

INDEX.

ACCOUNT. See *Church Property*.

ACKNOWLEDGMENT OF DEED. See *Mortgage*, 7.

ACTUAL BIAS, CHALLENGE FOR. See *Criminal Law*, 3.

ADMINISTRATOR. See *Minors, Property of*, 4.

ADMIRALTY. See *Practice*, 21, 22.

1. A ship-owner who, on the trial of the issue as to the cause of collision, contests all liability whatever, is not thereby precluded from claiming the benefit of the limitation of liability provided by sect. 4283 of the Revised Statutes. *The "Benefactor,"* 239.
2. After such trial, a decree declaring his ship to be in fault, and fixing the damages which the respective libellants sustained, is *res judicata*, and, until reversed, must stand as the basis for determining their *pro rata* share of the fund substituted by stipulation for the ship and freight. On filing his petition for limited liability, the libellants, until final action shall be had thereon, should be restrained from enforcing the decree. *Id.*
3. *Semble*, that the stipulation on filing that petition should be for the value of the ship after the collision, with the addition thereto of the freight then pending, it not appearing that her value was subsequently diminished. *Id.*
4. Proceedings for a limitation of liability, if not instituted until after a party has obtained satisfaction of his demand, are ineffectual as to him. A return of the money should not be compelled, nor, in general, should relief be granted, except upon condition of compensating the party for any costs and expenses to which he may have been subjected by reason of the delay of the ship-owner in claiming the benefit of the statute. *Id.*
5. The court, in reversing the decree of the Circuit Court, directs that court to proceed upon the petition for limited liability, and promulgates a rule that such a petition shall be hereafter filed in the Circuit Court when the case is there pending. *Id.*
6. The rule requiring a steamer to keep out of the way of a sailing-vessel is equally imperative upon the latter to keep her course; and

ADMIRALTY (*continued*).

where, by her unnecessary deviation therefrom, a collision is rendered unavoidable, the steamer is not liable therefor. *The "Illinois,"* 298.

7. A steam-tug making between seven and eight knots an hour was towing a ship by a hawser leading astern two hundred and seventy feet. The course which they were sailing crossed that of a schooner moving at the rate of from two to three knots an hour at a point just ahead of the tug, or between her and the ship. The schooner had a competent man at her wheel, and a lookout, both of whom did their duty faithfully. Her lights were properly set and brightly burning, and she kept her course about northeast. There was a pilot upon the ship, to whose orders the tug was subject. He, however, gave none. The tug did not slow her engine until the schooner was up to her, nor stop it until the schooner was about to strike the hawser. The course of the tug and the ship had then been changed about a point to the south. The ship struck the schooner on her port side, at about the fore-rigging, and sunk her. *Held*, that the ship and the tug, being in contemplation of law but one vessel under steam, were bound to keep out of the way of the schooner, and are liable for the damages which she sustained. *The "Civitta" and the "Restless,"* 699.
8. The form of decree sanctioned in *The Alabama and the Gamecock* (92 U. S. 695) approved. *Id.*
9. The court, upon the facts set forth in the opinion, holds that two vessels were in fault, in a collision whereby a boat towed by one of them was sunk, and affirms the decree of the court below apportioning the loss between them. *The "Connecticut,"* 710.
10. The court promulgates a rule declaring what matters the record shall contain in cases of admiralty and maritime jurisdiction, where the reviewing power of the court is limited to questions of law. *The "Adriatic,"* 730.

AFFIRM, MOTION TO. See *Practice*, 26.

AGENT. See *Principal and Agent*.

AMENDMENTS. See *Practice*, 1, 2, 15, 16.

ANTE-NUPTIAL SETTLEMENT.

An ante-nuptial settlement of lands, though made by the settler with the design of defrauding his creditors, will not be set aside in the absence of the clearest proof of his intended wife's participation in the fraud. *Prewitt v. Wilson*, 22.

APPEAL.

1. Upon a petition filed by A., alleging that he was the owner of an undivided half of certain real estate which was not susceptible of division, and praying for a partition thereof by sale, the court below decreed that he was entitled to one-half of the property, and referred the case to a master, "to proceed to a partition according

APPEAL (*continued*).

to law, under the direction of the court." *Held*, that this is not a final decree, and that an appeal does not lie therefrom. *Green v. Fisk*, 518.

2. No appeal lies from the decree of the Circuit Court entered in accordance with the mandate of this court. *Humphrey v. Baker*, 736.
3. Where salvors united in a claim for a single salvage service, jointly rendered by them, the owner of the property is entitled to an appeal where the sum decreed exceeds \$5,000, although the Circuit Court deemed it proper to apportion the recovery among the salvors according to their respective merits. *The "Connemara,"* 754.

APPELLEE, ASSIGNMENT OF ERRORS BY. See *Practice*, 28.

ARKANSAS. See *County Warrants*; *Railroad Companies, Subscriptions to the Capital Stock of*, 3.

ARMY, OFFICER OF THE. See *Officer of the Army or the Navy, Removal of*.

ASSETS, EQUITABLE MARSHALLING OF. See *Partnership*, 1, 2.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy*, 1; *Partnership*, 3.

The right to sue for and subject to the payment of his debts, effects fraudulently transferred by a party who was subsequently adjudicated a bankrupt, is vested alone in his assignees, and their failure to enforce it within the time prescribed by the bankrupt law does not transfer that right to his creditors. *Moyer v. Dewey*, 301.

ASSIGNMENT. See *Partnership*, 1, 2.

ASSISTANT TREASURER OF THE UNITED STATES. See *Internal Revenue Stamps*, 1.

ASSUMPSIT. See *Practice*, 15.

ATTACHMENT, WRIT OF. See *Jurisdiction*, 16.

AUDIT, BOARD OF. See *District of Columbia*, 2.

BAILMENT. See *Pledge*.

BANKRUPTCY. See *Assignee in Bankruptcy*; *Limitations, Statute of*, 1; *Partnership*, 1, 2.

1. In order to render a mortgage of real estate made by an insolvent debtor void as a preference and a fraudulent conveyance, within the meaning of the thirty-fifth section of the Bankrupt Act of March 2, 1867, c. 176 (14 Stat. 534), it must be affirmatively shown by his assignee in bankruptcy that the grantee had reasonable cause to believe that the grantor was insolvent at the time he executed the mortgage, and that it was made with intent to defeat the bankrupt law. *Barber v. Priest*, 293.
2. *Grant v. National Bank* (97 U. S. 80) approved. *Id.*
3. A discharge in bankruptcy is personal to the party to whom it is granted. *Moyer v. Dewey*, 301.

BIAS, CHALLENGE OF JUROR FOR. See *Criminal Law*, 3.

BIGAMY. See *Criminal Law*, 1-5.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

Payment of a promissory note, executed at New Orleans March 26, 1862, will be enforced in lawful money where payments on account of the principal and interest were in that medium, and where, before the commencement of the suit, no claim was made that, by the agreement or the understanding of the parties, the term "dollars" was to be construed as meaning "Confederate dollars." *Cook v. Lillo*, 792.

BOND. See *Contracts*, 4; *Mortgage*, 8; *Municipal Bonds*; *Supersedes*.

BOUNDARIES. See *Monuments*.

BRAIDS. See *Customs Duties*, 3.

BURDEN OF PROOF. See *Bankruptcy*, 1.

CALIFORNIA. See *Constitutional Law*, 28.

CAPTURED AND ABANDONED PROPERTY. See *Suit against the United States*.

CASES EXPLAINED, QUALIFIED, OR OVERRULED.

Anderson v. Dunn, 6 Wheat. 204. See *Kilbourn v. Thompson*, 168.

County of Moultrie v. Savings Bank, 92 U. S. 631. See *Railroad Company v. Falconer*, 821.

Meriwether v. Garrett, 102 U. S. 472. See *Wolff v. New Orleans*, 358.

Parsons v. Jackson, 99 U. S. 434. See *Railway Company v. Sprague*, 756.

The Kansas Indians, 5 Wall. 737. See *Pennock v. Commissioners*, 44.

CAUSES, REMOVAL OF. See *Injunction*.

1. The second clause of the second section of the act of March 3, 1875, c. 137 (18 Stat., part 3, p. 470), construed, and *held*, that, when in any suit mentioned therein there is a controversy wholly between citizens of different States, which can be fully determined as between them, then either one or more of the plaintiffs or the defendants actually interested in such controversy may, on complying with the requirements of the statute, remove the entire suit. *Barney v. Latham*, 205.
2. The right of removal depends upon the case disclosed by the pleadings when the petition therefor is filed, and is not affected by the fact that a defendant who is a citizen of the same State with one of the plaintiffs may be a proper, but not an indispensable, party to such a controversy. *Id.*
3. A final decree of the proper court dissolved an insolvent life insurance company of Missouri, and, as provided by the statutes in force, vested, for the use and benefit of creditors and policy-holders, its entire property in A., a citizen of that State and superintendent of her insurance department. *Held*, 1. That the statutes being in force when the charter of the company was granted, are, in legal

CAUSES, REMOVAL OF (*continued*).

- effect, a part thereof. 2. That a suit having been previously instituted in a court of Louisiana by citizens of the latter State against the company, A. was, on being admitted a party thereto, entitled, by reason of his citizenship, to remove it to the Circuit Court of the United States. *Relfe v. Rundle*, 222.
4. A., a citizen of Louisiana, filed a bill in a court of that State, praying for an injunction to restrain B., who had recovered judgment against C. in that court, and sued out thereon a *fiery facias*, from levying the writ upon a tract of land whereof A. was the owner and actual possessor by a good and valid title from C. The judgment declares that an authentic act of mortgage, executed by C. and covering that and other tracts, was rendered executory, and that all the lands should be seized to satisfy it. The act was not reinscribed. A. was not a party to the judgment, nor was any demand made of, or notice given to, him. B. was a citizen of Mississippi, and filed a petition for the removal of the suit. *Held*, that the amount in controversy being sufficient, the suit was removable, under the act of March 3, 1875, c. 137, 18 Stat., pt. 3, p. 470. *Bondurant v. Watson*, 281.
5. The citizenship of the parties need not be averred in the petition for removal where it is shown by the record. *Id.*
6. A., a citizen of Massachusetts, commenced a suit, in a court of that State, against the executors of B., two of whom were citizens of Massachusetts and one a citizen of New York, to enforce a liability of the testator. The executors appeared and filed a joint answer. *Held*, that the controversy, not being divisible, nor wholly between citizens of different States, could not be removed into the Circuit Court of the United States. *Blake v. McKim*, 336.
7. The presumption that a State recognizes as binding on all her citizens and every department of her government an amendment to the Constitution of the United States, from the time of its adoption, and her duty to enforce it, within her limits, without reference to any inconsistent provisions in her own Constitution or statutes, is strengthened and becomes conclusive in this case, not only by the direct adjudication of the highest court of the State of Delaware that her Constitution had been modified by force of the amendments to the Constitution of the United States, but by the entire absence of any statutory enactment, since their adoption, indicating that she does not recognize, in the fullest legal sense, their effect upon her Constitution and laws. Where, therefore, a negro, indicted in one of her courts for a felony, presented a petition alleging that persons of African descent were, by reason of their race and color, excluded by those laws from service on juries, and praying that the prosecution against him be removed to the Circuit Court of the United States, — *Held*, that the prayer of the petition was properly denied. *Neal v. Delaware*, 370.
8. Had the State, since the adoption of the Fourteenth Amendment, enacted any statute in conflict with its provisions, or had her judicial

CAUSES, REMOVAL OF (*continued*).

- tribunals repudiated it as a part of the supreme law of the land, or declared that the acts passed to enforce it were inoperative and void. there would have been just ground to hold that the case was one embraced by sect. 641 of the Revised Statutes, and, therefore, removable into the Circuit Court. *Id.*
9. A party to a suit, who, under the act of March 3, 1875, c. 137 (18 Stat., pt. 3, p. 470), was entitled to its removal from the State court wherein it was brought, filed in due time his petition and the requisite bond, and prayed for such removal to the Circuit Court of the United States for the proper district. His petition was denied. *Held*, that, on his entering in the Circuit Court, within the period prescribed by that act, the transcript of the record, that court acquired jurisdiction of the suit, and that all subsequent proceedings of the State court therein are absolutely void. *Kern v. Huidekoper*, 485.
 10. A sheriff, to whom was directed a *fiery facias* sued upon a judgment against A., levied the writ upon certain goods and chattels, for which replevin was brought in a State court against him by B., a non-resident of the State, claiming to be the owner of them. *Held*, that there is nothing in the character of the suit which precludes its removal by B. to the Circuit Court. *Id.*
 11. A suit instituted to try the title of a party to a State office, whereof he is the incumbent, and whereto he was, by the constituted authorities of the State, duly declared to be elected pursuant to her laws, cannot be removed from one of her courts into the Circuit Court of the United States on his petition, setting forth that, by reason of bribery and threats, colored persons who were qualified to vote at the election, and who would have voted for him, were deterred from voting, and that the returning board rejected the votes of the parishes where such illegal practices prevailed. *Dubuclet v. Louisiana*, 550.
 12. A township in Illinois and a taxpayer thereof, on behalf of himself and other resident tax-payers, filed their bill in a court of that State against certain State, county, and township officers and the "unknown owners and holders" of certain township bonds, each payable in the sum of \$1,000. The bill prayed for an injunction to restrain the levy and collection of a tax to pay the principal of the bonds or any interest thereon. A., a citizen of another State, was the owner of all of them. *Held*, that he was entitled, under the act of March 3, 1875, c. 137 (18 Stat., pt. 3, p. 470), to remove the suit to the Circuit Court of the United States. *Harter v. Kernochan*, 562.
 13. A decree was rendered by the State court against A. by default, although he was not summoned, nor served with a copy of the bill or any notice of the pendency of the suit. On his application within the prescribed period the decree was set aside, and he thereupon filed his petition to remove the cause. *Held*, that it was filed in due time. *Id.*
 14. Under the act of March 3, 1875, c. 137 (18 Stat., pt. 3, p. 470), a writ of error is the proper mode for reviewing here the order of the Cir-

CAUSES, REMOVAL OF (*continued*).

cuit Court remanding an action at law removed thereto from a State court, and it lies without regard to the value of the matter in dispute. *Babbitt v. Clark*, 606.

15. The removal should not be granted, if the petition therefor be not filed in the State court before or at the term at which the action could be first tried, and before the trial thereof. Where, therefore, a cause, by the practice of the State court, stood for trial upon the issue raised by the petition and answer, the rule-day having expired without filing a reply, and the plaintiff then filed in the clerk's office a reply, without leave or notice, and the cause was continued until the ensuing term, when, before the cause was called for trial, the defendant presented his application for its removal, — *Held*, that the application should not have been granted, and the order of the Circuit Court remanding the cause was proper. *Id.*

CAUSES, SUBMISSION OF. See *Practice*, 1-3.

CHARTER. See *Municipal Bonds*, 17; *Taxation*, 1, 2.

A final decree of the proper court dissolved an insolvent life insurance company of Missouri, and, as provided by the statutes in force, vested, for the use and benefit of creditors and policy-holders, its entire property in A., a citizen of that State and superintendent of her insurance department. *Held*, that the statutes being in force when the charter of the company was granted, are, in legal effect, a part thereof. *Relfe v. Rundle*, 222.

CHURCH PROPERTY.

1. Pending a suit brought to control the affairs of a church and obtain possession of its property by a portion of the congregation against its founder and another portion, each claiming to be the lawfully elected trustees, every member who desired to worship at the church was permitted to do so, and it was kept exclusively for church purposes. A decree passed for the complainants. *Held*, that they were not entitled to recover for the use and occupation of the church premises, as no claim therefor was made in their bill, and the defendants derived no pecuniary advantage therefrom. *Bouldin v. Alexander*, 330.
2. The referee having found that money had been collected on behalf of the church by the pastor, who held a deed of trust on the church property to secure notes payable to him, this court directs that he be allowed by the court below to produce them in order that the money be applied as a credit thereon, or, upon his failure to do so, or to satisfactorily account for them, that a decree be entered against him for the money. *Id.*

CIGAR RIBBONS. See *Customs Duties*, 3.

CITY. See *Taxation*, 5-7.

COLLATERAL SECURITY. See *National Banks*, 1, 2.

COLLECTOR OF INTERNAL REVENUE. See *Internal Revenue Stamps*, 2.

COLLISION. See *Admiralty*.

COLORED SCHOOLS FOR THE DISTRICT OF COLUMBIA, TRUSTEES OF. See *District of Columbia*, 1.

