMENT. See *Assignment*, 1.

1. The judgment in an action brought by the holder of negotiable paper against the indorsers, is not a bar to his subsequent action against the maker, who was not notified of the pendency of the first action. *Railroad Company* v. *National Bank*, 14.
2. An estoppel by judgment is equally conclusive upon all the parties to the action and their privies, and may not be invoked or repudiated at the pleasure of one of them as his interest may require. *Id.*

JUDGMENT, BILL TO SET ASIDE A. See *Pleading*, 1.

JUDICIAL SALE. See *Mortgaged Lands in Illinois, Redemption of.*

JURISDICTION. See *Causes, Removal of; District of Columbia, Supreme Court of*, 1; *Lands, Partition of*, 2; *State Courts, Jurisdiction of; State Courts, Re-examination of the Final Judgments or Decrees of*, 4.

I. OF THE SUPREME COURT.

1. Neither the charge of the court below, if no exception was taken thereto before the final submission of the case to the jury, nor the granting or the refusing a new trial, is subject to review here. *Railway Company* v. *Heck*, 120.
2. An appeal will be dismissed when it appears from the record, taken as a whole, that the amount actually in controversy is not sufficient to give this court jurisdiction. *Banking Association* v. *Insurance Association*, 121.
3. *Gray* v. *Blanchard* (97 U. S. 564) reaffirmed. *Id.*
4. An appeal is the only mode by which the appellate jurisdiction of this court can be exercised in equity suits, brought in the courts of the United States, and it does not lie before a final decree has been rendered. *Hayes* v. *Fischer*, 121.

JURISDICTION (*continued*).

5. A proceeding in the court below for contempt cannot be re-examined here on an appeal or a writ of error. *Id.*
6. The ruling in *The Abbotsford* (98 U. S. 440), that under the act of Feb. 16, 1875 (18 Stat. 315), the finding of facts by the Circuit Court in admiralty cases is conclusive, and that only rulings upon questions of law can be reviewed by bill of exceptions, reaffirmed. *The "Benefactor,"* 214.
7. This court, in *Martin* v. *Hunter's Lessee* (1 Wheat. 85), affirmed the constitutionality of sect. 25 of the Judiciary Act of 1789 (1 Stat. 85, re-enacted in sect. 709, Rev. Stat.), which, in certain cases therein mentioned, confers on this court jurisdiction to re-examine upon a writ of error the final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had. The doctrine then asserted, and ever since maintained, cannot be questioned here. *Williams* v. *Bruffy*, 248.
8. That jurisdiction attaches whenever the highest court of a State, by any decision which involves a Federal question, affirms or denies the validity of the judgment of an inferior court, over which it can by law exercise appellate authority, whether the decision, after an examination of the record of that judgment, be expressed by refusing a writ of error or *supersedeas*, or by dismissing a writ previously allowed. *Id.*
9. This court, when it has once acquired jurisdiction, may, in order to enforce its judgment, send its process to either the appellate, or the inferior, court. *Id.*
10. Where the marshal of the United States, to whom was directed a warrant of provisional seizure, sued out of the proper court sitting in bankruptcy, levied it upon certain goods in the possession of a third party claiming title to them, — *Held*, that this court has jurisdiction to re-examine the judgment of a State court, whereby it was held in a suit against the marshal that, by reason of such possession, he had no authority under the laws of the United States to so levy the warrant. *Sharpe* v. *Doyle*, 686.

II. Of the Circuit Court.

11. Where a bill is filed to enforce a claim or lien upon a specific fund within reach of the court, and such of the defendants as are neither inhabitants of nor found within the district do not voluntarily appear, the Circuit Court has jurisdiction to adjudicate upon their right to, or interest in, the fund, if they be notified of the pendency of the suit by service or publication, in the mode prescribed by sect. 738 of the Revised Statutes. *Goodman* v. *Niblack*, 556.
12. In such a case, where it appears by the bill that certain non-residents are indispensable parties, and they are not made parties, the bill is bad on demurrer, and should be dismissed without prejudice. *Id.*

III. In General.

13. The courts of the United States, as courts of admiralty, have not exclusive jurisdiction of suits *in personam*, growing out of collisions

JURISDICTION (*continued*).
between vessels while navigating the Ohio River. *Schoonmaker* v. *Gilmore*, 118.
14. The decisions of this court affirming the jurisdiction of the courts of the United States in cases arising under the laws of the United States, or where a State is a party, cited and commented on. *Railroad Company* v. *Mississippi*, 135.
15. Where an act of Congress admitting a State into the Union, or organizing a territorial government, provides, in accordance with a treaty stipulation, that the lands in the possession of an Indian tribe shall not be a part of such State or Territory, the new government has no jurisdiction over them. *Harkness* v. *Hyde* (98 U. S. 476) qualified and explained. *Langford* v. *Monteith*, 145.
16. Where, in a civil suit before a justice of the peace of the Territory of Idaho, it appears by the answer of the defendant, verified by his affidavit, that the question of title to real estate is necessarily involved, the justice should certify the case to the District Court for trial. If he proceeds to try it, it must, on appeal from his judgment, be dismissed. *Id.*

JURY. See *Court and Jury*.

JURY, TRIAL BY. See *Court of Claims*, 2.

LAND DEPARTMENT, DECISIONS OF THE OFFICERS THEREOF.
1. In the progress of the proceedings to acquire, under the laws of the United States, a title to public land, the power of the Land Department over them ceases when the last official act necessary to transfer the title to the successful claimant has been performed. *United States* v. *Schurz*, 378.
2. Title by patent from the United States is title by record, and the delivery of the instrument to the patentee is not, as in a conveyance by a private person, essential to pass the title. *Id.*
3. Therefore, when the officers whose action is rendered by the laws necessary to vest the title in the claimant have decided in his favor, and the patent to him has been duly signed, sealed, countersigned, and recorded, the title to the land passes, and the ministerial duty of delivering to him the instrument can be enforced by *mandamus*. *Id.*
4. An acceptance of the grant will, in such case, be presumed from his efforts to secure the favorable action of the department, and especially from his demand for the possession of the patent. *Id.*

LAND GRANTS. See *School Lands*, 1.

LAND, LIABILITY OF OWNER OF.
The owner or occupant of land who induces or leads others to come upon it for a lawful purpose is liable in damages to them — they using due care — for injuries occasioned by the unsafe condition of the land or its approaches, if such condition was known to him and not to them, and he negligently suffered it to exist, without giving timely notice thereof to them or the public. *Bennett* v. *Railroad Company*, 577.

LANDS, PARTITION OF.

