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ACTION. See *Bankruptcy*, 1; *Corporation*, 4, 5; *Fraud*; *Negligence*.

ADMIRALTY. See *Appeal*, 6, 7; *Bills of Lading*, 2; *Constitutional Law*, 1; *Jurisdiction*, 5; *Maritime Law*; *Practice*, 11.

1. The term "torts," when used in reference to admiralty jurisdiction, embraces not only wrongs committed by direct force, but such as are suffered in consequence of negligence or malfeasance, where the remedy at common law is by an action on the case. *Leathers v. Blessing*, 626.
2. The jurisdiction in admiralty is not ousted by the fact, that when the wrong was done on the vessel by the negligence of her master, she had completed her voyage and was securely moored at the wharf where her cargo was about to be discharged. *Id.*
3. The owner of a vessel may, before he or it is sued, institute appropriate proceedings in a court of competent jurisdiction, to obtain the benefit of the limitation of liability provided for by sects. 4284 and 4285 of the Revised Statutes. *Ex parte Slayton*, 451.
4. Upon a libel in admiralty for a collision, the libellant may be allowed damages for the loss of the use of his vessel while laid up to repair the injuries thereby suffered; and if at the time of the collision she was in no need of repair, and was engaged in and peculiarly fitted for a particular business, and her charter value cannot be otherwise satisfactorily ascertained, the average of the net profits of her trips for the season may be adopted as the measure of the allowance. *The "Potomac,"* 630.
5. A vessel being insured on two-thirds of her valuation by valued policies, by which, in case the insurers should pay any loss, the assured agreed to assign to them all right to recover satisfaction from any other person, or to prosecute therefor at the charge and for account of the insurers, if requested, and that they should be entitled to such proportion of the damages recovered as the amount insured bore to the valuation in the policies, the assured filed a libel in admiralty against another vessel for damages suffered by a collision. The insurers paid the libellant two-thirds of that damage, and released and assigned to the owners of the libelled vessel all their

ADMIRALTY (*continued*).

right in any damages growing out of the collision. It appearing that the collision was owing to the fault of both vessels, the libellant could recover only half of the damages sued for. *Held*, that one-third of the sum paid by the insurers must be deducted from the amount to be recovered. *Id.*

AGENCY. See *Bank and Banker*; *Bills of Exchange and Promissory Notes*; *Bills of Lading*, 2; *Constitutional Law*, 2; *Insurance*, 3; *Negotiable Instruments*, 3; *Practice*, 16.

ALIEN. See *Missouri*.

AMOUNT IN CONTROVERSY. See *Jurisdiction*, 1, 2, 5; *Practice*, 9.

APPEAL. See *Arizona*; *Costs*, 1, 2; *Equity*, 4; *Letters-patent*, 25; *Louisiana*, 1, 2; *Practice*, 7-10, 13.

1. An appeal may be perfected without an order formally allowing it. It is in legal effect allowed when the circuit judge takes the security and signs the citation. *Brandies v. Cochrane*, 262.
2. An appeal, dismissed under rule 16, will not be reinstated, unless good cause therefor be shown. *James v. McCormack*, 265.
3. Where, after the allowance of an appeal, the required *supersedeas* bond was duly approved and the cause entered here, the court below had no longer any control over the decree, and its subsequent order vacating that allowance is void. *Keyser v. Farr*, 265.
4. *Goddard v. Ordway* (101 U. S. 745) distinguished. *Id.*
5. An information for a forfeiture under the internal revenue laws cannot be brought from the Circuit Court to this court by appeal. *United States v. Emholt*, 414.
6. Where, to the next Circuit Court, the District Court sitting in admiralty allowed an appeal from its decree, although the same was not, in accordance with its rules, prayed for in writing, the jurisdiction of the Circuit Court at once attached, notwithstanding the failure of the clerk of the District Court to deliver within twenty days, as required by its rules, to the clerk of the Circuit Court the appeal and record. *The "S. S. Osborne"*, 447.
7. A cross-appeal to this court must be prosecuted as any other appeal, or it will be dismissed. *Id.*

ARIZONA.

A "statement" of the case, according to the law regulating civil proceedings in the Territory of Arizona, takes the place of a bill of exceptions, when the alleged errors of law are set forth with sufficient matter to show the relevancy of the points taken; and, though prepared for and used on a motion for a new trial, it is available on appeal from the judgment, when, by stipulation of the parties, it is made a part of the record for that purpose. *Head v. Hargrave*, 45.

ARKANSAS. See *Taxation*, 1.

ARMY. See *Court-martial*; *Limitations, Statute of*, 4; *Officer of the Army*.

ASSESSMENT. See *Corporation*, 4.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy; Limitations, Statute of*, 1-3.

ASSIGNMENT. See *Equity*, 5; *Jurisdiction*, 2, 6; *Municipal Subscriptions*, 6.

ASSIGNMENT FOR CREDITORS. See *Jurisdiction*, 2.

ATTORNEY AT LAW. See *Costs*, 4-6; *Jury*.

BANK AND BANKER. See *Taxation*, 3-12.

1. The statute of Pennsylvania (*ante*, p. 220), declaring that the stock of a bank shall be transferable only on the books in such manner as the by-laws shall ordain, and that no stockholder shall be authorized to transfer his stock until his debt is discharged or secured to the satisfaction of the directors, does not prohibit the bank from waiving its right, nor the cashier from acting for them, by an authority, either express or implied. *National Bank v. Watsontown Bank*, 217.
2. A. borrowed money of B., to whom he assigned and delivered his certificate of stock as collateral security, with authority to sell in case of default in payment. On A.'s default B. sent the certificate to the cashier of the bank, who made the requisite entries on the stock ledger which he kept, it being the only book, except the book of certificates, showing the transfers of stock, and it was his practice to keep the account of such transfers without consulting in each case the directors. The latter had adopted no by-law on the subject. On B.'s instructing the cashier to sell the stock, the latter informed him that it would not be necessary to send him a certificate, but to forward a power of attorney, which B. did. Part of the stock was sold, the proceeds were remitted, and the proper entries made on the stock ledger. A. subsequently became insolvent. He was indebted to the bank, and on the directors refusing to approve the transfer B. brought suit to compel the issue to him of the customary certificate of stock. *Held*, 1. That as between A. and B. the title to the stock passed by A.'s delivery of the certificate with the accompanying power of attorney. 2. That the acts of the cashier were binding on the bank, and the transfer by him made on the stock ledger vested in B. a complete and unincumbered title to the stock, and a right to the usual certificate as evidence of his ownership. 3. That had B. acquired merely an equity based on his contract, the legal right of the bank to assert its lien was lost by its own laches, and the enforcement of it would, under the circumstances, operate as a fraud. *Id.*

BANKRUPTCY. See *Corporation*, 3, 4; *Fraudulent Conveyance; Limitations, Statute of*, 1-3.

1. After suit brought, proceedings were instituted wherein the plaintiff was duly adjudged to be a bankrupt and assignees were appointed. *Held*, that his bankruptcy cannot be set up by the defendants to bar its further prosecution in his name, if either the assignees expressly

BANKRUPTCY (*continued*).

consent thereto, or the claim sued on was, four months before the proceedings, transferred by him in good faith and for a valuable consideration to a party for whose use and benefit the suit was brought. *Thatcher v. Rockwell*, 467.

2. A. entered into a written contract with B., whereby, in consideration of moneys advanced by the latter for the purchase of skins, he agreed that he would tan, finish, and deliver them to B. B., in consideration of a commission on sales, and a further percentage to cover insurance, storage, and labor, agreed to sell them, and put the proceeds, less his commissions and advances, at the disposal of A. It was further agreed that all the skins, whether green, in the process of tanning, tanned, or tanned and finished, should be considered as security for refunding the moneys advanced. The business was, for about six months, carried on until A. became unable, from sickness and financial embarrassment, to proceed with it, and he was then indebted to B., who was aware of his condition. They, in order to carry out the first contract, entered into another, whereby B. was to take possession of A.'s tannery, and run and use it with such materials there as would be necessary to finish and complete the skins, and sell them, the net proceeds to be put to the credit of A. after deducting advances and expenses. A., four days thereafter, filed his petition in bankruptcy. B. took possession of the tannery, and A.'s assignee in bankruptcy brought replevin for the skins. *Held*, 1. That A. had not an unqualified property in them, but they were subject to a charge in the nature of a mortgage in favor of B., which was binding on the parties and A.'s assignee in bankruptcy. 2. That the second contract was not fraudulent, within the meaning of the bankrupt law. *Hauselt v. Harrison*, 401.

BILL OF EXCEPTIONS. See *Arizona ; Practice*, 1, 2, 11.

The court condemns the practice of setting out in the bill of exceptions the entire charge of the court below, instead of confining it to such parts as are the subject of exception. *United States v. Rindskopf*, 418.

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Jurisdiction*, 4.

A bill of exchange, headed "Office of Belleville Nail Mill Co.," and concluding, "charge same to account of Belleville Nail Mill Co., A. B., Pres't, C. D., Sec'y," is the bill of the company, and not of the individual signers; and a declaration thereon against the latter as drawers, setting forth the instrument, and alleging it to be their bill of exchange, is bad on demurrer. *Hitchcock v. Buchanan*, 416.

BILLS OF LADING.

1. The legal character and effect of a bill of lading stated in reference to its negotiable quality. *Pollard v. Vinton*, 7.
2. Neither the master of a steamboat, nor its shipping agents at points on the rivers of the interior where cargo is received and delivered,

BILLS OF LADING (*continued*).

can, by giving a bill of lading for goods not received for shipment, bind the vessel or its owner, and such bill is void even in the hands of a transferee in good faith and for value. *Id.*

3. *Schooner Freeman v. Buckingham* (18 How. 182) cited and approved. *Id.*

BOND. See *Constitutional Law*, 7; *County Bonds*; *Evidence*, 3, 4; *Injunction*, 1, 3; *Internal Improvements*; *Internal Revenue*, 1, 2; *Louisiana*, 1-3; *Municipal Bonds*; *Municipal Subscriptions*, 1-7; *Railroad Companies, Subscriptions to the Capital Stock of*.