COMITY. See *Louisiana*, 4; *Minors, Property of*, 1.

COMMERCE.

1. Letters-patent granted by the United States do not exclude from the operation of the tax or license law of a State the tangible property in which the invention or discovery is embodied. *Webber v. Virginia*, 344.
2. A statute of Virginia requires that the agent for the sale of articles manufactured in other States must first obtain a license, for which he is required to pay a specific tax for each county in which he sells or offers to sell them, while the agent for the sale of articles manufactured in that State, if acting for the manufacturer, is not required to obtain a license or pay any license tax. *Held*, that the statute is in conflict with the commerce clause of the Constitution of the United States, and void. *Id.*
3. Commerce among the States is not free whenever a commodity is, by reason of its foreign growth or manufacture, subjected by State legislation to discriminating regulations or burdens. *Id.*
4. *Welton v. State of Missouri* (91 U. S. 275) and *County of Mobile v. Kimball* (102 id. 691) cited and approved. *Id.*

COMMERCIAL PAPER, LIABILITY OF, INDORSER OF. See *Florida*, 3.

COMMISSIONER OF INTERNAL REVENUE. See *Internal Revenue*, 2; *Internal Revenue Stamps*, 1.

COMPLAINANT, DEATH OF THE. See *Practice*, 3.

CONDITION PRECEDENT. See *Municipal Bonds*, 19; *Railroad Companies, Subscriptions to the Capital Stock of*, 10.

CONGRESSIONAL TOWNSHIPS. See *Constitutional Law*, 15.

CONSENT DECREE. See *Railroad Companies, Subscriptions to the Capital Stock of*, 5.

CONSIGNOR. See *Pledge*.

CONSTITUTIONAL LAW. See *Commerce*; *Florida*; *Municipal Bonds*, 19; *Railroad Companies, Subscriptions to the Capital Stock of*, 11.

- 1 A contract between a State and a party, whereby he is to perform certain duties for a specific period at a stipulated compensation, is within the protection of the Constitution; and on his executing it he is entitled to that compensation, although before the expiration of the period the State repealed the statute pursuant to which the contract was made. *Hall v. Wisconsin*, 5.

CONSTITUTIONAL LAW (*continued*).

2. If the provisions of a statute which are unconstitutional be so connected with its general scope that, should they be stricken out, effect cannot be given to the legislative intent, the other provisions must fall with them. *Allen v. Louisiana*, 80.
3. K., for refusing to answer certain questions put to him as a witness by the House of Representatives of the Congress of the United States, concerning the business of a real-estate partnership of which he was a member, and to produce certain books and papers in relation thereto, was, by an order of the House, imprisoned for forty-five days in the common jail of the District of Columbia. He brought suit to recover damages therefor against the sergeant-at-arms, who executed the order, and the members of the committee, who caused him to be brought before the House, where he was adjudged to be in contempt of its authority. *Held*, that, although the House can punish its own members for disorderly conduct, or for failure to attend its sessions, and can decide cases of contested elections and determine the qualifications of its members, and exercise the sole power of impeachment of officers of the government, and may, where the examination of witnesses is necessary to the performance of these duties, fine or imprison a contumacious witness, — there is not found in the Constitution of the United States any general power vested in either House to punish for contempt. *Kilbourn v. Thompson*, 168.
4. An examination of the history of the English Parliament and the decisions of the English courts shows that the power of the House of Commons, under the laws and customs of Parliament to punish for contempt, rests upon principles peculiar to it, and not upon any general rule applicable to all legislative bodies. *Id.*
5. The Parliament of England, before its separation into two bodies, since known as the House of Lords and the House of Commons, was a high court of judicature, — the highest in the realm, — possessed of the general power incident to such a court of punishing for contempt. On its separation, the power remained with each body, because each was considered to be a court of judicature and exercised the functions of such a court. *Id.*
6. Neither House of Congress was constituted a part of any court of general jurisdiction, nor has it any history to which the exercise of such power can be traced. Its power must be sought alone in some express grant in the Constitution, or be found necessary to carry into effect such powers as are there granted. *Id.*
7. The court, without affirming the non-existence of such a power in any case other than those already specified, decides that it cannot be exercised by either House in aid of an inquiry into the private affairs of a citizen. *Id.*
8. The Constitution divides the powers of the government which it establishes into the three departments, — the executive, the legislative, and the judicial, — and unlimited power is conferred on no department or officer of the government. It is essential to the successful work-

CONSTITUTIONAL LAW (*continued*).

ing of the system that the lines which separate those departments shall be clearly defined and closely followed, and that neither of them shall be permitted to encroach upon the powers exclusively confided to the others. *Id.*

9. That instrument has marked out, in its three primary articles, the allotment of power to those departments, and no judicial power, except that above mentioned, is conferred on Congress or on either branch thereof. On the contrary, it declares that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. *Id.*
10. The resolution of the House, under which K. was summoned and examined as a witness, directed its committee to examine into the history and character of what was called "the real-estate pool" of the District of Columbia; and the preamble recited, as the grounds of the investigation, that Jay Cooke & Co., who were debtors of the United States, and whose affairs were then in litigation before a bankruptcy court, had an interest in the pool or were creditors of it. The subject-matter of the investigation was judicial, and *not* legislative. It was then pending before the proper court, and there existed no power in Congress, or in either House thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently no authority to compel a witness to testify on the subject. *Id.*
11. It follows that the order of the House, declaring K. guilty of a contempt of its authority, and ordering his imprisonment by the sergeant-at-arms, is void, and affords the latter no protection in an action by K. against him for false imprisonment. *Id.*
12. *Anderson v. Dunn* (6 Wheat. 204) commented on, and some of the reasoning of the opinion overruled and rejected. *Id.*
13. The provision of the Constitution, that, for any speech or debate in either House, the members shall not be questioned in any other place, exempts them from liability elsewhere for any vote, or report to or action in their respective Houses, as well as for oral debate. Therefore the plea of the members of the committee that they took no part in the actual arrest and imprisonment of K., and did nothing in relation thereto beyond the protection of their constitutional privilege, is, so far as they are concerned, a good defence to the action. *Id.*
14. This court concurs in opinion with the Supreme Court of Illinois that sect. 5 of art. 9 of the Constitution of that State of 1848 (*supra*, p. 257) imposes a limitation on the power of the legislature to authorize taxation by the municipal corporations or the political subdivisions of the State. *Weightman v. Clark*, 256.
15. A congressional township is by the laws of Illinois merely a corporation for school purposes. It cannot, therefore, subscribe for stock in a railroad company, and issue its bonds in payment, nor levy a

CONSTITUTIONAL LAW (*continued*).

tax upon persons and property within its jurisdiction, to aid in building railroads. *Id.*

16. As long as a city exists, laws are void which withdraw or restrict her taxing power so as to impair the obligation of her contracts made upon a pledge expressly or impliedly given that it shall be exercised for their fulfilment. *Von Hoffman v. City of Quincy* (4 Wall. 535) cited on this point, and approved. *Wolff v. New Orleans*, 358.
17. The adoption of the Fifteenth Amendment rendered inoperative a provision in the then existing Constitution of a State, whereby the right of suffrage was limited to the white race. *Neal v. Delaware*, 370.
18. Therefore, a statute confining the selection of jurors to persons possessing the qualifications of electors is enlarged in its operation so as to embrace all those who, by the Constitution of the State, as modified by that amendment, are entitled to vote. *Id.*
19. The presumption should be indulged, in the first instance, that the State recognizes as binding on all her citizens and every department of her government an amendment to the Constitution of the United States, from the time of its adoption, and her duty to enforce it, within her limits, without reference to any inconsistent provisions in her own Constitution or statutes. *Id.*
20. In this case, that presumption is strengthened and becomes conclusive, not only by the direct adjudication of the highest court of the State of Delaware that her Constitution had been modified by force of the amendments to the Constitution of the United States, but by the entire absence of any statutory enactment, since their adoption, indicating that she does not recognize, in the fullest legal sense, their effect upon her Constitution and laws. *Id.*
21. Had the State, since the adoption of the Fourteenth Amendment, enacted any statute in conflict with its provisions, or had her judicial tribunals repudiated it as a part of the supreme law of the land, or declared that the acts passed to enforce it were inoperative and void, there would have been just ground to hold that the prayer of the prisoner for the removal of the prosecution against him presented a case embraced by sect. 641 of the Revised Statutes. *Id.*
22. The exclusion, because of their race and color, of citizens of African descent from the grand jury that found, and from the petit jury that was summoned to try, the indictment, if made by the jury commissioners, without authority derived from the Constitution and laws of the State, was a violation of the prisoner's rights, under the Constitution and laws of the United States, which the trial court was bound to redress; and the remedy for any failure in that respect is ultimately in this court upon writ of error. *Id.*
23. The court reaffirms the doctrines announced in *Strauder v. West Virginia* (100 U. S. 303), *Virginia v. Rives* (id. 313), and *Ex parte Virginia* (id. 339). *Id.*

CONSTITUTIONAL LAW (*continued*).

24. Under the Constitution of Illinois of 1848, a bill passed by both Houses of the legislature became a law when it was approved and signed by the governor of the State within ten days after its presentation to him; and this, notwithstanding the fact that, when the bill was so approved and signed, the legislature had adjourned *sine die*. *Seven Hickory v. Ellery*, 423.
25. A statute of Illinois, legalizing elections held by the voters of a county on the question of issuing negotiable bonds of the county, in aid of certain railroad companies, and authorizing, on conditions therein named, all the townships in counties where the township organization had been adopted, lying on or near to the line of a specified railroad, to subscribe to the stock of the railroad company, and issue negotiable bonds therefor, is a public act, and does not conflict with section 23 of article 3 of the Constitution of 1848, which provides that "no private or local law, which may be passed by the General Assembly, shall embrace more than one subject, and that shall be expressed in the title." *Unity v. Burrage*, 447.
26. A general statute of Tennessee required the county courts, when thereunto authorized by a popular vote at an election held for the purpose, to subscribe for stock in a railroad company. A special statute was subsequently passed, which, without requiring the submission of the question of subscription to a popular vote, conferred power on the county courts of the counties on the line of a particular railroad to make, and on the company to receive, a subscription for its stock. *Held*, that the special statute is not in violation of the provisions of sect. 8, art. 1, or of sect. 7, art. 11, of the Constitution of Tennessee of 1834, *supra*, p. 525. *County of Tipton v. Locomotive Works*, 523.
27. Neither the act of the legislature of Illinois, entitled "An Act to incorporate the Illinois Southeastern Railway Company," approved Feb. 25, 1867, authorizing townships to make donations to that company, nor the amendatory act of Feb. 24, 1869, authorizing the issue of township bonds, for the amount so donated, is in conflict with the Constitution of the State. *Harter v. Kernochan*, 562.
28. The statute of California, approved April 15, 1880, limiting to four years the terms of office of the commissioners required by the act of Congress of June 30, 1864, c. 184 (13 Stat. 325), "to be appointed by the executive of California," to manage the Yosemite Valley and Mariposa Big Tree Grove, is not repugnant to that act, and may be followed by him in making his appointments. *Ashburner v. California*, 575.
29. The act of the General Assembly of Missouri, approved March 18, 1871, which provides that "it shall be lawful for the council of any city, or the trustees of any incorporated town, to purchase lands, and to donate, lease, or sell the same to any railroad company upon such terms and conditions as such board may deem proper, and for the purposes of assisting and inducing such railroad company to locate and build machine-shops or other improvements upon such lands,

CONSTITUTIONAL LAW (*continued*).

- and, for such purposes, to levy taxes upon the taxable property of such city or town, and to borrow money and to issue the bonds of such city or town for such purposes: *Provided*, a majority of the qualified voters of such town or city, at a special election to be held therein, shall assent to such purchase and donation," is void, it being in conflict with sect. 14 of art. 11 of the Constitution adopted in 1865. which declares that "the General Assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to, any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto." *Jarrott v. Moberly*, 580.
30. The provision which prohibits the creation of an indebtedness by a direct loan of municipal credit does not permit the indirect use of such credit for the same purpose. *Id.*
 31. In the absence of constitutional restraint, the legislature may pass special laws for the sale or investment of the estates of infants or other persons who are not *sui juris*. *Hoyt v. Sprague*, 613.
 32. The act of the legislature of Louisiana, approved April 20, 1871, under which certain bonds were issued to the New Orleans, Mobile, and Chattanooga Railroad Company, is in conflict with the constitutional amendment of 1870, which declares "that, prior to the first day of January, 1890, the debt of the State shall not be so increased as to exceed twenty-five millions of dollars," inasmuch as it authorized the creation of a new debt on a new consideration in excess of the prescribed amount. *Williams v. Louisiana*, 637.
 33. *Williams v. Louisiana* (*supra*, p. 637) reaffirmed. *Durkee v. Board of Liquidation*, 646.
 34. After the bonds in question were issued, the General Assembly of Louisiana passed an act creating the Board of Liquidation, and authorizing it to convert and fund all valid outstanding claims against the State. A subsequent act declared the bonds to be void, and forbade the board to fund them. *Held*, that the act withdraws from the board all authority to act in the premises, and that the obligation of no contract is thereby impaired, inasmuch as there was no previous acceptance by bondholders of the proposition to fund, and no consideration had passed. *Id.*
 35. A bill designated as "House Bill No. 231," and having for its title, "An Act to amend an act entitled 'An Act to incorporate the Illinois Grand Trunk Railway,'" regularly passed the House of Representatives of the General Assembly of Illinois. In its passage through the Senate "Illinois" was dropped from the title, and in the message of the House to the Senate and of the Senate to the House, reporting its passage by those bodies respectively, "Illinois" was left out of the title, but the designation as House Bill No. 231 was retained. The journals show no amendment to the title. The bill as above entitled was signed by the presiding officer of each

CONSTITUTIONAL LAW (*continued*).

House. The Constitution of Illinois then in force provides that "every bill shall be read on three different days in each House, . . . and every bill having passed both Houses shall be signed by the speakers of their respective Houses." *Held*, that the act was duly and constitutionally passed. *Walnut v. Wade*, 683.

36. The act of the legislature of Nebraska approved Feb. 2, 1875, entitled "An Act authorizing School District Number 56, of Richardson County, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and for setting apart a fund to pay the same," is void, it being in conflict with sect. 1, art. 8, of the Constitution of that State of 1866-67, which declares that "the legislature shall pass no special act conferring corporate powers." *School District v. Insurance Company*, 707.
37. A State statute abolishing imprisonment for debt does not, within the meaning of the Constitution, impair the obligation of contracts which were entered into before its enactment. *Penniman's Case*, 714.

CONTEMPT, POWER OF THE HOUSE OF REPRESENTATIVES TO PUNISH FOR. See *Constitutional Law*, 1-13.CONTINUANCE. See *Practice*, 3.CONTRACTS. See *Constitutional Law*, 16, 34; *District of Columbia*, 1; *Limitations, Statute of*, 2; *Louisiana*, 4; *Practice*, 11, 12, 29.

1. A contract between a State and a party, whereby he is to perform certain duties for a specific period at a stipulated compensation, is within the protection of the Constitution; and on his executing it he is entitled to that compensation, although before the expiration of the period the State repealed the statute pursuant to which the contract was made. *Hall v. Wisconsin*, 5.
2. A party to a contract, the making of which, although prohibited by law, is not *malum in se*, may, while it remains executory, rescind it and recover money by him advanced thereon to the other party who had performed no part thereof. *Spring Company v. Knowlton*, 49.
3. The trustees of A., a corporation which was organized under the act of New York of Feb. 17, 1848, for the formation of corporations for manufacturing purposes, and acts amendatory thereof, passed a resolution increasing its capital stock, which was \$1,000,000, by the addition of \$200,000, allowing each stockholder to take one share of the new stock for every five shares of the original stock which he held, and providing that on his paying in instalments \$80 on each share of \$100, a certificate as for full-paid stock should be issued to him by the company, and on his failure to pay an instalment of \$20 per share on or before a specified date his claim to the new stock should be forfeited, and such forfeited shares divided ratably among the other stockholders who had paid that instalment. A subscription agreement binding the subscribers thereto to take stock and pay \$80

CONTRACTS (*continued*).

per share in instalments as they should be called for by the company, and, on failure to pay any instalment, to submit to the forfeiture of all sums theretofore paid, was prepared and signed by B., who, being then a trustee of A. and its vice-president, was an active promoter of the scheme for the increase of the stock. He paid but one instalment of twenty per cent on his new stock, and the latter was, by a resolution of the company, declared to be forfeited. The capital stock of the company was afterwards reduced to its original amount, and, to refund the payments made on the new stock withdrawn, bonds were issued. None of them were tendered to or demanded by B. On A.'s refusing to pay him the amount of that instalment, he brought suit therefor. *Held*, that he was entitled to recover. *Id*.