1. Proceedings for the partition of real estate in Indiana were instituted in the year 1832, in the circuit court of the county where it is situate. The record consists of an order appointing three commissioners to divide the land between the several proprietors, their report at the next term, and its confirmation by the court. The report complies in its details with the requirements of the statute, gives the boundaries of the land, sets forth with proper description the portion assigned to each proprietor, and is accompanied by a plat showing the tracts assigned. *Held*, that it is not a valid objection to the proceedings when they collaterally come in question that no petition or complaint appears in the record as the foundation of them. *Hall* v. *Law*, 461.
2. When the recitals in the record show the jurisdiction of the court and its compliance with the statute, the order appointing commissioners is an adjudication affirming the sufficiency of the application and notice, which can be questioned only in a direct review of the proceedings in an appellate court. *Id.*

LANDS, SALE OF, FOR THE NON-PAYMENT OF THE INCOME TAX. See *Income Tax.*

LANDS SOLD FOR THE NON-PAYMENT OF TAXES.

1. The right of entry of a party who claims under the treasurer's deed lands in Iowa sold for the non-payment of taxes is barred, if, within five years after the deed has been executed and recorded, he neither sues for nor takes actual possession of the lands. *Barrett* v. *Holmes*, 651.
2. A statutory provision to that effect is not in conflict with the Constitution of the United States. *Id.*

LAPSE OF TIME. See *Limitations, Statute of.*

LETTERS-PATENT.

1. Reissued letters-patent No. 1826, granted Nov. 29, 1864, to Jonathan L. Booth for a new and useful improvement in grain-separators, are valid. *Parks* v. *Booth*, 96.
2. A specification describing an invention consisting merely of a new combination of old elements or devices which produces a new and useful result is sufficient if they be specifically named, their mode of operation given, and the result pointed out, so that those skilled in the art and the public may know the extent and nature of the claim and what the parts are which co-operate to do the work claimed for the invention. *Id.*
3. Where, in a suit for the infringement of letters-patent for such a combination, the parts of which are not susceptible of division or separate use, the answer sets up that the complainant is not the first and original inventor of it, the defence, to be available, must apply to the combination as an entirety, and not to a part of it, or to one or more of the claims of the letters, if they do not cover the entire invention. *Id.*

LETTERS-PATENT (*continued*).

4. A patentee is not entitled to reimbursement for counsel fees paid or expenses incurred by him, other than his taxable costs, nor to interest on the profits realized by an infringer. *Id.*
5. To entitle an improvement to protection under the patent laws, it must be the product of the exercise of the inventive faculties, and involve something beyond what is obvious to persons skilled in the art to which it relates. *Pearce* v. *Mulford*, 112.
6. Reissued letters-patent No. 5774, granted Feb. 24, 1874, to "Shubael Cottle, assignor to Mulford, Hale, & Cottle," for an improvement in chains and chain links for necklaces, &c., are void, the first claim for want of patentability in the alleged invention, and the second for want of novelty. *Id.*
7. *Quære*, whether said first claim is not also void for want of novelty. *Id.*
8. Reissued letters-patent No. 4026, granted June 14, 1870, to Hosea Ball for a new and useful improvement in ovens, are void, inasmuch as they contain new matter, and are for an invention different from that exhibited in the original specification and drawings. *Ball* v. *Langles*, 128.
9. The ruling in *Seymour* v. *Osborne* (11 Wall. 516) and *Russell* v. *Dodge* (93 U. S. 460), touching the authority of the Commissioner of Patents in granting a reissue of letters-patent, reaffirmed. *Id.*
10. The invention for which reissued letters-patent No. 1904, dated March 21, 1865, were granted to the Goodyear Dental Vulcanite Company was a set of artificial teeth, as a new article of manufacture, consisting of a plate of hard rubber with teeth, or teeth and gums, secured thereto in the manner described in the specification, by embedding the teeth and pins in a vulcanizable compound, so that it shall surround them while it is in a soft state, before it is vulcanized, and so that when it has been vulcanized the teeth are firmly and inseparably secured in the vulcanite, and a tight joint is effected between them, the whole constituting but one piece. *Held*, that the invention being a product or manufacture made in a defined manner, and not the product alone, separated from the process by which it is created, the process is as much a part of the invention as is the material of which the plate or product is composed. *Goodyear Dental Vulcanite Company* v. *Davis*, 222.
11. Those letters are not infringed otherwise than by using the material and the process or their equivalents. A plate made of celluloid is not, therefore, an infringement, as celluloid is not an equivalent for hard rubber, and in preparing it for that purpose the process, which is inseparable from the invention, cannot be employed. *Id.*
12. *Ball* v. *Langles* (*supra*, p. 128) reaffirmed. *Garneau* v. *Dozier*, 230.
13. Reissued letters-patent No. 6397, granted April 20, 1875, to Duncan McKenzie for a new and useful improvement in baker's ovens, must, in view of the state of the art at the time the original letters were granted, be so construed as to limit the element of the combination which relates to the communication between the furnace or

LETTERS-PATENT (*continued*).

fireplace and the interior of the oven, to the peculiar structural arrangement, whereby the products of combustion are admitted into the baking-chamber through openings in the arch or top of the furnace, and through the floor of the oven that separates it from the fire-chamber along the flues extending rearward from the furnace to the back part of the oven. *Id.*

14. There is, therefore, no infringement of the reissued letters where the bottom of the baking-chamber is not separated by any partition or diaphragm from the fire-chamber or furnace, and there are no flues to conduct the generated heat into the chamber. *Id.*
15. Reissued letters-patent No. 2261, dated May 29, 1866, issued to James Densmore and Amos Densmore for "a new and useful improved oil-tank car for carrying petroleum and other like substances in bulk," are void, — the alleged invention described in the specification being destitute of utility and novelty. *Densmore* v. *Scofield*, 375.
16. Where a bill was filed charging an infringement of reissued letters-patent No. 5154, dated Nov. 19, 1872, which was denied by the answer, the court, in view of the state of the art at the date of the invention for which the original letters were granted to Asa M. Swain, May 11, 1860, for improvements in water-wheels, construed the claims of the reissued letters in accordance with the distinct limitation of that invention in the original letters to a wheel of specific construction and form with its associated apparatus, and, finding that there was no infringement of the claims thus construed, dismissed the bill. *Held*, that such a construction gave the complainant no just ground of exception. *Manufacturing Company* v. *Ladd*, 408.
17. The evidence examined, and the result of a comparison of the reissued letters with the original letters, including the drawings and model submitted with the application for them, stated. *Id.*
18. A reissue can only be granted for the same invention which was originally patented. *Id.*
19. Letters-patent for a process, irrespective of the particular mode or form of apparatus for carrying it into effect, are admissible under the patent laws of the United States. *Tilghman* v. *Proctor*, 707.
20. To sustain such letters, the patentee should be the first and original inventor of the process, and claim it in them. If the means of carrying it out are not obvious to ordinary mechanics skilled in the art, his specification should describe some mode of carrying it out which will produce a useful result. *Id.*
21. A party who subsequently discovers a new mode of carrying out a patented process, and obtains letters-patent therefor, is not entitled to use the process without the consent of the patentee thereof. *Id.*
22. *Mitchell* v. *Tilghman* (19 Wall. 287) reviewed and overruled; and the letters-patent No. 11,766, granted Oct. 3, 1854, to Richard A.