On the 5th of December, 1863, after the Proclamation of Emancipation, and in that part of Virginia the people of which were in rebellion against the United States, one resident therein sold and delivered to another a number of slaves, with warranty of title, but not of soundness, the purchaser covenanting "to pay on delivery the sum of \$25,000 in bankable Confederate currency, and, in addition, to give his note," with two persons named as sureties, "for the further sum of \$20,000, to be paid in twelve months after call, in equal annual payments thereafter, or at the purchaser's option it may be, on call, all or a part paid;" and the seller covenanting "not to call upon the purchaser for specie when it is at a premium, but engaging on his part to be satisfied with the bankable currency of the day, on the stipulation to choose his own time for the call." On the 1st of January, 1864, the purchaser, in lieu of the note, made to the seller two bonds, with the same persons as sureties, to pay \$8,000 "on demand, or twelve months thereafter, at the option of the obligors," and \$12,000 "on demand, or two years thereafter, at the option of the obligors," "in the bankable currency of the day, according to the agreement of the 5th of December last," "the said demand shall be made in writing by the obligee, his heirs or legal representatives only." Payment of the bonds was demanded in writing by the obligee after the end of the war of the rebellion, and when the bankable currency of Virginia consisted wholly of notes of the United States or of the national banks. *Held*, in an action on the bonds, that the plaintiff had no ground of exception, 1, to the admission of evidence that, at the time when the agreement and bonds were made, Confederate currency was bankable and was the only currency in circulation in Virginia, the value of gold in relation to such currency was as nineteen or twenty to one, slaves were not selling at all for gold, and these slaves were not worth in Confederate currency so much as \$45,000, and that before the war, when the price of slaves was at its highest, such a lot of slaves would not have been worth more than a fifth of that sum in gold; 2, to an instruction to the jury that, if they found that the bonds were made in reference to Confederate currency, the plaintiff was entitled to recover the amount, therein stipulated to be paid, at the value of Confederate money compared with national currency at the time of the making of the bonds. *Rives v. Duke*, 132.

BRIDGE.

1. Congress, in the exercise of its power over the navigable waters of the United States, which is derived from the commerce clause of the Constitution, gave, by resolution (*ante*, p. 473), its assent that a bridge across the Ohio at Cincinnati might be constructed in accordance with the terms of a charter conferred by State laws ; but in case the free navigation of the river should at any time be substantially and materially obstructed by the contemplated bridge, the right to withdraw such assent, or to direct the necessary modifications and alterations, was reserved. While the bridge was erecting, in compliance with the provisions of law, Congress, by statute (*ante*, p. 473), declared that it should be unlawful to proceed therewith, unless certain specified changes should be made. The company made them, and completed the bridge according to the altered plan. *Held*, 1. That in view of the legislation of Congress the resolution is the paramount law by which the rights involved are to be determined, and that the company, by accepting its provisions, became subject to all the limitations and reservations of power which Congress deemed fit to impose. 2. That the withdrawal by Congress of its assent is, for the purposes of this case, equivalent to a positive enactment that, notwithstanding State legislation, the further maintenance of the bridge according to the plan first prescribed was unlawful. 3. That Congress, by requiring changes and modifications to which the company conformed, incurred no liability to the latter. *Bridge Company v. United States*, 470.
2. Congress could withdraw its assent whenever it determined that in regard to the construction of the bridge other requirements than those originally prescribed were essential to secure due protection to the navigation of the river. *Id.*

CANALS. See *Constitutional Law*, 7.

The legislation of the State of Indiana touching the water-power of the Wabash and Erie Canal, and the rights of certain parties thereto acquired under that legislation, considered. *Held*, 1. That the contractor who, pursuant to his bid under the act of Jan. 9, 1842 (*ante*, p. 510), performed the work, acquired, until he should be fully paid therefor, a property right in the rents of the water-power which he rendered available, and the State became a trustee to collect and pay them to him. 2. That by his contract (*ante*, p. 514) the mill-owner secured, without payment of rent, the right to draw water to his mill from the canal, as long as the latter yielded a surplus beyond the amount required for navigation and for furnishing the earlier leases. 3. That the title to the property, which the State conveyed to the board of trustees of the canal, was subject to the rights so acquired and secured. 4. That where by a decree rendered in a suit whereto the board and the holder of the certificates of stock provided for in the conveyance of the State to the trustees were parties, the part of the canal to which those rights attached was sold and the fund brought into court, the contractor and the mill-

CANALS (*continued*).

owner can intervene in order that their respective rights, either upon the fund or against the purchaser, may be ascertained and determined. *French v. Gapen*; *Spears v. Gapen*, 509.

CASES AFFIRMED.

The following among others expressly approved and affirmed:—

County of Greene v. Daniel, 102 U. S. 187. See *Davenport v. County of Dodge*, 237.

Hackett v. Ottawa, 99 U. S. 86. See *Ottawa v. National Bank*, 342.

Hecht v. Boughton, *ante*, 235. See *United States v. Railroad Company*, 263.

Hills v. Exchange Bank, *ante*, 319. See *Evansville Bank v. Britton*, 322.

Lottawana, The, 21 Wall. 558. See *The "Scotland,"* 24.

Miller v. Brass Company, 104 U. S. 350. See *Mathews v. Machine Company*, 54; *Bantz v. Frantz*, 160.

Norwich Company v. Wright, 13 Wall. 104. See *The "Scotland,"* 24.

Railroad Company v. Loftin, 98 U. S. 559. See *Railroad Company v. Loftin*, 258.

Schooner Freeman v. Buckingham, 18 How. 182. See *Pollard v. Vinton*, 7. *Supervisors v. Stanley*, *ante*, 305. See *Hills v. Exchange Bank*, 319; *Evansville Bank v. Britton*, 322.

Taylor v. Ypsilanti, *ante*, 60. See *New Buffalo v. Iron Company*, 73.

Township of Pine Grove v. Talcott, 19 Wall. 666. See *Taylor v. Ypsilanti*, 60.

Terry v. Hatch, 93 U. S. 44. See *Chatfield v. Boyle*, 231.

United States v. New Orleans, 99 U. S. 582. See *Ralls County Court v. United States*, 733.

CASES EXPLAINED, QUALIFIED, OR OVERRULED.

Goddard v. Ordway, 101 U. S. 745. See *Keyser v. Farr*, 265.

Jifkins v. Sweetzer, 102 U. S. 177. See *Hewitt v. Phelps*, 393.

Town of Eagle v. Kohn, 84 Ill. 292. See *Insurance Company v. Bruce*, 328.

United States v. Clark, 96 U. S. 37. See *United States v. Smith*, 620.

CAUSES, REMOVAL OF.

1. Where in a suit in a State court for the recovery of lands, and damages for the detention of them, the whole controversy, so far as the title to them is concerned, is between the plaintiff, a citizen of the State where the suit is brought, and such of the defendants as are citizens of that State; and the case of the other defendants is a mere adjunct of the principal dispute, the pleadings presenting no separate claim or question, — *Held*, that under the act of March 3, 1875, c. 137, the case is not removable to the Circuit Court. *Corbin v. Van Brunt*, 576.

2. From the decree of a State court rendered in 1874 an appeal was in 1876 taken to the Supreme Court, where, in 1877, the decree was reversed and the cause remanded, "with leave to both parties to

CAUSES, REMOVAL OF (*continued*).

amend pleadings as they may be advised, and to take testimony, and for an account to be taken in accordance with the views contained in the opinion" of the court. On the day after the mandate was received in the court of original jurisdiction the defendant filed his petition, praying that, by reason of the citizenship of the parties, the cause be removed to the proper Circuit Court of the United States. *Held*, that neither the date when, nor the stage of the cause at which, the petition was filed precluded the removal under the act of March 3, 1875, c. 137. *Jifkins v. Sweetzer* (102 U. S. 177) distinguished. *Hewitt v. Phelps*, 393.

3. Section 643 of the Revised Statutes, providing for removal from State courts of civil suits against revenue officers, is not superseded by the act of March 3, 1875, c. 137. *Venable v. Richards*, 636.

CERTIFICATE OF STOCK. See *Bank and Banker*; *Corporation*, 1-4.

CHARTER. See *Bridge*; *Constitutional Law*, 8-16; *Corporation*, 1; *Taxation*, 1.

CHARTER-PARTY.

In *The "Francis Wright,"* 381, the court, upon the facts found, affirms the decree below as to the construction of a charter-party.

CHOSE IN ACTION. See *Jurisdiction*, 6.

CLAIMS AGAINST THE UNITED STATES. See *Limitations, Statute of*, 4; *Officer of the Army*; *Officer of the Navy*.

COLLISION. See *Admiralty*, 4, 5; *Maritime Law*.

COMMERCE. See *Bridge*; *Constitutional Law*, 2-6.

COMPROMISE.

A compromise, as the term is defined by the Code of Louisiana, is as binding on the interested parties as a judgment, and cannot be collaterally assailed. *Oglesby v. Attrill*, 605.

CONDITION. See *Municipal Subscriptions*, 1, 3.

CONFEDERATE BONDS AND NOTES. See *Bond*.

CONFLICT OF LAWS. See *Bridge*; *Constitutional Law*, 2-8; *Maritime Law*, 3, 4; *Municipal Bonds*, 3; *Municipal Subscriptions*, 4; *Taxation*, 3-12.

CONGRESS. See *Bridge*; *Constitutional Law*, 2, 6.

CONSTITUTIONAL LAW. See *Bridge*; *County Bonds*, 3; *Louisiana*, 9, 12; *Municipal Subscriptions*, 4, 6, 8, 9; *Practice*, 15; *Railroad Companies, Subscriptions to the Capital Stock of*, 2, 4; *State Laws*, 3-5; *Water-works*, 2; *Wharf and Wharfage*, 1.

1. The act of Feb. 16, 1875, c. 77, whereby the appellate jurisdiction of this court in admiralty causes is limited to the determination of questions of law arising on the record, is constitutional. *The "Francis Wright,"* 381.

CONSTITUTIONAL LAW (*continued*).