4. A bond executed Dec. 22, 1871, to an insurance company by B., its agent, and conditioned for the faithful discharge of his duties, contains a provision that it shall continue and remain in force so long as he "shall be the agent of said company, whether under his existing appointment or any future one," and until all liabilities on his part, by reason of such agency, "shall have been discharged." Dec. 23, 1873, a new contract entered into between the company and B., whereby the latter was appointed agent, changes the rate of his commissions and contains the following clause: "This contract abrogates all former ones, so far as new business is concerned." *Held*, that the bond of Dec. 22, 1871, was not abrogated thereby. *Boogher v. Insurance Company*, 90.
5. Contracts created by, or entered into under, the authority of statutes are to be interpreted according to the language used in each particular case to express the obligation assumed. *Railroad Companies v. Schutte*, 118.
6. A party to a contract, who has performed part of it according to its terms, and is prevented from completing it by the failure of the other party, is entitled to compensation for the work performed. *Chicago v. Tilley*, 146.
7. Where there is no contract, express or implied, between the parties, usage or custom cannot make one. *Tilley v. County of Cook*, 155.
8. A county and a city within its limits proposed to erect public buildings, the portion appropriated to the uses of each to be paid for by them respectively. They jointly offered a premium for plans. A. furnished one, and received the promised compensation. There was no further contract between the parties. The city and county severally adopted a resolution selecting his plan, subject to such modifications as might thereafter be determined upon if his estimate as to the cost of construction should be verified. He brought suit against them to recover five per cent of the estimated cost of the buildings. *Held*, 1. That he was not entitled to recover. 2. That evidence of the value of his services in making the estimate was properly excluded, inasmuch as he failed to show that they had been rendered at the instance of the defendants. *Id*.

CONTRACTS (*continued*).

9. A consul-general of a foreign government, residing in this country, entered into a contract, whereby, in consideration of a stipulated percentage, he agreed to use his influence in favor of a manufacturing company here with an agent of that government sent to examine and report in regard to the purchase of arms for it. By exerting his influence, sales of arms were made by the company to that government, and he brought suit to recover the percentage. *Held*, that, in a court of the United States there can be no recovery on the contract. *Oscanyan v. Arms Company*, 261.
10. The contract entered into July 16, 1868, by the Union Pacific Railroad Company, by direction of the executive committee of the board of directors, with Godfrey and Wardell (*supra*, p. 652), which the latter assigned, without consideration, to a new company, in which a majority of the stock was taken by six directors of the old company, declared to be fraudulent and void. *Wardell v. Railroad Company*, 651.
11. The deputy-governor of the branch at Milwaukee of "The National Home for Disabled Volunteer Soldiers" was not permitted by its by-laws to contract for or receive, beyond his stated salary, compensation for services, which, at the request of the building committee of the board of managers, he rendered in the erection of the new buildings for the home at that place. *Yates v. National Home*, 674.
12. A., a railroad company, in the execution of its contract with the government, carried the mails from P. to F., the route being partly over its own road and partly over a portion of the road of company B., which also had a contract for carrying the mails over its entire line. After the passage of the act of March 3, 1873, c. 231, the Post-Office Department made frequent adjustments of the amount due to the respective companies, which was from time to time received without protest or objection. B. having received the amount due for conveying all the mails over its road, although over a part of it a portion of them had been carried by A. under its contract, the latter brought suit against the United States to recover compensation for the portion so carried. *Held*, that A.'s acquiescence in the adjustments precluded the maintenance of the suit. *Railroad Company v. United States*, 703.
13. The contracts entered into by the United States and the Pacific Mail Steamship Company, for carrying the mails by the latter between San Francisco and certain Asiatic ports, considered. *Held*, 1. That the company has no claim to compensation other than sea postage for carrying them in vessels which had not been accepted by the Postmaster-General. 2. That it is entitled to recover, under the contract of Aug. 23, 1873, for services performed, pursuant to its terms, in vessels which he had, under the contract of Oct. 16, 1866, accepted. 3. That the annulment of the contract by the act of March 3, 1875, c. 128, does not affect the company's claim for such services on a voyage commenced before that date. *Steamship Company v. United States*, 721.

CONTRACTS (*continued*).

14. A., the executor of the deceased member of a firm, entered into a contract in writing with B., the surviving partner, whereby he sold and transferred to the latter all the interest of the testator in the effects of the partnership for a valuable consideration, consisting in part of lands. The contract also stipulated that B. should, within five years from its date, if A. so desired, "purchase back" the lands at a certain price in cash. *Held*, that the respective rights and obligations of the parties under the contract were fixed when A., within the five years, duly notified B. to make the purchase at the expiration of them, and that, on tendering to B. within a reasonable time thereafter a proper deed for the lands, A. could maintain a suit for the stipulated price. *Brown v. Slee*, 828.

CONVEYANCE. See *Deed*.

CORPORATION, DIRECTORS OF. See *Contracts*, 10.

1. The directors of a corporation are subject to the obligations which the law imposes upon trustees and agents. They cannot, therefore, with respect to the same matters, act for themselves and for it, nor occupy a position in conflict with its interests. *Wardell v. Railroad Company*, 651.
2. Hence, a court will refuse to give effect to arrangements by directors of a railroad company to secure, at its expense, undue advantages to themselves, by forming, as an auxiliary to it, a new company, with the understanding that they or some of them shall become stockholders in it, and then that valuable contracts shall be given to it by the railroad company, in the profits of which they, as such stockholders, shall share. *Id.*

CORPORATIONS. See *Constitutional Law*, 14, 15.

COSTS. See *Admiralty*, 2.

Costs are not payable out of the fund in controversy. *National Bank v. Whitney*, 99.

COUNTY WARRANTS.

1. A county in Arkansas, when sued on its warrants by a *bona fide* holder thereof for value, may set up any defence to which they were subject in the hands of the original payee. *Wall v. County of Monroe*, 74.
2. The same rule is applicable where they are issued to the payee, in lieu of others in his favor cancelled by the county court, after it found them to be just claims against the county. *Id.*
3. Neither the order directing the issue of the original warrants, nor that cancelling them and substituting others in their place, has the force of a judicial determination concluding either the payee of them or the county. *Id.*
4. Such warrants are not negotiable paper in the sense of the law merchant. *County of Ouachita v. Wolcott*, 559.
5. Where the county court has fixed, by its order, a time for calling them in for redemption, classification, or other lawful purpose, the holder

COUNTY WARRANTS (*continued*).

who neglects or refuses to present them, as required by the order, and the notice thereof given, conformably to the statute, has no right of action against the county to enforce their payment. *Id.*

COUPONS.

1. The fact that coupons are made payable at a particular place does not make it necessary to aver or prove a presentation of them for payment there. *Walnut v. Wade*, 683.
2. Coupons bear interest from their maturity, and, when severed from the bonds, are negotiable, and pass by delivery. *Id.*
3. Overdue and unpaid interest coupons do not of themselves make the bond to which they are attached dishonored paper. *Cromwell v. County of Sac* (96 U. S. 51) cited and approved, and *Parsons v. Jackson* (99 id. 434) distinguished. *Railway Company v. Sprague*, 756.

COURSES AND DISTANCES. See *Monuments*.COURT AND JURY. See *Criminal Law*, 5; *Practice*, 4, 5, 25, 30; *Principal and Agent*.COURT, FINDING OF FACT BY THE. See *Practice*, 6-9.

A pleading which would be cured by verdict is good after a finding by the court to which the issue was submitted by the stipulation of the parties. *Adam v. Norris*, 591.

COURT, TRIAL BY. See *Jury*, *Waiver of*.CREDITORS. See *Ante-nuptial Settlement*; *Assignee in Bankruptcy*, *Deed*; *Partnership*, 3, 4; *Railroad Companies*, *Subscriptions to the Capital Stock of*, 4; *Wife*, *Settlement of Lands upon*.CREDITORS, COMPOSITION WITH. See *Limitations*, *Statute of*, 1.CRIMINAL LAW. See *Constitutional Law*, 19-23.

1. On an indictment for bigamy, the first marriage may be proved by the admissions of the prisoner, and it is for the jury to determine whether what he said was an admission that he was actually and legally married according to the laws of the country where the marriage was solemnized. *Miles v. United States*, 304.
2. As long as the fact of his first marriage is contested, the second wife is an incompetent witness. Where it has by other evidence been duly established to the satisfaction of the court, she may be admitted to prove her marriage with him. *Id.*
3. On the trial of such an indictment, the United States challenged a juror for "actual bias." Three triers, appointed by the court conformably to the law of Utah, where the indictment was found, tried the challenge, and declared it to be true. *Held*, that their decision being by that law final, he was properly excluded from the panel. *Id.*
4. Against the objection of the prisoner, jurors were interrogated by the United States as to their belief that the practice of polygamy is in

CRIMINAL LAW (*continued*).

obedience to the divine will and command. *Held*, that the objection was properly overruled. *Id*.

5. In a criminal case, the evidence upon which the jury are justified in finding a verdict of guilty must be sufficient to satisfy them of the prisoner's guilt beyond a reasonable doubt. *Held*, that the instruction by the court of original jurisdiction upon this point (*supra*, p. 309) furnishes him no just ground of exception. *Id*.
6. Upon the showing made in this case, the motions to quash the indictment and the panels of jurors should have been sustained. *Neal v. Delaware*, 370.

CURIA ADVISARE VULT. See *Practice*, 3.

CUSTOM. See *Contracts*, 7.

CUSTOMS DUTIES.

1. In 1873, A. imported certain manufactured shirtings, not made up, composed of linen and cotton, the latter being the material of chief value and largely predominating. *Held*, that they were, within the meaning of the tariff acts, manufactures of cotton, and, as such, subject to the duty imposed by the first section of the act of March 3, 1865, c. 80. 13 Stat. 491. *Fisk v. Arthur*, 431.
2. The ruling in *Solomon v. Arthur* (102 U. S. 208), that goods made of mixed materials were not dutiable under the mixed-material clause of the twenty-second section of the act of March 2, 1861, c. 192 (12 Stat. 192), if they came properly within any other description found in the tariff acts, reaffirmed. *Id*.
3. Laces, cigar ribbons, galloons, and braids made substantially of silk, although cotton forms a part thereof, were subject to a duty of sixty per cent *ad valorem*, under sect. 8 of the act of June 30, 1864, c. 171. 13 Stat. 181. *Swan v. Arthur*, 597.
4. A. imported certain pictures painted by hand on porcelain. When they are framed or in any manner set, the porcelain, which, being manufactured only as a ground upon which to obtain a good surface to paint, and not for any independent use, is obscured from view, constitutes of itself no article of chinaware, and forms no material part of their value. *Held*, that they are subject to the duty of ten per cent *ad valorem* prescribed by schedule M of sect. 2504 of the Revised Statutes, as paintings not otherwise provided for. *Arthur v. Jacoby*, 677.

DAMAGES. See *Admiralty*; *Jurisdiction*.

DEBT, IMPRISONMENT FOR. See *Constitutional Law*, 37.

DECREE, IMPEACHMENT OF. See *Practice*, 3.

DECREE IN PERSONAM. See *Church Property*, 2.

DEED.

1. A conveyance executed for a valuable and adequate consideration will be upheld against the creditors of the grantor, however fraudulent.

DEED (*continued*).

lent his purpose may have been, if the grantee had no knowledge thereof. *Prewitt v. Wilson*, 22.

2. An ante-nuptial settlement of lands, though made by the settler with the design of defrauding his creditors, will not be set aside in the absence of the clearest proof of his intended wife's participation in the fraud. *Id.*

DEED, IMPEACHMENT OF. See *Mortgage*, 7.

DEED OF TRUST. See *Church Property*, 2.

DELAWARE. See *Constitutional Law*, 17-23.

DISTILLERY. See *Internal Revenue*, 1.

DISTRICT OF COLUMBIA.

1. In 1870, the Board of Trustees of Colored Schools for the District of Columbia had authority to employ an architect to prepare the plans and specifications for a school-house in Washington, and superintend its construction, and could, as the agent of the District, bind it to pay him for his services. *District of Columbia v. Cluss*, 705.
2. The disallowance of his claim by the board of audit constituted by the act of June 20, 1874, c. 337 (18 Stat., pt. 3, p. 116), does not bar his right of recovery. *Id.*
3. The corporation which the act of Feb. 21, 1871, c. 62 (16 Stat. 419), created by the name of the District of Columbia succeeded to the property and liabilities of the corporations which were thereby abolished. *Id.*

DUTIES. See *Customs Duties*.

EQUITY. See *Church Property*; *Minors, Property of*, 4; *Practice*, 29.

EQUITY OF REDEMPTION. See *Insurable Interest*.

EQUIVALENTS. See *Letters-patent*, 9.

ERROR, WRIT OF. See *Writ of Error*.

ESTOPPEL. See *Minors, Property of*, 4; *Monuments*, 2; *Municipal Bonds*, 6, 8, 17; *Railroad Companies, Subscriptions to the Capital Stock of*, 7; *Res Judicata*.

- One S., having money in his hands belonging to a corporation, W., fraudulently diverted it from the use to which the company had appropriated it, and purchased therewith bonds of the P. & G. and of the T. railroads. S. subsequently handed over the bonds to D. and others, purchasers of the railroads from the trustees of the State internal improvement fund of Florida, that D. and his associates might use them in payment, it being the understanding that they were to raise money by mortgage and pay S. what he had advanced on the bonds, with commissions and fees in addition; and S., besides taking stock in the new company to be formed, was to have certain privileges in the election of directors. D. and his associates not being able to raise the balance of the purchase-money remaining

ESTOPPEL (*continued*).

after applying the bonds, S., by giving to the trustees a fraudulent check, got possession of the title-deeds, and caused them to be recorded. Thereupon D., for himself and his associates, executed a paper, purporting to convey the railroads to S., "in trust for the express purpose of enabling said S.— which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting or to consist as incorporators of said D. and his associates," as soon as the latter should be incorporated as a railroad company by the legislature. The legislature incorporated D. and his associates, and the company at once, without objection from S. or any one in his interest, took possession of the property and operated the railroad as owner. One L., who had succeeded to S. under his contracts, assumed control of the company, and was its principal stockholder. A new railroad company was then incorporated, which absorbed the other and took possession of its property. Both S. and L. were named as incorporators of the new company. The corporation W., whose funds S. had thus embezzled and invested, averred in its bill that the ownership of the property was in it. Through its agents it had also entered into a contract of settlement with S. and L., stipulating that the money it had lost should be paid to it from the proceeds of the sales of certain State bonds to be issued to the railroad company on the faith of the ownership of this property. *Held*, that the corporation W. was estopped from setting up title to the property as against *bona fide* holders of the bonds. *Railroad Companies v. Schutte*, 118.

EVIDENCE. See *Ante-nuptial Settlement*; *Bankruptcy*, 1; *Contracts*, 7, 8; *Criminal Law*, 1, 2; *Mexican Land-Grants*, 1.

1. To a petition for a *mandamus*, to compel A., the clerk of a township, to whom had been delivered a certified copy of a judgment recovered against it to certify the judgment to the supervisor in order that the amount thereof might be placed upon the tax-roll, A. made answer, among other things, that he had resigned his office before the copy was served upon him. *Held*, that evidence that the township board had, after the cause was at issue, appointed his successor, was properly excluded. *Thompson v. United States*, 480.
2. A suit was brought to foreclose a mortgage made by husband and wife of land, a part of which belonged to him and a part to her. Her answer sets up that he obtained her signature by physical violence, and that he and the officer who took her acknowledgment, both of whom died before her answer was filed, represented to her that the mortgage did not cover her land. *Held*, that her testimony is not sufficient to impeach the mortgage. *Insurance Company v. Nelson*, 544.

EXCEPTIONS, BILL OF. See *Practice*, 25.

EXECUTOR. See *Causes, Removal of*, 6; *Contracts*, 14; *Minors, Property of*, 1, 3; *Partnership*, 3, 4.

EXTRA COMPENSATION. See *Internal Revenue Stamps*.

FACTS, FINDING OF. See *Practice*, 6-9, 13, 25, 30.

FALSE IMPRISONMENT, ACTION FOR. See *Constitutional Law*, 3-13.