LETTERS-PATENT (*continued*).
Tilghman, and subsequently renewed and extended, relating to the manufacture of fat acids, sustained as letters for a process. *Id.*
23. *O'Reilly* v. *Morse* (15 How. 62) and *Neilson* v. *Thompson* (Web. P. C. 275) commented upon and explained. *Id.*

LIEN. See *Jurisdiction*, 11, 12; *Taxation*, 1.
A., to secure the payment of his note to B., executed to C. a deed of trust of land of even date therewith, which was duly recorded. A. afterwards conveyed the land to D., and it became the property of C. through sundry mesne conveyances duly recorded, each of which, including that to C., recited that the land was subject to the deed of trust. C. then, to secure the payment of certain bonds, made a deed of trust of the land, which was duly recorded; and subsequently there was filed for record an instrument executed by him, purporting to release to his grantor "all the right, title, interest, claim, and demand" which he, C., had acquired by virtue of the trust-deed executed to him by A. to secure the note. The release did not acknowledge the payment of the note. C. thereafter made another deed of trust. E. was, long prior to the execution of the conveyances, except the deed of trust and that from A. to D., the lawful holder of A.'s note, it having for a valuable consideration been duly assigned to him before its maturity. *Held*, that E. was entitled to the lien created by A.'s deed of trust. *Swift* v. *Smith*, 442.

LIFE INSURANCE. See *Assignment; Condition Precedent.*

LIMITATIONS, STATUTE OF. See *Bankruptcy*, 6; *Lands Sold for the Non-payment of Taxes.*
1. An instrument gives color of title, — whether the grantor acts under authority of judicial proceedings or otherwise, — if by apt words of transfer it passes what purports to be the title; and the grantee's possession of the lands thereunder for the period mentioned in the Statute of Limitations bars the true owner's right of recovery. *Hall* v. *Law*, 461.
2. Where the complainant is out of possession, and the determination in his favor is only preliminary to a decree against the defendant for the surrender of the possession, the suit, although in form a proceeding in equity, so nearly resembles the common-law action of ejectment as to justify the application of that statute. *Id.*

LIS PENDENS. See *Appeal*, 6.

LOCAL ACTIONS. See *State Courts, Jurisdiction of.*

LOUISIANA. See *Constitutional Law*, 4; *Contracts*, 3.

MANDAMUS. See *Causes, Removal of*, 1; *Contracts*, 6; *Municipal Bonds*, 5; *Patent of the United States for Land*, 4.
1. This court will not by *mandamus* compel an inferior court to reverse a decision made in the exercise of its jurisdiction. *Ex parte Perry*, 183.

MANDAMUS (*continued*).
2. The Supreme Court of the District of Columbia is authorized to issue the writ of *mandamus* as an original process in cases where, by the principles of the common law, the petitioner is entitled to it. *United States* v. *Schurz*, 378.
3. The judgment in a proceeding for a *mandamus* is subject to review on the same conditions as that in any other action. *Hartman* v. *Greenhow*, 672.

MARSHAL. See *Bankruptcy*, 7, 8.

MARSHAL'S DEED. See *Confiscation*, 1.

MEMPHIS, CITY OF. See *Municipal Corporations*.

MERCANTILE PAPER. See *Bills of Exchange and Promissory Notes*.

MEXICAN LAND-GRANTS.
A party who, under article 24 of the Mexican law of 1825, procured from the government, by purchase, a grant of public lands, could alienate it before they were selected; and his formal act of sale, with a power to his alienee to obtain the title of possession, constituted the latter the absolute owner of them, when he, by the proper officer, was furnished with the evidence of title and put in possession. Where, therefore, the grant contained no specific description of the lands, but contemplated the selection and location of them, the title of extension, when given to the alienee, is complete. *Hunnicutt* v. *Peyton*, 333.

MINERAL LANDS. See *School Lands*, 1.

MINING PARTNERSHIP. See *Practice*, 9.
A member of "a mining partnership" may, without dissolving it, convey his interest in the mine and business. *Kahn* v. *Smelting Company*, 641.

MISSISSIPPI. See *Causes, Removal of*, 1; *Municipal Bonds*, 15.
According to the ruling of the highest court of Mississippi, the financial powers conferred by the general law upon boards of supervisors of counties in that State do not include that of borrowing money. *Wells* v. *Supervisors*, 625.

MISSISSIPPI RIVER, RIPARIAN OWNERS ON. See *Constitutional Law*, 2.

MISSOURI. See *Municipal Bonds*, 12, 17, 18; *Personal Chattels, Sale and Delivery of*.

MISSOURI RIVER, RIPARIAN OWNERS ON. See *Constitutional Law*, 2.

MISTAKE. See *Pleading*, 2.

MORTGAGE. See *Ejectment; Mortgaged Lands in Illinois, Redemption of; Personal Chattels, Sale and Delivery of.*

1. A railroad company in Iowa, after executing a mortgage to secure its bonds, which was duly recorded, covering all the property which it then possessed or might thereafter acquire, entered into a written contract with A., leasing for a specific period and at a stipulated sum, payable monthly, certain cars whereof he was the owner. It also reserved but did not exercise the privilege of purchasing them at the original cost at any time during the existence of the contract. A. retained the right to rescind the contract, if the company failed to pay the interest on its bonds. While the contract was in force, the mortgagee filed his bill of foreclosure. The court appointed a receiver, who took charge of the road and used the cars in operating it. The contract was never recorded. *Held*, 1. That the contract was binding between the parties thereto, and the failure to record it did not, under the statute of Iowa, render the cars subject to the lien of the mortgage. 2. That A. was entitled to the possession of them, and to compensation for their use by the receiver, payable out of the fund to the credit of the suit. *Myer* v. *Car Company*, 1.
2. Where a party, on receiving an absolute deed, covenants with his grantor to reconvey the lands, when the money which it was given to secure shall be paid, both instruments must be taken together as constituting a mortgage. *Lanahan* v. *Sears*, 318.

MORTGAGED LANDS IN ILLINOIS, REDEMPTION OF.

The court adheres to the rule announced in *Brine* v. *Insurance Company* (96 U. S. 627), touching the statutory right of redeeming mortgaged lands in Illinois after a judicial sale under a decree of foreclosure of a mortgage or deed of trust. *Swift* v. *Smith*, 442.

MUNICIPAL BONDS.

1. A town in Wisconsin, being thereunto authorized by law, subscribed for stock in a railroad company, and issued its bonds in payment therefor, each reciting that it "shall be valid only when it is thereon duly certified that the conditions upon which it was voted, issued, and deposited by said town have been performed." Suit was brought on the bonds by a party who in good faith purchased them before they matured. *Held*, that the certificate on the bonds (*supra*, p. 87) is in proper form, estopping the town from denying their validity, and placing them in a condition to be put on the market as commercial paper. *Menasha* v. *Hazard*, 81.
2. Where, before the subscription and bonds were voted, the company was authorized to consolidate with other companies constructing connecting lines, and such consolidation was effected, — *Held*, that the issue of the bonds to the consolidated company was lawful. *Id.*
3. *County of Scotland* v. *Thomas* (94 U. S. 682) and *Wilson* v. *Salamanca* (99 id. 499) approved. *Id.*
4. Where a court of county commissioners in Alabama, pursuant to the act of Dec. 31, 1868 (Pamphlet Laws of 1868, p. 514), subscribed for stock in a railroad company, and issued the bonds of the county

MUNICIPAL BONDS *(continued)*.

in payment therefor, the holder of them, or of the coupons thereto attached, is not required to present them when due to that court for allowance, before commencing suit, to enforce their payment. *County of Greene* v. *Daniel*, 187.