2. In respect to its foreign and inter-state business, a telegraph company is, as an instrument of commerce, subject to the regulating power of Congress, and, if it accepts the provisions of title 65 of the Revised Statutes, it becomes an agent of the United States, so far as the business of the government is concerned. *Telegraph Company v. Texas*, 460.
3. Where it has accepted those provisions, State laws, so far as they impose upon it a specific tax on each message which it transmits beyond the State, or which an officer of the United States sends over its lines on public business, are unconstitutional. *Id.*
4. A town situate upon navigable waters may, without infringing the Constitution of the United States, erect wharves, collect reasonable wharfage proportioned to the tonnage of vessels, and, forbid them, under a penalty, to land within the corporate limits at any point other than the public wharf or landing. *Packet Company v. Catlettsburg*, 559.
5. The ordinances of the town of Catlettsburg (*ante*, p. 560), adopted pursuant to the power conferred by its charter, are not unconstitutional, and this case shows no such abuse of that power as entitles the complainant to relief. *Id.*
6. Congress has not prescribed the rules touching the landing and departure of vessels, wharfage, and other matters relating thereto, which are enforced at points upon the navigable waters of the country where the amount of commerce requires them; and if they may be justly regarded as regulations of commerce, they are such as the States may respectively adopt, until that body deems it expedient to act. *Id.*
7. The State of Louisiana provided for funding her bonds at reduced rates and on certain terms. A subsequent statute prohibits the funding of all questionable obligations, among which are specially designated those issued in aid of the construction of a certain canal, until, by a final decree of the Supreme Court, "they have been declared legal and valid obligations against the State of Louisiana, and that the same were issued in strict conformity to law, and not in violation of the Constitution of this State, or of the United States, and for a valid consideration." A., a holder of the canal bonds, filed his bill praying for such a decree. The court decided that the statute did not allow them to be funded, they not being valid obligations in the hands of the first taker, and that the latter occupied as good a position as a *bona fide* holder. *Held*, that this not being an action to recover the contents of the bonds, and A. having the same right to enforce payment as he ever possessed, the statute as thus construed does not impair the obligation of any contract. *Guaranty Company v. Board of Liquidation*, 622.
8. An institution in the city of New Orleans for the relief of destitute females and helpless children of all religious denominations was incorporated April 29, 1853, by an act of the General Assembly of the State of Louisiana, which declares that from and after its passage

CONSTITUTIONAL LAW (*continued*).

- all the property, real and personal, belonging to the institution, "is hereby exempted from all taxation either by the State, parish, or city in which it is situated, any law to the contrary notwithstanding." By means of donations the institution erected an asylum, and has always fulfilled the objects for which it was established. In the year 1874 certain property — a cotton-press — was devised to it, the revenues of which have been faithfully applied to enable it to carry on its work. Under a statute enacted in pursuance of article 118 of the State Constitution of 1868 (*ante*, p. 364), the city in 1876 imposed upon that property a tax, the validity of which was sustained by the court below. *Held*, 1. That imposing the tax without granting any compensation or indemnity was not a legitimate exercise of the power of dissolving corporations which is reserved in a provision of the Code of Louisiana. 2. That the statute and the provision, as they were construed and applied to the circumstances of this case, are in violation of the tenth section of the first article of the Constitution of the United States. *Asylum v. New Orleans*, 362.
9. Where, by a State statute, the charter of a street-railroad company was repealed, and its franchises and track were transferred to another, and the company refuses to seek a remedy, a stockholder who asks an injunction on the ground that the statute impairs the obligation of a contract will have a standing in a court of equity. *Greenwood v. Freight Company*, 13.
 10. Such a statute impairs the obligation of a contract, unless the legislature reserved the right to repeal the statute conferring the charter. *Id.*
 11. In Massachusetts such a reservation becomes part of every act of incorporation, by virtue of sect. 41, chap. 68, of the General Statutes, which declares, "Every act of incorporation passed after the eleventh day of March, in the year one thousand eight hundred and thirty-one, shall be subject to amendment, alteration, or repeal at the pleasure of the legislature." *Id.*
 12. The origin of this and similar clauses of reservation in the statutes of the States stated. *Id.*
 13. By the exercise of the repealing power reserved by such a clause the charter no longer exists, and whatever validity transactions entered into and authorized by it while it was in force may possess, there can be no new transactions dependent on the special power conferred by the charter. Such power is abrogated when the law granting it is repealed. *Id.*
 14. Neither the rights of the shareholders to the real and personal property of the corporation, nor rights of contract, or choses in action, are destroyed by such repeal; and if the legislature has provided no specific mode of enforcing and protecting such rights, the courts will do so by the means within their power. *Id.*
 15. If the legislature has the power to repeal the statute under which a company was organized, it can charter a new one, and confer the same powers on it as the former possessed; and, so far as the prop-

CONSTITUTIONAL LAW (*continued*).

erty or franchises of the old company are necessary to the public use, it can authorize the new one to take them, on making due compensation therefor. *Id.*

16. A statute which, under this power, repeals an act of incorporation, and at the same time creates a new one with similar powers, the use of which requires the exercise of the right of eminent domain, is not in conflict with the Constitution of the United States, if it provides for compensation for the property of the extinct corporation so taken by the new one. *Id.*

CONTRACT. See *Bank and Banker*, 2; *Bankruptcy*; *Bills of Lading*; *Canals*; *Charter Party*; *Constitutional Law*, 7-16; *Corporation*, 4; *Damages*; *Equity*, 5; *Jurisdiction*, 6; *Negotiable Instruments*; *Sale*; *State Laws*, 1.

1. Where a party who delivered granite was, by the terms of his contract, to receive "the sum of sixty-five cents per cubic foot for all stones when the quarried dimensions do not exceed twenty cubic feet in each stone, and one cent additional for every cubic foot of those having such dimensions exceeding twenty feet," — *Held*, that where the dimensions of a stone exceed twenty feet, he is entitled for each cubic foot sixty-five cents, and one cent additional for every cubic foot of the entire stone. *United States v. Granite Company*, 37.
2. The contract between the parties (*ante*, p. 225) construed. *Held*, that W. having put an end to it by canvassing on behalf of another party for a rival edition of the same work, and cancelling the orders he had obtained for S.'s reprint, S. was not bound thereafter to furnish him with copies of the work on credit. *Warren v. Stoddart*, 224.
3. The advertisement by the officer in command of the arsenal of the United States at Rock Island, Illinois, inviting proposals, and the written bid in connection therewith which he accepted, constitute the terms agreed on by the United States and the successful bidder, for building the masonry of the piers and abutments of the bridge at Rock Island. It appearing that the formal contract subsequently drawn up was intended to embody only those terms, but that by accident or mistake it varied essentially therefrom, — *Held*, 1. That it was competent for the Court of Claims, proceeding as a court of equity jurisdiction under the authority of the act of Aug. 14, 1876, c. 279 (*ante*, p. 680), to reform the contract, and then determine and adjust the accounts of the parties thereunder arising. 2. That the accepted bid did not embrace the coffer-dam work. *Harvey v. United States*, 671.

CONTRACTOR. See *Canals*.

CORPORATION. See *Bank and Banker*; *Bridge*; *Constitutional Law*, 8-16; *Costs*, 5; *Negotiable Instruments*; *Railroad Companies*, *Subscriptions to the Capital Stock of*; *Water-works*; *Wharf and Wharfage*.

1. Certificates of stock of an incorporated company issued in excess of the limit imposed by its charter are void, and the holder of them is

CORPORATION (*continued*).

- not entitled to the rights, nor subject to the liabilities, of a holder of authorized stock. *Scovill v. Thayer*, 143.
2. He is not estopped to set up the invalidity of such unauthorized stock as a defence to an action by creditors against him, to recover the balance unpaid thereon, by the fact that he attended the meeting at which it was voted to issue the same, or that he received and held certificates therefor, or that the officers and agents of the company represented its capital to be equal to the amount of both its authorized and unauthorized stock. *Id.*
 3. When the company which issued stock beyond such limit has been adjudicated bankrupt, the holder of the unauthorized stock is not entitled to have the money paid thereon applied as a credit on the unpaid balance due on his authorized stock. *Id.*
 4. Subscribers to the stock of an incorporated company paid twenty per cent on their shares, and entered into an agreement with the company that no further assessments should be made thereon, and certificates for full-paid shares were issued to them. The company was adjudicated a bankrupt, and to satisfy the claims of its creditors it became necessary to assess the unpaid stock. *Held*, 1. That the agreement was in equity void as to creditors. 2. That before an action at law can be maintained by the assignees in bankruptcy against a stockholder to recover upon his unpaid subscription of stock, some proceedings in the interest of creditors are necessary in a court of competent jurisdiction, to set aside the agreement, and to make an assessment upon such unpaid stock. 3. That until an order of such court to that effect, and an assessment, or some authorized demand upon the stockholder to pay the balance due on his stock, no cause of action accrues against him in favor of the assignees, and the limitation prescribed by the second section of the Bankrupt Act does not begin to run in his favor. *Id.*
 5. Where the action of a corporation is lawful, the motives therefor, or the expediency thereof, is not a subject of judicial inquiry. *Oglesby v. Atrill*, 605.

COSTS. See *Injunction*; *Letters-patent*, 25.

1. An appeal lies from a decree in equity for costs when they are directed to be paid, not by a particular party, but out of a fund in the hands, or under the control, of the court. *Trustees v. Greenough*, 527.
2. A decree made by a Circuit Court of the United States, directing that the complainant be paid his costs and expenses out of a fund in court, — the fund, in the mean time, remaining in the court in course of administration, — is *pro tanto* a final decree, from which, if their amount be sufficient, an appeal will lie. *Id.*
3. A trust estate must bear the necessary expenses of its administration. *Id.*
4. One jointly interested with others in a common fund, who, in good faith, maintains the necessary litigation to save it from waste and secure its proper application, is entitled in equity to the reimburse-

COSTS (*continued*).

ment of his costs as between solicitor and client, either out of the fund itself, or by proportionate contributions from those who receive the benefit of the litigation. *Id.*

5. Where bonds issued by a corporation are secured by a trust fund which the trustee is wasting or misapplying, or which he refuses or neglects to apply to the payment of them, a holder of a portion of them who, in good faith, files a bill to secure a due application of the fund, and succeeds in bringing it under the control of the court for the common benefit of the bondholders, is entitled to be paid from the fund before its distribution his costs, counsel fees, and necessary expenses of the litigation, that is to say, his costs as between solicitor and client. A claim, however, for his private expenses, such as travelling fares and hotel bills, or for his own time or personal services, cannot be allowed. *Id.*
6. The practice of allowing to trustees, complainants, and receivers, and their counsel, large and extravagant counsel fees and commissions payable out of trust funds under the control of the court, commented on and disapproved. *Id.*

COUNSEL FEES. See *Costs*, 4-6.

