INDEX.

ACCOUNTS WITH THE UNITED STATES, SETTLEMENT OF.

A claim against the United States for damages which a contractor alleged he had sustained was, by the appropriate department, adjusted upon a basis to which he agreed. He accepted the sum allowed, and gave a receipt therefor in full. *Held*, that the acceptance of the sum is a bar to his suit for the same claim. *Murphy* v. *United States*, 464.

ACKNOWLEDGMENT. See *Deed*, 2, 3.

ADMIRALTY.

1. A writ of prohibition will not be issued to a District Court of the United States sitting in admiralty, wherein a libel claiming damages was filed against a steamer for drowning certain seamen of a vessel with which, as she was navigating the public waters of the United States, the steamer, as was alleged, wrongfully collided. *Ex parte Gordon*, 515.
2. That court, having jurisdiction of the steamer and of the collision which is the subject-matter of the suit, is competent to decide whether, under the circumstances, it may estimate the damages which one person has sustained by the killing of another. *Id.*
3. *Ex parte Gordon* (*supra*) reaffirmed, the doctrines there announced being applicable, although the amount involved in the suit below is not sufficient to give this court appellate jurisdiction. *Ex parte Ferry Company*, 519.
4. The District Court sitting in admiralty will not be restrained from proceeding in a suit to recover pilotage. *Ex parte Hagar*, 520.
5. In order to justify this court in returning a cause in admiralty to the Circuit Court, for the finding of facts which is required by the act of Feb. 16, 1875, c. 77 (18 Stat., pt. 3, p. 315), it must appear that the omission to make such finding is attributable to the court, and not to the parties. *The "S. S. Osborne,"* 183.
6. Under the act of Feb. 16, 1875, c. 77 (18 Stat., pt. 3, p. 315), the finding of facts by the Circuit Court in admiralty cases is conclusive. *The "Annie Lindsley,"* 185.

ADMIRALTY (*continued*).

7. A brig and a schooner were approaching each other nearly end on, on courses involving risk of collision. The schooner put her helm to port. The brig put her helm to starboard, thereby violating rule 16 prescribed by sect. 4233 of the Revised Statutes, and causing a collision. *Held*, that the brig was liable. *Id.*
8. Drafts on the owner of a vessel do not bind her, unless the debt for which they were given by her master is a lien on her, although they express on their face that they are "recoverable against the vessel, freight, and cargo." *The "Woodland,"* 180.

ADVERSE POSSESSION. See *Jurisdiction*, 1.

AGENT. See *Principal and Agent.*

ALABAMA. See *Taxation*, 11–13.

AMOUNT IN CONTROVERSY. See *Admiralty*, 3; *Appeal*, 2; *Longevity Pay*, 2.

APPEAL. See *Bankruptcy*, 9; *Practice*, 6.

1. A person cannot appeal from a decree rendered in a suit whereto he was not a party. *Ex parte Cockcroft*, 578.
2. A defendant, who made no defence except to reduce the amount of the recovery, cannot appeal from a decree against him for less than $5,000. *Lamar* v. *Micou*, 465.

APPROPRIATIONS BY CONGRESS. See *Land Department*, 1.

ARBITRATOR. See *Equity Pleading and Practice*, 7.

ARMY. See *Longevity Pay.*

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy.*

1. Except so far as they may directly or indirectly affect the fund to which an assignee in bankruptcy is entitled for distribution under the law, he has no interest in the controversies among secured creditors, nor can he enforce contracts between the bankrupt's creditors. *Dudley* v. *Easton*, 99.
2. It is not his duty to protect the dower rights of the bankrupt's wife against the consequences of her own acts prior to the bankruptcy, or to inquire whether homestead rights can be claimed as against incumbrancers whose title is superior to his own. *Id.*
3. *McHenry* v. *La Société Française* (95 U. S. 58) approved. *Id.*

ASSIGNMENT. See *Bills of Exchange and Promissory Notes*, 2, 3; *Insurance*, 6, 7; *Judgment*, 9; *Letters-patent*, 27; *Mortgage*, 10.

ATTACHMENT. See *Bankruptcy*, 3–8; *Letters-patent*, 27; *Mortgage*, 4, 7.

BANK AND BANKER. See *National Banks; Taxation*, 1–5.

1. Although the relation between a bank and its depositor is that merely of debtor and creditor, the money which he deposits, if held by him in a fiduciary capacity, does not change its character by being placed

BANK AND BANKER (*continued*).
to his credit in his bank account. *National Bank* v. *Insurance Company*, 54.

2. The bank contracts that it will pay the money on his checks, and, when they are drawn in proper form, it is bound to presume, in case the account is kept with him as a trustee, or as acting in some other fiduciary character, that he is in the course of lawfully performing his duty, and to honor them accordingly; but when against such an account it seeks to assert its lien for an obligation which it knows was incurred for his private benefit, it must be held as having notice that the fund is not his individual property, if it is shown to consist, in whole or in part, of money which he held in a trust relation. *Id.*
3. As long as trust property can be traced and followed, the property into which it has been converted remains subject to the trust; and, if a man mixes trust funds with his, the whole will be treated as trust property, except so far as he may be able to distinguish what is his. This doctrine applies in every case of a trust relation, and as well to moneys deposited in bank, and to the debt thereby created, as to every other description of property. *Id.*
4. A banker's lien on the securities and money deposited in the usual course of business, for advances which are supposed to be made upon their credit, ordinarily attaches not only against the customer, but against the unknown equities of all others in interest, unless it be modified or waived by some agreement, express or implied, or by conduct inconsistent with its assertion; but it cannot prevail against the equity of the beneficial owner, of which the banker has either actual or constructive notice. *Id.*
5. When a bank account was opened in the name of a depositor, as general agent, and it was known to the bank that he was the agent of an insurance company; that conducting its agency was his chief business; that the account was opened to facilitate that business, and used as a means of accumulating the premiums on policies collected by him for the company, and of making payment to it by checks, — the bank is chargeable with notice of the equitable rights of the company, although he deposited other money in the same account and drew checks upon it for his private use. The company may enforce, by bill in equity, its beneficial ownership therein against the bank, claiming a lien thereon for a debt due to it, which he contracted for his individual use. *Id.*
6. A party in Illinois transmitted to bankers residing in a city in Mississippi a note for collection which was there dated, but did not inform them nor were they aware of the residence of the maker. The only instruction sent was that the note was to be collected if paid, and if not paid on presentment it was to be protested and notice of non-payment sent to the indorser. In due time they put the note in the hands of a reputable notary of that city for the purpose of presentment and demand, and of notice to the indorser should there be a default of payment. *Held*, that they are not liable to their cor-

BANK AND BANKER (*continued*).
respondent for the manner in which the notary performed his duty. *Britton* v. *Niccolls*, 757.
7. The notary is a public officer; and when he received the note, he, according to the ruling of the Supreme Court of that State, became the agent of the holder, and for failure to discharge his duties he alone is liable. *Id.*
8. The duty and liability of bankers as collecting agents stated, and the authorities bearing upon their responsibility for the acts of the notary to whom the notes sent to them for collection are delivered for presentment, demand, and protest, cited and examined. *Id.*

BANKRUPTCY. See *Assignee in Bankruptcy.*
1. " Mutual debts " and " mutual credits," where they occur in sect. 20 of the act of March 2, 1867, c. 176 (14 Stat. 517), and sect. 5013, of the Revised Statutes, are correlative. Credits do not include a trust, and in case of bankruptcy only such credits as must in their nature terminate merely in debts are the subject-matter of set-off. *Libby* v. *Hopkins*, 303.
2. A. being indebted to B. by note secured by mortgage, and on an account, sent him money with instructions to credit it on the note. A. was shortly thereafter adjudged to be a bankrupt. *Held*, that the money was received by B. in trust to apply it pursuant to instructions, and, having refused to conform to them, he cannot set off against it the account, but is liable therefor to A.'s assignee in bankruptcy. *Id.*
3. The title to the goods of a party who is subsequently declared a bankrupt, which vests in his assignee when the assignment for which the statute provides is made, relates back to the date of filing the petition in bankruptcy, although they are then held under an attachment levied upon them within four months preceding that date. *Conner* v. *Long*, 228.
4. When, prior to such filing, the goods so levied upon were sold under the writ and the proceeds remain in the hands of the sheriff, or are thereafter, and before the assignment, paid by him to the attaching creditor, the title to the goods is not transferred to the assignee, but his right to the proceeds inures, and he may maintain an action therefor against the sheriff, if that officer retains them, or against the creditor, if they have been paid to him. When the goods are sold subsequently to such filing, no title passes to the purchaser, they then being the property of the assignee. *Id.*
5. A., a sheriff, in obedience to an order of court, commanding him to sell certain specified goods whereon he had levied a writ of attachment issued against B., sold them, and paid the proceeds to the creditor. At the time of the order, sale, and payment, proceedings were pending wherein B. was declared a bankrupt. They had, within a few days after the levy, been commenced in another State. A. had no notice of them until after he had so paid the proceeds.

BANKRUPTCY (*continued*).

Held, that A. is not liable to B.'s assignee for the wrongful conversion of the goods. *Id.*

6. The assignment made to assignees in bankruptcy in proceedings which were brought more than four months after attachments, issued in a chancery suit pending in a State court, were levied upon the property of the bankrupt, does not divest the jurisdiction of that court to determine the priority of lien respectively claimed by the attaching creditors, or to administer the fund arising from the sale of the property. *Davis* v. *Friedlander*, 570.
7. His assignees in bankruptcy, if they enter their appearance in the suit, are bound by the decree, affirming the validity of the liens acquired by the levy of the writs, and directing the application of the proceeds of the sale to satisfy them. The assignees cannot thereafter set up in any other court their title to the property. *Id.*
8. A., claiming that by a proceeding at law he had a prior lien, filed in the District Court sitting in bankruptcy his bill against the other attaching creditors, the assignees in bankruptcy, and the purchasers of the property. He prayed that the sale under the writs sued out of the Chancery Court be set aside, that the property be delivered to and sold by the assignees, and that the proceeds be first applied to the satisfaction of his lien. *Held*, that the bill would not lie. *Id.*
9. The Circuit Court was authorized to dismiss an appeal thereto, which, at a term thereof then holding, was not entered therein within ten days after it had been taken from a decision of the District Court sitting in bankruptcy. *Ex parte Woollen*, 300.
10. Upon consideration of the proofs, the court affirms the decree below, declaring invalid a lien acquired by the levy of an execution upon the goods of a party who was immediately thereafter adjudged to be a bankrupt. *Sage* v. *Wyncoop*, 319.
11. *Wilson* v. *City Bank* (17 Wall. 473) approved. *Id.*

BILL OF EXCEPTIONS. See *Practice*, 5.

BILL OF REVIEW.

1. The rule is administrative rather than jurisdictional, that no bill of review shall be admitted unless the party first obeys and performs the decree, and "enters into a recognizance, with sureties, to satisfy the costs and damages for the delay if it be found against him." *Davis* v. *Speiden*, 83.
2. No special license of the court is required to file a bill of review for the correction of errors on the face of the record. *Id.*
3. A., without performing a decree rendered against him, filed, in the Supreme Court of the District of Columbia, such a bill of review. A demurrer thereto was, at a special term, overruled and an appeal taken. *Held*, that the court *in banc* erred in requiring him to perform the decree or submit to the dismissal of his bill, as, by his uncontradicted affidavit, he had brought himself within the operation of that exception to the rule which, in case of poverty, want of assets, or other inability, dispenses with performance. *Id.*

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Admiralty*, 8; *Bank and Banker*, 6–8; *Corporation*, 3; *Insurance*, 2–5; *Municipal Bonds*, 2; *Usury*.