5. In case of non-payment, a *mandamus* will, by the laws of the State, lie against that court to compel the assessment and levy of the necessary taxes; but the holder who resorts to the courts of the United States must there reduce the bonds or the coupons to judgment, before he is entitled to that remedy. *Id.*

6. The court of county commissioners may cause the bonds to be executed in such denominations as may be agreed upon by it and the railroad company, provided the total amount for which they are issued does not exceed that set forth in the proposal accepted by the vote of the qualified electors of the county. *Id.*

7. The twelfth section of the ninth article of the Constitution of Illinois, adopted in 1870, declares that "no county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness." Under a statute of that State, approved April 15, 1873, authorizing cities to construct water-works, and for that purpose to appropriate and borrow money, and levy and collect a general tax in the same manner as other municipal taxes may be levied and collected, the city of Litchfield, by her ordinance, authorized and directed the issue of city bonds not exceeding a certain amount to be used for borrowing money for the erection, construction, and maintenance of water-works for the use of the people of that city. Bonds in the form and amount prescribed were accordingly issued, bearing date Jan. 1, 1874. Each recites that it "is issued under authority of an act of the General Assembly of the State of Illinois, entitled 'An Act authorizing cities, incorporated towns, and villages to construct and maintain water-works,' approved April 15, 1873, and in pursuance of an ordinance of the said city of Litchfield, No. 184, and entitled 'An Ordinance to provide for the issuing of bonds for the construction of the Litchfield water-works,' approved Dec. 4, 1873." The said twelfth section is not referred to in the statute or the ordinance, nor does the latter make mention of the city's indebtedness, although at the time of the issue of the bonds it exceeded the constitutional limit. A *bona fide* holder of them brought suit upon the unpaid coupons thereto attached. *Held*, that he was not entitled to recover. *Buchanan* v. *Litchfield*, 278.

8. Inasmuch as neither the Constitution nor the statute prescribes any mode by which a party dealing with the city can ascertain the amount of her indebtedness, *quære*, if the bonds had contained recitals which could be justly interpreted as amounting to a representation by her constituted authorities, that her indebtedness, increased

MUNICIPAL BONDS (*continued*).
by the amount of the bonds, did not exceed the constitutional limit, would she, as against a *bona fide* holder of them, be estopped from disputing the truth of such representations. *Id.*

9. The present case distinguished from others, wherein it was held that certain recitals in the bonds of a municipal corporation were conclusive as to their validity, and its liability to pay them. *Id.*

10. In determining whether the constitutional limit of the indebtedness of the city had been exceeded by the issue of the bonds, the court permitted — there having been no separate assessment of the property within the city for the preceding year made or required by law — the introduction of the assessments for State and county taxes embracing all taxable property within the county and townships of which the city formed a part, from which, in connection with a map, the location and taxable value of all the property within the limits of the city for that year could be readily ascertained. *Held*, that the evidence, being the best which the law afforded, was properly admitted. *Id.*

11. *Quœre*, Is the city legally bound to refund to the proper parties the money which her authorized agents or officers received and paid into her treasury, as the proceeds of the sale of the bonds. *Id.*

12. A city in Missouri, having lawful power to borrow money and provide for the payment of her debts, issued her bonds for the purpose of raising the means to pay her interest-bearing debt and the expenses of her government. They recite that they are issued under the authority of her charter, and an ordinance pursuant thereto passed Jan. 8, 1867. Although not actually executed until July 16, 1872, they were antedated as of Jan. 1, 1872, for the purpose of evading a law of the State passed March 28, 1872, which enacts that no bond thereafter issued by any county, city, or incorporated town, for any purpose whatever, shall be valid or negotiated until it is registered by the State auditor, and his certificate of such registration indorsed thereon. A., believing that the bonds were what on their face they purported to be, and, therefore, obligatory on the city, bought them in good faith from her authorized agent, and the money paid therefor went into her treasury. *Held*, 1. That the city was in the market as a borrower, and received the money in that character notwithstanding the transaction assumed the form of a sale of her securities, upon which, they being defectively executed, a suit could not be maintained. 2. That A. is entitled to recover the money paid, with interest thereon, from the time the obligation of the city to pay was denied. *Louisiana* v. *Wood*, 294.

13. The power of the city conferred by her charter to borrow money to take up her bonded indebtedness was not repealed by the eleventh section of the act of March 28, 1872, which enacts that "any county, city, or town that desires to place its outstanding indebtedness, under the provisions of this act, may do so by funding the same, and issuing new bonds in lieu of the present ones, upon such terms and bearing such interest, with such length of time to run, as

MUNICIPAL BONDS (*continued*).
may be agreed upon between the county, city, or town and the holders of its bonds." *Id.*
14. The bonds of a municipal corporation issued in payment of its subscription to the stock of a railroad company are void, unless the statute confers in express terms, or by reasonable implication, authority to issue them. *Wells* v. *Supervisors*, 625.
15. The laws of Mississippi bearing upon the right of the authorities of Pontotoc County to subscribe for stock in the Selma, Marion, and Memphis Railroad Company (formerly known as the Memphis, Holly Springs, Okolona, and Selma Railroad Company), stated and considered, and the conclusion reached, that the bonds issued July 1, 1877, in payment of such subscription, and reciting that they are "issued under and pursuant to an order of the board of police of said county of Pontotoc, now known as the board of supervisors of said county, made under the authority of the Constitution and laws of said State of Mississippi, authorized by a vote of the people of said county at a special election held for the purpose on the twentieth day of November, A.D. 1869," are void, there having been no authority of law to issue them. *Id.*
16. *Lynde* v. *The County* (16 Wall. 6) distinguished. *Id.*
17. An act of the General Assembly of Missouri, approved Jan. 4, 1860, authorizes counties, towns, and cities to subscribe to the stock of a railroad company which it incorporated, and issue bonds in payment therefor. The seventh section enacts that "upon the presentation of a petition of the president and directors of said company to the county court of any county through which said road may be located, praying that a vote may be taken in any strip of country through which it may pass, not to exceed ten miles on either side of said road; that the inhabitants thereof are desirous of taking stock in said road and of voting upon themselves a tax for the payment of the same, — it shall be the duty of said county court to order an election therein, and shall prescribe the time, place, and manner of holding said election; and if a majority of the taxable inhabitants shall determine in favor of the tax, it shall be the duty of said court to levy and collect from them a special tax, which shall be kept separate from all other funds and appropriated to no other purposes, and as fast as collected shall cause the same to be paid to the treasurer of said company." *Held*, that the affirmative vote of the inhabitants of such a strip authorized the county court to levy, collect, and pay over to the treasurer of the company such special tax, but it did not create a debt of the county, as such, for which bonds might be issued under that act or the act of March 24, 1868, authorizing "counties, cities, and incorporated towns to fund their respective debts." *Ogden* v. *County of Daviess*, 634.
18. The act of March 24, 1870, entitled "An Act to amend an act to facilitate the construction of railroads in the State of Missouri, approved March 23, 1868," granted no new power of subscription. The act of 1868 related entirely to municipal townships as such. *Id.*

MUNICIPAL BONDS (*continued*).