FIFTEENTH AMENDMENT. See *Constitutional Law*, 17-19.

FINAL DECREE. See *Appeal*, 1.

FLORIDA.

1. The circumstances stated under which bonds of Florida, payable to bearer, issued in aid of certain railroad companies, signed by her governor and her treasurer, and sealed with her seal, were sold by the active efforts of the governor and came into the hands of subjects of Holland. Most of the sales were in that country. *Held*, that inasmuch as the bonds, though fraudulent in their inception, were put upon the market and sold in a foreign country to a people largely unacquainted with the English language, a case is presented which justifies the court in treating the owners of them as purchasers for value and in good faith, and entitled to relief accordingly. *Railroad Companies v. Schutte*, 118.
2. One S., having money in his hands belonging to a corporation, W., fraudulently diverted it from the use to which the company had appropriated it, and purchased therewith bonds of the P. & G. and of the T. railroads. S. subsequently handed over the bonds to D and others, purchasers of the railroads from the trustees of the State internal improvement fund, that D. and his associates might use them in payment, it being the understanding that they were to raise money by mortgage and pay S. what he had advanced on the bonds, with commissions and fees in addition; and S., besides taking stock in the new company to be formed, was to have certain privileges in the election of directors. D. and his associates not being able to raise the balance of the purchase-money remaining after applying the bonds, S., by giving to the trustees a fraudulent check, got possession of the title-deeds, and caused them to be recorded. Thereupon D., for himself and his associates, executed a paper, purporting to convey the railroads to S., "in trust for the express purpose of enabling said S. — which he hereby agrees and binds himself to do — to convey the same to that incorporation, consisting or to consist as incorporators of said D. and his associates," as soon as the latter should be incorporated as a railroad company by the legislature. The legislature incorporated D. and his associates, and the company at once, without objection from S. or any one in his interest, took possession of the property and operated the railroad as owner. One L., who had succeeded to S. under his contracts, assumed control of the company, and was its principal stockholder. A new railroad company was then incorporated, which absorbed the other and took possession of its property. Both S. and L. were named as incorporators of the new company. The corporation W.,

FLORIDA (*continued*).

whose funds S. had thus embezzled and invested, averred in its bill that the ownership of the property was in it. Through its agents it had also entered into a contract of settlement with S. and L., stipulating that the money it had lost should be paid to it from the proceeds of the sales of certain State bonds to be issued to the railroad company on the faith of the ownership of this property. *Held*, that the corporation W. was estopped from setting up title to the property as against *bona fide* holders of the bonds. *Id.*

3. The legislation under which certain bonds were issued by the State of Florida in aid of railroads having been pronounced unconstitutional by the Supreme Court of that State, this court passes upon the liability of the railroad company as guarantors of such bonds, — the case upon the facts being within the rule of the liability of an indorser of commercial paper. *Id.*
4. The State, by the terms of the statute, having a lien on the property of the railroad company as trustee for the holders of the bonds, it does not follow, because the provisions of the statute in respect to the execution and exchange of the State bonds is unconstitutional, that the statutory lien is void also. The unconstitutional part of the statute may in this instance be stricken out, and the statutory mortgage left in full force. *Id.*
5. A suit was brought by the State of Florida against the F. C. Railroad Company, alleging default in the payment of interest due on the company's bonds given in exchange for State bonds, and seeking to enforce the statutory lien by the sale of the roads and the application of the proceeds to the holders of the State bonds. The company answered, setting up fraud, the unconstitutionality of the law touching the State bonds, and averring that the railroad bonds were not a lien. The Supreme Court of the State dismissed the bill because it was not proved that any of the State bonds were in the hands of *bona fide* holders. The point as to the statutory authority, however, to exchange the bonds and create a lien, was directly made by the pleadings and, after full argument, elaborately considered by the court. *Held*, that the decision on this point was in no just sense *obiter*. *Id.*

FORECLOSURE. See *Louisiana*, 4; *Mortgage*, 7, 8; *Res Judicata*; *Superseas*, 1.

FORFEITURE.

The ruling that when an act has been done which the law declares shall work the forfeiture of property, the right of the government at once attaches to pursue and seize the property whenever and wherever it may be found and assert the forfeiture, reaffirmed. *Henderson's Distilled Spirits*, 14 Wall. 44, cited and approved. *Thacher's Distilled Spirits*, 679.

FRAUD. See *Ante-nuptial Settlement*; *Assignee in Bankruptcy*; *Deed Wife, Settlement of Lands upon*.

- FRAUDULENT CONVEYANCE. See *Bankruptcy*, 1.
- FUTURE ADVANCES, MORTGAGE TO SECURE. See *Mortgage*, 1-3.
- GALLOONS. See *Customs Duties*, 3.
- GRAND JURY, SELECTION OF. See *Constitutional Law*, 22; *Criminal Law*, 6.
- GRANT. See *Land-Grant*.
- GRANT, MONUMENTS CALLED FOR IN. See *Monuments*.
- GRANTOR AND GRANTEE. See *Bankruptcy*, 1; *Deed*, 1.
- GUARANTY. See *Warehouseman*.
- GUARDIAN. See *Minors, Property of*, 1, 3.
- GUARDIAN AD LITEM. See *Jurisdiction*, 13, 14.
- HOMESTEAD SETTLEMENT. See *Land-Grants*, 5.
- HOUSE OF REPRESENTATIVES, POWER OF, TO PUNISH FOR CONTEMPT. See *Constitutional Law*, 3-13.
- HUSBAND AND WIFE. See *Ante-nuptial Settlement*, *Criminal Law*, 1, 2; *Mortgage*, 7; *Wife, Settlement of Lands upon*.
- ILLINOIS. See *Causes, Removal of*, 12; *Constitutional Law*, 14, 27, 35; *Interest*; *Municipal Bonds*, 17; *Public Act*; *Railroad Companies, Subscriptions to the Capital Stock of*, 1, 6.
1. Under the Constitution of Illinois of 1848, a bill passed by both Houses of the legislature became a law when it was approved and signed by the governor of the State within ten days after its presentation to him; and this, notwithstanding the fact that, when the bill was so approved and signed, the legislature had adjourned *sine die*. *Seven Hickory v. Ellery*, 423.
 2. The word "inhabitants," where it occurs in the first section of the act of the General Assembly of Illinois, entitled "An Act to amend an act entitled 'An Act to incorporate the Illinois Grand Trunk Railway,'" means legal voters. *Walnut v. Wade*, 683.
- IMMUNITY FROM TAXATION. See *Taxation*, 1-4, 8.
- IMPORTS, DUTIES ON. See *Customs Duties*.
- INDIANA. See *Lands taken for Public Use*.
- INDICTMENT. See *Causes, Removal of*, 7; *Constitutional Law*, 22; *Criminal Law*.
- INFANT. See *Jurisdiction*, 13, 14; *Minors, Property of*.
- INJUNCTION. See *Admiralty*, 8; *Causes, Removal of*, 12; *Taxation*, 11-13.
- After the plaintiff removed to the proper Circuit Court of the United States a suit in replevin brought in a State court, the latter pro

INJUNCTION (*continued*).

ceeded to try it and render judgment for a *retorno habendo*. An action having been thereupon brought in the State court against him and his sureties on the replevin bond, they filed their bill in the Circuit Court, praying that the plaintiff in that action be enjoined from further prosecuting it. *Held*, that the Circuit Court properly granted the prayer of the bill. *Dietzsch v. Huidekoper*, 494.

INSOLVENT CORPORATION. See *Railroad Companies, Subscriptions to the Capital Stock of*, 4-7.

INSTRUCTIONS TO JURY. See *Practice*, 4, 5, 25, 30.

INSURABLE INTEREST.

1. The owner of the equity of redemption has an insurable interest equal to the value of the buildings on the land. *Insurance Company v. Stinson*, 25.
2. A party having a mechanic's lien on buildings by him erected on land then covered by mortgage has an insurable interest, limited only by their value and the amount of his claim. His discontinuance of his suit to enforce the lien after their destruction is not matter of defence to his action on the policy. *Id.*

INSURANCE. See *Insurable Interest*.

INTEREST. See *Coupons*, 2; *Usury*.

The court enforces the ruling of the Supreme Court of Illinois, that a note given in that State for a sum of money at a stipulated rate of interest not exceeding ten per cent per annum, bears that rate as long as the principal remains unpaid. *Ohio v. Frank*, 697.

INTERNAL REVENUE. See *Internal Revenue Stamps*.

1. While a distillery, the capacity of which was estimated at 416.90 bushels of grain each twenty-four hours, was in full operation, A., the owner thereof, made application, under sect. 3311, Rev. Stat., to have the capacity reduced to 207.45 bushels, by closing six tubs. According to the practice prevailing in that collection district, two tubs were closed a day, commencing May 2, 1876. On May 2 and 3 A. mashed 207.45 bushels, but distilled beer from 415.96 bushels, which he had mashed April 30 and May 1. Thereafter he used 207.45 bushels daily. All the spirits produced by him during May were reported by him, and the tax thereon duly paid. *Held*, 1. That the producing capacity of the distillery was not in law reduced to 207.45 bushels per day until May 4. 2. That for the beer distilled from the 415.96 bushels of grain mashed April 30 and May 1, A. was not liable to be taxed as for material used by him in excess of the producing capacity of his distillery on May 2 and 3. *Weitzel v. Rabe*, 340.
2. The regulation prescribed by the Commissioner of Internal Revenue, that "whenever any rectifier proposes to empty any spirits, for the purpose of rectifying, purifying, refining, redistilling, or compounding the same, he will file with the collector a notice or statement giving

INTERNAL REVENUE (*continued*).

the number of casks or packages, the serial number of each, the number of wine and proof gallons in each, the kind of stamps and serial numbers of each, the particular name of such spirits as known to the trade, the proof, by whom produced, the district where produced, by whom inspected, and the date of inspection," is within the purview of the power conferred upon that officer by sect. 3249 of the Revised Statutes, "to prescribe rules and regulations to secure a uniform and correct inspection, weighing, marking, and gauging of spirits." *Thacher's Distilled Spirits*, 679.

INTERNAL REVENUE STAMPS.

1. An assistant treasurer of the United States to whom, without prepayment therefor, the Commissioner of Internal Revenue furnishes for sale and distribution sealed packages of adhesive stamps, is not entitled to commissions or extra compensation for selling them. *Folger v. United States*, 30.
2. A collector of internal revenue gave bond, Sept. 16, 1864, with sureties to the United States, conditioned for the payment of the money received by him for stamps sold, and the return of those not sold, which had been or might be delivered to him under the act of March 3, 1863, c. 74. That act was repealed June 30, 1864. *Held*, that the liability of the sureties was limited to the stamps delivered to him before the last-mentioned date. *United States v. Hough*, 71.
3. A dealer in tobacco, who is assessed upon his sales thereof when it is in a bonded warehouse, is not liable to be taxed for the revenue stamps required to be affixed thereto before the removal thereof, unless they were at the time of such sales so affixed, whereby they entered into the value of the tobacco and formed a part of the price thereof. *Jones v. Van Benthuyssen*, 87.

INTER-STATE COMMERCE. See *Commerce*, 3.

IOWA. See *Jurisdiction*, 17; *Land-Grants*, 3-5.

JUDGMENT, BILL TO ENJOIN. See *Practice*, 29.

JUDGMENT BY DEFAULT. See *Causes, Removal of*, 13.

JUDICIAL DECISION. See *Florida*, 5.

It cannot be said that a case is not authority on one point, because, although that point was properly presented and decided in the regular course of the consideration of the cause, something else was found in the end which disposed of the whole matter. *Railroad Companies v. Schutte*, 118.

JURISDICTION. See *Appeal*; *Causes, Removal of*; *Constitutional Law*, 22; *Practice*, 17; *Res Judicata*; *Writ of Error*.

I. OF THE SUPREME COURT.

1. *Quære*, Does the act of June 1, 1872, c. 255 (17 Stat. 196; Rev. Stat., sect. 914), authorize the review here of an action at law, wherein, pursuant to the practice of the courts of the State in which the Cir-

JURISDICTION (*continued*).

- cuit Court was held, the facts were found by a referee. *Boogher v. Insurance Company*, 90.
- 2 Sect. 700 of the Revised Statutes is the only enactment providing for the review here of a civil cause where an issue of fact has been tried in the Circuit Court otherwise than by a jury. *Id.*
 3. In order to give this court jurisdiction to determine whether the facts found by the referee, and confirmed by the court below, are sufficient to support the judgment, they must be treated as the finding of the court. Otherwise, there has not been such a judicial determination of them as to make them conclusive here. *Id.*
 4. This court cannot, by *mandamus*, compel an inferior court to reverse its decision made in the exercise of its legitimate jurisdiction. *Ex parte Burtis*, 238.
 5. A judgment or a decree of the Supreme Court of the District of Columbia cannot be re-examined here, unless the matter in dispute, exclusive of costs, exceeds the value of \$2,500. *Dennison v. Alexander*, 522.
 6. This court has authority, under sect. 700 of the Revised Statutes, to determine, as in case of a special verdict, whether the facts set forth in an agreed statement whereon the cause was submitted for trial are sufficient in law to support the judgment, although the finding of the Circuit Court on them be in form general. *Supervisors v. Kennicott*, 554.
 7. In a suit brought, in one of her courts, by the State of Louisiana, seeking to restrain payment on the bonds issued to the New Orleans, Mobile, and Chattanooga Railroad Company, under an act of the legislature approved April 20, 1871, and praying for relief, upon the ground that the act was in violation of the constitutional amendment of 1870, which declares "that, prior to the first day of January, 1890, the debt of the State shall not be so increased as to exceed twenty-five millions of dollars," which limit, it was claimed, had been attained before the passage of the act, a holder of some of the bonds, who was permitted to intervene, set up that they were issued in discharge and release of valid and then subsisting obligations of the State, which, prior to the adoption of the amendment, had been created under her legislation. *Held*, that this court has jurisdiction to determine whether the amendment as construed by the court below, and applied to the facts of the case, impairs the obligation of a contract. *Williams v. Louisiana*, 637.
 8. In a suit for partition, the value of the undivided part in controversy, and not of the lands, determines the appellate jurisdiction of this court. *McCarthy v. Provost*, 673.
 9. The act of March 3, 1875, c. 137 (18 Stat., pt. 3, p. 470), did not change the jurisdiction of this court to review the final judgment or decree of the Circuit Court. *Whitsitt v. Railroad Company*, 770.
 10. The judgment of the Circuit Court, on a plea to the jurisdiction, will not be reviewed here upon a petition for a *mandamus*. *Ex parte Railway Company*, 794.

JURISDICTION (*continued*).

II. OF THE CIRCUIT COURT.

11. A right arising under or a liability imposed by either the common law or the statute of a State may, where the action is transitory, be asserted and enforced in any circuit court of the United States having jurisdiction of the subject-matter and the parties. *Dennick v. Railroad Company*, 11.
12. A. died in New Jersey from injuries there received, for which, if death had not ensued, B., the party inflicting them, would have been liable to an action for damages. The statute of that State (*supra*, p. 12) provides that such an action may be brought against the party by the personal representative of the deceased. C., appointed, under the laws of New York, administratrix of A., brought, in a court of the latter State, a suit against B., which, by reason of the citizenship of the parties, was removed to the Circuit Court of the United States. *Held*, 1. That the suit can be maintained, the right of action not being limited by the statute to a personal representative of the deceased appointed in New Jersey and amenable to her jurisdiction. 2. That distribution of moneys recovered by C. from B. may be enforced by the courts of New York in the manner prescribed by that statute. *Id.*
13. Where a suit is brought, not to enforce a claim or lien upon property, but to cancel a purely personal contract, the Circuit Court cannot acquire jurisdiction of the defendant unless he appear or there be personal service of process upon him within the district. If he is an infant, the decree against him is void on its face, the record showing affirmatively the non-service of process, although a guardian *ad litem* was appointed for him in his absence. *Insurance Company v. Bangs*, 435.
14. The necessity for such service on the infant is not obviated by the State statute requiring his general guardian "to appear for and represent his ward in all legal suits and proceedings, unless when another person is appointed for the purpose as guardian or next friend." *Id.*
15. The Circuit Court has jurisdiction of suits by or against a national bank, without regard to the citizenship of the parties. *County of Wilson v. National Bank*, 770.
16. An attachment cannot be sued out of the Circuit Court against the property of the defendant in an action where the court has not acquired jurisdiction of the person. *Ex parte Railway Company*, 794.
17. This ruling is applicable to the Circuit Court of the United States sitting in Iowa, notwithstanding the act of June 4, 1880, c. 120. 21 Stat. 155. *Id.*

III. IN GENERAL.

18. A court which has once rightfully obtained jurisdiction of the parties may retain it until complete relief is afforded within the general scope of the subject-matter of the suit. *Ward v. Todd*, 327.