1. In an action against a party upon his indorsement in blank of a negotiable promissory note, evidence of a contemporaneous parol agreement that the indorsement was without recourse is inadmissible. *Martin* v. *Cole*, 30.
2. The ruling in *Wills* v. *Claflin* (92 U. S. 135), construing a statute, which requires the assignee of a promissory note to exhaust his remedy against the maker before proceeding against the assignor, reaffirmed. *Id.*
3. In this case, the question whether an execution, sued out on a judgment recovered by the assignee against the maker of the note, would have been unavailing, is, for the purpose of fixing the liability of the assignor, determined by the finding below that the maker was insolvent. *Id.*

BOND. See *Internal Revenue*, 4, 5; *Municipal Bonds; Railroad Companies, Subscriptions to the Capital Stock of.*

BOOKS. See *Customs Duties*, 3.

CALIFORNIA. See *Corporation*, 1–3.

CANALS.

1. Pursuant to authority conferred by law, the board of public works of a State leased the surplus water of her canals, but reserved the right to resume the use of it, when it should be needed for the purposes of navigation. A statute was subsequently passed whereby one of the canals within certain limits was granted to, and appropriated by, a city for a highway. *Held*, that the lessee was not thereby deprived of his property without due process of law, as the State, so far from assuming an obligation to maintain the canals to supply water-power, had the right, of which every lessee was bound to take notice, to discontinue them, whenever the legislature deemed expedient. *Fox* v. *Cincinnati*, 783.
2. The question as to whether the city acted in excess of the grant, and violated the conditions thereto annexed, cannot be re-examined here on a writ of error to a State court. *Id.*

CASES EXPLAINED, QUALIFIED, OR OVERRULED.

Insurance Company v. *Eggleston*, 96 U. S. 572. See *Thompson* v. *Insurance Company*, 252.

United States v. *Burlington & Missouri Railroad Co.*, 98 U. S. 334. See *Wood* v. *Railroad Company*, 329.

CAUSES, REMOVAL OF. See *Jurisdiction*, 5.

1. Under the second section of the act of March 3, 1875, c. 137 (18 Stat., pt. 3, p. 470), a suit cannot be removed from a State court to the Circuit Court, unless either all the parties on one side of the controversy are citizens of different States from those on the other side, or there is in such suit a separable controversy, wholly between some

CAUSES, REMOVAL OF (*continued*).
of the parties who are citizens of different States, which can be fully determined as between them. *Hyde* v. *Ruble*, 407.
2. That act repealed the second clause of sect. 639 of the Revised Statutes. *Id.*
3. A cause pending on appeal in the Supreme Court of a State at the date of the passage of the act of March 3, 1875, c. 137 (18 Stat., pt. 3, p. 470), was remanded for a rehearing, the decree below having been reversed solely upon the ground of the admission of the evidence of incompetent witnesses. The transcript was filed in the court of original jurisdiction at a term thereof which was within the time prescribed by the State statute. *Held*, that a petition for the removal of the cause to the Circuit Court of the United States filed at the same term and before such rehearing was filed in due season. *King* v. *Worthington*, 44.
4. A., a corporation of Maryland, having assumed the right to take, and B., a corporation of Virginia, the right to grant, a lease of the railroad and franchises of the latter in Virginia, A., with the implied assent of both States, took possession, and is in the actual use of the road and franchises. *Held*, that A. did not thereby forfeit or surrender its right to remove into the Circuit Court a suit instituted against it in a court of Virginia by a citizen of that State. *Railroad Company* v. *Koontz*, 5.
5. When the petitioner presents to the State court a sufficient case for removal, it is the duty of that court to proceed no further in the suit. The jurisdiction of the Circuit Court then attaches, and is not lost by his failure to enter the record and docket the cause on the first day of the next term. Upon good cause being shown, the entry at a subsequent day may be permitted. *Id.*
6. Good cause for such entry is presented where the petition for removal having been overruled by the State court, and the petitioner there forced to trial upon the merits, he, in the regular course of procedure, obtains a reversal of the judgment and an order for the allowance of the removal. *Id.*
7. Where the removal is denied, the petitioner loses no right by contesting in the State court the suit on its merits. *Id.*

CHARITY. See *Contributions to a Charity.*

CHARTER. See *Contributions to a Charity; Corporation*, 6.

CLAIMS AGAINST THE UNITED STATES. See *Accounts with the United States, Settlement of; Longevity Pay; Tax Sale.*

COLLISION. See *Admiralty*, 1–3, 7.

COMITY. See *Judgment*, 5; *Witness.*

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

COMPROMISE. See *Land Department*, 2, 3.

CONDITION. See *Contracts*, 2; *Contributions to a Charity; Covenant; Insurance*, 1, 2.

CONFEDERATE BONDS AND NOTES. See *Jurisdiction*, 3.

CONFLICT OF LAWS. See *Witness.*

CONNECTICUT. See *Railroad Companies*, 3, 4.

CONSTITUTIONAL LAW. See *Canals*, 1; *Equity*, 2; *Interest*, 1; *Limitations, Statute of*, 2; *Municipal Bonds*, 6; *Railroad Companies*, 4; *Railroad Companies, Subscriptions to the Capital Stock of*, 2; *Taxation*, 6–10.

The Constitution does not prohibit a State from including in the taxable property of her citizens so much of the registered public debt of another State as they respectively hold, although the debtor State may exempt it from taxation or actually tax it. *Bonaparte* v. *Tax Court*, 592.

CONTEMPT. See *Taxation*, 13.

CONTRACTOR. See *Accounts with the United States, Settlement of; Railroad Companies*, 2.

CONTRACTS. See *Bank and Banker; Contributions to a Charity*, 1, 3; *Guaranty; Insurance; Interest; Mails, Transportation of the; Mortgage; National Banks*, 2, 3; *Partnership*, 3; *Railroad Companies*, 1, 4; *Rescission of Contract.*

1. Where a penalty or a forfeiture is inserted in a contract merely to secure the performance or enjoyment of a collateral object, the latter is considered as the principal intent of the instrument, and the penalty is deemed only as accessory. *Klein* v. *Insurance Company*, 88.
2. A condition in a policy of life insurance, that if the stipulated premium shall not be paid on or before a certain day the policy shall cease and determine, is of the very essence and substance of the contract. Against a forfeiture caused by failure so to pay, a court of equity cannot relieve. *Id.*
3. Lawful interest is the only damages to which a party is entitled for the non-payment of money due upon contract. His right is limited to the recovery of the money so due, and such interest. *Loudon* v. *Taxing District*, 771.
4. A city entered into a contract with A., whereby it executed its bonds in discharge of certain indebtedness to him, and agreed to appropriate a specific portion of the revenue derived from taxation to pay judgments in his favor against it. The city did not apply the taxes pursuant to its contract, and he was compelled to pay exorbitant interest to raise money to meet his engagements. The bonds were not worth more than fifty per cent of their par value. *Held*, that the failure of the city to make the stipulated application of the taxes furnishes no ground for setting aside the contract, and that A. is entitled to no other relief than a provision for paying the balance due upon the judgments out of the taxes levied, or to be levied, in that behalf. *Id.*
5. The court holds that all questions relating to the character of the vessels employed by the Pacific Mail Steamship Company in execut-

CONTRACTS (*continued*).
ing its contracts with the United States, and to the performance of the voyages, were determined in *Steamship Company* v. *United States* (103 U. S. 721), and are no longer open to inquiry. *United States* v. *Steamship Company*, 480.
6. The terms of a stipulation filed in the court below (*ante*, p. 482) commented on. *Id.*
7. A communication from the Postmaster-General, informing the Court of Claims that, in the event of its accepting a voyage of one of the vessels, he had made an order imposing a fine for her delay in starting, was properly disregarded. *Id.*

CONTRIBUTIONS TO A CHARITY.
1. A corporation was created in one State to promote a benevolent enterprise, and its charter provided that the presidents of institutions organized in other States of the Union to collect funds to aid it should constitute a board of visitors, with absolute supervisory control over its affairs. In another State such an institution was formed. The trustees thereof reserved the right, in conjunction with the presidents of other similar boards, to supervise and administer the affairs of the original corporation in accordance with its charter, and collected a fund to be applied in aid of it. A fundamental change was subsequently made in the charter, whereby the visitorial rights of the auxiliary institutions were materially changed. The contributors to the fund demanded a return of it, upon the ground that the conditions upon which it had been advanced were not performed, and the corporation brought suit against the institution to recover it. *Held*, that the suit could not be maintained. *Printing House* v. *Trustees*, 711.
2. Section 9 of the amended charter of the corporation (*ante*, p. 721) changed essentially the constitution and powers of the board of visitors, as created and defined by sect. 10 of the original charter (*ante*, p. 717). *Id.*
3. The general doctrine relating to charities, and to the jurisdiction of a Court of Chancery over them, has no application to this case. *Id.*

CONVERSION. See *Bankruptcy*, 5.

COPYRIGHT.
1. In an action for the infringement of his copyright of a book, the plaintiff cannot recover without proving that, within ten days from the publication thereof, he delivered two copies of such copyright book at the office of the Librarian of Congress, or deposited them in the mail, properly addressed to that officer. *Merrell* v. *Tice*, 557.
2. *Quære*, Is the certificate of the Librarian, under his official seal, that two copies were so deposited, competent evidence of the fact. *Id.*
3. Where to his certificate (*ante*, p. 558), setting forth other facts, there is added a statement, not signed or sealed, that two copies of the publication were deposited, — *Held*, that the statement is admissible in evidence only against the party making it. *Id.*

CORPORATION. See *Contributions to a Charity; Equity*, 4; *Letters-patent*, 27; *National Banks; Railroad Companies.*

1. The laws of California, under which a mining company was organized, empower it "to enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes for which it was created," and make it the duty of its board of directors to exert its corporate powers, and to conduct and control its business and property. *Held*, 1. That, as incident to the general powers of the company, its board may borrow money for its purposes, and invest certain of its officers with authority to negotiate loans, execute notes, and sign checks drawn against its bank account. 2. That the fact that the board has invested them with such authority may be shown otherwise than by the official record of its proceedings. *Mining Company* v. *Anglo-Californian Bank*, 192.
2. Where, therefore, without objection by the board, checks so drawn have, for a long period, been signed by the president and secretary of the company, the bank has the right to assume that those officers are invested with authority to sign them. *Id.*
3. On the day when the decision, in a suit then pending, declaring that certain persons acting as such board, pursuant to an election theretofore held, should be removed from office, was announced, they, at a later hour, met as the board, and adopted a resolution, pursuant to which the president and secretary executed, on behalf of the company, and in settlement of its overdrawn bank account, a note bearing interest at a rate allowed by the laws of the State only when the contract therefor is in writing. On the next day that judgment was filed with, and recorded by, the clerk of the court. *Held*, that, the persons being *de facto* directors, the note so executed is binding on the company. *Id.*
4. Certain shares of stock were sold by the agent of a corporation, and the moneys derived therefrom forwarded to its treasurer, who, in his official capacity, received and applied them to its uses. The agent subsequently claimed that a part of the shares was his individual property. *Held*, that if he is entitled to recover therefor, his remedy is against the corporation. *Loring* v. *Frue*, 223.
5. The treasurer to whom a stock subscription is paid is not bound to issue the requisite certificates, nor is he personally liable to the party who, for the money so paid, is entitled to them. *Id.*
6. The charter of an insurance company in Illinois declares that, "in all cases of losses exceeding the means of the corporation, each stockholder shall be held liable to the amount of unpaid stock held by him." An action at law was brought against a stockholder who had not paid his stock subscription, to recover the amount due upon the policy issued by the company to the plaintiff's intestate. *Held*, that the declaration is bad in substance, as it fails to aver that the losses of the company, or its liabilities, exceed its assets. *Quære*, If there was a deficiency of assets, could such an action be maintained to enforce the liability of a stockholder. *Blair* v. *Gray*, 769.

COUNTY BONDS. See *Railroad Companies, Subscriptions to the Capital Stock of; Taxation*, 11–13.

COUPON. See *Limitations, Statute of*, 1; *Municipal Bonds*, 3.

COURT AND JURY. See *Equity*, 2; *Instructions to Jury; Partnership*, 3; *Practice*, 10.