19. The court reaffirms its former rulings that the holder of a municipal bond is chargeable with notice of the statutory provisions under which it was issued. *Id.*

MUNICIPAL CORPORATIONS.

Upon consideration of the legislation of Tennessee, being chapter 10 of acts of 1879, entitled "An Act to repeal the charters of certain municipal corporations, and to remand the territory and inhabitants thereof to the government of the State," approved Jan. 30, 1879; chapter 11, entitled "A Bill to establish taxing districts in this State, and to provide the means of local government for the same," approved Jan. 30, 1879; and chapter 92, entitled "An Act to collect and dispose of the taxes assessed for municipal corporations in this State whose charters have been or may be repealed, or which may surrender their charters, and to provide for the compromise and make settlement of the debts of such distinct municipal corporations, respectively," approved March 14, 1879 (*supra*, pp. 477, 479, 490), the court *holds*: —

1. Property held by the city of Memphis for public uses, such as public buildings, streets, squares, parks, promenades, wharves, landing-places, fire-engines, hose and hose-carriages, engine-houses, engineering instruments, and generally all things held for governmental purposes, cannot be subjected to the payment of its debts. Upon the repeal of its charter, such property passed under the immediate control of the State, the power once delegated to the city in that behalf having been withdrawn. *Meriwether* v. *Garrett*, 472.

2. The private property of individuals within the limits of the territory of the city cannot be subjected to the payment of the debts of the city except through taxation. *Id.*

3. The power of taxation is legislative, and cannot be exercised otherwise than under the authority of the legislature. *Id.*

4. Taxes levied according to law before the repeal of the charter, other than such as were levied in obedience to the special requirement of contracts entered into under the authority of law, and such as were levied under judicial direction for the payment of judgments recovered against the city, cannot be collected through the instrumentality of a court of chancery at the instance of the creditors of the city. Such taxes can only be collected under authority from the legislature. If no such authority exists, the remedy is by appeal to the legislature, which alone can grant relief. Whether taxes levied in obedience to contract obligations, or under judicial direction, can be collected through a receiver appointed by a court of chancery, if there be no public officer charged with authority from the legislature to perform that duty, is not decided, as the case does not require it. *Id.*

5. The receiver and back-tax collector appointed under the authority of the act of March 13, 1879, is a public officer, clothed with authority from the legislature for the collection of the taxes levied

MUNICIPAL CORPORATIONS (*continued*).

before the repeal of the charter. The funds collected by him from taxes levied under judicial direction cannot be appropriated to any other uses than those for which they were raised. He, as well as any other agent of the State charged with the duty of their collection, can be compelled by appropriate judicial orders to proceed with the collection of such taxes by sale of property or by suit, or in any other way authorized by law, and to apply the proceeds upon the judgments. *Id.*

6. The bills in this case not having been framed with a view to any such purpose, cannot be amended so as to obtain relief against such receiver and back-tax collector. *Id.*

NATIONAL BANKS. See *State Courts, Jurisdiction of.*

1. Where, in order to discharge the liabilities of an insolvent national banking association, the comptroller of the currency assessed against the several shareholders a sufficient percentage upon the par value of the stock by them respectively held, he has no power to direct a further assessment to supply the deficit caused by the inability of the receiver to enforce payment from such as are insolvent or beyond the jurisdiction. *United States* v. *Knox*, 422.
2. "In addition to the amount invested in the shares," the holders thereof, after the exhaustion of the assets of the association, are, to a sum not exceeding the par value of the shares, "individually responsible, equally and ratably and not one for another," for its outstanding debts. The liability is several, and is not affected by the failure of any other shareholder to pay the amount assessed against him. *Id.*

NAVIGATION. See *Admiralty*, 1; *Commerce*, 3, 5, 6.

NEGLIGENCE. See *Land, Liability of Owner of; Passengers, Carrier of.*

NEGOTIABLE PAPER. See *Bills of Exchange and Promissory Notes, Judgment*, 1.

NEW TRIAL. See *Jurisdiction*, 1.

NOTICE. See *Bills of Exchange and Promissory Notes*, 1, 2; *Judgment*, 1; *Municipal Bonds*, 7, 14, 15, 19.

OFFICER OF THE ARMY OR THE NAVY, DISMISSAL OF.

1. An officer of the army or the navy was, June 20, 1866, subject to summary dismissal from the service by order of the President. *McElrath* v. *United States*, 426.
2. On the twenty-seventh day of June, 1866, the President nominated to the Senate A. to be a first lieutenant in the Marine Corps from the twentieth day of that month, *vice* B. dismissed. The Senate advised and consented to the appointment agreeably to the nomination, and A. was commissioned July 13, 1866. *Held*, that such appointment, followed by a commission, operated to discharge B. from the service as effectually as if he had been dismissed by the direct order of the President. *Id.*

OFFICER OF THE ARMY, &c., DISMISSAL OF (*continued*).

3. So much of sect. 5 of the act of July 13, 1866 (14 Stat. 92), as provides that "no officer in the military or naval service shall, in time of peace, be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof," did not take effect before Aug. 20, 1866, on which day, in contemplation of law, the rebellion against the national authority was suppressed, and peace restored. *Id.*

OFFICER OF THE UNITED STATES, BRIBERY OF.

A party who bribes an officer of the United States with money cannot maintain an action to recover it. *Clark* v. *United States*, 322.

OHIO RIVER, NAVIGATION OF. See *Jurisdiction*, 13.

PAROL EVIDENCE. See *Bills of Exchange and Promissory Notes*, 3; *Evidence*, 1.

PARTIES. See *Assignee in Bankruptcy; Judgment; Jurisdiction*, 14.

PARTITION. See *Lands, Partition of.*

PARTNERSHIP. See *Mining Partnership.*

Where the signature of a firm name to an instrument shows that it was intended to be the act of all the partners, effect must be given to it accordingly, although only one of them is named in the body of the instrument. *George* v. *Tate*, 564.

PASSENGERS, CARRIER OF.