JUROR, CHALLENGE OF. See *Criminal Law*, 3, 4.

JURORS, SELECTION OF. See *Causes, Removal of*, 7, 8; *Constitutional Law*, 18, 22.

JURY, WAIVER OF. See *Practice*, 8, 9.

1. A stipulation in writing, signed by the parties and filed with the clerk, that the cause shall be tried by the court, is equivalent to their waiver of a jury. *Bamberger v. Terry*, 40.
2. A stipulation, signed by the parties or their attorneys, and filed with the clerk of the Circuit Court, submitting a civil cause for trial on an agreed statement of facts, is "a stipulation in writing waiving a jury," within the meaning of sect. 649 of the Revised Statutes. *Supervisors v. Kennicott*, 554.

KANSAS, LANDS HELD IN, BY INDIAN HALF BLOODS. See *Taxation*, 3, 4.

LACES. See *Customs Duties*, 3.

LACHES. See *Limitations, Statute of*, 2.

LAND-GRANTS. See *Mexican Land-Grants*.

1. The grant of the right of way which the act of July 23, 1866, c. 212 (14 Stat. 210), makes to the St. Joseph and Denver City Railroad Company, "to the extent of one hundred feet in width on each side of said road where it may pass through the public domain," is absolute and *in præsenti*, and a party subsequently acquiring a parcel of such lands takes it subject to that right. *Railroad Company v. Baldwin*, 426.
2. *Quære*, Where Congress has conferred upon a railroad corporation, organized under the laws of a State, the right of way over the public lands in a Territory, can the State, subsequently created out of that Territory, prevent the corporation from enjoying that right. *Id.*
3. The grant made to Iowa by the act of May 15, 1856, c. 28 (11 Stat. 9), to aid in the construction of a railroad from Davenport to Council Bluffs, is *in præsenti*, and, with certain exceptions therein specified, it vested in the State the title to every section of public land designated by odd numbers for six miles in width on each side of the road, when the line thereof should be definitely fixed. *Grinnell v. Railroad Company*, 739.
4. The act authorized the State, subject to the approval of the Secretary of the Interior, to select, within the limit of fifteen miles of the road, land in alternate sections equal in amount to that which, within the six-mile limit, had been sold or otherwise appropriated by the United States. *Quære*, Does the right to any particular section or part of section, beyond the six-mile limit, vest in the State before the selection of it has been reported to and approved by the proper officer. *Id.*
5. After the lands had been duly certified to the State or to the railroad company, to which she transferred them, the legal title thereto was

LAND-GRANTS (*continued*).

subject to be defeated only by the United States, should there be a breach of any condition annexed to the grant, and it was not divested by a change of the location of part of the line of road authorized by the act of June 2, 1864, c. 103 (13 Stat. 95), although they are not situate within twenty miles of the relocated line. Subsequent settlers could, therefore, acquire no right thereto under the pre-emption or the homestead laws. *Id.*

LANDS, SALE OF. See *Contracts*, 14.

LANDS TAKEN FOR PUBLIC USE.

1. Sect. 7, art. 1, of the Constitution of Indiana, adopted in 1816, provides "that no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without a just compensation being made therefor." Under an act of the General Assembly, "to provide for a general system of internal improvements," approved Jan. 27, 1836, the board thereby created was authorized to enter upon, take possession of, and use lands. *Held*, that the right to enter and use them was complete as soon as they were actually appropriated under the authority of that act, but that the title to them did not, without the consent of the owner, vest in the State until just compensation was made to him therefor. *Kennedy v. Indianapolis*, 599.
2. The decisions of the Supreme Court of Indiana upon this point cited and examined. *Id.*
3. In this case nothing was paid, it being considered that the benefits resulting from the construction of the contemplated work would furnish the owner just compensation for the land taken. The work was never constructed, and the State sold the property. *Held*, that no title passed to the purchaser. *Id.*

LAST WILL AND TESTAMENT. See *Partnership*, 1.

LAW MERCHANT. See *County Warrants*, 4.

LEGACY. See *Partnership*, 1, 2.

LETTERS-PATENT.

1. Letters-patent No. 79,989, granted July 14, 1868, to Hiram Y. Lazear, for an improvement in gas-heaters, are valid. *Sharp v. Stamping Company*, 250.
2. Letters-patent granted by the United States do not exclude from the operation of the tax or license law of a State the tangible property in which the invention or discovery is embodied. *Webber v. Virginia*, 344.
3. The invention embraced by letters-patent No. 38,924, granted June 16, 1863, to George Wicke, for an improvement in machines for nailing boxes, is a new combination of old elements, all of which are necessary to the validity of his letters. *Wicke v. Ostrum*, 461.
4. The fourth and fifth claims of those letters, fairly construed, are for the combination of the cam, gate, and treadle of the adjustable car-

LETTERS-PATENT (*continued*).

- riage, table, and slide, with the elements of the other claims, and they are not infringed by machines manufactured substantially in accordance with letters-patent No. 172,579, granted Jan. 25, 1876, to Henry P. Ostrum, for an improvement in machines for nailing boxes. *Id.*
5. Under the patent laws in force in 1866, letters-patent became absolutely void on the surrender of them. *Peck v. Collins*, 660.
 6. The fifty-third section of the act of July 8, 1870, c. 230 (16 Stat. 205; Rev. Stat., sect. 4916), declares that the surrender "shall take effect upon the issue of the amended patent." *Semble*, that the effect of an adverse decision on the title of the patentee to the invention would be as fatal to the original letters as to his right to a reissue. *Id.*
 7. Reissued letters-patent are void, if they embrace a broader claim than that for which the original letters were issued. *Manufacturing Company v. Corbin*, 786.
 8. Reissued letters-patent No. 4289, granted March 7, 1871, to George Crouch, for an improvement in straps for shawls, are void, by reason of the prior knowledge and public use of the invention which they describe. *Crouch v. Roemer*, 797.
 9. The substitution of a known equivalent for one of the elements of a former structure is not patentable. *Id.*

LEX REI SITÆ. See *Minors, Property of*, 1.

LIABILITY, LIMITATION OF. See *Admiralty*, 1-4.

LICENSE. See *Commerce*.

LIEN. See *Florida*, 4; *Insurable Interest*; *Partnership*, 3, 4; *Liaison*, 8, 9.

LIMITATION OF LIABILITY. See *Admiralty*, 1-4.

LIMITATIONS, STATUTE OF. See *Prescription*.

1. An action on a debt or claim is not barred by a composition between a debtor and his creditors, under sect. 17 of the act of June 22, 1874, c. 390 (18 Stat., pt. 3, p. 183), if it would not be barred by his discharge under the bankrupt law. *Wilmot v. Mudge*, 217.
2. A., pursuant to his contract, surrendered to a railroad company coupons attached to some of its bonds, whereof he was the holder, and took in exchange therefor certificates of preferred stock. The road, with its franchises, was subsequently sold by the trustees of the Internal Improvement Fund of Florida, to pay the bonds, whereof those, which he held, constituted a part. Eight years after the sale he brought suit to rescind the contract upon the ground of fraud, all the particulars of which were as well known to him when the sale was made as at any subsequent time. *Held*, that his right to relief was barred by his laches and by the Statute of Limitations. *Coddington v. Railroad Company*, 409.

LIMITATIONS, STATUTE OF (*continued*).

3. The Statute of Limitations is a bar to a suit brought four years after a bank in South Carolina had permanently suspended specie payments, by a holder of its notes to enforce the individual liability of the stockholders. *Terry v. McLure*, 442.
4. *Carrol v. Green* (92 U. S. 509) and *Godfrey v. Terry* (97 id. 171) cited and approved. *Id.*

LIS PENDENS. See *Louisiana*, 4.

LOUISIANA. See *Causes, Removal of*, 2; *Constitutional Law*, 32-34; *Pledge; Usury*.

1. The failure to inscribe or to reinscribe a mortgage of lands in Louisiana does not affect its validity as against the parties thereto or their heirs. *Cucullu v. Hernandez*, 105.
2. To secure the payment of his note, A., the owner of lands, executed a mortgage of them, which was duly inscribed, but never reinscribed. He subsequently conveyed them to B., who contracted to pay the note as part of the purchase-money, and, to secure it and the remainder of the purchase-money, granted a mortgage of them with vendor's privilege, in the act of sale to him, which was in due time inscribed and reinscribed. After the note was overdue, B. paid interest thereon from time to time; and, to compel him to perform his contract, A. brought suit, which was pending at the time that he filed his bill of foreclosure against B. and C., the latter being the transferee of the note and mortgage executed by A. *Held*, 1. That the prescription as to the note was, against A. and B., interrupted by the payment of the interest, and was suspended during the continuance of that suit. 2. That, notwithstanding the lapse of more than ten years since the inscription of that mortgage, C. is entitled to priority of payment out of the proceeds of the sale of the lands. *Id.*
3. A party, after contesting, by prolonged litigation, a claim against him, is not entitled to the benefit of art. 2652 of the Civil Code of Louisiana, and cannot cancel it by paying what it cost the party to whom it was transferred. *Id.*
4. This court enforces, as a rule of property applicable to Louisiana, the decision of the Supreme Court of that State, that a mortgage of lands has no effect as to third persons, unless it be inscribed in the proper public office, and that, save in the single case of a minor's mortgage upon the property of his tutor, every mortgage ceases to be effectual against third parties, unless it be reinscribed within ten years from the date of its original inscription, and that neither the pact *de non alienando* nor the pendency of a suit to foreclose dispenses with the necessity of so inscribing or reinscribing it. *Bondurant v. Watson*, 281.

LOUISIANA, MISSOURI, CITY OF. See *Mandamus*, 2.

MAILS, TRANSPORTATION OF THE. See *Contracts*, 12, 13.

MANDAMUS. See *Evidence*, 1; *Taxation*, 6.

1. This court cannot, by *mandamus*, compel an inferior court to *reverse* its decision made in the exercise of its legitimate jurisdiction. *Ex parte Burtis*, 238.
2. In addition to the tax of one and one-half per cent, authorized by sect. 2, art. 3, of her charter, the city of Louisiana, Mo., may, by *mandamus*, be compelled to levy, assess, and collect a special tax, not exceeding one per cent per annum, to pay a judgment rendered against her, whereon an execution has been issued and returned *nulla bona*. *Louisiana v. United States*, 289.
3. After making a return to the alternative *mandamus* sued out against him by a judgment creditor of a township, the township supervisor cannot set up the non-service of any notice in the cause. *Edwards v. United States*, 471.
4. The judgment of the Circuit Court upon a plea to the jurisdiction, will not be reviewed here upon a petition for a *mandamus*. *Ex parte Railway Company*, 794.

MANDATE, DECREE IN ACCORDANCE WITH. See *Appeal*, 2.MARRIAGE, PROOF OF. See *Criminal Law*, 1, 2.MARSHALLING OF ASSETS. See *Partnership*, 3, 4.MECHANIC'S LIEN. See *Insurable Interest*.

MEXICAN LAND-GRANTS.

1. A patent issued upon a confirmed Mexican grant is in the nature of a conveyance by way of quitclaim. It is conclusive only as between the parties thereto, and is evidence that, as against the United States, the validity of the grant has been established. *Miller v. Dale* (92 U. S. 473) cited and approved. *Adam v. Norris*, 591.
2. Where a survey and a patent thereon are founded upon a superior Mexican grant, the rights of a party thereunder are not concluded by a prior survey to other claimants. *Id.*
3. A patent issued upon a survey of a grant was returned by the grantee to the Commissioner of the General Land-Office, who ordered another survey. *Held*, that the patent issued upon the last survey is not rendered invalid because, in addition to lands not covered by the prior patent, it purports to convey those which were so covered. *Id.*

MICHIGAN. See *Public Officer, Resignation of*, 1.

MINERAL LANDS.

- E. and R., two mining companies, in settlement of the differences between them respecting the possession of certain ground and the ores therein contained in the Eureka Mining District in Nevada, entered into an agreement establishing between specified points on the earth's surface a boundary line between their respective claims, and stipulating that E. would convey to R. all the mining ground and claim lying northwesterly of said line, including "all veins, lodes,

MINERAL LANDS (*continued*).

ledges, deposits, dips, spurs, and angles on, in, or under the same contained," and that R. would convey to E., with a covenant of warranty against its own acts, all its right, title, and interest in and to any and all the land or mining ground situated on the southeasterly side of said line, and in and to "all ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, and angles on, in, or under the said land or mineral ground." The agreement further declared that it was the object and intention of the parties to confine the workings of R. "to the northwesterly side of the said line continued downward to the centre of the earth." *Held*, that the agreement must be construed as extending the boundary line downwards through the dips of the veins or lodes wherever they may go in their course towards the centre of the earth. *Richmond Mining Company v. Eureka Mining Company*, 839.

MINORS, PROPERTY OF.

1. The property of minors, equally with that of adults, is subject to the *lex rei sitæ*, though the minors reside in another State or country. The local law may provide for the guardianship of such property, and for its administration and investment. By comity only will anything be conceded to the claims of the guardian of the domicile; although it is usual, by comity, to appoint, if due application be made for that purpose, the same person guardian who was appointed by the domiciliary court. *Hoyt v. Sprague*, 613.
2. In the absence of constitutional restraint the legislature may pass special laws for the sale or investment of the estates of infants or other persons who are not *sui juris*. *Id.*
3. Where an executor and guardian in Rhode Island, by virtue of such a special law, and by order of the Probate Court, conveyed the property of infants to a manufacturing corporation, by way of investment in its capital stock, — *Held*, that the conveyance and investment were protected by the law, and that no account could be demanded except for the stock and its dividends. *Id.*
4. Where minors were interested in a manufacturing establishment, as beneficiaries under a deceased partner, and the administrator, who was also their guardian, without any fraud, but with entire good faith, allowed the business to be continued by the surviving partners for several years, without filing any inventory or account; and the property suffered no deterioration, but increased in value, and was then, by virtue of a special law, transferred to a corporation created for the purpose; and the beneficiaries, after that, for more than seven years subsequently to coming of age, received dividends on their share of the stock and annual stated accounts, — *Held*, that, by reason of such acquiescence, they could not sustain a bill in equity for an account of the estate. *Id.*

MISSOURI. See *Constitutional Law*, 29, 30; *Mandamus*, 2; *Municipal Bonds*, 9, 10; *Practice*, 8; *Railroad Companies, Subscriptions to the Capital Stock of*, 1.

MONUMENTS.

1. The general rule that monuments control courses and distances reasserted in reference to lands situated in New Hampshire. *Land Company v. Saunders*, 316.
2. A well-known tract of land, embraced in an old patent, and long referred to by name in the laws of the State, containing settlements which had been subject to the census and tax laws, if called for in a subsequent grant made by the State, as the boundary of a new grant, is such a monument as will draw to it the limits of such subsequent grant, although its exterior lines were never actually run and located on the ground; and the State will be precluded from injecting a still later grant between the two prior ones. *Id.*
3. The premises in a grant were described as beginning at a fixed point, and thence "running east seven miles and one hundred and seventeen rods to Hart's Location; thence southerly by the westerly boundary of said location to a point so far south that a line drawn thence due south shall strike the northwest corner of the town of Burton; thence south to said northwest corner of Burton; thence westerly," &c., to the beginning. *Held*, 1. That if, when the grant was made, there was a tract well known as Hart's Location, lying easterly and in the vicinity of the land granted, and if it had a westerly boundary to which the granted tract could, by any reasonable possibility, extend, then Hart's Location was a monument which controlled the courses and distances of the survey; and this, though the western boundary of Hart's Location had never been actually surveyed on the ground; and though the northwest corner of Burton did not lie due south from any part of said western boundary. 2. That, in such case, the connection between the two monuments—the western boundary of Hart's Location and the northwest corner of Burton—would be the shortest line between them, though the course should be different from that named in the grant. *Id.*

MORTGAGE. See *Bankruptcy*, 1; *Res Judicata*.