1. It is not error for the judge, in his instructions, to comment upon the evidence, if he does not take from the jury the right to weigh the evidence and determine the disputed facts. *Insurance Company* v. *Trefz*, 197.
2. To a question whether he had ever been subject to or affected by certain disorders, including "diseases of the brain," enumerated in an application for an insurance upon his life, which stipulated that the policy should be void in case any statement or declaration in such application was untrue, A., a German, unfamiliar with the English language, — in which the question was put, — answered, "Never sick." In an action on the policy, — *Held*, 1. That the court properly charged that the jury might consider that the answer was made by a man ignorant of the language, who did not on that account understand, and consequently did not intend, its literal scope. 2. That the answer must be taken to mean only that A. had never had any of the enumerated diseases so as to constitute an attack of sickness. *Id.*
3. Evidence of A.'s admission that he had been sunstruck having been introduced, the court submitted it to the jury to find whether the affection so admitted by him was or was not a case of true sunstroke, and whether the affection which he did have was a disease of the brain. *Held*, that the action of the court was not erroneous. *Id.*

COURT OF CLAIMS. See *Accounts with the United States, Settlement of; Evidence*, 2; *Internal Revenue*, 1; *Letters-patent*, 10; *Longevity Pay*, 2.

COURTS OF THE UNITED STATES. See *Accounts with the United States, Settlement of; Admiralty*, 1–6; *Causes, Removal of; Evidence*, 2; *Judgment*, 9; *Jurisdiction.*

COVENANT.

1. Although words of proviso and condition may be construed as words of covenant, if such be the apparent intent and meaning of the parties, covenant will not arise unless it can be collected from the whole instrument that there was on the part of the person sought to be charged an agreement, or an engagement, to do or not to do some act. *Hale* v. *Finch*, 261.
2. Certain language in a bill of sale construed to be a condition and not a covenant. *Id.*

CREDITOR'S BILL. See *Equity Pleading and Practice*, 2; *National Banks*, 4.

The court affirms the decree below, dismissing the complainant's bill, it appearing that the lands which he seeks to subject to the payment

CREDITOR'S BILL (*continued*).
of his claim belong to the wife of his debtor, and that the purchase-money therefor was paid with funds constituting a part of her separate property. *Davis* v. *Fredericks*, 618.

CRIMINAL LAW. See *Evidence*, 1; *Jurisdiction*, 8.

CUSTOMS DUTIES.
1. It was the intention of Congress, so far as the free list in the fifth section of the act of June 6, 1872, c. 315 (17 Stat. 233), is concerned, to put an end to the discriminating duties imposed by the seventeenth section of the act of June 30, 1864, c. 171. 13 id. 215. *Gautier* v. *Arthur*, 345.
2. Plumbago, being embraced in that list, was not, although imported in a foreign vessel, subject to duty. *Id.*
3. Books imported in August, 1874, were subject to a duty of twenty-five per cent *ad valorem*. *Pott* v. *Arthur*, 735.
4. Stockings of worsted, or of worsted and cotton, made on frames and imported after June 22, 1874, are dutiable as knit goods, under schedule L, class 3, sect. 2504, of the Revised Statutes. *Vietor* v. *Arthur*, 498.
5. A., in 1879, imported sugars to which an artificial color was not given after they had been manufactured. *Held*, that, under schedule G, sect. 2504, Rev. Stat., the sole test of their dutiable quality was their actual color, as graded by the Dutch standard, and that they were subject to the duties prescribed by that schedule, with twenty-five per cent added thereto, pursuant to sect. 3 of the act of March 3, 1875, c. 125, 18 Stat. 339. *Merritt* v. *Welsh*, 694.

DAMAGES. See *Contracts*, 3; *Satisfaction of Decree*.

DECREE. See *Appeal; Bill of Review; Equity Pleading and Practice*, 7; *Satisfaction of Decree*.

DEED. See *Mortgage*.
1. The United States agreed to grant to the chief of an Indian tribe two sections of land to be thereafter selected, and to convey them by patent. After they had been selected, he aliened them by deed, in fee, with covenants of warranty. The patent was issued after his death. *Held*, that the title to the sections inured to and was vested in his alienee. *Elwood* v. *Flannigan*, 562.
2. On proof of the loss of a deed executed and acknowledged in Michigan, in conformity to the laws of that State, and recorded in the county in Illinois, where the granted lands are situate, a duly certified copy of the record, with the requisite certificate of such conformity thereto annexed, is by the statute of Illinois admissible in evidence. *Id.*
3. The certificate of acknowledgment (*ante*, p. 564) conforms to the laws of Michigan in force on the day of its date. *Id.*

DEED OF TRUST. See *Equity*, 3.

DEVISE. See *Will.*

DOWER. See *Assignee in Bankruptcy*, 2.

DUE PROCESS OF LAW. See *Canals*, 1; *Taxation*, 6–8.

DUTIES. See *Customs Duties.*

EJECTMENT. See *Jurisdiction*, 1.

EQUITY. See *Bank and Banker*, 5; *Contracts*, 2; *Contributions to a Charity*, 3; *Creditor's Bill; Equity Pleading and Practice; Land Grants*, 2; *Louisiana*, 5; *Partnership*, 1, 2; *Receiver; Verdict*, 1.

1. Where a party has been deprived of his right by fraud, accident, or mistake, and has no remedy at law, a court of equity will grant relief. *Metcalf* v. *Williams*, 93.
2. The determination by a court of equity, according to its own course and practice, of issues of fact growing out of the administration of trust property in its possession, does not impair the constitutional right of trial by jury. *Barton* v. *Barbour*, 126.
3. Although, in default of payment, a deed of trust authorizes a sale by the trustee, yet where he attempts to sell property which is subject to conflicting liens, and it is doubtful whether a part of it is covered by the deed, a court of equity has jurisdiction to restrain the sale, determine the rights of all parties, and administer the fund. *Draper* v. *Davis*, 347.
4. A shareholder in the Contra Costa Water-works Company brought his bill in equity against the city of Oakland, the company, and its directors, alleging that the company was furnishing the city with water, free of charge, beyond what the law required it to do, and that the directors, contrary to his request, continued to do so, to the great injury of himself, the other shareholders, and the company. *Held*, that in such a case there must be shown: 1. Some action or threatened action of the directors or trustees which is beyond the authority conferred by the charter, or the law under which the company was organized; or, 2. Such a fraudulent transaction, completed or threatened, by them, either among themselves or with some other party, or with shareholders, as will result in serious injury to the company or the other shareholders; or, 3. That the directors, or a majority of them, are acting for their own interests, in a manner destructive of the company, or of the rights of the other shareholders; or, 4. That the majority of shareholders are oppressively and illegally pursuing, in the name of the company, a course in violation of the rights of the other shareholders, which can only be restrained by a court of equity. 5. It must also be made to appear that the complainant made an earnest effort to obtain redress at the hands of the directors and shareholders of the corporation, and that the ownership of the stock was vested in him at the time of the transactions of which he complains, or was thereafter transferred to him by operation of law. *Hawes* v. *Oakland*, 450; *Huntington* v. *Palmer*, 482.

EQUITY PLEADING AND PRACTICE. See *Bill of Review*.

1. A bill is subject to demurrer for multifariousness, if one of the two complainants has no standing in court, or where they set up antagonistic causes of action, or the relief for which they respectively pray in regard to a portion of the property sought to be reached involves totally distinct questions, requiring different evidence and leading to different decrees. *Walker* v. *Powers*, 245.
2. Where real estate is alleged to have been conveyed in fraud of the grantor's creditors, and they, after his death, file their bill to subject it to the payment of their debts, — *Quære*, Are his heirs or devisees necessary parties. *Id.*
3. Where the city of St. Louis filed its bill to enjoin the defendant from completing on his premises within the city a work then in the course of construction, whereby the Mississippi River would be divided from its natural course, and a deposit created rendering it impossible for boats and vessels to land at the city's wharf north or south of the premises, — *Held*, that it is not necessary that the bill should relate all the minute circumstances which may be proved to establish its general allegations, and that the defendant should be required to answer it. *St. Louis* v. *Knapp Company*, 658.
4. Where the answer is responsive to the allegations of the complainant's bill, they must, to entitle him to relief, be sustained by the testimony of two witnesses, or of one witness corroborated by circumstances which are equivalent in weight to the testimony of another witness. *Vigel* v. *Hopp*, 441.
5. A plea in equity may be disregarded, if it alleges mere conclusions of law, or lacks the affidavit and certificate required by the thirty-first equity rule. *National Bank* v. *Insurance Company*, 54.
6. When an equity cause was heard upon bill, answer, and proofs, the want of a formal replication cannot, on appeal, be assigned for error. *Id.*
7. A case in equity, wherein an account and an injunction were prayed for, was at issue upon bill, answer, and replication. *Held*, that the parties, by referring the matter in controversy to an arbitrator, with the stipulation that his report should be the basis of a decree, waived the objection that the complainant's remedy was at law. *Strong* v. *Willey*, 512.

ESTOPPEL. See *Letters-patent*, 28; *Municipal Bonds*, 3.

EVIDENCE. See *Bills of Exchange and Promissory Notes*, 1; *Copyright; Deed*, 2; *Judicial Notice; Land Grants*, 3; *Louisiana*, 4; *Mortgage*, 8; *Practice*, 4; *Witness*.

1. Under a statute establishing degrees of the crime of murder, and providing that wilful, deliberate, malicious, and premeditated killing shall be murder in the first degree, evidence that the accused was intoxicated at the time of the killing is competent for the consideration of the jury upon the question whether he was in such a condition of mind as to be capable of deliberate premeditation. *Hopt* v. *People*, 631.

EVIDENCE (*continued*).

2. It is no objection to the competency of a witness for the government in the Court of Claims that his interest is adverse to that of the claimants, and that a judgment against them may have the effect of establishing his right to the money claimed. *Bradley* v. *United States*, 442.
3. Where, under the supervision of the proper officer, the records of a county were transcribed from a temporary book, wherein they had been originally recorded, into another, which was thereafter recognized as a part of the public records, and it was shown that the original book had been lost or destroyed, — *Held*, that the other book was properly admitted in evidence. *Belk* v. *Meagher*, 279.

EXCEPTIONS, BILL OF. See *Practice*, 5.

EXECUTION. See *Bankruptcy*, 10; *Bills of Exchange and Promissory Notes*, 3.

EXECUTOR. See *Louisiana*, 2–4, 7.

EXPORTS. See *Taxation*, 9, 10.

FORECLOSURE. See *Satisfaction of Decree*.

FORFEITURE. See *Contracts*, 1, 2; *Insurance*, 1–5.

FRACTIONS OF A DAY. See *Municipal Bonds*, 5.

FRAUD. See *Equity*, 1, 4; *Pre-emption*, 3; *Rescission of Contract*.

Micou v. *National Bank*, 530, involves only disputed questions of fact, and the court, upon a consideration of the proofs, holds that certain decrees against a guardian in favor of his wards, whereunder his real estate was purchased by them, they being his children and he insolvent, were not procured by him to be rendered with the intent thereby to hinder, delay, and defraud his creditors.

GUARANTY.

1. The rule, requiring notice by the guarantee of his acceptance of a guaranty and his intention to act under it, applies only where, the instrument being, in legal effect, merely an offer or proposal, such acceptance is necessary to that mutual assent, without which there can be no contract. *Davis* v. *Wells*, 159.
2. If made at the request of the guarantee, the guaranty becomes the answer of the guarantor to a proposal, and its delivery to the guarantee or for his use completes the communication between them and constitutes a contract. The same result follows where the agreement to accept is contemporaneous with the guaranty and constitutes its consideration. It must be so wherever there is a valuable consideration other than the expected advances to be made to the principal debtor, which, at the time the undertaking is given, passes from the guarantee to the guarantor; and equally so where the instrument is in the form of a bilateral contract, which binds the guarantee to

GUARANTY (*continued*).
make the contemplated advances, or otherwise creates by its recitals a privity between him and the guarantor. In each of these cases, their mutual assent is either expressed or necessarily implied. *Id.*
3. A guaranty, if expressed to be in consideration of one dollar paid to the guarantor by the guarantee, the receipt of which is therein acknowledged, is not an unaccepted proposal, but is, without notice of acceptance, binding on delivery. *Id.*
4. Where a guaranty declares that the guarantor thereby guaranties unto the guarantee, unconditionally at all times, any advances, &c., to a third person, notice of demand of payment and of the default of the debtor, as well as notice of the amount of the advances when made, is waived, although either or both would otherwise be required. *Id.*
5. But a failure or a delay in giving such notice, if required, is no defence to an action upon the guaranty, unless the guarantor has thereby sustained loss or damage, and then only to the extent thereof. *Id.*
6. The contract of guaranty, although that of a surety, is to be construed liberally and in furtherance of its spirit, to promote the use and convenience of commercial intercourse. *Id.*

GUARDIAN AND WARD. See *Fraud.*

HOMESTEAD. See *Assignee in Bankruptcy*, 2.