COUNTY. See *Internal Improvements*.

COUNTY BONDS. See *Railroad Companies, Subscriptions to the Capital Stock of*.

1. County bonds issued in Missouri by a *de facto* county court, which are sealed with the seal and signed by the *de facto* president thereof, cannot, when held by *bona fide* purchasers, be impeached by showing that he was not *de jure* a member of the court. *County of Ralls v. Douglass*, 728.
2. It is no defence to a suit on such bonds so held that the company, in payment of the county subscription to whose capital stock they were issued, was not organized within the period prescribed by law. *Id.*
3. The validity of such bonds cannot be impeached upon the ground that after the Constitution of Missouri of 1865 took effect they, without a vote of the people authorizing it, were issued to pay for such a subscription, if the latter was made pursuant to the authority of the charter granted to the company in 1857. *Id.*
4. Such bonds so issued are admissible in evidence, although no internal revenue stamp is thereunto affixed. *Id.*
5. In a suit against the county on the bonds, the execution of them is admitted, unless it be denied by a plea or an answer, verified by affidavit. *Id.*
6. Where the ownership was alleged in the petition, and the answer denied that the coupons were, in good faith and before they matured, owned by the plaintiff, evidence of the fact is admissible. *Id.*
7. Where judgment has been duly obtained in Missouri against a county upon coupons detached from its bonds, no defence which questions

COUNTY BONDS (*continued*).

- their validity can be pleaded to a *mandamus* commanding the county court to pay the judgment from moneys in the treasury, or raise the means therefore by the levy of a special tax. *Ralls County Court v. United States*, 733.
8. If not restrained by some valid special limitation upon the exercise of its taxing power, a county, authorized by law to contract an extraordinary debt by the issue of negotiable securities, can levy a tax sufficient to meet the principal and interest, as they respectively mature. *United States v. New Orleans* (99 U. S. 582) cited upon this point and approved. *Id.*
 9. A general law confining the annual tax "to defray the expenses of the county" to a fixed per centum is not applicable to such a debt. *Id.*
 10. After the debt was created, laws passed, depriving the county court of the requisite power to levy the tax which it possessed when the bonds were issued, are invalid. *Id.*
 11. The act of Kansas approved March 2, 1872 (Laws of Kansas, 1872, p. 110), does not require that the bonds issued pursuant to its provisions by a county in aid of works of internal improvement shall in all cases be deposited with the treasurer of state before they are delivered to the auditor of state for registration and for his certificate thereon, required by the fourteenth section. *Ante*, p. 742. *Lewis v. Commissioners*, 739.
 12. That certificate, as between the *bona fide* holder for value and the county, is conclusive that the bonds, which by their terms purport to be issued under that act, and which absolutely and unconditionally covenant to pay a certain sum of money at a time and place therein named, are negotiable as the valid obligations of the county. *Id.*

COUPONS. See *County Bonds*, 7; *Railroad Companies, Subscriptions to the Capital Stock of*, 4.

COURT AND JURY. See *Constitutional Law*, 1; *Practice*, 1, 2; *State Laws*, 2.

It is error to withdraw from the jury the determination of a disputed fact in issue. *So held*, where, in a suit against a city for damages sustained by a party who fell at night from a causeway erected within the city limits by an incorporated bridge company, but which was not provided with a proper guard or protection, although it extended from the company's bridge to the level of a street, the question of fact as to whether the city had treated the causeway as a street, and assumed such a control of the *locus in quo* as to incur a liability for its condition, was withdrawn from the jury, and the court instructed them that if the injury was caused by the absence of such a guard or protection the city was liable. *Manchester v. Ericsson*, 347.

COURT-MARTIAL.

1. Where, by a general military court-martial, a person then in the military service of the United States was found guilty of an offence,

COURT-MARTIAL (*continued*).

and sentenced to be discharged from that service, and be imprisoned at hard labor in the penitentiary, — *Held*, that he cannot, under a *habeas corpus*, be discharged from imprisonment if the court had jurisdiction to try him for the offence and was authorized to render the sentence whereof he complains. *Sed quære*, can this court order in his behalf the issue of that writ? *Ex parte Mason*, 696.

2. A., a soldier of the army, while on duty in 1882 at the jail in Washington City, maliciously attempted to kill a prisoner who was, by the authority of the United States, there confined. No application was made for the delivery of A. to the civil authorities, but he was, on a charge of having violated the sixty-second Article of War, tried by a general court-martial, and sentenced to be imprisoned in the penitentiary for the term of eight years, and to be dishonorably discharged from the service, with the forfeiture of his pay and allowance due and to become due. *Held*, 1. That the fifty-eighth and fifty-ninth Articles of War have no application to the case. 2. That the act being a breach of military discipline as well as a crime against society, the court-martial had jurisdiction to try A., and to pronounce the sentence, inasmuch as he was, by the statute in force in the District of Columbia, subject, on conviction, to imprisonment for that period in the penitentiary, and the court could, in its discretion, inflict the other penalties. *Id.*

COURT OF CLAIMS. See *Contract*, 3; *Equity*, 4; *Limitations*, *Statute of*, 4.

COURTS OF THE UNITED STATES. See *Appeal*; *Causes*, *Removal of*; *Contract*, 3; *Internal Improvements*, 2; *Jurisdiction*; *Limitations*, *Statute of*, 4; *Negotiable Instruments*, 1; *Practice*; *State Laws*.

CRIMINAL LAW. See *Court-martial*; *Forgery*.

CUSTOMS DUTIES.

1. A. imported goods invoiced as "white linen torchon laces and insertings," which, as "thread lace and insertings," were, he claimed, subject to a duty of thirty per cent *ad valorem*, under schedule C of sect. 2504, Rev. Stat. He paid, under protest, forty per cent, the duty prescribed by that schedule on manufactures of which flax is "the component material of chief value not otherwise provided for," and he brought suit against the collector. The court instructed the jury to determine from the evidence whether the goods were "thread lace" such as the schedule describes, and, if they were not, to find for the defendant. The jury found for A. *Held*, that the instruction was correct. *Smith v. Field*, 52.
2. The tax on snuff is thirty-two cents per pound. Granulated tobacco is not snuff, within the meaning of the statute. *Venable v. Richards*, 636.

DAMAGES. See *Admiralty*, 4, 5; *Bond*; *Injunction*; *Maritime Law*, 2, 6-9; *Sale*, 2, 3.

1. Where a party, entitled to the benefit of a contract, can, at a trifling

DAMAGES (*continued*).

expense and with reasonable exertions, save himself from a loss arising from a breach of it, it is his duty to do so, and he can charge delinquents only with such damages as with reasonable endeavor he could not prevent. *Warren v. Stoddart*, 224.

2. The validity and the infringement of letters-patent No. 117,925, granted Aug. 8, 1871, for an improvement in gas-pumps for oil-wells, having been established, — *Held*, that the case being an exceptional one, inasmuch as the market for such pumps was confined to a particular region, and the demand for them was so limited that, although no other species of pump could successfully compete with them, a single manufacturer could easily and with reasonable promptness fill all orders for them, the patentee is entitled to recover the difference between the cost of the material and labor used by the infringer in making the pumps which he sold and the price which he received for them. *Manufacturing Company v. Cowing*, 253.

DECREE. See *Appeal*, 3; *Costs*, 1, 2; *Maritime Law*, 6; *Practice*, 8, 13; *Redemption*.

DEED OF TRUST. See *Jurisdiction*, 4; *Redemption*, 2; *Trust and Trustee*, 3.

DELIVERY. See *Sale*.

DESCENT. See *Missouri*.

DEVISE. See *Constitutional Law*, 8.

DISTILLER'S BOND. See *Internal Revenue*, 1, 2.

DIVIDED COURT, JUDGMENT BY. See *Practice*, 6, 7.

DONATION. See *County Bonds*; *Municipal Subscriptions*; *Railroad Companies, Subscriptions to the Capital Stock of*.

DUTIES. See *Customs Duties*.

EJECTMENT. See *Trust and Trustee*, 2.

EMINENT DOMAIN. See *Constitutional Law*, 15, 16.

EQUITY.

- I. JURISDICTION AND GENERAL PRINCIPLES. See *Bank and Banker*, 2; *Canals*; *Constitutional Law*, 9; *Corporation*, 4; *Jurisdiction*, 6; *Redemption*; *Trust and Trustee*, 3; *Water-works*, 3.
1. A patent-right may be subjected by bill in equity to the payment of a judgment debt of the patentee. *Agerv. Murray*, 126.
2. A., to whom had been assigned letters-patent, filed after the expiration of them, which took place July 6, 1873, his bill against B., charging that the latter had during their term infringed them by using the patented invention, whereby he realized gains, profits, and savings, which he should be compelled to account for and pay to the complainant. The bill was, on demurrer, dismissed. *Held*, that the decree below is proper, the bill being merely for an account of

EQUITY (*continued*).

profits and damages against an infringer, and it not appearing from the case thereby made that any ground of equitable jurisdiction exists, or that A. has not a complete remedy at law whereby damages for the wrongs complained of can be recovered. *Root v. Railway Company*, 189.

3. Where a note for the debt of a firm was made by its surviving member, who, to secure its payment, executed a mortgage on real estate, which was the individual property of his deceased partners, — *Held*, that on the ownership being shown on the hearing of the foreclosure suit brought against him and their heirs the bill should be dismissed without prejudice, the ground of equitable relief not having been made out, and the complainant having a complete remedy at law to enforce the payment of the note. *Dowell v. Mitchell*; *Mitchell v. Dowell*, 430.