1. A national bank may enforce against the mortgagor and parties claiming under him with notice a mortgage of lands executed to it as collateral security for his then existing indebtedness to it, and such as he might thereafter incur. *National Bank v. Whitney*, 99.
2. An objection to the taking of such a mortgage as security for future advances can only be urged by the United States. *Id.*
3. In New York, a mortgage for a past indebtedness, if taken without notice of one for an indebtedness to be subsequently incurred, has precedence, if it be first recorded. *Id.*
4. The failure to inscribe or to reinscribe a mortgage of lands in Louisiana does not affect its validity as against the parties thereto or their heirs. *Cucullu v. Hernandez*, 105.
5. To secure the payment of his note, A., the owner of lands, executed a mortgage of them, which was duly inscribed, but never reinscribed.

MORTGAGE (*continued*).

He subsequently conveyed them to B., who contracted to pay the note as part of the purchase-money, and, to secure it and the remainder of the purchase-money, granted a mortgage of them with vendor's privilege, in the act of sale to him, which was in due time inscribed and reinscribed. After the note was overdue, B. paid interest thereon from time to time; and, to compel him to perform his contract, A. brought suit, which was pending at the time that he filed his bill of foreclosure against B. and C., the latter being the transferee of the note and mortgage executed by A. *Held*, 1. That the prescription as to the note was, against A. and B., interrupted by the payment of the interest, and was suspended during the continuance of that suit. 2. That, notwithstanding the lapse of more than ten years since the inscription of that mortgage, C. is entitled to priority of payment out of the proceeds of the sale of the lands. *Id.*

6. This court enforces, as a rule of property applicable to Louisiana, the decision of the Supreme Court of that State, that a mortgage of lands has no effect as to third persons, unless it be inscribed in the proper public office, and that, save in the single case of a minor's mortgage upon the property of his tutor, every mortgage ceases to be effectual against third parties, unless it be reinscribed within ten years from the date of its original inscription, and that neither the pact *de non alienando* nor the pendency of a suit to foreclose dispenses with the necessity of so inscribing or reinscribing it. *Bondurant v. Watson*, 281.
7. A suit was brought to foreclose a mortgage made by husband and wife of land, a part of which belonged to him and a part to her. She answered, setting up that he obtained her signature by physical violence, and that he and the officer who took her acknowledgment, both of whom died before her answer was filed, represented to her that the mortgage did not cover her land. *Held*, that her testimony is not sufficient to impeach the mortgage. *Insurance Company v. Nelson*, 544.
8. A mortgage executed by a railway company, to secure its bonds, provides that, in case of default for six months in the payment of the interest upon either of them, the entire amount of the debt secured "shall forthwith become due and payable," and that the lien of the mortgage may be at once enforced. The bonds themselves declare that, "in case of the non-payment of any half-yearly instalment of interest which shall have become due and been demanded, and such default shall have continued six months after demand," the principal of the bond shall be become due, with the effect provided in the mortgage. *Held*, that, the mortgage being a mere security, the terms of the bonds must control in determining when the principal is payable. *Railway Company v. Sprague*, 756.

MORTGAGED LANDS, INSURABLE INTEREST IN BUILDINGS THEREON. See *Insurable Interest*.

MOTION TO QUASH. See *Criminal Law*, 6.

MUNICIPAL BONDS. See *Constitutional Law*, 27, 32, 34, 36; *Coupons*, 3; *Pleading*, 7.

1. Where a municipal corporation, being thereunto authorized upon the performance of certain prerequisites, has issued its bonds, which get into circulation as commercial securities, — *Held*, that they are *prima facie* binding on the corporation according to the terms and conditions expressed on their face, and that, in an action on them, or the coupons thereto attached, the plaintiff need not aver such performance. *Lincoln v. Iron Company*, 412.
2. Where a county subscribed to the capital stock of a railway company, and issued its bonds therefor, the creditors of the company, on its becoming insolvent, are entitled to enforce the liability of the county on the bonds which are due and unpaid. *County of Morgan v. Allen*, 498.
3. The court reaffirms the doctrine announced in *Sawyer v. Hoag* (17 Wall. 619) and subsequent cases, that the assets of an insolvent company, including the moneys due from a shareholder on his subscription to its capital stock, constitute a fund for the payment of its creditors, and that he cannot, to their prejudice, be released from his liability by any arrangement between it and him which is not fair and honest and for a valuable consideration. The doctrine is applicable where the debt created by the subscription of a county is evidenced by its bonds, and they were surrendered to it in fraud of the rights of creditors, although the surrender was made pursuant to a consent decree in a suit to which they were not parties. *Id.*
4. In consideration of the facts and of the decisions of the Supreme Court of Illinois, in cases involving the same question, the court holds that the subscription by the county court, on behalf of the county of Morgan in that State, to the capital stock of the Illinois River Railroad Company, is valid, and that the bonds, having, by its order and in conformity with the terms of its subscription, been delivered to the company, are binding upon the county, and constitute a part of the assets of the company to which its creditors can resort for payment. *Id.*
5. The trustees named in a deed of mortgage executed by that company, to secure the holders of its bonds, brought a foreclosure suit, and, under the decree rendered, became the purchasers of the mortgaged property, which they conveyed to a new company chartered by the legislature. In a suit in a State court, to which they were made defendants, they set up that they were entitled to the possession of the county bonds for delivery to the new company. *Held*, that a decree against them does not estop the creditors of the old company, who were secured by that mortgage, from asserting their right to subject the county bonds to the payment of their claims, the proceeds of the sale of the mortgaged property being insufficient for the purpose. *Id.*

MUNICIPAL BONDS (*continued*).

6. A county, having lawful authority, issued its bonds in payment of its subscription to a railroad company. Between the latter and another company a consolidation was about to take place, upon condition that the county court would, on an extension of time being granted, levy and collect a tax sufficient to pay the amount due on the bonds. The county court accepted the proposition, and gave the requisite assurance. The consolidation thereupon took place. *Held*, that the county was estopped from denying the validity of the bonds in the hands of a *bona fide* holder, to whom they were transferred for value by the consolidated company. *County of Tipton v. Locomotive Works*, 523.
7. The bonds of the township of Harter, dated April 1, 1880, signed by the supervisor and countersigned by the clerk of the township, reciting that they are issued in pursuance of the authority conferred by those acts and an election of the legal voters of the township, held on the tenth day of November, 1868, under their provisions, are valid obligations of the township, although the donation was voted to the Illinois Southeastern Railway Company, and they were delivered to a corporation formed, pursuant to law, by the consolidation of that company with another. *Harter v. Kernochan*, 562.
8. As the records of the township show that the bonds were directed to be issued and delivered to the new company, the township is, as against a *bona fide* holder of them for value, estopped from denying their validity. *Id.*
9. The act of the General Assembly of Missouri of Feb. 16, 1872, forbidding, under certain penalties therein prescribed, the officers of a municipality in its behalf to loan the credit thereof, or donate to or subscribe stock in any railroad or other company, without the previous assent of two-thirds of the qualified voters, is merely prohibitory in its character, and confers no authority on those officers when such assent was given. *Jarrolt v. Moberly*, 580.
10. *Held*, therefore, that the bonds of the "municipal corporation of the inhabitants of the town of Moberly," in the county of Randolph, in the State of Missouri, dated May 1, 1872, and reciting that they are "issued in pursuance of an election held in said town on the twenty-sixth day of March, A. D. 1872, to decide whether said town should purchase and donate to the St. Louis, Kansas City, and Northern Railway Company two hundred acres of land for machine-shop purposes, the result of said election being two hundred and twenty-eight votes for the purchase and donation and one vote against the purchase and donation; and, in pursuance to orders of the board of trustees of the inhabitants of the town of Moberly, made on the eighteenth day of April, A. D. 1872, which orders were made in accordance with an act of the General Assembly of the State of Missouri, entitled 'An Act to authorize cities and towns to purchase lands, and to donate, lease, or sell the same to railroad companies,' approved March 18, A. D. 1870," are void. *Id.*

MUNICIPAL BONDS (*continued*).

11. The rulings in *Harter v. Kernochan* (*supra*, p. 562) reaffirmed. *Bonham v. Needles*, 648.
12. Although the records of a township, which was authorized by the statutes of Illinois to make a donation to a railroad company, and issue bonds in payment thereof, contain no evidence of a meeting of the township, whereat the qualified voters assented to the issue of bonds in payment of a donation, for which they have previously voted, the recital in the bonds, that they were issued in pursuance of those statutes, is conclusive upon the township in a suit brought against it by a *bona fide* holder, to enforce the payment of them. *Id.*
13. After the voters of a town in Illinois have, at an election held pursuant to the act of the General Assembly, entitled "An Act to amend an act entitled 'An Act to incorporate the Illinois Grand Trunk Railway,'" voted in favor of a donation to aid in the construction of a railroad, the supervisor and clerk are the proper authorities to subscribe for the stock of the company and issue the bonds of the township therefor. *Walnut v. Wade*, 683.
14. A *bona fide* holder of the bonds is not bound to look beyond their recitals and the legislative enactment under which they were issued. *Id.*
15. The fact that the coupons are made payable at a particular place does not make it necessary to aver or prove a presentation of them for payment there. *Id.*
16. Coupons bear interest from their maturity, and, when severed from the bonds, are negotiable, and pass by delivery. *Id.*
17. The charter of a railroad company in Illinois allowed counties, &c., to subscribe to the stock of the corporation and issue bonds in payment, if a majority of voters, at an election called by the *county court*, should favor the subscription. The voters of a county, which had adopted a township organization, voted in favor of subscribing to the stock of the company at an election called by its *board of supervisors*. A subsequent statute, relating to the company, provides that "all elections held for the purpose of voting said stock, and the manner in which said stock was voted, are hereby legalized in all respects, and the stock to be subscribed in the manner the same was voted." On the authority of this act and the election, the board of supervisors issued bonds of the county. At this time a county court existed in the county. Before the bonds fell due, a statute was passed authorizing municipal corporations, &c., to fund their bonds, which, in brief, declared that in cases where a county, &c., had issued bonds for subscription to railroad companies, &c., "which are now binding or subsisting legal obligations," and "which are properly authorized by law," the county, &c., might, on surrender of such bonds, issue new ones, with the provision that the issue should first be authorized by a vote of the majority of the legal voters of the county, &c. Conformably to this provision, and pursuant to such a vote, the board of supervisors issued, in exchange

MUNICIPAL BONDS (*continued*).

for the old bonds, funding bonds having a longer period to run and bearing a lower rate of interest. In a suit against the county by a holder of funding bonds, which he had received in exchange for surrendered bonds, — *Held*, 1. That the vote of the people at the last election recognized the original bonds as binding and subsisting obligations, and that the county is therefore estopped from setting up that they were invalid because voted for at an election called by the board of supervisors instead of by the county court. 2. That where, at an election held according to law, the people of a county authorized their proper representatives to treat certain outstanding county obligations as properly authorized by law for the purpose of settling with the holders, and the settlement has been made, the validity of the obligations can no longer be contested. *County of Jasper v. Ballou*, 745.

18. A bond, whereby a county acknowledges its indebtedness in a certain sum, payable, at a time therein mentioned, to company A. or the holder, if it "be transferred by the signature" of its president, is negotiable, and, on his transfer thereof by indorsement to "bearer," the latter may in his own name sue thereon. *County of Wilson v. National Bank*, 770.
19. A town in New York was authorized, upon certain conditions, to subscribe for railway stock, and sell its bonds at not less than their par value to raise funds wherewith to pay therefor. The subscription was made: but the commissioners issued to the company, in exchange for its stock, bonds in which that fact is recited. Such an exchange was not authorized by the statute, and, under the decisions of the courts of that State, a holder of the bonds, who had notice that they had been so exchanged, could not enforce the payment of them. After the passage of the act of April 28, 1871 (*supra*, p. 809), A. purchased them for value, and brought suit upon certain coupons detached therefrom. *Held*, that the legislature had the constitutional power to pass the act, and that the bonds were thereby validated. *Thompson v. Perrine*, 806.
20. The court declines to follow *Horton v. Town of Thompson* (71 N. Y. 513), in which the same point is involved. *Id.*

MUNICIPAL CORPORATIONS. See *Constitutional Law*, 14, 15.

MUNICIPAL CORPORATIONS, SUBSCRIPTIONS FOR STOCK BY.

A popular vote in favor of a municipal subscription for stock of a railroad company cast at an election held without authority of law does not bind the municipality nor confer the power to make the subscription. *Allen v. Louisiana*, 80.

NATIONAL BANKS. See *Jurisdiction*, 15; *Taxation*, 12, 13.

1. A national bank may enforce against the mortgagee and parties claiming under him with notice a mortgage of lands executed to it as collateral security for his then existing indebtedness to it,

NATIONAL BANKS (*continued*).

and such as he might thereafter incur. *National Bank v. Whitney*, 99.

2. An objection to the taking of such a mortgage as security for future advances can only be urged by the United States. *Id.*
3. The title to shares of the capital stock of a national bank passes when the owner delivers his stock certificate to the purchaser, with authority to him or any one whom he may name to transfer them on the books of the bank. *Johnston v. Laftin*, 800.
4. In good faith, and without intent to evade his responsibility as a stockholder, A., the owner of such shares, sold them to a broker, to whom he delivered his stock certificate and a power to transfer them, leaving blanks for the names of the attorney and transferee. The broker sold them to B., the president of the bank, who gave his individual check in payment therefor, and received the certificate and power. By the directions of B., a book-keeper of the bank inserted his own name as attorney, and transferred the stock to B. as "trustee" on the official stock register. The entries in the stock ledger and other books of the bank show that B. purchased the stock for it, and reimbursed himself with its funds. The book-keeper had actual knowledge of all the facts. In a suit brought by the receiver of the bank, to compel B. to retransfer the shares, and A. to repay the price therefor, and to have the latter declared a stockholder in regard to them, — *Held*, that as the book-keeper was the agent of the bank, his knowledge of the transaction could not be imputed to A., and that the suit could not be maintained. *Id.*

NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS,
DEPUTY GOVERNOR OF. See *Contracts*, 11.

NAVY, OFFICER OF THE. See *Officer of the Army or the Navy*,
Removal of.

NEBRASKA. See *Constitutional Law*, 36.

NEGOTIABLE PAPER. See *County Warrants*, 4; *Coupons*, 2; *Municipal Bonds*, 18; *Warehouseman*.

NEW HAMPSHIRE. See *Monuments*.

NEW YORK. See *Mortgage*, 3; *Municipal Bonds*, 19; *Railroad Companies*,
Subscriptions to the Capital Stock of, 10, 11.

OBITER DICTUM. See *Judicial Decision*.

OFFICER OF THE ARMY OR THE NAVY, REMOVAL OF.

1. The President has the power to supersede or remove an officer of the army or the navy by the appointment, by and with the advice and consent of the Senate, of his successor. *Blake v. United States*, 227.
2. It was not the purpose of the fifth section of the act of July 13, 1866, c. 176 (12 Stat. 92), to withdraw that power. *Id.*

PACT DE NON ALIENANDO. See *Louisiana*, 4.

PARTIES. See *Causes, Removal of*, 2; *Jurisdiction*, 15; *Res Judicata*.

PARTITION. See *Appeal*, 1; *Jurisdiction*, 8.

PARTNERSHIP. See *Contracts*, 14; *Minors, Property of*.

1. The last will and testament of A. directs that his interest in a firm, whereof he was a member at the time of his death, "be continued therein, and be chargeable for its debts and liabilities," but that his "other property shall not be so chargeable." *Held*, that the general assets of his estate are not bound for the debts of the firm which were contracted subsequently to his death. *Jones v. Walker*, 444.
2. The profits arising from that interest were, pursuant to the will, paid from time to time, the firm being then free from debt, and its capital undiminished. It afterwards became bankrupt. *Held*, that the legatees receiving them were not liable to the assignee in bankruptcy therefor. *Id.*
3. If the executor of a deceased partner consents to the surviving partners continuing the business with the assets of the firm, his lien on property thereafter acquired will be postponed to that of creditors, when a case arises for an equitable marshalling of assets; as, where the surviving partners make a general assignment for the benefit of creditors. *Hoyt v. Sprague*, 613.
4. In such case, the beneficiaries of the deceased partner's estate cannot have priority over the claims of creditors upon the partnership assets. *Id.*

PATENT OF THE UNITED STATES FOR LAND. See *Mexican Land-Grants*.

PERSONAL REPRESENTATIVE. See *Jurisdiction*, 12.

PICTURES PAINTED ON PORCELAIN. See *Customs Duties*, 4.

PLEADING. See *Admiralty*, 1; *Causes, Removal of*, 2, 3; *Church Property*, 1; *Judicial Decision; Practice*, 1, 2, 12, 14, 24, 27; *Taxation*, 12, 13.