HUSBAND AND WIFE. See *Assignee in Bankruptcy*, 2; *Creditor's Bill.*

ILLINOIS. See *Corporation*, 6; *Deed*, 2; *Municipal Bonds*, 6; *Railroad Companies, Subscriptions to the Capital Stock of*, 1, 2; *Verdict*, 4.

IMPORTS, DUTIES ON. See *Customs Duties.*

INDIAN. See *Deed*, 1; *Jurisdiction*, 8.

INDORSEMENT. See *Bills of Exchange and Promissory Notes*, 1.

INSTRUCTIONS TO JURY. See *Court and Jury.*
1. An instruction which assumes the existence of facts of which there is no evidence is misleading and erroneous. *Jones* v. *Randolph*, 108.
2. Under a statute which requires the instructions of the judge to the jury to be reduced to writing before they are given, and provides that they shall form part of the record and be subjects of appeal, it is error to give an instruction not reduced to writing otherwise than by a reference to a certain page of a law magazine. *Hopt* v. *People*, 631.

INSURANCE. See *Contracts*, 1, 2; *Court and Jury*, 2, 3.
1. The payment of the annual premium upon a policy of life insurance is a condition subsequent, the non-performance of which may or may not, according to circumstances, work a forfeiture of the policy. *Thompson* v. *Insurance Company*, 252.
2. Where the policy provides that it shall be forfeited upon the failure

INSURANCE (*continued*).
of the assured to pay the annual premium *ad diem*, or to pay at maturity his promissory note therefor, the acceptance by the company of the note, although a waiver of such payment of the premium, brings into operation so much of the condition as relates to the note. *Id.*

3. The omission of the company to give notice, according to its usage, of the day upon which the note will be due is not an excuse for non-payment. *Insurance Company* v. *Eggleston* (96 U. S. 572) distinguished. *Id.*
4. A parol agreement entered into at the time of giving and accepting such note cannot be set up to contradict the terms of the note and policy. *Id.*
5. The failure to pay or tender the amount due on the note held in this case to be fatal to a recovery on the policy. *Id.*
6. A person who has procured a policy of insurance on his life cannot assign it to parties who have no insurable interest in his life. *Cammack* v. *Lewis* (15 Wall. 643) cited and approved. *Warnock* v. *Davis*, 775.
7. The plaintiff's intestate, on procuring an insurance upon his life, entered into an agreement with a firm, whereby the latter was to pay all fees and assessments payable to the underwriters on the policy and to receive nine-tenths of the amount due thereon at his death. Pursuant to the agreement, he executed an assignment of the policy (*ante*, p. 777), and the firm paid the fees and assessments. On his death, the firm collected from the underwriters nine-tenths of the amount due on the policy, and his administrator sued the firm therefor. The parties to the agreement did not thereby design to perpetrate a fraud upon any one. *Held*, that the plaintiff was entitled to recover from the firm the moneys so collected with interest thereon, less the sums advanced by the firm. *Id.*

INTEREST. See *Contracts*, 3; *Mortgage*, 7; *National Banks*, 1–3; *Usury; Voucher.*

1. The right to interest upon interest, whether arising upon an express or an implied agreement, if allowed by the statutes then in force, cannot be impaired by subsequent legislation declaring their true intent and meaning. Such legislation can only be applied to future transactions. *Koshkonong* v. *Burton*, 668.
2. A party guilty of unreasonable and vexatious delay in making payment of a just claim cannot be relieved by offering to pay interest from the time when the delay began to be unreasonable and vexatious. *Chicago* v. *Tebbetts*, 120.

INTERNAL REVENUE. See *Legacy Tax; Taxation*, 2–4.

1. The Court of Claims has jurisdiction of a suit brought against the United States to recover back certain taxes and penalties alleged to be of the character mentioned in sects. 3220, 3228, Rev. Stat., where payment thereof was refused to the plaintiff, whose claim thereto had in due time been presented on appeal to and allowed by the

INTERNAL REVENUE (*continued*).

Commissioner of Internal Revenue. *United States* v. *Kaufman* (96 U. S. 567) cited and approved. *United States* v. *Savings Bank*, 728.

2. Lodging the appeal with the proper collector of internal revenue, for transmission to the commissioner in the usual course of business, under the requirements of the treasury regulations, is in effect the presentation of it to the commissioner. *Id.*
3. This court will take judicial notice that, by law, the territory of the United States is, for internal revenue purposes, divided into collection districts, with defined geographical boundaries. *United States* v. *Jackson*, 41.
4. Suit on a bond reciting that the President hath, pursuant to law, appointed A. "collector of taxes, under an act entitled 'An Act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,'" and conditioned that he "shall truly and faithfully execute and discharge all the duties of the said office, according to law, and shall justly and faithfully account for and pay over to the United States . . . all public moneys which may come into his hands or possession." *Held*, that the bond is binding on the parties thereto, but that the declaration is bad on demurrer, inasmuch as it does not aver A.'s appointment to the collectorship of any particular district. *Id.*
5. *Semble*, that the bond with A.'s commission, or the public record thereof, would be sufficient proof of such appointment, had the fact been averred. *Id.*

JUDGMENT. See *Evidence*, 2; *Jurisdiction*, 1–3; *Practice*, 8, 10.

1. A person not notified of an action nor a party thereto, and who had no opportunity or right to control the defence, introduce or cross-examine witnesses, or to prosecute a writ of error, is not bound by the judgment therein rendered. *Hale* v. *Finch*, 261.
2. During the term when it is rendered or entered of record, a judgment or an order, however conclusive in its character, is under the control of the court pronouncing it, and may then be set aside, vacated, or modified. *Bronson* v. *Schulten*, 410.
3. After that term, unless steps be taken during its continuance, by motion or otherwise, errors in a final judgment can only be corrected by an appellate court. *Id.*
4. To this rule there is an exception. The writ of error *coram vobis* brought before the court of original jurisdiction certain mistakes of fact not put in issue or passed upon, such as that a party died before judgment, or was a married woman, or was an infant and no guardian appeared or was appointed, or that there was error in the process through the default of the clerk. It did not lie, however, to correct errors in the judgment itself. The relief thereby sought is, in modern practice, attained by motion, supported, when necessary, by affidavits. *Id.*
5. Neither the practice of the State courts in exercising a control over their own judgments and administering equitable relief in a sum-

JUDGMENT (*continued*).
mary way, nor the statutes of the States, can determine the action of the courts of the United States on this subject. *Id.*
6. In this case the carelessness and laches of the plaintiffs preclude, under any rule, the setting aside of the judgment after the term at which it was rendered. *Id.*
7. The judgment of a State court cannot be re-examined here unless, within two years after it was rendered, a writ of error be brought. *Cummings* v. *Jones*, 419.
8. A judgment is satisfied when, under proceedings ordered by the proper court, the lands of the defendant are seized, sold, and conveyed by the sheriff to the plaintiff, he bidding for them the amount of the judgment, interest, and costs. *Walker* v. *Powers*, 245.
9. The assignee of a judgment founded on a contract cannot maintain a suit thereon in a court of the United States, unless such a suit might be there prosecuted had the assignment not been made. *Id.*

JUDICIAL NOTICE. See *Internal Revenue*, 3.
The courts of the United States take judicial notice of the public statutes of the several States. *Elwood* v. *Flannigan*, 562.

JURISDICTION. See *Admiralty*, 1–4; *Appeal*, 2; *Bankruptcy*, 6; *Causes, Removal of; Equity; Internal Revenue*, 1; *Judgment*, 2–7; *Louisiana*, 3; *Receiver*, 4; *Taxation*, 12.

I. Of the Supreme Court.
1. This court has no jurisdiction to re-examine the judgment of a State court affirming that the title of the true owner of lands is extinguished by an adverse possession under color of right for the length of time that would bar an action of ejectment. *Poppe* v. *Langford*, 770.
2. This court has no jurisdiction to re-examine the judgment of a State court, unless the record shows, affirmatively or by fair implication, that a Federal question, necessary to the determination of the cause, is involved. *Boughton* v. *Exchange Bank*, 427.
3. Inasmuch as a Federal question is not involved in the determination of the case, this court has no jurisdiction to re-examine the decree of a State court dismissing a bill brought by the vendor of lands in Alabama who prayed that the sale of them be set aside solely on the ground that two instalments of the purchase-money had been paid in the treasury notes of the Confederate States and the last in Confederate bonds, the notes having been received in the usual course of business, and the bonds under such circumstances as almost amounted to coercion. *Dugger* v. *Bocock*, 596.

II. Of the Circuit Court.
4. It is the duty of the Circuit Court to dismiss the suit if the parties thereto have been improperly or collusively made or joined for the purpose of creating a case of which that court would have cognizance. *Hawes* v. *Oakland*, 450; *Huntington* v. *Palmer*, 482.
5. Under the fifth section of the act of March 3, 1875, c. 137 (18 Stat.,

JURISDICTION (*continued*).

pt. 3, p. 470), it is the duty of the Circuit Court to dismiss a suit when it appears that the parties thereto have been improperly or collusively made or joined for the purpose of creating a case cognizable under that act. *Williams* v. *Nottawa*, 209.

6. A., a citizen of Indiana, sued in the Circuit Court a township of Michigan upon certain bonds issued by it and payable to bearer. He owned some of them, and the others were transferred to him by citizens of Michigan solely for the purpose of collection. Judgment was rendered in favor of the township on the bonds so transferred, and in his favor for the residue. This court, on his removing the case here, reverses the judgment, and directs, as the court below should on its own motion have done, that the suit be dismissed at his costs. *Id.*
7. *Quære*, Could the defendant, not a party to such collusion, take advantage, for the first time, on appeal or writ of error, of such objection. *Id.*
8. The Circuit Court of the United States for the District of Colorado has no jurisdiction of an indictment against a white man for the murder of a white man within the Ute Reservation in the State of Colorado. *United States* v. *McBratney*, 621.

JURY. See *Court and Jury; Evidence*, 1; *Verdict.*

KNIT GOODS. See *Customs Duties*, 4.

LACHES. See *Judgment*, 6; *Letters-patent*, 24.

LAND DEPARTMENT. See *Land Grants; Pre-emption.*

1. While no act of Congress expressly authorizes the Secretary of the Interior or other officer of the Land Department to appoint timber agents, the appropriation of money by Congress to pay them is a recognition of the validity of their appointment. *Wells* v. *Nickles*, 444.
2. Where the instructions of the Commissioner of the General Land-Office directed the agents to seize and sell timber cut on the public lands, and also authorized them to compromise with the trespasser on his paying a reasonable compensation for the timber cut and taken away, — *Held*, that a compromise so made by which he pays all the costs and expenses of the seizure, and gives bond to pay for the timber when its value shall be ascertained, pursuant to the agreement, is binding on the United States. *Id.*
3. This compromise, should, in violation of its terms, the property be seized and sold by such agents, is evidence of his title and right of possession in his action against their vendee for the recovery of the property. *Id.*

LAND GRANTS. See *Deed*, 1; *Mines and Mining Claims.*

1. A patent, duly signed, countersigned, and sealed, for public lands which, at the time it was issued, the Land Department had, under the statute, authority to convey cannot be collaterally impeached in an action at law; and the finding of the department touching the

LAND GRANTS (*continued*).

existence of certain facts, or the performance of certain antecedent acts, upon which the lawful exercise of that authority may in a particular case depend, cannot in a court of law be questioned. *Smelting Company* v. *Kemp*, 636.