1. A carrier of passengers for hire is bound to observe the utmost caution, and is responsible to them for such injuries received in the course of their transportation as might have been avoided or guarded against by his exercise of extraordinary vigilance, aided by the highest skill. *Pennsylvania Company* v. *Roy*, 451.
2. Such caution and vigilance extend to all the appliances and means used by him in transporting them. He must, therefore, provide cars or vehicles adequate, that is, sufficiently secure as to strength and other requisites, for their safe conveyance, and he is liable in damages if, by reason of the slightest negligence or fault in that regard, injury results to a passenger. *Id.*
3. A passenger purchased from a railroad company a ticket over its line, and at the same time, from a palace-car company, a ticket entitling him to a berth in one of its sleeping-cars, constituting a part of the train of the railroad company. In the course of transportation he was injured by the falling of a berth in the sleeping-car in which he was at the time riding. *Held*, that for the purposes of the contract with the railroad company for transportation, and in view of its obligation to use only cars that were adequate for safe conveyance, the palace-car company, its conductor and porter, were, in law, the servants and employés of the railroad company, and that the negligence of any of them, as to matters involving the safety or security of passengers, was that of the railroad company. *Id.*

PASSENGERS, CARRIER OF (*continued*).

4. In such case, the injured passenger being entitled only to compensatory damages, evidence as to his poverty, or the number and ages of his children, is irrelevant. *Id.*

PATENT OF THE UNITED STATES FOR LAND. See *Pleading*, 2.

1. When a patent for a part of the public lands has been regularly signed, sealed, countersigned, and duly recorded, the patentee has a perfect right to the possession thereof. *United States* v. *Schurz*, 378.
2. In the progress of the proceedings to acquire, under the laws of the United States, a title to public land, the power of the Land Department over them ceases when the last official act necessary to transfer the title to the successful claimant has been performed. *Id.*
3. Title by patent from the United States is title by record, and the delivery of the instrument to the patentee is not, as in a conveyance by a private person, essential to pass the title. *Id.*
4. Therefore, when the officers whose action is rendered by the laws necessary to vest the title in the claimant have decided in his favor, and the patent to him has been duly signed, sealed, countersigned, and recorded, the title to the land passes, and the ministerial duty of delivering the instrument to him can be enforced by *mandamus*. *Id.*
5. An acceptance of the grant will, in such case, be presumed from his efforts to secure the favorable action of the department, and especially from his demand for the possession of the patent. *Id.*

PENALTY. See *Criminal Law.*

PERSONAL CHATTELS, SALE AND DELIVERY OF.

1. In Missouri, where personal chattels have been sold and delivered, the vendee's mortgage or deed of trust on them to secure the purchase-money, he still retaining possession of them, is invalid against his creditors, unless it be acknowledged or proved, and recorded in the county in which he resides, in such manner as conveyances of land are, by law, directed to be acknowledged or proved and recorded. *Heryford* v. *Davis*, 235.
2. A contract between A., a manufacturer of cars, and B., a railroad company in Missouri, recites that A. thereby agrees to loan to B., for hire, certain cars to be used upon its road "for hire as aforesaid;" that A. has received from B. its three promissory notes, two at sixty days and the other at four months, together with certain bonds of the company as collateral for said notes; that A. is to hold the notes as collateral security and collect them at maturity, and hold the proceeds for the safe custody and return to A., when demanded, of said cars delivered to B. "for the term of four months, for hire as aforesaid," the latter to have the right and privilege at any time during the four months to purchase the cars upon the payment to A. of $6,338.40, that being the amount of the notes; that until such payment is made in full B. shall have no right, title,

PERSONAL CHATTELS, &c. (*continued*).

claim, or interest in or to the cars, except as to their use for hire, but that they shall remain the property of A., to be accounted for by B. and redelivered to A. in default of the payment of the $6,338.40; that in the event of default being made in the payment of said notes, and A. shall elect to take the cars into his possession, the sums collected on the notes shall be retained by him for his own use, together with such a sum, to be realized from the sale by him of the cars, as may be needed to make the amount due and unpaid on the notes, the balance, if any, to be paid to B.; that upon the payment by the latter of said notes at maturity without hinderance or delay said cars shall belong to and become the property of B., and that A. will relinquish his ownership to them, and give B. a good and sufficient bill of sale or conveyance thereof. The cars were delivered to B., but the contract was not recorded. C., having obtained a judgment against B., levied his execution on the cars. *Held*, 1. That the contract was not a bailment nor a conditional sale, but that under it the ownership of the cars passed to B. 2. That to protect them from seizure and sale under C.'s execution the contract should have been recorded in the manner prescribed by the laws of Missouri for recording mortgages or deeds of trust of personal property. *Id.*

PILOTAGE.

1. The pilot laws of the State of New York are not in conflict with the Constitution of the United States. *Ex parte McNiel* (13 Wall. 236) and *Cooley* v. *Board of Wardens of Port of Philadelphia* (12 How. 299) cited and reaffirmed. *Wilson* v. *McNamee*, 572.
2. The pilot may recover pilotage, although his services were tendered to, and refused by, the master of the vessel, when she was without the jurisdiction of the State. *Id.*

PLEADING. See *Bills of Exchange and Promissory Notes*, 3; *Estoppel*, 5; *Jurisdiction*, 11, 12; *Letters-patent*, 3.

1. A bill in chancery to set aside a judgment or a decree of a court of competent jurisdiction on the ground of fraud must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the court or the party injured was misled or imposed on. *United States* v. *Atherton*, 372.
2. A bill to set aside or annul a patent of the United States for public lands, or to correct it on account of fraud or mistake, must show, by like averments, the particulars of the fraud, and the character of the mistake and how it occurred. *Id.*

POST ROADS. See *Causes, Removal of*, 1.

PRACTICE. See *Appeal; Court and Jury*, 3; *Income Tax*, 1; *Jurisdiction*, 1, 4–6, 9, 11, 12, 16; *Lands, Partition of*, 1; *Municipal Corporations*, 5, 6; *Public Money, Person accountable for*, 2.

1. A petition for a rehearing cannot be filed after the term at which the judgment was rendered. *Brooks* v. *Railroad Company*, 107.

PRACTICE (*continued*).

2. This court will not by *mandamus* compel an inferior court to reverse a decision made in the exercise of its jurisdiction. *Ex parte Perry*, 183.
3. Exceptions reserved at the trial of the cause may, within such time thereafter during the term as the judge shall deem reasonable, be reduced to form and presented to him for signature, and they are not waived by suing out a writ of error before his signature is obtained. *Hunnicutt* v. *Peyton*, 333.
4. Where, under such circumstances, bills of exceptions are signed during the term, it is not necessary, to render them effective, that they be antedated, or ordered to be filed *nunc pro tunc*, as of a time during the trial. *Id*,
5. An objection not taken in the court below cannot be considered here. *Wilson* v. *McNamee*, 572.
6. A. sued out a writ of error returnable to the October Term, 1877. The return was duly made, the transcript of the record lodged in the clerk's office in September of that year, and a citation issued and served in time; but by an oversight of A.'s counsel no fee-bond was given. The cause was not docketed. In September, 1878, the bond was filed and the cause then docketed, no motion to docket and dismiss having in the mean time been made. *Held*, that a motion made at the present term to dismiss the writ must be denied. *Edwards* v. *United States*, 575.
7. Where, under the practice established in Utah, issues are tried by the court, its findings of fact should be announced and filed before the entry of the judgment. *Kahn* v. *Smelting Company*, 641.
8. After such an entry, an additional finding, made at the request of either party without notice to the other, forms no part of the record. *Id.*
9. In a suit to compel an account for the proceeds of a mining claim, a finding by the court that there was no such co-tenancy between the parties in the mine in controversy as to entitle the plaintiff to an accounting, is a mere legal inference, and not a sufficient finding of fact upon which to base a decree. *Id.*

PRE-EMPTION. See *School Lands*, 2, 3.