1. Where a municipal corporation, being thereunto authorized upon the performance of certain prerequisites, has issued its bonds, which get into circulation as commercial securities, — *Held*, that they are *prima facie* binding on the corporation according to the terms and conditions expressed on their face, and that, in an action on them, or the coupons thereto attached, the plaintiff need not aver such performance. *Lincoln v. Iron Company*, 412.
2. Want of such performance, when in any case available to defeat a recovery, must be set up by the corporation. *Id.*
3. A statute was declared to be a public act. A subsequent statute, supplementary thereto and amendatory thereof, is also a public act, and need not be specially pleaded. *Unity v. Burrage*, 447.
4. After making a return to the alternative *mandamus* sued out against

PLEADING (*continued*).

him by a judgment creditor of a township, the township supervisor cannot set up the non-service of any notice in the cause. *Edwards v. United States*, 471.

5. To a petition for a *mandamus*, to compel A., the clerk of a township, to whom had been delivered a certified copy of a judgment recovered against it to certify the judgment to the supervisor in order that the amount thereof might be placed upon the tax-roll, A made answer, among other things, that he had resigned his office before the copy was served upon him. *Held*, that the appointment of his successor, after the institution of the proceedings, should, if available as a matter of defence, have been set up by a plea of *puis darrein continuance* or its equivalent. *Thompson v. United States*, 480.
6. Where a party, pursuant to leave, files a plea to the jurisdiction of the court, his former plea to the merits is thereby withdrawn. *Kern v. Huidekoper*, 485.
7. A company who, under a contract with a city, was constructing water-works, executed a mortgage on them, to secure certain bonds and the coupons thereto attached, which stipulates that if the company shall fail, for the space of ninety days, to pay the coupons when they shall become due, provided such failure is not caused by the city under the contract, all of the bonds shall become due, and the lien of the mortgage may be enforced for the whole debt. Coupons remained due and unpaid for the specified period. *Held*, that the bill need not negative the failure of the city, but that such failure, if it existed, must be set up as matter of defence. *Water-works Company v. Barret*, 516.
8. A pleading which would be cured by verdict is good after a finding by the court to which the trial of the issue was submitted by the stipulation of the parties. *Adam v. Norris*, 591.
9. The fact that coupons are made payable at a particular place does not make it necessary to aver or prove a presentation of them for payment there. *Walnut v. Wade*, 683.

PLEDGE.

1. Where a factor has against his consignor no interest in the consigned property, he cannot pledge it for his own debt. Such a pledge, although accompanied by a warehouse receipt setting forth that the property is deliverable to the pledgee, is, under the laws of Louisiana, invalid, and confers upon him no title adverse to that of the consignor. *Insurance Company v. Kiger*, 352.
2. In such a case, the obligation imposed by those laws upon the warehouseman is discharged by his surrender of the property pursuant to judicial process sued out by such consignor, notice of which he gave to the pledgee. *Id.*

PLEDGE. See *Pledge*.

POLYGAMY. See *Criminal Law*.

PORCELAIN, PICTURES PAINTED ON. See *Customs Duties*, 4.

PRACTICE. See *Admiralty*, 5, 10; *Appeal*, 2; *Causes, Removal of*, 5, 14, 15; *Criminal Law*, 3, 4; *Jurisdiction*, 6, 18; *Minors, Property of*, 1; *Mandamus*; *Pleading*, 8; *Principal and Agent*; *Supersedeas*, 2; *Taxation*, 9; *Writ of Error*, 1.

1. The court is authorized by sect. 954 of the Revised Statutes to allow, at any time during the trial, amendments in the pleadings; and where it has done so, it must, in its discretion, determine whether the submission of the cause ought to be vacated. *Bamberger v. Terry*, 40.
2. Where the plaintiff is permitted to amend his declaration so as to avoid a variance between it and the proofs, and it appears that neither the nature nor the merits of the issue are thereby changed, the defendant is not entitled to an order setting aside the submission of the cause for trial. *Id.*
3. Where the complainant dies after the term at which the cause on its submission for final hearing upon the pleadings and proofs was continued by an order of *curia advisare vult*, the decree in his favor entered as of that term cannot be impeached by the defendants upon the ground that it was rendered subsequently to his death. *Mitchell v. Overman*, 62.
4. A prayer for instructions which are presented as a whole, is properly refused if any of them is erroneous. *United States v. Hough*, 71.
5. It is error to instruct touching the law applicable to facts of which there is no evidence. *Jones v. Van Benthuyzen*, 87.
6. *Quære*, Does the act of June 1, 1872, c. 255 (17 Stat. 196; Rev. Stat., sect. 914), authorize the review here of an action at law, wherein, pursuant to the practice of the courts of the State in which the Circuit Court was held, the facts were found by a referee. *Boogher v. Insurance Company*, 90.
7. Sect. 700 of the Revised Statutes is the only enactment providing for the review here of a civil cause where an issue of fact has been tried in the Circuit Court otherwise than by a jury. *Id.*
8. The Practice Act of Missouri declares that an issue of fact in any action may, upon the written consent of the parties, be referred. Where, therefore, the record states that, after a case was called for trial and a jury sworn to try the issue joined, a juror was, by "consent of parties," withdrawn, and the case referred to A., this court must assume that such consent, as well as that to waive a jury, was in writing. *Id.*
9. In order to give this court jurisdiction to determine whether the facts found by the referee, and confirmed by the court below, are sufficient to support the judgment, they must be treated as the finding of the court. Otherwise, there has not been such a judicial determination of them as to make them conclusive here. *Id.*
10. The ruling that, where any portion of the charge to the jury is correct, an exception to the entire charge will not be sustained, reaf-

PRACTICE (*continued*).

- firm, and held to be applicable to a general exception taken to the report of a referee. *Id.*
11. Where it is shown by the opening statement of counsel for the plaintiff that the contract on which the suit is brought is void, as being either in violation of law or against public policy, the court may direct the jury to find a verdict for the defendant. *Oscanyan v. Arms Company*, 261.
 12. A court is, in the due administration of justice, bound to refuse its aid to enforce such a contract, although its invalidity be not specially pleaded. *Id.*
 13. This court cannot re-examine questions of fact upon a writ of error. *Miles v. United States*, 304.
 14. A verdict cures a defective statement of a title or cause of action. *Lincoln v. Iron Company*, 412.
 15. A verdict in assumpsit, the plea being *non assumpsit*, "that the defendant is guilty in manner and form as alleged in the declaration," is amendable, and judgment may be rendered thereon for the damages thereby assessed. *Id.*
 16. Eight years after a bill in equity had been filed, and on the day it was dismissed, on a final hearing upon the pleadings and proofs, an amended bill was filed without leave. *Held*, that it must be disregarded in the consideration of the case here. *Terry v. McLure*, 442.
 17. Where a State court, proceeding to the trial of a suit which had been removed therefrom, renders judgment against the party, whose petition for a removal it erred in refusing to grant, he may raise here the question as to the jurisdiction of that court, notwithstanding the fact that he appeared at the trial and insisted upon the merits of his cause of action or defence. *Kern v. Huidekoper*, 485.
 18. Where a party, pursuant to leave, files a plea to the jurisdiction of the court, his former plea to the merits is thereby withdrawn. *Id.*
 19. An order made by the court below, pursuant to the consent of parties, is binding upon them here. *Water-works Company v. Barret*, 516.
 20. A cause, not presenting questions entitling it to precedence, will not, over the objection of a party thereto, be advanced in order that it may be heard with another case standing before it on the docket. *Louisiana v. New Orleans*, 521.
 21. Where in a case in admiralty the decree below, determining the liability of the respective vessels in a collision, was rendered before the act of Feb. 16, 1875, c. 77 (18 Stat., pt. 3, p. 315), took effect, this court, the case being properly here on appeal, will re-examine the evidence, and, if the appellant does not show that in the concurring action of the courts below error was committed to his prejudice, the decree will be affirmed. *The "Richmond,"* 540.
 22. Where, after such a decree, and the taking effect of that act, the

PRACTICE (*continued*).

- ascertainment of the amount of damages sustained by the vessel not in fault was referred to a master, the action of the Circuit Court upon exceptions to his report, all of which relate to questions of fact, will not be reviewed here. *Id.*
23. Under the circumstances of this case, the court declines to accept the submission of the cause against the wishes of those who, being collaterally interested in the decision which may be made, united in the employment of counsel to present their defence, and contributed to a common fund for the payment of the expenses of the litigation. *Smelting Company v. Kemp*, 666.
 24. Where matters of set-off are pleaded by the defendant in a suit brought by the United States, the refusal of the court below to direct the jury to certify the amount which they may find due to him from the plaintiff will not be reviewed here. *Schaumburg v. United States*, 667.
 25. Where the bill of exceptions sets forth all the facts, and states that they were proved, this court, if the law arising upon them is for the plaintiff, will not reverse the judgment, because a peremptory instruction was given to return a verdict in his favor. *Arthur v. Jacoby*, 677.
 26. Where the appellee has a color of right to the dismissal of an appeal, he may unite with a motion therefor one to affirm the decree. *Hinckley v. Morton*, 764.
 27. A bill of review is the appropriate mode of correcting errors apparent on the face of the record, and it was in this case filed in time, less than two years having elapsed since the original decree was passed. *Clark v. Killian*, 766.
 28. The court will not consider errors assigned by the appellee. *Id.*
 29. Where there has been no newly discovered evidence, a bill in equity will not lie to cancel a contract or enjoin a judgment thereon, where the complainant, against whom it was rendered, sets up as grounds of relief matters which he had full opportunity to plead in the action at law. *Life Insurance Company v. Bangs*, 780.
 30. Where, upon the undisputed facts of the case, the plaintiff is not entitled to recover, the court may instruct the jury to find a verdict for the defendant. *National Bank v. Insurance Company*, 783.
 31. The judgment of the Circuit Court, upon a plea to the jurisdiction, will not be reviewed here upon a petition for a *mandamus*. *Ex parte Railway Company*, 794.

PRE-EMPTION. See *Land-Grants*, 5.

PREFERENCE. See *Bankruptcy*, 1.

PRESCRIPTION.

Payments made by a purchaser of lands in Louisiana on account of a debt due by his vendor which he has assumed as part of the price thereof, and which is a charge thereon, interrupt the prescription as to that debt both as to the vendor and the purchaser, and so long as

PRESCRIPTION (*continued*).

a suit by the vendor against the latter to compel him to pay the debt remains pending the prescription is suspended. *Cucullu v. Hernandez*, 105.

PRESUMPTION. See *Constitutional Law*, 19, 20; *Taxation*, 9.

PRINCIPAL AND AGENT. See *National Bank*, 4.

Pursuant to orders received from A., the owner of the Corn Exchange Elevator at Oswego, who was engaged in storing grain for the public and doing business on his own account, B. bought for him two cargoes of wheat, and drew sight and time drafts for the purchase-money. C., a bank at Milwaukee, bought the drafts and received the bills of lading. The latter describe B. as the shipper, and, by their terms, each cargo was to be delivered at Oswego to the account or order of D., cashier of C., care of the City Bank. C. thereupon enclosed the drafts and bills of lading to the City Bank, saying, "On payment of the drafts you will deliver the cargo to the order of A. If not paid, please hold and advise by telegraph." The bank acknowledged their receipt, and presented the sight-drafts to A., who paid them, and accepted the time-drafts. Upon the arrival of the wheat at Oswego, the master of each vessel reported to the cashier of the City Bank, who, knowing that A. was the owner of the Corn Exchange Elevator, indorsed the bills of lading: "Deliver to the Corn Exchange Elevator for account of D., cashier, Milwaukee, subject to the order of the City Bank, Oswego." After the wheat had been so delivered, A. sold and shipped it. In its account with C., the City Bank made a charge for its trouble beyond the customary percentage for collecting and remitting the proceeds of the drafts. Before the time-drafts became due, A. failed. They were duly protested for non-payment, and have not been paid. In an action by C. against the City Bank, — *Held*, 1. That the City Bank, in receiving and acknowledging the drafts and bills of lading, with the accompanying instructions, became the agent of C. in the business which it had undertaken. 2. That whether, in discharging its duties as such agent, it exercised reasonable diligence and care, is a question for the jury, which the court below should not have withdrawn from them and decided. *National Bank v. City Bank*, 668.

PRISONER, ADMISSIONS OF. See *Criminal Law*, 1.

PROCESS, SERVICE OF. See *Causes, Removal of*, 13; *Jurisdiction*, 13, 14.

PUBLIC ACT.

1. A statute of Illinois, legalizing elections held by the voters of a county on the question of issuing negotiable bonds of the county, in aid of certain railroad companies, and authorizing, on conditions therein named, all the townships in counties where the township organization had been adopted, lying on or near to the line of a specified railroad, to subscribe to the stock of the railroad company, and

PUBLIC ACT (*continued*).

issue negotiable bonds therefor, is a public act. *Unity v. Burrage*, 447.

2. Such a statute does not conflict with section 23 of article 3 of the Constitution of 1848, which provides that "no private or local law, which may be passed by the General Assembly, shall embrace more than one subject, and that shall be expressed in the title." *Id.*

PUBLIC LANDS. See *Land-Grants*.PUBLIC OFFICER, RESIGNATION OF. See *Evidence*, 1.

1. The common-law rule is in force in Michigan, that the resignation of a public officer is not complete until the proper authority accepts it, or does something tantamount thereto, such as to appoint a successor. *Edwards v. United States*, 471.
2. *Semble*, that proceedings against the clerk of a township, to enforce its duty of levying the amount of such a judgment, are against it, and do not abate by his resignation and the appointment of his successor. *Thompson v. United States*, 480.

PUBLIC POLICY. See *Contracts*, 9; *Practice*, 11, 12.PUIS DARREIN CONTINUANCE, PLEA OF. See *Pleading*, 5.QUITCLAIM. See *Mexican Land-Grants*, 1.RAILROAD COMPANIES, CONSOLIDATION OF. See *Municipal Bonds*, 7, 8.RAILROAD COMPANIES, SUBSCRIPTIONS TO THE CAPITAL STOCK OF. See *Constitutional Law*, 15, 26, 29, 30; *Municipal Bonds*; *Public Act*, 1.

1. Neither the charter of the city of Louisiana, Missouri, approved March 12, 1870, construed with art. 10, sect. 14, of the State Constitution adopted in 1865, nor sect. 17, chap. 63, of the General Statutes of 1865, taken in connection with an amendment to that chapter adopted as sect. 52, March 24, 1870, authorized the city to subscribe to the capital stock of a railroad company organized under the laws of Illinois. *Allen v. Louisiana*, 80.
2. A popular vote in favor of a municipal subscription for stock of a railroad company cast at an election held without authority of law does not bind the municipality nor confer the power to make the subscription. *Id.*
3. An act of the legislature of Arkansas, passed in 1868, authorizes any county to subscribe to the stock of any railroad company in that State, provided the subscription shall not exceed \$100,000, and the consent of the inhabitants of the county thereto shall first be obtained at an election held for that purpose. At an election held under that act, the voters of a county voted to subscribe \$100,000 to the stock of company A. and \$100,000 to the stock of company B. *Held*, 1. That the act does not restrict the county to a single subscription. 2. That the power to subscribe is general, limited only

RAILROAD COMPANIES, SUBSCRIPTIONS TO, &c. (*continued*).

by the subscription of \$100,000 to the stock of any one company
County of Chicot v. Lewis, 164.