2. If in the issuing of a patent the officers of that department take mistaken views of the law, or draw erroneous conclusions from the evidence, or act from either imperfect views of duty or corrupt motives, the party aggrieved cannot set up such matters in a court of law to defeat the patent. He must resort to a court of equity, where he can obtain relief, if his rights are injuriously affected by the existence of the patent, and he possesses such equities as will control the legal title vested in the patentee. A stranger to the title cannot complain of the act of the government in regard thereto. *Id.*
3. A defendant in ejectment claimed adversely to the title to a placer mining claim, derived from a patent of the United States bearing date March 29, 1879, which describes, by metes and bounds, the premises, containing one hundred and sixty-four acres and sixty one-hundredths of an acre, more or less. *Held*, that he cannot put in evidence the proceedings in the Land Department for the purpose of showing that the patent was issued upon a single application, including several mining locations, some made after the passage of the act of July 9, 1870, c. 235 (16 Stat. 217), limiting the location of one person or an association of persons to one hundred and sixty acres, and others made after the passage of the act of May 10, 1872, c. 152 (17 id. 91), limiting a location to twenty acres for each individual applicant. *Id.*
4. A patent issued subsequently to the passage of the said act of 1870 may embrace a placer mining claim consisting of more than one hundred and sixty acres, and including as many adjoining locations as the patentee had purchased. The proceedings to obtain a patent therefor are the same as when the claim covers but one location. *Id.*
5. The terms "location" and "mining claim" defined. *Id.*
6. Labor and improvements, within the meaning of the statute, are deemed to have been put on a mining claim, whether it consists of one or more locations, when the labor was performed or the improvements were made for its development, though in fact such labor and improvements may be on ground which originally constituted only one of the locations, or may be at a distance from the claim. *Id.*
7. The grant of ten odd-numbered sections of land per mile to the Burlington and Missouri River Railroad Company by the act of July 2, 1864, c. 216 (13 Stat. 356), was *in præsenti*, and although not expressly requiring them to be taken within any specific lateral limit, necessarily implied that they should consist of those nearest to the line of road upon which the grant could, consistently with its exceptions and reservations, take effect. *Wood* v. *Railroad Company*, 329.
8. Where the odd-numbered sections within the limit of twenty miles from the line were, conformably to the act, withdrawn, — *Held*, that

LAND GRANTS (*continued*).

so much of the land thereby embraced as was not sold, reserved, or otherwise disposed of, or to which a pre-emption or a homestead claim had not attached, was subject to the grant, and that no right in conflict therewith could be thereafter acquired. *Id.*

9. *United States* v. *Burlington & Missouri River Railroad Co.* (98 U. S. 334) commented on. *Id.*

LEGACY TAX.

A testator who died Dec. 4, 1867, bequeathed certain personal property to trustees, to be held by them in trust for his widow during her life, and on her death to his children. She died June 17, 1872. *Held*, that a legacy tax upon the property was, without authority of law, assessed in April, 1873, as no right to the payment thereof had accrued at the date when the act of July 14, 1870, c. 255 (16 Stat. 256), repealing such tax, took effect. *Mason* v. *Sargent*, 689.

LETTERS-PATENT.

1. The scope of letters-patent must be limited to the invention covered by "the claim," and the latter cannot be enlarged by the language used in other parts of the specification. *Railroad Company* v. *Mellon*, 112.
2. So limited, the invention for which letters-patent No. 58,447 were granted, Oct. 2, 1866, to Edward Mellon, for an improvement in the mode of attaching tires to the wheels of locomotives, consists simply in rounding off that corner of the inner side of the tire which fits into the re-entrant corner made by the flange upon the rim of the wheel-centre, so as to prevent the corner of the tire from indenting and sinking into the periphery of the wheel-centre. *Id.*
3. Said letters are, therefore, not infringed by the use of an angular flange upon the wheel-centre, that being expressly excluded by the claim. *Id.*
4. Norton's reissued letters-patent, dated Oct. 4, 1870, for an improved post-office stamp for printing the post-mark and cancelling the post-age-stamp at one blow, are void, by reason of not being for the same invention specified in the original. *James* v. *Campbell*, 356.
5. If letters-patent fully and clearly describe and claim a specific invention, complete in itself, so as not to be inoperative or invalid by reason of a defective or an insufficient specification, a reissue cannot be had for the purpose of expanding and generalizing the claim in order to embrace an invention not specified in the original. *Burr* v. *Duryee* (1 Wall. 531) reaffirmed. *Id.*
6. In such case, the court ought not to be required to explore the history of the art to ascertain what the patentee might have claimed: he is bound by his statement describing the invention. *Id.*
7. A patentee cannot claim in a patent the same thing claimed by him in a prior patent; nor what he omitted to claim in a prior patent in which the invention was described, he not having reserved the right to claim it in a separate patent, and not having seasonably applied therefor. *Id.*

LETTERS-PATENT (*continued*).

8. Letters-patent for a machine cannot be reissued for the purpose of claiming the process of operating that class of machines; because, if the claim for the process is anything more than for the use of the particular machine patented, it is for a different invention. *Powder Company* v. *Powder Works* (98 U. S. 126) reaffirmed. *Id.*
9. The government of the United States has no right to use a patented invention without compensation to the owner of the patent. *Id.*
10. *Quære*, Can a suit be maintained against an officer of the government for using such an invention solely in its behalf; and must not the claim for compensation be prosecuted in the Court of Claims. *Id.*
11. The specification (*ante*, pp. 737–742) forming part of the original letters-patent No. 146,614, granted to Harvey W. Rice, Jan. 20, 1874, for an improvement in steam-boilers, and that forming part of the reissued letters No. 6422, issued to him May 4, 1875, show that the original and the reissued letters are not for the same invention. The latter are therefore void. *Heald* v. *Rice*, 737.
12. The said letters were anticipated by letters No. 135,659, dated Feb. 11, 1873, the reissue whereof, No. 6420, bears date May 4, 1875, and by letters No. 139,075, dated May 20, 1873, all of them granted to David Morey for a straw-feeding attachment for furnaces. *Id.*
13. The question of the identity of an invention described in the original and the reissued letters-patent is one of law for the court, whenever it can be determined solely from their face by mere comparison, without the aid of extrinsic evidence to explain terms of art or to apply the descriptions to the subject-matter. *Id.*
14. Reissued letters-patent No. 5216, granted Jan. 7, 1873, to Frances Lee Barnes, executrix of Samuel H. Barnes, deceased, for an "improvement in corset-springs," are void, the invention for which the original letters, bearing date July 17, 1866, were granted, having with his consent been in public use for more than two years prior to his application for them. *Egbert* v. *Lippmann*, 333.
15. There may be a public use of the invention although but a single machine or device for which the letters were subsequently granted was used only by one person. *Id.*
16. Letters-patent No. 143,600, dated Oct. 14, 1873, and granted to John J. Vinton for an improvement in the manufacture of iron from blast-furnace slag, are void, inasmuch as the process and appliances described in his specification and claim were known and in common use before the date of his alleged invention. *Vinton* v. *Hamilton*, 485.
17. Letters-patent No. 181,512, granted Aug. 22, 1876, to Christian Worley and Henry McCabe, for an improvement in manufacturing plug-tobacco, are void, inasmuch as the improvement therein described was, with the consent of the inventor, in public use for more than two years prior to his application therefor. *Worley* v. *Tobacco Company*, 340.
18. *Egbert* v. *Lippmann* (p. 333) cited and approved. *Id.*

LETTERS-PATENT (*continued*).

19. An inventor cannot relieve himself of the consequences of such use by assigning to those who used his invention an interest therein, or in the letters-patent granted therefor. *Id.*
20. Reissued letters-patent No. 6166, granted Dec. 8, 1874, to George Nimmo, for "an improvement in moulding crucibles," are void, the invention therein described being neither patentable nor novel. *Pickering* v. *McCullough*, 310.
21. A combination of old elements is not patentable unless they all so enter into it as that each qualifies every other. It must either form a new machine of distinct character and function, or produce a result which is not the mere aggregate of separate contributions, but is due to the joint and co-operating action of all the elements. *Id.*
22. In reissued letters-patent No. 6844, granted Jan. 11, 1876, to Joshua E. Ambrose, assignor by mesne conveyances to Edward Miller & Co., for an improvement in lamps, the second claim is void, it not being for the invention described and claimed in the original application. *Miller* v. *Brass Company*, 350.
23. Where a specific device or combination is claimed, the non-claim of other devices or combinations apparent on the face of the specification is, in law, so far as the patentee is concerned, a dedication of them to the public, and will so be enforced, unless he with all due diligence surrenders his patent for reissue, and proves that his omission to claim them arose wholly from inadvertence, accident, or mistake. *Id.*
24. Such lapse of time as indicates his want of due diligence is fatal, and the reissue, if granted, will be void. *Id.*
25. The court condemns the practice of reissuing letters-patent with broader claims than those covered by the original letters. *Id.*
26. Reissued letters-patent No. 3274, bearing date Jan. 19, 1869, granted to Henry M Stow, for "improved pavement," and the letters-patent No. 134,404, bearing date Dec. 31, 1872, issued to him for "improvement in wood pavements," are severally void for want of novelty. *Stow* v. *Chicago*, 547.
27. The right of a corporation to assign letters-patent, whereof it is the owner, is not affected by an attachment whereunder shares of its capital stock, belonging to a stockholder, were seized, and the assignment may be made by an instrument in writing not under seal. *Gottfried* v. *Miller*, 521.
28. A., on selling a machine containing a patented invention, warranted the title to it and the right to use it. He afterwards acquired a part interest in the letters-patent. *Held*, that the sale, so far as he is concerned, is a license to the vendee to use the machine. *Quære*, Are the other part owners estopped by the sale from setting up that by such use the letters-patent are infringed. *Id.*
29. Under the contract between A. and the other part owners (*ante*, p. 525) all licenses granted by him were in effect confirmed. *Id.*

LICENSE. See *Letters-patent*, 28, 29.

LIEN. See *Admiralty*, 8; *Bank and Banker*, 2–5; *Bankruptcy*, 3–8, 10; *Equity*, 3.

A person hired by the owners of a mine in Utah to oversee the miners, and generally to control and direct its working and development, did, in the performance of his duties, some manual labor. *Held*, that for the wages due to him he is entitled to the lien conferred by sect. 1221 of the Compiled Laws of that Territory. *Mining Company* v. *Cullins*, 176.

LIFE INSURANCE. See *Insurance.*

LIMITATIONS, STATUTE OF. See *Mines and Mining Claims*, 3; *Practice*, 7; *Tax Sale*, 3; *Verdict*, 5.

1. The Statute of Limitations of Wisconsin applies to the coupons of a municipal bond, whether they be detached from it or not, and begins to run from the time they respectively mature. *Koshkonong* v. *Burton*, 668.
2. The legislature has the constitutional power to provide that existing causes of action shall be barred, unless, within a shorter period than that prescribed when they arose, suits to enforce them be brought, if a reasonable time is given by the new law before the bar takes effect. *Id.*

LOCATOR. See *Land Grants*, 3–6; *Mines and Mining Claims; Pre-emption.*

LONGEVITY PAY.

1. *Quære*, In computing the longevity pay to which an officer of the army is entitled under sect. 7 of the act of June 18, 1878, c. 263 (20 Stat. 145), should the time during which he was a cadet at West Point be included in his period of service. *United States* v. *Babbitt*, 767.
2. The Court of Claims decided that question adversely to the plaintiff. As the case in which it arose was one of a class, and a judgment against him could not, by reason of the amount in controversy, be reviewed, *a pro forma* judgment was, by consent of the Attorney-General, rendered against the United States on a claim for such pay, in which that time was embraced. The United States appealed. *Held*, that the consent so given was a waiver of any error in including that time as a basis of computation. *Id.*

LOUISIANA.