PRESUMPTION. See *Court and Jury*, 3; *Patent of the United States for Land*, 5.

PRINCIPAL AND AGENT. See *Bankruptcy*, 1; *Bills of Exchange and Promissory Notes*, 3.

PRIVATE BOUNDARY. See *Deceased Persons, Declarations of.*

PRIVATE LAND-CLAIMS. See *Mexican Land-Grants.*

PRIVATE PROPERTY. See *Municipal Corporations*, 2.

PRIVATE PROPERTY, TAKING THEREOF FOR PUBLIC USE. See *Constitutional Law*, 12.

PRIVIES See *Judgment*, 2.

PROCESS. See *Jurisdiction*, 11.

PROMISSORY NOTES. See *Bills of Exchange and Promissory Notes.*

PROPERTY HELD BY A CITY FOR PUBLIC USES. See *Municipal Corporations*, 1.

PROPRIETARY STAMPS. See *Public Money, Person accountable for.*

PROVISIONAL SEIZURE, WARRANT OF. See *Bankruptcy*, 7, 8.

PUBLIC LANDS. See *Mexican Land-Grants; Patent of the United States for Lands; School Lands.*

PUBLIC MONEY, PERSON ACCOUNTABLE FOR. See *Evidence*, 8.

1. A manufacturer to whom, pursuant to sect. 3425 of the Revised Statutes, the Commissioner of Internal Revenue sells proprietary stamps on credit is not, in default of payment therefor, accountable for public money, and does not forfeit the commissions to which he is, under that section, entitled. *United States* v. *Goldback*, 623.
2. Where the manufacturer, when sued, paid into court the amount due upon the stamps after deducting his commissions, and it was then stipulated that the case should be submitted, the only point in issue being as to his right to them, — *Held*, that the United States was not entitled to judgment for the costs which accrued after the date of such payment. *Id.*

PUBLIC POLICY. See *Claims against the United States*, 2.

PUBLICATION, SERVICE OF PROCESS BY. See *Jurisdiction*, 11.

RAILROAD COMPANIES, CONSOLIDATION OF. See *Municipal Bonds*, 2.

RAILROAD COMPANIES, SUBSCRIPTIONS TO CAPITAL STOCK OF. See *Municipal Bonds*, 1, 2, 4, 14, 17–19.

REBELLION, WHEN IN CONTEMPLATION OF LAW, SUPPRESSED.

The rebellion was, in contemplation of law, suppressed Aug. 20, 1866. *McElrath* v. *United States*, 426.

RECEIVER. See *Appeal*, 6; *Mortgage*, 1; *Municipal Corporations*, 5, 6.

RECORD. See *Lands, Partition of; Practice*, 8.

REHEARING.

A petition for a rehearing cannot be filed after the term at which the judgment was rendered. *Brooks* v. *Railroad Company*, 107.

REISSUED LETTERS-PATENT. See *Letters-patent*, 1, 6, 8–10, 12, 14–17.

A reissue can only be granted for the same invention which was originally patented. *Manufacturing Company* v. *Ladd*, 408.

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

RES JUDICATA.

A decree dismissing a bill *without prejudice* is not a bar to a subsequent suit for the same cause of action. *County of Mobile* v. *Kimball*, 691.

REVISED STATUTES OF THE UNITED STATES.

The following sections referred to and explained: —

Sect. 709. See *Jurisdiction*, 7; *State Courts, Re-examination of the Final Judgments and Decrees of*, 4.
Sect. 858. See *District of Columbia, Supreme Court of.*
Sect. 1059. See *Constitutional Law*, 5.
Sect. 1060. See *Constitutional Law*, 5.
Sect. 1061. See *Constitutional Law*, 5.
Sect. 2903. See *Foreign Coins, Value of*, 2.
Sect. 3281. See *Estoppel*, 5.
Sect. 3296. See *Criminal Law; Estoppel*, 5.
Sect. 3303. See *Estoppel*, 5.
Sect. 3477. See *Claims against the United States*, 2.
Sect. 3564. See *Foreign Coins, Value of*, 2.
Sect. 4283. See *Constitutional Law*, 6.
Sect. 4289. See *Constitutional Law*, 6.
Sect. 5440. See *Estoppel*, 5.

RIPARIAN OWNERS.

The second section of the act of the General Assembly of Iowa, entitled "An Act in relation to riparian owners on the Mississippi and Missouri Rivers," approved March 18, 1874, is not in conflict with any statute of the United States. Where, therefore, the owner of lands on the Mississippi had made an embankment in front of them, and at its outer end beyond low-water mark erected, without the direction or consent of the Secretary of War, a stone pier or crib, this court affirms the judgment of the Supreme Court of that State, declaring that under that section a railway company cannot construct its road over the embankment between high and low water mark, unless the damages to such owner shall first be ascertained and paid. *Railway Company* v. *Renwick*, 180.

SCHOOL LANDS.

1. The grant of the sixteenth and thirty-sixth sections of public land to the State of California for school purposes, made by the act of March 3, 1853 (10 Stat. 246), was not intended to cover mineral lands. Such lands were, by the settled policy of the general government, excluded from all grants. *Mining Company* v. *Consolidated Mining Company*, 167.
2. Neither in regard to the acts to be done nor the qualifications of the settler, is a settlement, within the meaning of sect. 7 of that statute, required to be precisely the same as that whereby a pre-emption right can be secured under the act of Sept. 4, 1841. 5 Stat. 453. *Id.*

SCHOOL LANDS (*continued*).

3. Whenever, at the time the government surveys of section 16 or 36 of public land in California are made, there is, by the erection of a dwelling-house or by cultivation, a settlement on any portion thereof, whereon some one resides who asserts claim thereto, the title to such portion does not vest in the State, but she has the right to other land in lieu thereof. *Sherman* v. *Buick* (93 U. S. 209) and *Water & Mining Company* v. *Bugbey* (96 id. 165) commented on and explained. *Id.*

SECRETARY OF THE TREASURY. See *Foreign Coins, Value of.*

SET-OFF. See *Court of Claims*, 2.

In an action at law upon a bond, a demand against the obligee, obtained by the defendant after notice of the assignment of the bond to the plaintiff, is not a matter of set-off. *George* v. *Tait*, 564.

SETTLEMENT AND CULTIVATION. See *School Lands*, 2, 3

SEVENTH AMENDMENT OF THE CONSTITUTION. See *Constitutional Law*, 5.

SPECIFIC PERFORMANCE. See *Damages.*

STATE COURTS, JURISDICTION OF.

Actions, local in their nature, may be maintained in the proper State court against a national banking association in a county or a city other than that where it is established. *Casey* v. *Adams*, 66.