II. PLEADING AND PRACTICE. See *Costs*; *Injunction*; *Negotiable Instruments*, 2.

4. The rules touching the effect of the findings of fact by the Court of Claims do not apply to the hearing of an appeal from its adjudication on a claim whereof it took cognizance under a special act of Congress, which required it to exercise equity jurisdiction. This court, on such an appeal, must determine the facts as well as the law applicable thereto. *Harvey v. United States*, 671.
5. The paper writing (*ante*, p. 661) is sufficient in form to assign the contract therein mentioned; and where the assignee of such contracts, each executed for a separate parcel of school lands in Iowa, by the proper county officer to a different assignor, tendered the amount due on them and brought suit for a deed of conveyance for the lands, — *Held*, 1. That his assignors, who claim an interest in the respective tracts, are, with the county and its officers, necessary parties, although by the terms of the contract the governor of the State was to execute the conveyance. 2. That the value of the matter in dispute between the complainant and the county is the amount so tendered. *Corbin v. County of Black Hawk*, 659.

ESTOPPEL. See *Corporation*, 2; *Municipal Subscriptions*, 1.

EVIDENCE. See *Bond*; *County Bonds*, 4-6; *Insurance*, 1, 2; *Internal Revenue*, 1; *Jury*; *Letters-patent*, 2; *Sale*, 2; *Trust and Trustee*, 1.

1. Under the statute of Illinois of Feb. 12, 1849, copies of the original daily journals kept by the clerks of each house of the legislature, made by persons contracted with or employed for the purpose, in well-bound books furnished by the secretary of state, and afterwards deposited and kept in his office, are official records, copies of which certified by him are competent evidence. *Post v. Supervisors*; *Amoskeag Bank v. Ottawa*, 667.
2. The printed journals of either house of a legislature, published in obedience to law, are competent evidence of its proceedings. *Id.*
3. In a suit upon city bonds, which recite that they are issued to pay its

EVIDENCE (*continued*).

subscription, the validity of which depended on its ratification "by a majority of the taxpayers," the plaintiff offered in evidence, 1, the poll-books of an election held for that purpose and to elect city officers, for whom no person other than a taxpayer could lawfully vote, and which contain the name of every voter, with the record of his vote on the question, and show a majority of votes cast in favor of the ratification; 2, the proceedings of a meeting of the city council, whereat that fact was shown to their satisfaction by the certificate of the officers of the election, and the bonds ordered to be issued. *Held*, that the offered evidence is competent, and that the plaintiff was not bound to sustain the record by proof that each person voting was thereunto lawfully entitled. *Hannibal v. Fauntleroy*, 408.

4. In a suit upon the official bond of A., approved July 19, 1866, on which day he entered upon duty as collector of internal revenue, and continued therein until May 23, 1867, the United States offered in evidence a duly certified treasury transcript of his accounts. The defendants objected to the evidence on the ground that the bond related solely to his second term of office, and that the balance shown by the transcript was the result of transactions which occurred during his first and second terms, and after the appointment and qualification of his successor. In support of the objection, the defendants produced the bond of his successor, approved April 29, 1867. *Held*, that it was irregular to permit the defendants, in support of their objections, to put in evidence going to the merits of their defence, and that the bond did not show when A.'s successor entered upon duty. 2. That the transcript was admissible, inasmuch as it is entirely consistent with the description of the assessment lists of dates prior to July, 1866, and of those subsequent to May 23, 1867, that the taxes were actually received by him during his second term, and, were it otherwise, the objectionable items could, on mere inspection, be excluded from the account. *United States v. Hunt*, 183.
5. Receipts signed by A. for the aggregate amount of the alphabetical lists, although the latter show in detail the names of persons assessed and the amount severally due from each, are competent evidence for the United States, as is also the original statement signed by him, showing the amounts collected and the amounts abated as uncollectible during the month, and those collected May 18, 1867. *Id.*

EXCEPTIONS. See *Arizona; Practice*, 1, 2, 11, 12.

EXECUTION. See *Practice*, 14, 15; *Water-works*.

1. Judgment creditors who cause an execution to be levied upon lands of the defendant in Texas acquire a lien superior to that of his unrecorded mortgage, whereof, at the date of the levy, they had no notice. *Stevenson v. Texas Railway Company*, 703.
2. A purchaser at the sale under that execution is entitled to all the rights of the creditors, and takes the lands freed from the mortgage, although it be recorded before such sale. *Id.*

EXPERT. See *Jury*.

FORBEARANCE. See *Negotiable Instruments*, 1.

FORECLOSURE. See *Redemption*, 1.

FORFEITURE. See *Appeal*, 5; *Insurance*, 3.

FORGERY.

An indictment on sect. 5431 of the Revised Statutes, alleging, in the words of the statute, that the defendant feloniously, and with intent to defraud, did pass, utter, and publish a falsely made, forged, counterfeited, and altered obligation of the United States, but not further alleging that the defendant knew it to be false, forged, counterfeited, and altered, is insufficient, even after verdict. *United States v. Carll*, 611.

FRAUD. See *Bank and Banker*, 2.

A., wishing to borrow money of B., offered by way of security a mortgage upon his real estate containing sandstone quarries, which had not been sufficiently worked to show their extent and value. He furnished, however, the certificate of two other persons, setting forth, each for himself, that he had for more than twenty years resided in the neighborhood of the quarries, and was acquainted with them, and giving, in his best judgment, their value, which was one hundred and fifty per cent more than the amount of the loan. B. took the mortgage and lent the money, which was not paid. Upon a sale under a decree of foreclosure, the land brought less than one-sixth of the amount loaned. B. thereupon sued A. and the other parties to recover damages for the loss sustained, and he charged that they had conspired to defraud him by a false and fraudulent certificate. *Held*, that the action will not lie, the defendants not being liable for an expression of opinion, however fallacious, in regard to property the value of which depends upon contingencies that may never occur, or developments that may never be made. *Gordon v. Butler*, 553.

FRAUDULENT CONVEYANCE. See *Bankruptcy*; *Jurisdiction*, 2.

1. A mortgage of his entire estate, executed by an insolvent mortgagor to a creditor, who knows of his insolvency, and who, for the purpose of giving him a fictitious credit, actively conceals the mortgage, withholds it from record, and represents him as having a large estate and unlimited credit, by which means he is enabled to contract other debts which he cannot pay, is void at common law. *Blennerhassett v. Sherman*, 100.
2. A mortgage executed by an insolvent with intent to give a preference to a creditor, who has reasonable cause to believe him to be insolvent, and knows that it is made in fraud of the provisions of the Bankrupt Act, and who, for the purpose of evading them, actively conceals it and withholds it from record for two months, is void, although executed more than two months before the filing of a petition in bankruptcy by or against the mortgagor. *Id.*

FRAUDULENT REPRESENTATIONS. See *Fraud*.

GRANULATED TOBACCO. See *Customs Duties*, 2.

HABEAS CORPUS. See *Court-martial*, 1; *Practice*, 9.

HUSBAND AND WIFE. See *Louisiana*, 5-8.

ILLINOIS. See *Evidence*, 1; *Municipal Bonds*; *Municipal Subscriptions*, 8; *Railroad Companies, Subscriptions to the Capital Stock of*; *State Laws*, 5.

1. A judge of a Circuit Court in Illinois cannot, in vacation, appoint a receiver of a railroad corporation. The possession of a receiver so appointed is not that of the court. *Hammock v. Loan and Trust Company*, 77.
2. Section 49 of chapter 37, Rev. Stat. Ill., 1874 (p. 332), is to be construed as if there was no comma between the words "to hear and determine motions" and the words "to dissolve injunctions." Punctuation is no part of a statute. *Id.*
3. The legislation of Illinois, giving the right to redeem mortgaged lands sold under decree, does not embrace the real estate of a railroad corporation mortgaged in connection with its franchises and personal property. Its real estate, personalty, and franchises, so mortgaged, should be sold as an entirety, and without the right of redemption given by statute. *Id.*
4. The chattel-mortgage statute is inapplicable to an ordinary railway mortgage. *Id.*

IMMUNITY FROM TAXATION. See *Constitutional Law*, 8; *Taxation*.

IMPORTS, DUTIES ON. See *Customs Duties*.

INDIANA. See *Canals*; *Taxation*, 10, 12.

INDICTMENT. See *Forgery*.

INDORSEMENT. See *Negotiable Instruments*, 1.

INFORMATION. See *Appeal*, 5.

INFRINGEMENT. See *Damages*, 2; *Equity*, 2; *Letters-patent*, 10, 12, 24.

INJUNCTION. See *Constitutional Law*, 9; *Taxation*, 8.

1. Where an injunction is granted to a party without requiring him to give bond or other undertaking, the Circuit Court has no power to award damages to the injured party, except by such a decree in the matter of costs as may be deemed equitable. *Russell v. Farley*, 433.
2. In the absence of either an act of Congress, or a rule of court on the subject, the Circuit Court can, before granting an injunction, impose terms, and it can relieve therefrom whenever it would be oppressive or inequitable to continue them. *Id.*
3. Where neither the bond given, nor the statutes, nor any rule of court, prescribes a specific mode of assessing damages, and the condition of the bond is simply to pay such as the adverse party may sustain by reason of the injunction, if the court finally decides that the

INJUNCTION (*continued*).

party to whom it was granted is not entitled thereto, — *Seemle*, that the court may, as an incident to its jurisdiction, cause them to be assessed under its own direction, or leave the party to his action at law. *Id.*

4. The court decreed that this was not a case for damages. *Held*, that its action in the premises approaches so nearly to an exercise of discretion, that a very clear showing must be made to induce this court to reverse it. *Id.*

INSOLVENCY. See *Bankruptcy*; *Fraudulent Conveyance*.

INSTRUCTIONS. See *Bond*; *Court and Jury*; *Insurance*, 1; *Internal Revenue*, 2.

INSURANCE. See *Admiralty*, 5.