1. According to the law of Louisiana in force in 1813, if the heirs, whether forced or voluntary, of a testator were absent from the State, the Probate Court had jurisdiction to order a sale of his property. *Davis* v. *Gaines*, 386.
2. The will having been duly proved, the proper Probate Court, upon the petition of the executor, made an order, pursuant to which the immovables of the deceased were, according to law, sold and conveyed to a purchaser in good faith for a valuable consideration. *Held*, that his title is not affected by the subsequent discovery and probate of a later will appointing another person executor, and making a different disposition of them. *Id.*

LOUISIANA (*continued*).

3. The order of sale is an adjudication that all the facts necessary to give the court jurisdiction existed. *Id.*
4. Where the possession of the immovables so sold was held for over sixty years, under the executor's deed, which recites that the sale was made "after the publications and delays prescribed by law," and it apppears from his account, remaining of record in the Probate Court for fifty years, that he paid a specified sum for advertising the sale, — *Held*, that the deed and account are competent evidence of the advertisement, and being uncontradicted are conclusive. *Id.*
5. When the purchase-money was applied to the extinguishment of a mortgage executed by the deceased, and constituting a valid incumbrance on the immovables, the purchaser, although the sale was irregular or void, cannot be ousted of his possession upon a bill in equity filed by the heirs or the devisees unless they repay or tender him the purchase-money. *Id.*
6. The prescription applicable to immovables in Louisiana cannot be maintained unless the possessor obtained them in good faith and by a just title; that is to say, by a title which he derived from those whom he believed to be the true owners, and which, if they had in fact been such owners, was by its nature sufficient to transfer the ownership. *Id.*
7. The prescription against all informalities connected with or growing out of a public sale by a person authorized to sell at auction, may be pleaded by one who purchases in good faith at the sale of an executor or a register of wills, and holds by a just title, against the averment that the sale was not advertised, that the inventory of the estate was not completed before the order of sale was made, or that it was partly made by appraisers appointed by the testamentary executor, or that it was signed by only one of the two appraisers so appointed. Such informalities are cured by the lapse of five years. *Id.*

MAILS, TRANSPORTATION OF THE. See *Contracts*, 5–7.

1. The sixth section of the act of Congress of July 1, 1862, c. 120, incorporating the Union Pacific Railroad Company (12 Stat. 489), constitutes a contract between the United States and the company, whereunder the latter, for its service in transporting upon its road, from Jan. 1, 1876, to Oct. 1, 1877, the mails, and the agents and clerks employed in connection therewith, is entitled to compensation at fair and reasonable rates, not to exceed those paid by private parties for the same kind of service. *Union Pacific Railroad Company* v. *United States*, 662.
2. The contract is not affected by the sections of the Revised Statutes declaring that the Postmaster-General may fix the rate for such service when performed by railroad companies to which Congress granted aid, and he had no authority to insist that it was not binding upon the United States. *Id.*

MAILS, TRANSPORTATION OF THE (*continued*).

3. The company, having been required to perform the contract, lost no rights by a compliance therewith, as it protested against and rejected all illegal conditions attached to the requirement. *Id.*
4. A railroad company, in aid of which Congress granted land, entered, September, 1875, into a contract with the United States to transport for four years the mails over its road at a price which conformed to the statute then in force. It received from the Postmaster-General due notice of his orders, reducing the rates of compensation, pursuant to the act of July 12, 1876, c. 179 (19 Stat. 78), and the act of July 17, 1878, c. 259. 20 id. 140. The company protested against the order, but performed the stipulated service. *Held*, that it is entitled to recover the contract price therefor. *Chicago and Northwestern Railway Company* v. *United States*, 680.
5. Those acts apply only to contracts thereafter made, or to such as did not require the performance of the service for a specific period. *Id.*
6. The provisions of the act of July 12, 1876, c. 179 (19 Stat. 78), touching a reduction of rates for railway service, do not apply to a contract then in force which provided for transporting the mails for a term of years. *Chicago, Milwaukee, and St. Paul Railway Company* v. *United States*, 687.

MANDAMUS. See *Taxation*, 12.

MARRIAGE. See *Will.*

MICHIGAN. See *Deed*, 2, 3; *Mortgage*, 4, 6.

MINES AND MINING CLAIMS. See *Land Grants*, 3–6; *Lien.*

1. By the act of May 10, 1872, c. 152 (17 Stat. 91), and the acts amendatory thereof, the rights of the original locator of a mining claim or of his assignee, which was located prior to that date, were continued until Jan. 1, 1875, although no work had been done thereon, provided that no relocation thereof had been made; and they were thereafter extended, if within the year 1875, and before another party relocated the claim, work was resumed thereon to the extent required by law. When, therefore, work was so resumed, the claim was not open to relocation before Jan. 1, 1877, although no work had been done upon it during the year 1876. *Belk* v. *Meagher*, 279.
2. Actual possession of the claim is not essential to the validity of the title obtained by a valid location; and until such location is terminated by abandonment or forfeiture, no right or claim to the property can be acquired by an adverse entry thereon with a view to the relocation thereof. *Id.*
3. A. entered, Dec. 19, 1876, upon a claim not then in the actual possession of any one, but covered by a valid and subsisting location which did not expire until the first day of January thereafter. Between the date of his entry and Feb. 21, 1877, he made no im-

MINES AND MINING CLAIMS (*continued*).

provements or enclosure, and did a very small amount of work, but had no other title than such as arose from his attempted location of the claim and his occasional labor upon it. On the last-mentioned date B. entered upon the property peaceably and in good faith, and did all that was required to protect his right to the exclusive possession thereof. A. brought ejectment, Oct. 25, 1877. *Held*, that A.'s entry and labor did not entitle him to a patent under sect. 2332, Rev. Stat., nor prevent B.'s acquisition of title to the claim, and that the Statute of Limitations of Montana of Jan. 11, 1872, had no application thereto. *Id.*

MINING COMPANY. See *Corporation*, 1–3.

MONTANA. See *Mines and Mining Claims*, 3; *Satisfaction of Decree*, 2.

MORTGAGE. See *Satisfaction of Decree.*

1. A mortgage executed by a railroad company upon its then and thereafter to be acquired "property" contains a specific description of the different kinds of such property. *Held*, that certain municipal bonds, issued to aid in building the road, which are not embraced by such description, do not pass by the use of the general word "property." *Smith* v. *McCullough*, 25.
2. By the laws of Utah in force in the year 1873 a mortgage of lands which is first recorded, if it be taken without notice of an elder mortgage, is entitled to precedence of lien. *Neslin* v. *Wells*, 428.
3. It is only when the equities are equal that the maxim *qui prior est tempore potior est jure* applies. *Id.*
4. In Michigan, replevin will lie at the suit of the mortgagee of personal chattels against an officer who, by virtue of an attachment sued out against the mortgagor, levied upon them while they were in his possession, and who, when they are properly demanded, refuses to surrender them to the mortgagee. *Wood* v. *Weimar*, 786.
5. Such a mortgage, executed in good faith to secure the amount actually due upon what was deemed to be valid and subsisting obligations, will be upheld and enforced, although the several items which make up that amount are not set forth; provided that subsequent creditors have not been injured by the want of specifications, and the proofs, which are adduced to establish the identity of the debt, show that it comes fairly within the general description. *Id.*
6. An unrecorded mortgage is not, by the laws of Michigan, rendered void as to creditors, although the mortgaged goods remained in the possession of the mortgagor, if before the expiration of twelve months from its date they were replevied by the mortgagee, who thereafter retained the possession of them. *Id.*
7. Where the interest on a certain mortgage debt was paid, and the assignee took from the debtor other notes for that interest which were secured by another mortgage, the latter cannot, as to them, avail against attaching creditors. *Id.*
8. Where the objection to the admissibility of a deed offered in evidence

MORTGAGE (*continued*).
was grounded on its irrelevancy, no question as to the form of its authentication will be considered here. *Id.*
9. Where, after replevin by the mortgagee, payments were made on the mortgage debt, he cannot enforce his lien on the mortgaged chattels or their value beyond the amount actually due him when judgment is rendered. *Id.*
10. Where the payee of a note dies, and no administration is granted on his estate, and there are no creditors, his distributees may transfer the note so as to vest in the assignee the equitable title thereto. *Id.*

MUNICIPAL BONDS. See *Limitations, Statute of*, 1; *Mortgage*, 1.
1. Where a town in New York subscribed for stock in a railroad company, and the commissioners, authorized to execute bonds in payment therefor, issued unsealed obligations, whereon a *bona fide* holder for value brought suit, — *Held*, that the absence of a seal on the paper does not affect his right to recover. *Draper* v. *Springport*, 501.
2. The indorsee of negotiable paper which has a fraudulent or illegal inception must, in order to recover thereon, prove that he is a *bona fide* holder thereof for value. *Stewart* v. *Lansing*, 505.
3. Coupon bonds of a town in New York were by commissioners executed to a railroad company pursuant to an order of a county judge, which was annulled and reversed by the judgment of the Supreme Court in a proceeding whereof, before they were issued, the commissioners and the company had due notice. *Held*, 1. That, as between the company and the town, the bonds are invalid. 2. That, in an action on coupons detached therefrom, the plaintiff must, to make out his right to recover against the town, establish his *bona fide* ownership of them. 3. That upon the question of such ownership a judgment in his favor upon other coupons detached from the same bonds does not estop the town. *Id.*
4. Upon the evidence in this case it was not error to charge the jury to find for the town. *Id.*
5. When necessary to determine conflicting rights, courts of justice will take cognizance of the fractions of a day. *Louisville* v. *Savings Bank*, 469.
6. The section of the Constitution of Illinois entitled "Municipal subscriptions to railroads or private corporations" (*ante*, p. 471), which took effect July 2, 1870, did not invalidate township bonds, which, pursuant to a vote cast at an election of the voters of the township lawfully held on that day, before closing the polls of the general election, were issued to pay a previously voted donation, that was to be raised by special tax. *Id.*
7. *Harter* v. *Kernochan* (103 U. S. 562) cited and approved. *Id.*

MUNICIPAL CORPORATION. See *Canals; Contracts*, 4; *Municipal Bonds; Taxation*, 7; *Voucher.*

MURDER. See *Evidence*, 1; *Jurisdiction*, 8.

NATIONAL BANKS. See *Bank and Banker; Taxation*, 1; *Usury*.

1. The sole particular, so far as loans and discounts are concerned, in which sect. 5197 of the Revised Statutes places a national bank upon an equality with natural persons, is in permitting it to charge a rate of interest allowed to them which is prescribed and limited by the laws of the State, Territory, or district where the bank is located. *National Bank* v. *Johnson*, 271.
2. Although under those laws a contract between natural persons to reserve and pay upon the discount of business paper any stipulated rate of interest may be valid, such a contract, if a national bank be a party thereto, and the paper be in pursuance thereof transferred to it, is in violation of that section when such rate is in excess of seven per cent per annum. *Id.*
3. A national bank in New York discounted for the payee, at the rate of twelve per cent per annum, certain promissory notes, which he then indorsed to it, and whereon he, against prior parties thereto, could have maintained an action. They were paid at maturity. He brought suit in due time against the bank for twice the amount of interest reserved and paid in excess of seven per cent per annum. *Held*, that he was entitled to recover. *Id.*
4. A national bank, in voluntary liquidation under sect. 5220 of the Revised Statutes, is not thereby dissolved as a corporation, but may sue and be sued, by name, for the purpose of winding up its business; and it is no defence to a suit upon a disputed claim that, under sect. 2 of the act of June 30, 1876, c. 156 (19 Stat. 63), the plaintiff has also filed a creditor's bill to enforce the individual liability of the shareholders. *National Bank* v. *Insurance Company*, 54.

NEGLIGENCE. See *Railroad Companies*, 1, 2; *Receiver*, 2, 4.