STATE COURTS, RE-EXAMINATION OF THE FINAL JUDGMENTS AND DECREES OF. See *Jurisdiction*, 10.

1. This court, in *Martin* v. *Hunter's Lessee* (1 Wheat. 85), affirmed the constitutionality of sect. 25 of the Judiciary Act of 1789 (1 Stat. 85, re-enacted in sect. 709, Rev. Stat.), which, in certain cases therein mentioned, confers on this court jurisdiction to re-examine upon a writ of error the final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had. The doctrine then asserted, and ever since maintained, cannot be questioned here. *Williams* v. *Bruffy*, 248.
2. That jurisdiction attaches whenever the highest court of a State, by any decision which involves a Federal question, affirms or denies the validity of the judgment of an inferior court, over which it can by law exercise appellate authority, whether the decision, after an examination of the record of that judgment, be expressed by refusing a writ of error or *supersedeas*, or by dismissing a writ previously allowed. *Id.*
3. This court, when it has once acquired jurisdiction, may, in order to enforce its judgment, send its process to either the appellate, or the inferior, court. *Id.*
4. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, may, in the class of cases provided for in sect. 709, Rev. Stat., be re-examined here upon

STATE COURTS, &c. (*continued*).
writ of error, although it was rendered upon an equal division of opinion among the judges. It is immaterial whether that court, in rendering it, was exercising original or appellate jurisdiction. *Hartman* v. *Greenhow*, 672.

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

STATUTES OF THE UNITED STATES.
The following, among others, referred to, commented on, and explained: —

1789. Sept. 24.	*c.* 20.	See *Jurisdiction*, 7; *State Courts, Re-examination of the Final Judgments and Decrees of*, 4.
1841. Sept. 4.	*c.* 16.	See *School Lands*, 2.
1853. Feb. 26.	*c.* 81.	See *Claims against the United States*, 2.
1853. March 3.	*c.* 145.	See *School Lands*, 1, 2.
1862. July 14.	*c.* 163.	See *Customs Duties*, 1.
1862. July 17.	*c.* 195.	See *Confiscation.*
1863. March 3.	*c.* 92.	See *Constitutional Law*, 5.
1864. June 30.	*c.* 171.	See *Customs Duties*, 2.
1865. March 3.	*c.* 78.	See *Income Tax*, 1, 4.
1866. July 13.	*c.* 176.	See *Officer of the Army or the Navy, Dismissal of*, 3.
1867. March 2.	*c.* 176.	See *Bankruptcy*, 6.
1868. March 2.	*c.* 15.	See *Causes, Removal of*, 1.
1868. July 28.	*c.* 186.	See *Distiller.*
1870. July 14.	*c.* 255.	See *Customs Duties*, 1.
1873. March 3.	*c.* 3.	See *Foreign Coins, Value of.*
1874. June 22.	*c.* 390.	See *Bankruptcy*, 6.
1875. Feb. 16.	*c.* 77.	See *Admiralty*, 4.
1875. March 3.	*c.* 137.	See *Causes, Removal of*, 1.

STOCKHOLDERS OF AN INSOLVENT NATIONAL BANK, LIABILITY OF. See *National Banks.*

STOCK, SUBSCRIPTION TO. See *Municipal Bonds*, 1, 2, 4, 14, 17–19.
A., by his bond, acknowledged the receipt from an insurance company of ten shares of its capital stock, and agreed to pay $200 therefor, in instalments, — one-fourth on the receipt of the stock certificate, and the remainder in three equal amounts at three, six, and nine months from Jan. 7, 1871, the date of the bond. He paid on executing it $25, and his name was entered as a stockholder on the books of the company. The certificate was not delivered or demanded. In 1872 the company became bankrupt. *Held*, that the assignee is entitled to recover of A. the unpaid instalments. *Hawley* v. *Upton*, 314.

SUBSEQUENT PURCHASER. See *Deed of Trust.*

SUIT, FUND TO THE CREDIT OF. See *Mortgage*, 1.

SUITS IN PERSONAM.

The courts of the United States, as courts of admiralty, have not exclusive jurisdiction of suits *in personam* growing out of collisions between vessels while navigating the Ohio River. *Schoonmaker* v. *Gilmore*, 118.

SUPERSEDEAS. See *Appeal*, 7; *Jurisdiction*, 8.

A bond is not sufficient for the purposes of either an appeal to this court or a *supersedeas*, if the obligors are not thereby bound for the payment of costs, should the appellant fail to make his plea good. *Seward* v. *Corneau*, 161.

SURVEY. See *School Lands*, 3.

TAXATION. See *Constitutional Law*, 1, 9; *Income Tax; Municipal Corporations.*

Where, under a decree to enforce a statutory lien retained by the State upon the property, real and personal, stock, and franchises of a railroad company, the property and franchises were sold, — *Held*, that the property was thereafter subject to taxation under the laws of the State, as immunity therefrom, if possessed by the company, did not pass to the purchaser. *Railroad Company* v. *County of Hamblen*, 273.

TENNESSEE. See *Municipal Corporations.*

TEXAS. See *Ejectment; Evidence*, 5, 6.

TICE METERS. See *Distiller.*

TITLE. See *Patent of the United States for Lands*, 2-4.

An instrument gives color of title, — whether the grantor acts under authority of judicial proceedings or otherwise, — if by apt words of transfer it passes what purports to be the title; and the grantee's possession of the lands thereunder for the period mentioned in the Statute of Limitations bars the true owner's right of recovery. *Hall* v. *Law*, 461.

TREASURY DEPARTMENT, TRANSCRIPT FROM THE BOOKS AND PROCEEDINGS OF. See *Evidence*, 8.

TRUST, DEED OF. See *Deed of Trust.*

TRUSTEE. See *Deed of Trust.*

UTAH. See *Practice*, 7.

VACANT LANDS, ENTRY UPON, UNDER COLOR OF TITLE.

The possession of a person who, under color of title, enters upon vacant lands, and holds adversely, is construed to include so much as is within the boundaries of his title, and to that extent the true owner will be deemed to be disseised. But if the latter be in actual possession of any part of the lands whereon the entry is made, his constructive seisin extends to all not in fact occupied by the intruder. *Hunnicutt* v. *Peyton*, 333

VIRGINIA. See *Contracts*, 5, 6.

VOLUNTARY CONVEYANCE. See *Corporations*, 1.

WAIVER. See *Practice*, 3, 4.

WISCONSIN. See *Municipal Bonds*, 1, 2.

WITNESS, COMPETENCY OF.

Sect. 858 of the Revised Statutes touching the competency of witnesses in suits by or against executors, administrators, or guardians applies to the courts of the District of Columbia as fully as to the circuit and district courts of the United States. *Page* v. *Burnstine*, 664.

WRIT OF ERROR. See *Jurisdiction*, 7, 8; *Practice*, 3, 6; *State Courts, Re-examination of the Final Judgments or Decrees of*, 4.

A proceeding in the court below for contempt cannot be re-examined here on an appeal or a writ of error. *Hayes* v. *Fischer*, 121.

University Press: John Wilson & Son, Cambridge.