1. When sued upon a life policy, the company set up that in applying for it the insured did not make true answers to questions touching his habits. The evidence in regard to them was conflicting. The court refused to charge the jury that when "witnesses testify, from their own knowledge of the party and his habits, that he was not of temperate habits, their testimony is entitled to greater consideration by a jury than witnesses who testify otherwise, because they have not seen or known of such habits as are testified to by those who declare that he was not a person of temperate habits." *Held*, that the refusal was proper. *Insurance Company v. Foley*, 350.
2. If the habits of the insured in the usual, ordinary, and every-day routine of his life were temperate, his representations that he was and always had been a man of temperate habits were not untrue, within the meaning of the policy, although he may have had an attack of *delirium tremens* from an exceptional over-indulgence. *Id.*
3. A party whose life was insured died at a place south of a certain parallel of latitude, his visit to which at that season of the year, without the consent of the company, worked a forfeiture of the policy. A relative, ignorant of his death, paid the customary price for a permit to go South to the local agent of the company, who transmitted to its State agents the money, and requested them to obtain the permit and forward it to him. It was not issued, and the agent, shortly after hearing of the death of the insured, tendered the money he had so received. *Held*, that the facts did not constitute a waiver of the forfeiture, and if they did, it was not, under the circumstances, binding. *Bennecke v. Insurance Company*, 355.

INTERNAL IMPROVEMENTS. See *County Bonds*; *Municipal Subscriptions*; *Railroad Companies*, *Subscriptions to the Capital Stock of*.

1. Where a precinct in an organized county in Nebraska voted, pursuant to the statute of that State approved Feb. 15, 1869, to aid a work of internal improvement, and bonds were, as in this case, issued therefor by the county commissioners (*ante*, p. 238). — *Held*, that, to enforce payment, the holder of them must sue the county, and

INTERNAL IMPROVEMENTS (*continued*).

judgment, if rendered in his favor, will be in form against it, and be collected by a tax upon the taxable property of the precinct. *Davenport v. County of Dodge*, 237.

2. The courts of the United States cannot by *mandamus* compel the collection of a tax to pay such bonds until a judgment upon them shall be obtained. *County of Greene v. Daniel* (102 U. S. 187) cited on this point and approved. *Id.*

INTERNAL REVENUE. See *Appeal*, 5; *County Bonds*, 4; *Evidence*, 4.

1. Suit on a distiller's bond, the breach assigned being his non-payment of the tax due on a specified number of gallons of spirits alleged to have been distilled at his distillery between certain dates. *Held*, that *prima facie* proof of his liability is furnished by the assessment of the Commissioner of Internal Revenue; but it may be overcome by evidence showing either that the tax was paid, or that the whole or a part of the spirits in question was not distilled, within the period mentioned. *United States v. Rindskopf*, 418.
2. The point in controversy being as to the quantity of spirits produced upon which the tax was not paid, the court below erred in charging the jury that the assessment must stand as an entirety or be wholly rejected. *Id.*
3. Under the act of July 14, 1870, c. 255, the proprietor of friction-matches, who furnished his own dies, was entitled to a commission of ten per cent, payable in money upon the amount of adhesive stamps over \$500 which he at any one time purchased for his own use from the Bureau of Internal Revenue. *Swift Company v. United States*, 691.
4. The provisions of the statute being clear to that effect, he is entitled to recover pursuant thereto, although a different contemporaneous construction of them was given by the bureau, it not appearing that he acquiesced therein. *Id.*

INTER-STATE COMMERCE. See *Constitutional Law*, 2-6.JUDGMENT. See *Compromise*; *County Bonds*, 7; *Equity*, 1; *Internal Improvements*; *Practice*, 3-9, 14.

Cotton seized under color of the act of March 12, 1863, c. 20, was by A., the deputy general agent of the treasury, consigned, subject to freight and charges, to B., supervising special agent of the treasury at New Orleans. It was there received by a firm who paid the charges on A.'s order, to hold "the amount against the cotton." Shortly thereafter A. directed B. to deliver the cotton to C., the claimant, upon his giving a bond of indemnity. C. gave the required bond, to save harmless the government, the seizing agent, and the officers and agents of the treasury, on account of the seizure and detention of the cotton, and, on paying freight and charges, he, by order of B., received the cotton. He subsequently sued the firm for the amount so paid, and recovered judgment, which a member of the firm paid, and then brought this action against A. for the money. *Held*, 1. That A., being neither a party nor a privy to the suit of C.

JUDGMENT (*continued*).

against the firm, and it not appearing that notice of its pendency was ever given to him or any agent of the government, he is not bound by the judgment there rendered. 2. That the court below having in this action given a certificate of probable cause, as provided by sect. 989, Rev. Stat., it appears that A. could have successfully defended the suit brought by C., and been protected by the bond given by the latter. *Flanders v. Seelye*, 718.

JUDICIAL DISCRETION. See *Injunction*, 4.

JURISDICTION.

I. OF THE SUPREME COURT. See *Constitutional Law*, 1; *Equity*, 4; *Practice*, 8.

1. Where the land within a particular district was assessed for taxation, each owner being liable only for the amount wherewith he was separately charged, and the bill of complaint, filed by a number of them, praying for an injunction against the collection of the assessment, was dismissed, and they appealed here,—*Held*, that the several amounts cannot be united to make up the sum necessary to give this court jurisdiction. *Russell v. Stansell*, 303.
2. A person having made an assignment in favor of his creditors, one of them in behalf of himself and such others as would unite with him, filed his bill to set aside as fraudulent a previous conveyance in favor of A., and to exclude from the benefit of the assignment A., who, he alleged, was not a creditor. Several creditors united as complainants. The bill was dismissed, and they appealed. *Held*, that the matter in dispute is not the entire fund, but their distributive shares thereof, and the amount being less than \$5,000, this court has no jurisdiction. *Chatfield v. Boyle*, 231.
3. *Terry v. Hatch* (93 U. S. 44) cited and approved. *Id.*
4. This court has jurisdiction to re-examine the judgment of a State court involving the right of a national bank to purchase a promissory note secured by a deed of trust upon real estate. A motion to affirm will, however, be granted where that is the only Federal question in the case and the decision below is in recognition of the right. *Swope v. Leffingwell*, 3.
5. Where a petition of the owner of a vessel claiming the benefit of the limited liability provided by sect. 4283 of the Revised Statutes was rejected and an appeal taken,—*Held*, that this court has jurisdiction where the aggregate amount claimed is more than \$5,000 in excess of the value of the vessel. *The "Mamie,"* 773.

II. OF THE CIRCUIT COURT. See *Appeal*, 3, 6; *Causes, Removal of; Injunction*, 1-3; *Negotiable Instruments*, 1.

6. As a suit to compel the specific performance of a contract, or to enforce its other stipulations, is a suit to recover the contents of a chose in action, it was not, under sect. 629, Rev. Stat., maintainable in the Circuit Court by an assignee, if it could not have

JURISDICTION (*continued*).

been prosecuted there by the assignor, had no assignment been made. *Corbin v. County of Black Hawk*, 659.

III. IN GENERAL. See *Admiralty*, 1, 2; *Court-martial*; *Limitations, Statute of*, 1-3; *Louisiana*, 2, 8.

JURY. See *Insurance*, 1.

In an action for legal services, the opinions of attorneys as to their value are not to preclude the jury from exercising their "own knowledge and ideas" on the subject. It is their province to weigh the opinions by reference to the nature of the services rendered, the time occupied in their performance, and other attending circumstances, and by applying to them their own experience and knowledge of the character of such services. The judgment of a witness is not, as a matter of law, to be accepted by the jury in place of their own. *Head v. Hargrave*, 45.

KANSAS. See *County Bonds*, 11.

LACHES. See *Bank and Banker*, 2; *Letters-patent*, 9, 14; *Limitations, Statute of*, 2.

LAND GRANTS. See *Public Lands*.

LAW AND FACT. See *Constitutional Law*, 1; *Court and Jury*; *Equity*, 4; *Practice*, 1, 2; *State Laws*, 2.

LEGISLATIVE JOURNALS. See *Evidence*, 1, 2; *State Laws*, 5.

LETTERS-PATENT. See *Damages*, 2; *Equity*, 1, 2.

1. A specification in letters-patent is sufficiently clear and descriptive, when expressed in terms intelligible to a person skilled in the art to which it relates. *Loom Company v. Higgins*, 580.
2. Evidence is admissible to show the meaning of terms used in letters-patent, as well as the state of the art. *Id.*
3. If an improvement of a well-known appendage to a machine is fully described in a specification, it is not necessary to show the ordinary modes of attaching the appendage to the machine: the letters-patent are to be read as if the machine and its appendage were present, or in the mind of the reader, and he a person skilled in the art. *Id.*
4. *Quære*, whether the defence of insufficient description can be set up without alleging an intent to deceive the public. *Id.*
5. A new combination of known devices, producing a new and useful result (as that of greatly increasing the effectiveness of a machine), is evidence of invention, and may be the subject of letters-patent. *Id.*
6. Webster's improvement in looms for weaving pile fabrics, which consisted in such a new combination of known devices as to give to a loom the capacity of weaving fifty yards of carpet a day, when before it could only weave forty, — *Held*, to be patentable, and his letters-patent for the same, dated Aug. 27, 1872, sustained. *Id.*

LETTERS-PATENT (*continued*).

7. Of the two original inventors, the first will be entitled to letters-patent, unless the other puts the invention into public use more than two years before the application for them. *Id.*
8. An invention relating to machinery may be exhibited as well in a drawing as in a model, so as to lay the foundation of a claim to priority, if sufficiently plain to enable those skilled in the art to understand it. *Id.*
9. Though the defence of prior invention ought to be set out in the answer, yet if the omission to set it out is not objected to at the proper time in the court below, it cannot be objected to here. *Id.*
10. Letters-patent granted by the United States are, as against an infringer, *prima facie* evidence of the novelty and utility of the device or invention for which they were granted. *Lehnbeuter v. Holthaus*, 94.
11. Letters-patent No. 8814, granted Nov. 30, 1875, to Joseph Lehnbeuter and Casper Claes for a design for show-cases, are valid. *Id.*
12. The claim for which Esek Bussey secured, July 18, 1876, letters-patent No. 180,001, is confined to an automatic device for raising up and letting down a hinged oven-shelf, and they are not infringed by constructing and operating a shelf as described in letters-patent No. 205,704, granted Jan. 9, 1878, to E. C. Little and D. H. Nation. The devices in both letters, though in some respects different, operate upon a principle which has been long used in other contrivances by which the same general effect is produced. *Bridge v. Excelsior Company*, 618.
13. Reissued letters-patent No. 4731, granted Feb. 6, 1872, to Gideon Bantz for an improvement in boiler furnaces for burning wet fuel, are void, inasmuch as the specification and claim attached to the original letters No. 26,616, which bear date June 22, 1858, were confined to a combination therein described, whilst the reissued letters cover the several elements of that combination as distinct inventions. *Bantz v. Frantz*, 160.
14. If the first specification was defective in not asserting a separate claim for each device, the right of the patentee to make the requisite correction was forfeited by his delay and laches. *Miller v. Brass Company* (104 U. S. 350) cited upon this point and reaffirmed. *Id.*
15. Letters-patent No. 4887, bearing date April 30, 1872, granted to Washburn Race and S. R. C. Mathews for an improvement in hydrants, being a reissue of letters No. 19,206, dated Jan. 26, 1858, are void, inasmuch as, by claiming the elements of the invention separately and not as a combination, which is claimed in the original letters, they enlarge the scope of the latter, and they also cover a different invention. *Miller v. Brass Company* (104 U. S. 350) cited and approved. *Mathews v. Machine Company*, 54.
16. Letters-patent No. 96,959, bearing date Nov. 16, 1869, granted to said Race and Mathews for an improvement in hydrants, are also void, as they embrace matters previously known and in public use. *Id.*
17. Reissued letters-patent No. 6370, bearing date April 6, 1875, granted to William J. Wilson "for improvements in processes for preserving

LETTERS-PATENT (*continued*).