NEGOTIABLE PAPER. See *Bills of Exchange and Promissory Notes; Municipal Bonds*.

NEW TRIAL. See *Practice*, 2.

NOTARY PUBLIC. See *Bank and Banker*, 6–9.

NOTICE. See *Bank and Banker*, 2, 4, 5; *Bankruptcy*, 5; *Guaranty*, 1, 3–5; *Insurance*, 3; *Mortgage*, 2; *Principal and Agent*.

OFFICER OF THE ARMY. See *Longevity Pay*.

PARTIES. See *Equity Pleading and Practice*, 2; *Jurisdiction*, 4–7.

PARTNERSHIP. See *Railroad Companies*, 1.

1. Real estate purchased with partnership funds for partnership uses, though the title be taken in the name of one partner, is in equity treated as personal property, so far as is necessary to pay the debts of the partnership and adjust the equities of the partners. *Shanks* v. *Klein*, 18.
2. For this purpose, in case of the death of such partner, the survivor can sell the real estate; and, though he cannot transfer the legal title which passed to the heirs or the devisees of the deceased, the

PARTNERSHIP (*continued*).
sale vests the equitable ownership, and the purchaser can, in a court of equity, compel them to convey that title. *Id.*

3. The declaration in an action against A., B., and C., to recover the price of a saw-mill sold to them, alleges that they were, at the time of the sale, partners in the business of sawing and manufacturing lumber and timber, and of procuring, owning, and operating a saw-mill for that purpose at a designated place. B., who alone appeared or was served with process, admitted in his answer that he and A. and C. were interested together in the business of sawing and manufacturing lumber at the time mentioned, and "contemplated and intended to procure by lease or purchase, or erect, a saw-mill" at said place. It was proved that the mill at the time of the sale was in their possession. *Held*, that an instruction to the jury that the partnership was conceded was not erroneous. *Held, also*, that the court in this case properly left it to the jury to determine whether the defendant had possession of the property pursuant to the sale. *Porter* v. *Graves*, 171.

PATENT OF THE UNITED STATES FOR LAND. See *Deed; Land Grants.*

PENALTY. See *Contracts*, 1, 2.

PILOTAGE. See *Admiralty*, 4.

PLEADING. See *Corporation*, 6; *Internal Revenue*, 4; *Practice*, 1.

PLUMBAGO. See *Customs Duties*, 2.

PRACTICE. See *Admiralty*, 1–6; *Appeal; Bankruptcy*, 9; *Bill of Review; Causes, Removal of; Court and Jury; Equity Pleading and Practice; Instructions to Jury; Judgment; Jurisdiction; Longevity Pay*, 2; *Receiver; Verdict.*

1. The non-joinder of a defendant in an action *ex contractu* can be taken advantage of only by a plea in abatement. *Metcalf* v. *Williams*, 93.
2. The jury may be properly instructed to find for the defendant, where, if the verdict should be against him, the court should set it aside and grant a new trial. *Griggs* v. *Houston*, 553.
3. A matter occurring during the progress of the trial which was not brought to the attention of the court below, nor decided by it, will not be considered here. *Belk* v. *Meagher*, 279.
4. Where specific objections are made to the admission of evidence, all others are waived. *Id.*
5. This court will not pass upon the charge below, where the bill of exceptions does not set forth the evidence, and there is nothing to show that the question of law to which the charge relates is involved in the issue. *Jones* v. *Buckell*, 554.
6. A party whose appeal has been dismissed cannot be heard in opposition to the decree. *Loudon* v. *Taxing District*, 771.
7. The construction given by the Supreme Court of a State to a statute of limitations of the State will be followed by this court in a case

PRACTICE (*continued*).

decided the other way in the Circuit Court before the decision of the State court. *Moores* v. *National Bank*, 625.

8. The erroneous sustaining of a demurrer to a replication to one of several defences in the answer requires the reversal of a final judgment for the defendant, which is not clearly shown by the record to have proceeded upon other grounds. *Id.*
9. Where the record is such as to furnish a sufficient color of right to the dismissal of the writ of error to justify the court in entertaining with a motion to dismiss a motion to affirm under Rule 6, — *Held*, that although the grounds for dismissal be removed by a further showing, the motion to affirm will be granted when it is manifest that the writ was sued out for delay only. *Micas* v. *Williams*, 556.
10. Judgment upon nonsuit was rendered, with leave to move to set it aside. More than two years thereafter the court heard the respective parties and granted the motion. *Held*, that the action of the court presented no question upon which a jury could pass, and that no exception thereto having been taken, it cannot be reviewed here. *Loring* v. *Frue*, 223.

PRE-EMPTION. See *Land Grants; Mines and Mining Claims.*

1. A party lawfully settling upon a portion of a quarter-section of public land, who in good faith complies with the statutory requirements, is entitled as against subsequent settlers to pre-empt that quarter-section, and they derive no right thereto by purchasing the claim of a prior settler, unless, by an actual entry at the proper office, he has a transferable interest in the land. *Quinby* v. *Conlan*, 420.
2. The courts cannot exercise a direct appellate jurisdiction over the rulings of the officers of the Land Department, nor reverse or correct them in a suit between private parties. *Id.*
3. Where, by misconstruing the law, those officers have withheld from a party his just rights, or misrepresentation and fraud have been practised necessarily affecting their judgment, the courts may in a proper proceeding interfere and refuse to give effect to their action. *Id.*
4. On Jan. 18, 1871, A., a pre-emptor, settled upon part of an even-numbered section of land which, although previously offered at public sale, was at that date withdrawn from private entry, it being within the grant to the Burlington and Missouri River Railroad Company. *Held*, that, under the second section of the act of July 14, 1870, c. 272 (16 Stat. 279), he was entitled to the period of eighteen months from the time limited for filing his declaratory statement, within which to make payment and proof. *Morrison* v. *Stalnaker*, 213.

PRESCRIPTION. See *Louisiana*, 6, 7.

PRINCIPAL AND AGENT. See *Bank and Banker*, 5–8; *Corporation*, 4, 5.

Where a person acts merely as agent of another, and as such signs papers, an express disclosure of his principal's name on their face or in the signature is not essential to protect him from personal liability to a party having full knowledge of the facts. *Metcalf* v. *Williams*, 93.

PROBATE COURT AND PROCEEDINGS. See *Louisiana.*

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

PUBLIC LANDS. See *Deed; Land Department; Land Grants; Mines and Mining Claims; Pre-emption.*

PUBLIC POLICY. See *Rescission of Contract.*

PUBLIC RECORDS. See *Evidence*, 3; *Internal Revenue*, 5.

PURCHASER FOR VALUE. See *Louisiana*, 2, 7; *Municipal Bonds*, 1–3; *Railroad Companies, Subscriptions to the Capital Stock of*, 3.

RAILROAD COMPANIES. See *Causes, Removal of*, 4; *Land Grants*, 7–9; *Mails, Transportation of the; Mortgage*, 1; *Pre-emption*, 4; *Receiver.*

1. A contract between A., a despatch company, and B., a railroad company, whose road, in connection with those of other companies, forms a continuous line, stipulated that B. should "receive, load, and unload, deliver and way-bill," all freight sent to it by A. at such rates for transportation as may be established by the railroad companies, and should, while assuming all the risks of a common carrier, pay for all damage to or loss of property while on its road or in its possession. A similar contract was entered in by A. with each of the other companies, between which there was an arrangement that the amount charged for the through freight should be divided between them according to the length of their respective roads; that each company should pay for losses occurring on its road; and that on such freight the last carrier should collect the charges from the consignee, deduct its share thereof, account in the same way to the next company, and so on to the first. Settlements were made by the railroad companies periodically upon accountings between them, and each settled separately with A. *Held*, 1. That B., by its agreement with A., incurred neither an obligation to carry freight beyond its own road, nor a liability for the negligence of either of the other companies. 2. That the arrangement between the railroad companies did not make them partners *inter sese* or as to third persons. *Insurance Company* v. *Railroad Company*, 146.
2. Sections 1166 and 1167 of the Code of Tennessee, touching the liability which railroad companies incur by failing to observe certain precautions in running their trains, do not apply to contractors engaged in constructing a railroad. *Griggs* v. *Houston*, 553.
3. The provision of the act of the General Assembly of Connecticut, 1866 (*ante*, p. 2), relative to the abandonment of railroad stations, whilst it authorizes the railroad commissioners to consent, or to refuse to consent. to the abandonment of an existing station, confers upon them no authority to bind the State by contract not to exercise its legislative power touching the establishment of such stations. *Railroad Company* v. *Hamersley*, 1.
4. The act entitled "An Act establishing a depot at Plantsville,"

RAILROAD COMPANIES (*continued*).
approved July 15, 1875, does not impair the obligation of any contract between that State and the New Haven and Northampton Company. *Id.*

RAILROAD COMPANIES, SUBSCRIPTIONS TO THE CAPITAL STOCK OF. See *Mortgage*, 1; *Municipal Bonds*, 1, 3, 6.

1. The legislation of the State of Illinois reviewed, whereunder the county of Clay issued two series of bonds, one dated Nov. 1, 1869, in payment of its subscription to the stock of the Illinois Southeastern Railway Company, and another dated Jan. 4, 1871, whereby its donation voted before the year 1870 to that company was paid. *County of Clay* v. *Society for Savings*, 579.
2. The bonds are valid, as they were issued in strict conformity to the conditions and requirements prescribed by statute, and pursuant to a popular vote cast at an election lawfully held before the year 1870. The Constitution of Illinois, which took effect during that year, does not attempt to impair the obligation of any prior contract in regard to them, nor prohibit the issue of such as were necessary to give effect to a donation so voted. *Id.*
3. Where a *bona fide* holder for value of a county bond sues thereon, its recitals, showing that it was issued in accordance with the statute, are conclusive and binding, and the fact that for many years its validity has been recognized by paying the interest thereon as it became due cures mere irregularities in issuing it. The county cannot, by setting them up, escape liability. *Id.*

RECEIVER. See *Equity*, 2; *Taxation*, 1.

1. The rule that a receiver cannot be sued without leave of the court of equity which appointed him applies to suits against him on a money demand, or for damages, as well as to those the object of which is to recover property which he holds by order of that court. *Barton* v. *Barbour*, 126.
2. The fact that, by such order, he is in possession of a railroad, and engaged in the business of a common carrier thereon, does not so take his case out of the rule, as that an action will lie against him for an injury caused by his negligence or that of his servants in conducting that business. *Id.*
3. If the adjustment of a demand against him involves disputed facts, that court may, in a proper case, either of its own motion or on the prayer of the parties injured, allow him to be sued in a court of law, or direct the trial of a feigned issue to settle the facts. *Id.*
4. In view of the public and private interests involved, a court of equity, having in its possession for administration as trust assets a railroad or other property, may authorize the receiver to keep it in repair, and manage and use it in the ordinary way, until it can be sold to the best advantage of all interested therein. Without leave of that court, a court of another State has, under such circumstances, no jurisdiction to entertain suits against him for causes of action arising

RECEIVER (*continued*).
in the State wherein he was appointed and the property is situated, which are based on his negligence or that of his servants in the performance of their duty in respect to the property. *Id.*

RECORD. See *Evidence*, 3; *Internal Revenue*, 5.

REISSUED LETTERS-PATENT. See *Letters-patent*, 4–8, 11, 13, 22–25.

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

REPLEVIN. See *Mortgage*, 4, 6, 9.

RESCISSION OF CONTRACT.
Quære, Can a party who buys property at a public sale, to perfect his previous private purchase thereof, have the sale vacated on the ground that it was contrary to law and public policy; or, after having received and used the property, can he, when sued for the purchase-money, set up such a defence. *Porter* v. *Graves*, 171.