4. Where a county subscribed to the capital stock of a railway company, and issued its bonds therefor, the creditors of the company, on its becoming insolvent, are entitled to enforce the liability of the county on the bonds which are due and unpaid. *County of Morgan v. Allen*, 498.
5. The court reaffirms the doctrine announced in *Sawyer v. Hoag* (17 Wall. 619) and subsequent cases, that the assets of an insolvent company, including the moneys due from a shareholder on his subscription to its capital stock, constitute a fund for the payment of its creditors, and that he cannot, to their prejudice, be released from his liability by any arrangement between it and him which is not fair and honest and for a valuable consideration. The doctrine is applicable where the debt created by the subscription of a county is evidenced by its bonds, and they were surrendered to it in fraud of the rights of creditors, although the surrender was made pursuant to a consent decree in a suit to which they were not parties. *Id.*
6. In consideration of the facts and of the decisions of the Supreme Court of Illinois, in cases involving the same question, the court holds that the subscription by the county court, on behalf of the county of Morgan in that State, to the capital stock of the Illinois River Railroad Company, is valid, and that the bonds, having, by its order and in conformity with the terms of its subscription, been delivered to the company, are binding upon the county, and constitute a part of the assets of the company to which its creditors can resort for payment. *Id.*
7. The trustees named in a deed of mortgage executed by that company, to secure the holders of its bonds, brought a foreclosure suit, and, under the decree rendered, became the purchasers of the mortgaged property, which they conveyed to a new company chartered by the legislature. In a suit in a State court, to which they were made defendants, they set up that they were entitled to the possession of the county bonds for delivery to the new company. *Held*, that a decree against them does not estop the creditors of the old company, who were secured by that mortgage, from asserting their right to subject the county bonds to the payment of their claims, the proceeds of the sale of the mortgaged property being insufficient for the purpose. *Id.*
8. The county court of Wilson County, Tennessee, had, after certain preliminary proceedings were taken, lawful authority to subscribe, on behalf of the county, for stock in the Tennessee and Pacific Railroad Company, and to issue bonds of the county in payment therefor. *County of Wilson v. National Bank*, 770.
9. It was not essential to the validity of the popular election, ordered and held on the question of subscription to the stock, that there should have been a final and definite survey and location of the

RAILROAD COMPANIES, SUBSCRIPTIONS TO, &c. (*continued*).

entire line of the company's road. All that was required was a substantial location, designating the termini and general direction of the road, and an estimate of the cost of constructing it. *Id.*

- 10 In accordance with the petition of the taxpayers of a town in New York, dated March 25, 1872, the county judge appointed commissioners who were empowered and directed to subscribe for stock in a railroad company when its road should be constructed through a certain village. The road was not so constructed until Oct. 20, 1875. *Held*, that as, by the terms of the petition, and the proceedings of the judge thereon, the construction of the road was a condition precedent to the exercise by the commissioners of their power to make the subscription, they, being merely agents of the town, had no authority to act in the premises until that condition was performed. *Railroad Company v. Falconer*, 821.
11. A contract, therefore, under date of June 14, 1872, between the company and the commissioners, whereby the latter assumed to bind the town to subscribe for stock when the road should be so constructed, being *ultra vires*, no rights of the company were impaired by the amendment to the Constitution of the State (*supra*, p. 822), which took effect Jan. 1, 1875, and prohibited all municipal aid to corporations by the subscription of stock or otherwise. *Id.*
12. *County of Moultrie v. Savings Bank* (92 U. S. 631) distinguished. *Id.*

RAILROAD COMPANIES, TOWNSHIP DONATIONS TO. See *Constitutional Law*, 27, 29, 30; *Municipal Bonds*, 9-12.

RAILROAD COMPANY, ACTION AGAINST, FOR DAMAGES. See *Jurisdiction*, 11, 12.

RAILROAD COMPANY, TAXATION OF. See *Taxation*, 1, 2, 8, 9.

REASONABLE CARE AND DILIGENCE. See *Principal and Agent*.

REASONABLE DOUBT. See *Criminal Law*, 5.

REBELLION, THE. See *Suit against the United States*.

RECITALS. See *Mortgage*, 8; *Municipal Bonds*, 1, 7, 10, 12, 14, 15.

RECORD. See *Admiralty*, 5; *Causes, Removal of*, 10.

REFEREE. See *Practice*, 6-10.

REISSUED LETTERS-PATENT. See *Letters-patent*, 6, 7.

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

REPLEVIN. See *Causes, Removal of*, 10.

REPRESENTATIVES, HOUSE OF, POWER OF, TO PUNISH FOR CONTEMPT. See *Constitutional Law*, 2-13.

RESIGNATION. See *Public Officer, Resignation of*.

RES JUDICATA. See *Admiralty*, 2; *County Warrants*, 3.

Pending proceedings in a State court by a national bank, to foreclose a mortgage executed to it by A. and duly recorded, B., his creditor, recovered against him in the Circuit Court of the United States a judgment which, by the *lex loci*, was a lien on the equity of redemption. B. then filed his bill in the latter court against A. and the bank to set aside the mortgage as illegal, or to have certain alleged payments of usurious interest applied to reduce the debt. Shortly thereafter, the State court rendered a decree of foreclosure and sale, which the bank set up in its answer to the bill. The Circuit Court thereupon dismissed the bill. *Held*, 1. That the State court having first acquired jurisdiction of the subject-matter, its decree was a bar to the further prosecution of the suit against A. and the bank. 2. That A. represented all the parties who, pending the foreclosure proceedings, acquired through him an interest in or a charge on the mortgaged land, and that B., although not a party to them, is bound by the decree therein rendered. *Stout v. Lye*, 66.

RETORNO HABENDO, JUDGMENT OF. See *Injunction*.

REVENUE STAMPS. See *Internal Revenue Stamps*.

REVIEW, BILL OF. See *Practice*, 27.

REVISED STATUTES OF THE UNITED STATES.

The following sections referred to and explained:—

Sect. 641. See *Causes, Removal of*, 8.

Sect. 649. See *Jury, Waiver of*, 2.

Sect. 700. See *Jurisdiction*, 2, 6.

Sect. 914. See *Jurisdiction*, 1.

Sect. 954. See *Practice*, 1.

Sect. 2504. See *Customs Duties*, 4.

Sect. 3249. See *Internal Revenue*, 2.

Sect. 3311. See *Internal Revenue*, 1.

Sect. 4916. See *Letters-patent*, 6.

SAILING RULES. See *Admiralty*, 6, 7.

SALVAGE. See *Appeal*, 3.

SET-OFF. See *Practice*, 24.

SETTLEMENT. See *Ante-nuptial Settlement; Wife, Settlement of Lands upon*.

SHIRTINGS. See *Customs Duties*, 1.

SOUTH CAROLINA. See *Limitations, Statute of*, 3.

SPECIAL TAX. See *Mandamus*, 2.

SPECIE PAYMENTS. See *Limitations, Statute of*, 3.

STATE CONSTITUTION OR STATUTES, INCONSISTENT PROVISIONS IN. See *Constitutional Law*, 19, 20.

STATE COURT, PROCEEDINGS IN, SUBSEQUENTLY TO FILING PETITION FOR REMOVAL OF A CAUSE. See *Causes, Removal of*, 9; *Practice*, 17.

STATE OFFICE, SUIT TO TRY THE TITLE OF A PARTY TO See *Causes, Removal of*, 11.

STATUTES OF THE UNITED STATES.

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

- 1856. May 15. c. 28. See *Land-Grants*, 3.
- 1861. March 2. c. 192. See *Customs Duties*, 2.
- 1863. March 3. c. 74. See *Internal Revenue Stamps*, 2.
- 1864. June 2. c. 103. See *Land-Grants*, 5.
- 1864. June 30. c. 171. See *Customs Duties*, 3.
- 1864. June 30. c. 184. See *Constitutional Law*, 28.
- 1866. July 13. c. 176. See *Officer of the Army or the Navy, Removal of*, 2.
- 1866. July 23. c. 212. See *Land-Grants*, 1.
- 1867. March 2. c. 176. See *Bankruptcy*, 1.
- 1870. July 8. c. 230. See *Letters-patent*, 6.
- 1871. Feb. 21. c. 62. See *District of Columbia*, 3.
- 1872. June 1. c. 255. See *Jurisdiction*, 1.
- 1873. March 3. c. 231. See *Contracts*, 12.
- 1874. June 20. c. 337. See *District of Columbia*, 2.
- 1874. June 22. c. 390. See *Limitations, Statute of*, 1.
- 1875. Feb. 16. c. 77. See *Practice*, 1.
- 1875. March 3. c. 128. See *Contracts*, 13.
- 1875. March 3. c. 137. See *Causes, Removal of*, 1, 9, 12; *Jurisdiction*, 9.
- 1880. June 4. c. 120. See *Jurisdiction*, 17.

STATUTORY LIEN. See *Florida*, 4; *Taxation*, 8, 9.

STATUTORY MORTGAGE. See *Florida*, 4.

STIPULATION FOR VALUE. See *Admiralty*, 2, 3.

STOCK, SUBSCRIPTIONS TO. See *Contracts*, 3; *Railroad Companies, Subscriptions to the Capital Stock of*.

STOCKHOLDER, INDIVIDUAL LIABILITY OF. See *Limitations, Statute of*, 3.

STOCKHOLDER, MONEY DUE BY, ON ACCOUNT OF HIS SUBSCRIPTION. See *Railroad Companies, Subscriptions to the Capital Stock of*, 5.

SUBMISSION OF CAUSES. See *Practice*, 1-3.

SUFFRAGE, RIGHT OF. See *Constitutional Law*, 17.

SUIT AGAINST THE UNITED STATES. See *Contracts*, 12, 13.

A., a merchant residing in Georgia, left there at the commencement of the rebellion, and, until its close, remained in loyal territory. On

SUIT AGAINST THE UNITED STATES (*continued*).

leaving, he intrusted his business to an agent, who, with money collected or acquired on his account, purchased, in 1864, cotton subsequently captured by the United States and sold. A. sued for the net proceeds thereof in the Court of Claims. *Held*, that he was entitled to recover. *United States v. Quigley*, 595.

SUPERSEDEAS.

1. An appeal was taken by a county from a decree of foreclosure rendered against it upon a mortgage of its lands, to secure the bonds of a railroad company. The decree was affirmed, and the costs of the appeal were paid. *Held*, that the liability of the county and its sureties upon the *supersedeas* bond is limited to such damages as resulted from a delay in the sale of the lands, and does not include the balance remaining unpaid of the decree after applying thereto the proceeds of the sale, nor the interest thereon which accrued pending the appeal. *Supervisors v. Kennicott*, 554.
2. The ruling in *Jerome v. McCarter* (21 Wall. 17), that where, by reason of the changed circumstances of the case, or of the parties, or of the sureties on a *supersedeas* bond, so that the security, which at the time it was taken was sufficient, does not continue to be so, this court will, on proper application, so order and adjudge as justice may require, — reaffirmed, and applied to this case. *Williams v. Clafin*, 753

SUPREME COURT OF THE DISTRICT OF COLUMBIA, RE-EXAMINATION OF THE JUDGMENTS OR DECREES OF. See *Jurisdiction*, 5.

SURETY. See *Internal Revenue Stamps*, 2; *Supersedeas*.

SURVEY. See *Mexican Land-Grants*.

TARIFF. See *Customs Duties*.

TAXATION. See *Commerce*; *Constitutional Law*, 14, 15; *Internal Revenue Stamps*, 3; *Mandamus*, 2.

1. Where a railroad company is, for the purpose of constructing and repairing its road, invested with the powers and privileges and subjected to the obligations contained in certain enumerated sections of the charter of another company which was exempt from taxation, — *Held*, that the grant does not include immunity from taxation. *Railroad Company v. Commissioners*, 1.
2. *Railroad Companies v. Gaines* (97 U. S. 697) and *Morgan v. Louisiana* (93 id. 217) reaffirmed and applied to this case. *Id.*
3. Lands in Kansas held in fee-simple by a half-blood member of the tribe of Sac and Fox Indians of the Mississippi under a patent from the United States, issued pursuant to the seventeenth article of the treaty of Feb. 18, 1867 (15 Stat. 495), are not exempt from State taxation. *Pennock v. Commissioners*, 44.
4. *The Kansas Indians* (5 Wall. 737) distinguished. *Id.*

TAXATION (*continued*).

5. As long as a city exists, laws are void which withdraw or restrict her taxing power so as to impair the obligation of her contracts made upon a pledge expressly or impliedly given that it shall be exercised for their fulfilment. *Von Hoffman v. City of Quincy* (4 Wall. 535) cited on this point, and approved. *Wolff v. New Orleans*, 358.
6. Although such laws be enacted, *mandamus*, to compel her to exercise that power to the extent she possessed it before their passage, will lie at the suit of a party to such a contract who has no other adequate remedy to enforce it. *Id.*
7. *Meriwether v. Garrett* (102 U. S. 472) distinguished. *Id.*
8. A party who, under proceedings to enforce the statutory lien of the State of Tennessee, purchases a railroad does not acquire therewith the immunity from taxation thereon which the railroad company possessed. *Wilson v. Gaines*, 417.
9. Where the case stands on demurrer to his bill, which prays that the collection of taxes on the property be restrained, and avers that the sale was under those proceedings, this court will not, in the absence of a particular allegation to the contrary, presume that the sale embraced anything not covered by that lien. *Id.*
10. *Morgan v. Louisiana* (93 U. S. 217) cited and approved. *Id.*
11. As a general rule, the owner of taxable property, who seeks to enjoin the collection of a tax thereon, which he alleges to be in excess of what is lawful, must first pay or tender so much thereof as is justly due. *National Bank v. Kimball*, 732.
12. A bill to restrain the collection of a State tax upon the shares of a national bank is bad on demurrer, where it does not appear that there is any statutory discrimination against them, or that they, under any rule established by the assessing officers, are rated higher in proportion to their actual value than other moneyed capital. *Id.*
13. The bill filed in this case shows that the same percentage is assessed on such shares as upon other property, and that they are rated at about one-half their actual value. No case for relief is made by averring that some other property is rated for taxable purposes at less than one-half of its cash value. *Id.*

TAXATION, IMMUNITY FROM. See *Taxation*, 1-3, 8-10.

TENDER. See *Taxation*, 11.

TENNESSEE. See *Constitutional Law*, 26; *Taxation*, 8-10.

TESTATOR, SUIT TO ENFORCE LIABILITY OF. See *Causes, Removal of*, 6.

TOBACCO. See *Internal Revenue Stamps*, 3.

TOWNSHIP DONATIONS. See *Constitutional Law*, 27, 29, 30; *Municipal Bonds*, 9-12.

TOWNSHIPS, PROCEEDINGS TO ENFORCE LIABILITY OF.

Semble, that proceedings against the clerk of a township, to enforce the performance of its duty of levying the amount of a judgment recovered against it, are against it, and do not abate by his resignation and the appointment of his successor. *Thompson v. United States*, 480.

TRANSITORY ACTIONS. See *Jurisdiction*, 11, 12

TRUSTEE. See *Church Property*, 1.

TRUST FUND. See *Railroad Companies, Subscriptions to the Capital Stock of*, 4-7.

ULTRA VIRES. See *Railroad Companies, Subscriptions to the Capital Stock of*, 11.

USAGE. See *Contracts*, 7.

USE AND OCCUPATION. See *Church Property*.

USURY.

In Louisiana, usurious interest cannot be reclaimed, nor imputed to the principal, unless a suit for its recovery be commenced or a plea of usury be set up within twelve months after the payment thereof. *Cook v. Lillo*, 792.

UTAH. See *Criminal Law*, 3.

VALUE, STIPULATION FOR. See *Admiralty*, 2, 3.

VARIANCE. See *Practice*, 2.

VERDICT. See *Pleading*, 8; *Practice*, 14, 15.

VIRGINIA. See *Commerce*, 2.

WAIVER. See *Jury, Waiver of*.

WAREHOUSEMAN. See *Pledge*.

A warehouseman is not a guarantor of the title of property placed in his custody, although his receipts therefor are by statute negotiable. *Insurance Company v. Kiger*, 352.

WARRANTS. See *County Warrants*.

WIFE, SETTLEMENT OF LANDS UPON. See *Ante-nuptial Settlement*.

The settlement of lands by a man upon his wife is not invalid, if the rights of existing creditors are not thereby impaired. *Clark v. Killian*, 766.

WILL. See *Partnership*, 1, 2.

WITNESS. See *Criminal Law*, 1, 2; *Mortgage*, 7.

WORDS.

"Dollars." See *Bills of Exchange and Promissory Notes*.

"Inhabitants." See *Illinois*, 2.

WRIT OF ERROR. See *Constitutional Law*, 22.

1. The only paper purporting to be the writ of error in this case is in the name, and bears the teste, of the Chief Justice of the Supreme Court of Louisiana, and is signed by the clerk and sealed with the seal of that court. *Held*, that the suit must be dismissed for want of jurisdiction. *Bondurant, Tutrix, v. Watson*, 278.
2. This court cannot re-examine questions of fact upon a writ of error. *Miles v. United States*, 304.
3. Under the act of March 3, 1875, c. 137 (18 Stat., pt. 3, p. 470), a writ of error is the proper mode for reviewing here the order of the Circuit Court remanding an action at law removed thereto from a State court, and it lies without regard to the value of the matter in dispute. *Babbitt v. Clark*, 606.

YOSEMITE VALLEY AND MARIPOSA BIG TREE GROVE, COMMISSIONERS OF. See *Constitutional Law*, 28.