- and packing cooked meat," are void, all the elements therein described being old, and the aggregation of them bringing out no new product, nor any old product, in a cheaper or otherwise more advantageous way. *Packing Company Cases*, 566.
18. The first and third claims of the reissued patent No. 7923, bearing date Oct. 23, 1877, granted to John A. Wilson "for improvement in sheet-metal cases," are void for want of novelty. *Id.*
 19. Reissued letters-patent No. 4870, bearing date April 16, 1872, granted to Asa Johnson and Thomas S. Sandford — the latter being the assignee of an interest therein — for an alleged new and useful improvement in fastening sheet metals to roofs, are void, inasmuch as several of the devices essential to the combination described in the original letters are omitted, and the remaining parts, for which a separate claim is made, operate in a different way and for a different purpose. *Johnson v. Railroad Company*, 539.
 20. Contrivances substantially the same as that set forth in the second claim of the reissued letters (*ante*, p. 544), for fastening metals together, wherein, by the use of slotted side-plates and an adjusting bolt, allowance is made for their contraction and expansion caused by changes in temperature, were in use before the issue of the original letters. *Id.*
 21. Reissued letters-patent No. 4106, bearing date Aug. 23, 1870, granted to Charles Guidet for an improved stone pavement, are void, as before his application there were in use pavements consisting of rough blocks of the same form, and arranged in substantially the same way, as that described in his specification. His claim is for rougher side surfaces than those found in the old pavements, although he does not state the degree of roughness required, and, the change being only in degree, is not patentable. *Guidet v. Brooklyn*, 550.
 22. A party, having the absolute ownership of a patented machine, has the right either to use it during the extended term of the letters-patent, or to transfer such ownership and right to another. *Paper-bag Cases*, 766.
 23. A license for the exclusive use of such a machine within certain territory does not continue longer than the term of the original letters. *Id.*
 24. A licensee cannot, as such, sue for an infringement, but must assert his rights in the name of the original patentee. *Id.*
 25. Where the matter in controversy is merely the costs of suit, an appeal from the decree in which they were taxed will not be considered. *Id.*

LIABILITY, LIMITATION OF. See *Admiralty*, 3; *Jurisdiction*, 5; *Maritime Law*.

LICENSE. See *Letters-patent*, 23, 24.

LIEN. See *Bank and Banker*, 2; *Bankruptcy*, 2; *Louisiana*, 1; *Negotiable Instruments*, 2; *Redemption*, 2.

LIFE INSURANCE. See *Insurance*.

LIMITATIONS, STATUTE OF. See *Corporation*, 4; *Public Lands*, 2.

1. Section 5057 of the Revised Statutes (*ante*, p. 642) does not, in the cases therein mentioned, declare that the court, wherein the suit is brought more than two years after the cause of action accrued, shall not have jurisdiction thereof. It is merely a statute of limitations, and, as such, should be construed and enforced. *Upton v. McLaughlin*, 640.
2. If, in a suit by an assignee in bankruptcy, it does not appear that the defendant raised in some appropriate form, in the court of original jurisdiction, the question as to the application of the statute of limitations, he is precluded from so doing in the appellate court. *Id.*
3. The Code of Civil Procedure of the Territory of Wyoming is not in conflict with this ruling. *Id.*
4. A paymaster in the army, from whom public funds had been stolen, the amount of which he subsequently paid to his chief paymaster, pursuant to the order of the Paymaster-General, filed his petition in the Court of Claims for relief, under sects. 1059 and 1062 of the Revised Statutes. *Held*, that the limitation of six years prescribed by sect. 1069 is applicable to the case. *United States v. Smith*, 620.
5. *United States v. Clark* (96 U. S. 37) distinguished. *Id.*

LIMITED LIABILITY OF SHIP-OWNERS. See *Admiralty*, 3; *Jurisdiction*, 5; *Maritime Law*.

LIS PENDENS. See *Louisiana*, 2.

LOCATOR. See *Public Lands*, 2, 3.

LOUISIANA. See *Compromise*; *Constitutional Law*, 7, 8; *Wharf and Wharfage*.

1. Where an order directing the seizure and sale of lands in Louisiana, whereon the vendor retained his lien and privilege, has been made in a proceeding to enforce the payment of an instalment of the purchase-money, and an appeal is taken, the surety on the bond is liable for the claim sued on. *Marchand v. Frellsen*, 423.
2. The pendency of proceedings on appeal does not render void an order of another court of competent jurisdiction for the seizure and sale of the lands to satisfy a subsequent instalment, nor does the payment of the first bond satisfy that given on appeal from the second order. *Id.*
3. The application of the proceeds of the sale under the first order to satisfy, pursuant to its requirements, the several instalments *pro rata*, does not discharge the surety from the payment of the unpaid balance, for which he was otherwise liable. *Id.*
4. The seizure and sale under executory process, authorized by art. 732 of the Code of Practice of Louisiana, vest in the purchaser, as against the owner and subsequent incumbrancers, an absolute title to the mortgaged lands. *Carite v. Trotot*, 751.

LOUISIANA (*continued*).

5. Such incumbrancers cannot set aside a conveyance by the creditor to the mortgagor's wife, made pursuant to his agreement with her, that should he purchase the lands when they were subjected to judicial sale, he would sell them to her. *Id.*
6. "The separation of property obtained by the wife" is not rendered void by the omission to publish it pursuant to art. 2429 of the Civil Code, nor by the consent of the husband that the case might be tried, nor by the failure to issue execution on the judgment authorizing the separation, where the object of the suit was merely to put an end to the community and to secure to her and her children the right to her future earnings, he not being condemned to pay any money other than the costs. *Id.*
7. Under art. 2425 of the Civil Code, his financial embarrassment is sufficient to authorize a judgment of separation of property in her favor. *Id.*
8. The proper parish court had jurisdiction of such a suit, although it was not prosecuted for the recovery of money or money's worth. *Id.*
9. The act of the General Assembly of the State of Louisiana, of Feb. 23, 1852, entitled "An Act to consolidate the city of New Orleans, and to provide for the government and administration of its affairs," is not in conflict with article 118 of the State Constitution of 1845, which declares that "every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title." Nor does section 37 of the act (*ante*, p. 279) violate article 127 of that Constitution (*ante*, p. 290), touching equality and uniformity of taxation. *Louisiana v. Pilsbury*, 278.
10. That article applied only to State taxes, and required that all the property on which they were levied — not all property in the State — should be taxed according to its value, and conformably to some fixed rate or mode. *Id.*
11. By accepting the bonds which were issued under that section, and the supplementary act passed the same day, known as No. 72, and which formed the consolidated debt of New Orleans, the creditors of the city, of the municipalities, and of Lafayette entered into a contract with the city, an essential part whereof was the pledge to levy an annual tax of a specified amount for the payment of interest and principal. Although slavery has been abolished, the obligation of the city to raise the required fund by special tax on real estate remains, and the right of the bondholders to enforce it is not waived by having received for years without objection the stipulated interest raised in another mode than that for which the contract provides. *Id.*
12. The act of the General Assembly of Louisiana of March 6, 1876, so far as it relates to the consolidated debt, is null and void, inasmuch as it provides for exchanging the debt for premium bonds, each of the denomination of twenty dollars, dated Sept. 1, 1875, the principal and interest to be paid at a time to be determined by chance in a lottery, and prohibits the levying of the stipulated tax to pay

LOUISIANA (*continued*).

the interest due upon that debt. It also attempts to deprive the creditor of the means of enforcing payment which existed when the debt was contracted, and it furnishes no other adequate remedy. *Id.*

MANDAMUS. See *County Bonds*, 7; *Internal Improvements*, 2.

After the Circuit Court has denied a motion for an order remanding a cause to the State court, whence it was removed, a *mandamus* will not lie compelling it to make such order. *Ex parte Hoard*, 578.

MARITIME LAW. See *Admiralty; Jurisdiction*, 5; *Shipping Commissioner*.

1. The act of March 3, 1851, c. 43, reproduced in the Revised Statutes in sects. 4282, &c., applies to owners of foreign as well as domestic vessels; and to acts done on the high seas as well as in waters of the United States, except when a collision occurs between two vessels of the same foreign nation, or perhaps of two foreign nations having the same maritime law. *The "Scotland,"* 24.
2. The maritime law of the United States, as found in the statute, is the same as the general maritime law of Europe, and is different from that of Great Britain in this, that the former gauges the liability by the value of the ship and freight after loss or injury, and the latter by their value before the loss or injury, not exceeding £15 per ton. *Id.*
3. The maritime law is only so far operative as law in any country as it is adopted by the laws and usages of that country. The principles laid down on this subject in *Norwich Company v. Wright* (13 Wall. 104), and in *The Lottawana* (21 *id.* 558), reasserted and affirmed. *Id.*
4. The courts of every country will administer justice according to its laws, unless a different law be shown to apply; and this rule applies to transactions taking place on the high seas. If a collision occur on the high seas between two vessels, controversies arising therefrom will be governed in the courts of this country by our laws, unless the two colliding ships belong to the same foreign country, or perhaps to different countries using the same law, when they will be governed by the laws of the country to which they belong. *Id.*
5. Ship-owners may avail themselves of the defence of limited responsibility by answer or plea as well as by the form of proceeding prescribed by the rules of this court, at least so far as to obtain protection against the libellants or plaintiffs in the suit. Those rules were not intended to restrict them, but to aid them in bringing into concourse those having claims against them arising from the acts of the master or crew. *Id.*
6. If the owners plead the statute, a decree may be made requiring them to pay into court the limited amount for which they are liable, and distributing said amount *pro rata* amongst the parties claiming damages. Such a proceeding in a court of admiralty would be an "appropriate proceeding" under the statute. *Id.*

MARITIME LAW (*continued*).