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

SATISFACTION OF DECREE.
1. At a sale of mortgaged lands in Montana Territory, pursuant to a decree of foreclosure in a proceeding wherein A. was complainant, he became the purchaser of a part of them; but, on account of his fraudulent conduct, the sale to him was set aside. B., the mortgagor, now seeks to charge him with the value of the use and occupation of such part while it was in his possession under his purchase, and with damages for waste. *Held*, 1. That the satisfaction of the decree caused by the sale was vacated when that sale was set aside. 2. That a judgment should be rendered against A. for only so much of the sum found to be due for such value and damages as exceeds the amount necessary to satisfy the decree. *Fort* v. *Roush*, 142.
2. *Quære*, If the sum so found is insufficient to satisfy the decree, will A., in order to secure an execution against B., be compelled to proceed under sect. 286 of the Revised Statutes of the Territory for the revival of the decree. *Id.*

SAVINGS BANKS. See *Taxation*, 3.

SEAL. See *Municipal Bonds*, 1.

SET-OFF. See *Bankruptcy*, 1, 2.

STATE CANALS. See *Canals.*

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

1861. Aug.	5.	*c.* 45.	See *Tax Sale*, 1.
1862. June	7.	*c.* 98.	See *Tax Sale*, 1.
1862. July	1.	*c.* 120.	See *Mails, Transportation of the*, 1.
1864. June	30.	*c.* 171.	See *Customs Duties*, 1.
1864. July	2.	*c.* 216.	See *Land Grants*, 7, 8.

STATUTES OF THE UNITED STATES (*continued*).

1867. March 2. *c.* 176. See *Bankruptcy*, 1.
1870. July 9. *c.* 235. See *Land Grants*, 3–6.
1870. July 14. *c.* 255. See *Legacy Tax*.
1870. July 14. *c.* 272. See *Pre-emption*, 4.
1872. May 10. *c.* 152. See *Land Grants*, 3; *Mines and Mining Claims*, 1.
1872. June 6. *c.* 315. See *Customs Duties*, 1.
1875. Feb. 16. *c.* 77. See *Admiralty*, 5, 6.
1875. March 3. *c.* 125. See *Customs Duties*, 5.
1875. March 3. *c.* 137. See *Causes, Removal of*, 1–3; *Jurisdiction*, 5.
1876. June 30. *c.* 156. See *National Banks*, 4.
1876. July 12. *c.* 179. See *Mails, Transportation of the*, 4–6.
1878. June 18. *c.* 263. See *Longevity Pay*.
1878. July 17. *c.* 259. See *Mails, Transportation of the*, 4, 5.
1879. March 1. *c.* 125. See *Taxation*, 4.
Rev. Stats., sect. 639. See *Causes, Removal of*, 2.
" " " 954. See *Verdict*, 4.
" " " 2332. See *Mines and Mining Claims*, 3.
" " " 2504. See *Customs Duties*, 4, 5.
" " " 3220, 3228. See *Internal Revenue*, 1.
" " " 3408. See *Taxation*, 2–4.
" " " 4233. See *Admiralty*, 7.
" " " 5013. See *Bankruptcy*, 1.
" " " 5197. See *National Banks*, 1.
" " " 5220. See *National Banks*, 4.
" " " 5234. See *Taxation*, 1.

STOCKHOLDERS. See *Corporation*, 6; *Equity*, 4.

STOCKINGS. See *Customs Duties*, 4.

SUGAR. See *Customs Duties*, 5.

TAXATION. See *Constitutional Law; Contracts*, 4; *Internal Revenue; Legacy Tax; Tax Sale*.

1. The personal property of an insolvent national bank in the hands of a receiver appointed pursuant to sect. 5234 of the Revised Statutes is exempt from taxation under State laws. *Rosenblatt* v. *Johnston*, 462.
2. Part of the capital of a State bank was invested in foreign countries. *Held*, that it was subject to the tax imposed by sect. 3408 of the Revised Statutes, it not appearing in what manner the investments were made. *Nevada Bank* v. *Sedgwick*, 111.
3. The last clause of sect. 3408 of the Revised Statutes exempts savings banks of the character there mentioned from taxation on so much of their deposits as they have invested in securities of the United States, and on all sums not exceeding $2,000 which they have on deposit in the name of any one person. *Savings Bank* v. *Archbold*, 708.

TAXATION (*continued*).

4. The act of March 1, 1879, c. 125 (20 Stat. 327), does not change the effect of that clause. *Id.*
5. A bank, by its charter, is required to "pay to the State an annual tax of one half of one per cent on each share of capital stock, which shall be in lieu of all other taxes," and is authorized to "purchase and hold a lot of ground" for its use "as a place of business," and hold such real property as may be conveyed to it to secure its debts. With a portion of its capital stock it purchased a lot with a building thereon, a portion of which it occupies as a place of business. It took, to secure money loaned, a deed of trust upon three city lots, which it subsequently purchased under this deed, and now owns. *Held*, that the immunity from taxation extends only to so much of the building, the use whereof is required by the actual wants of the bank in carrying on its business. The remainder of its real estate is subject to taxation. *Bank* v. *Tennessee*, 493.
6. Although differing from proceedings in courts of justice, the general system of procedure for the levy and collection of taxes, which is established in this country, is, within the meaning of the Constitution, due process of law. *Kelly* v. *Pittsburgh*, 78.
7. A State has the power to determine what portions of her territory shall, for local purposes, be within the limits of a city and subject to its government, and to prescribe the rate of taxation at which such portions shall be assessed. *Id.*
8. A party is not deprived of his property without due process of law by the enforced collection of taxes merely, because they, in individual cases, work hardships or impose unequal burdens. *Id.*
9. *Quære*, Are the statutes of a State in violation of the Constitution of the United States if they subject to taxation the capital of her citizens, although, on the day to which the assessment of it relates, it is invested in products on shipboard in the course of exportation to foreign countries, or in transit from one State to another for purposes of exportation. *People* v. *Commissioners*, 466.
10. If on that day it consisted of money, subsequent assessments including it cannot be set aside on the ground that, when they were made, it was employed in the purchase of products for exportation. *Id.*
11. The county commissioners of a county in Alabama who were required by statute to levy and assess such a special tax not exceeding one per cent upon the real and personal property as would be sufficient to meet the semi-annual interest falling due upon certain bonds of the county, discharged their duty when a valid and sufficient levy of a tax had been made, and everything done to enable the collector to proceed; and the Governor of the State was notified of the failure, if such were the case, of the collector to give bond for the collection of any taxes other than those levied for general purposes. *Ex parte Rowland*, 604.
12. A *mandamus* will, therefore, not lie against the commissioners "to cause the tax to be collected;" and so much of the command of a writ sued out of the Circuit Court for the District of Alabama as

TAXATION (*continued*).
attempted to impose that duty upon them, being in excess of the jurisdiction of the court, is void. *Id.*
13. The commissioners being adjudged to be in contempt of that command, and imprisoned therefor by order of the Circuit Court, this court, upon a writ of *habeas corpus*, directs that they be discharged. *Id.*

TAXATION, IMMUNITY FROM. See *Taxation*, 1–5.

TAX SALE.
1. So much of the act of Congress of Aug. 5, 1861, c. 45 (12 Stat. 282), as provides that the surplus of the proceeds of the sale of real estate sold for a direct tax due to the United States shall, after satisfying the tax, costs, charges, and commissions, be deposited in the treasury, to be there held for the use of the owner of the property, was not repealed by the act of June 7, 1862, c. 98, id. 422. *United States* v. *Taylor*, 216.
2. Prior to his application to the Secretary of the Treasury for that surplus, such owner has no claim thereto which can be enforced by suit against the United States. *Id.*
3. The Statute of Limitations runs from the date of his application. *Id.*

TENNESSEE. See *Railroad Companies*, 2.

TIMBER. See *Land Department*.

TRESPASS. See *Land Department*, 2, 3.

TRUST AND TRUSTEE. See *Bank and Banker*, 1–5; *Bankruptcy*, 1, 2; *Equity*, 2, 3; *Receiver*.

USURY.
1. Usurious interest *paid* a national bank on renewing a series of notes cannot, in an action by the bank on the last of them, be applied in satisfaction of the principal of the debt. *Driesbach* v. *National Bank*, 52.
2. *Barnet* v. *National Bank* (98 U. S. 555) reaffirmed. *Id.*

UTAH. See *Lien; Mortgage*, 2.

UTE RESERVATION. See *Jurisdiction*, 8.

VACATING SALE. See *Rescission of Contract*.

VERDICT. See *Practice*, 2.
1. The verdict of a jury upon an issue which a court of chancery directed them to try is merely advisory. *Quinby* v. *Conlan*, 420.
2. A stipulation that the jury, if the court be not in session when they agree upon their verdict, may sign, seal, and deliver it to the officer in charge and disperse, is equivalent to an agreement that the court may open the sealed verdict in their absence, and, if necessary, reduce it to proper form. *Koon* v. *Insurance Company*, 106.
3. It is also a waiver of the right to poll the jury if they be not in court. *Id.*

VERDICT (*continued*).

4. The entry of the verdict in the proper form is allowed by sect. 954 of the Revised Statutes of the United States and by the Practice Act of Illinois. *Id.*
5. Land in Virginia, whereof the owner died seised in 1823, descended to his married daughter. In January, 1868, she and A., her husband, conveyed it in fee, and shortly thereafter died, he predeceasing her. In that year and after her death, B., their grantee, brought ejectment. The jury returned a special verdict, setting forth substantially the above facts and finding that the right of A. was, at the date of the conveyance to B., barred by the Statute of Limitations. *Held*, in view of the provisions of the code of that State (*ante*, pp. 324, 325, 326), that the facts so found entitle B. to recover, inasmuch as it does not appear therefrom that her title or right of entry, which passed by the conveyance, was barred at the date thereof, or at the commencement of the suit. *Collins* v. *Riley*, 322.
6. A verdict for the plaintiff, if it declares that the land in dispute "was claimed by the defendants" is in substantial compliance with the requirements of the code. *Id.*

VIRGINIA. See *Verdict*, 5, 6.

VISITORS. See *Contributions to a Charity.*

VOUCHER.

A., to secure an indebtedness to B., conveyed to C., in trust, certain lands in the city of Chicago, which were subsequently condemned for a street. B. permitted the city to take possession of them and make the improvements, but with the express reservation and condition that he thereby waived no right against A. or the city. The city paid A. his proportion of the award, and issued to him a voucher showing the amount awarded, the payment made, and the balance still due. A. delivered to C. this voucher, and indorsed thereon an order to pay the balance to him, as trustee for B., in full of principal due for lien on the land. The city paid C. but a part of the sum due on the voucher, and C., pursuant to a power contained in the deed of trust, sold the lands at public auction to B., who conveyed them to D. The voucher was thereupon assigned to D., it being agreed that he should have all the rights therein of B. and C. *Held*, that D. is entitled to a decree against the city for the balance remaining unpaid on the voucher, with interest thereon from the time it became due. *Chicago* v. *Tebbetts*, 120.

WAIVER. See *Equity Pleading and Practice*, 7; *Longevity Pay*, 2; *Verdict*, 3.

WATER POWER. See *Canals.*

WILL. See *Louisiana*, 2.

A.'s last will and testament provides as follows: "To my beloved wife E. I give and bequeath all my estate, real and personal, of which I may die seised, the same to remain and be hers, with full power,

WILL (*continued*).

right, and authority to dispose of the same as to her shall seem meet and proper, so long as she shall remain my widow, upon the express condition that if she shall marry again, then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike." A.'s children and E. survived him. She conveyed the real estate to B. in fee, and subsequently married. *Held*, that B.'s estate determined on E.'s marriage. *Giles* v. *Little*, 291.

WISCONSIN. See *Limitations, Statute of.*

WITNESS. See *Evidence*, 2.

Where, touching the competency of witnesses, there is a conflict between the law of a State and an act of Congress, the latter must govern the courts of the United States. *King* v. *Worthington*, 44.

WORDS.

"Location." See *Smelting Company* v. *Kemp*, 636.

"Mining Claim." See *Id.*

"Property." See *Smith* v. *McCullough*, 25.

WRIT OF ERROR. See *Canals*, 2; *Judgment*, 1–7; *Practice*, 9.

WRIT OF PROHIBITION. See *Admiralty*, 1.

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