7. It is not necessary that ship-owners should surrender and transfer the ship in order to claim the benefit of the law. That is only one mode of relief. They may plead their immunity, and, if found in, or confessing, fault, may abide a decree against them for the value of ship and freight as found by the proofs. *Id.*
8. The rule of damages, in case of goods lost or destroyed on the high seas by the fault of those in charge, is the price or value of the goods at the place of shipment, with all charges of lading, insurance, and transportation, and interest at six per cent per annum, but without any allowance for anticipated profits: *Id.*
9. When the goods have no market value at the place of shipment, resort may be had to other means of ascertaining their actual value, such as the price which they usually bring at the port of destination, with a fair deduction for profits and charges. *Id.*

MASSACHUSETTS. See *Constitutional Law*, 11.

MICHIGAN. See *Municipal Subscriptions*, 3, 4.

MILL-OWNER. See *Canals*.

MISSOURI. See *County Bonds*, 1-10; *Municipal Subscriptions*, 9-11.

1. By the laws of Missouri in force in 1866 an alien was capable of taking by descent lands in that State, and of holding and alienating them, if he either resided in the United States, and, by taking the oath prescribed by the act of Congress, had declared his intention to become a citizen, or resided in Missouri, although the ancestor through whom he claimed was, at the time the descent was cast, an alien, who, by reason of his non-residence, was incapable of inheriting. *Sullivan v. Burnett*, 334.
2. The statute of 1855, which gave to a non-resident alien the right within a limited period to sell and convey the lands whereof the intestate died seized, applied only where at the time of his death there was no person capable of taking them by descent. *Id.*
3. The statute of March 30, 1872 (*ante*, p. 336), has no retrospective operation. *Id.*

MORTGAGE. See *Bankruptcy*, 2; *Equity*, 3; *Execution*; *Fraud*; *Fraudulent Conveyance*; *Illinois*, 3, 4; *Louisiana*, 4, 5; *Redemption*.

MUNICIPAL BONDS. See *Evidence*, 3; *Louisiana*, 11; *Municipal Subscriptions*; *State Laws*, 5; *Water-works*, 2, 3.

1. *Hackett v. Ottawa* (99 U. S. 86) cited, and the doctrines therein set forth reaffirmed. *Ottawa v. National Bank*, 342.
2. Municipal bonds in Illinois, payable to a person therein named or bearer, are transferable by delivery without indorsement, and the holder may sue in his own name to recover their contents. *Id.*
3. Where, without express legislative authority, they are payable at a place in another State, *quære*, What law should govern in determining the rights of the holder who claims them by delivery only. *Id.*

MUNICIPAL CORPORATION. See *Constitutional Law*, 4-6; *Court and Jury*; *Evidence*, 3; *Municipal Bonds*; *Municipal Subscriptions*; *Water-works*; *Wharf and Wharfage*.

MUNICIPAL SUBSCRIPTIONS.

1. Where a city having by statute authority to make an unconditional subscription to the stock of a railroad company, and to deliver its bonds in advance of the construction of the road, issued them, representing in effect by their recitals that they conformed to the statutory requirements, and that its liability thereon was complete, — *Held*, that the bonds are valid in the hands of a *bona fide* holder for value, and that the city is estopped from showing that it had imposed certain conditions upon its liability, although the statute declares that in such an event the bonds should not be binding until such conditions were performed. *Insurance Company v. Bruce*, 328.
2. *Town of Eagle v. Kohn* (84 Ill. 292) commented upon and distinguished. *Id.*
3. Under a statute of Michigan of March 22, 1869, authorizing cities to pledge their aid, "by loan or donation, with or without conditions," in the construction of any railroad by a company organized under the laws of the State, the electors of a city voted to issue its bonds to aid such a company upon certain conditions, touching the eastern terminus of the road, and providing that if any citizen should subscribe and pay for stock in the company the latter should deliver him such bonds therefor, and that the citizens should, within thirty days, have the right to subscribe for the stock to the amount of aid voted. The bonds were delivered to the company. *Held*, that the conditions were not unauthorized by the statute, and constitute no defence to an action on the bonds. *Taylor v. Ypsilanti*, 60.
4. The court adheres to the ruling in *Township of Pine Grove v. Talcott* (19 Wall. 666), and measures the rights and obligations of the parties under the statute in question, as it was there enforced, and as it was acted upon by all the departments of the State government at and before the time when the company earned the bonds by the performance of the prescribed conditions. The court, therefore, declines to accept the subsequent adjudications of the Supreme Court of Michigan, declaring the statute to be repugnant to the Constitution of the State. *Id.*
5. *Taylor v. Ypsilanti*, *supra*, (p. 60,) cited and approved. *New Buffalo v. Iron Company*, 73.
6. An assignee of municipal bonds issued to a railroad company succeeds to its rights by virtue of its contract with the municipality, although at the time of the assignment the statute under which they were issued was declared by the Supreme Court of the State to be repugnant to the Constitution. *Id.*
7. Bonds voted in aid of one company, which, under the law then in force, was subsequently consolidated with another company, may be delivered to the consolidated company. *Id.*
8. The court adheres to the decision of the Supreme Court of Illinois

MUNICIPAL SUBSCRIPTIONS (*continued*).

declaring that the provision in the existing Constitution of that State entitled "Municipal subscriptions to railroads or private corporations" took effect July 2, 1870. *Wade v. Walnut*, 1.

9. The court again decides that section fourteen of the eleventh article of the Constitution of Missouri of 1865 (*ante*, p. 456) did not withdraw or curtail any authority which a municipal corporation then possessed to subscribe for stock in, or loan its credit to, a railroad company. *Louisiana v. Taylor*, 454.
10. The charter of the Louisiana and Missouri River Railroad Company, granted by the act of the General Assembly of Missouri, approved March 10, 1859, conferred upon the city of Louisiana power to subscribe to the stock of that company. By its act of incorporation, passed June 12, 1866, the city was authorized to pay for its subscription by the issue of bonds, if the ordinance providing therefor was approved by a majority of the votes cast at any general election held in the city, or at one expressly ordered for the purpose. *Id.*
11. The power thus conferred was not affected by the general railroad law of 1866. *Id.*

NATIONAL BANKS. See *Jurisdiction*, 4; *Taxation*, 3-12.

NAVIGABLE WATERS. See *Bridge*; *Canals*; *Constitutional Law*, 4-6.

NAVY. See *Officer of the Navy*.

NEBRASKA. See *Internal Improvements*.

NEGLIGENCE. See *Admiralty*, 1, 2; *Court and Jury*.

By reason of a collision of railway trains in Virginia a passenger was injured, and becoming thereby disordered in mind and body he some eight months thereafter committed suicide. *Held*, in a suit by his personal representatives against the railway company, that, as his own act was the proximate cause of his death, they are not entitled to recover. *Scheffer v. Railroad Company*, 249.

NEGOTIABLE INSTRUMENTS. See *Bills of Exchange and Promissory Notes*; *Bills of Lading*, 1; *County Bonds*; *Municipal Bonds*.

1. A corporation organized under the laws of South Carolina agreed, by an instrument under its seal, to pay on a certain date to A. a sum of money at a specified rate of interest, and by an indorsement under its seal (*ante*, p. 177), on the paper after it matured, further agreed, in consideration of forbearance to a date named, to pay at a higher rate of interest the money to *bearer*. *Held*, 1. That the indorsement is a new contract upon sufficient consideration, and is negotiable within the meaning of the law merchant, and by the law of that State. 2. That B., the lawful holder thereof, is not precluded from suing thereon in the Circuit Court, by the fact that A. is a citizen of that State. *Manufacturing Company v. Bradley*, 175.
2. Where the paper by its terms creates a lien for the debt therein mentioned, the stockholders also being by law jointly and severally

NEGOTIABLE INSTRUMENTS (*continued*).

liable therefor, and their property subject to seizure upon an execution against the company, — *Held*, that, to a suit in equity seeking a decree for the debt, and the enforcement of B.'s lien, the stockholders are proper parties defendant. *Id.*

3. The fact that after the paper had matured the president of the company bought it and transferred it by delivery to B. furnishes no defence to a recovery, the purchase having been made in good faith with his own means, and sanctioned by the directors of the company. *Id.*

NEW ORLEANS. See *Constitutional Law*, 8; *Louisiana*, 9-12; *Wharf and Wharfage*.

NEW TRIAL. See *Arizona*.

NEW YORK. See *Practice*, 14, 15; *Taxation*, 3-9, 12.

NOTICE. See *Execution*; *Judgment*.

OFFICER OF THE ARMY.

1. An officer of the army who is "retired from active service" is still in the military service of the United States, and, in addition to the per centum of the pay of the rank on which he was retired, is entitled to the ten per centum allowed by law for each term of five years' service. *United States v. Tyler*, 244.
2. The ten per centum is to be computed on the sum primarily fixed as such reduced pay, with the increase for each five years previously earned added to that sum, when its increase for any new period of five years is to be computed. *Id.*

OFFICER OF THE NAVY.

An officer of the navy, while engaged in public business, travelled by land and sea under orders, the travel by sea not being in a public vessel of the United States. *Held*, that under the act of June 30, 1876, c. 159 (19 Stat. 65), he is entitled to mileage for the whole distance travelled. *United States v. Temple*, 97.

OPINION, CERTIFICATE OF DIVISION OF. See *Practice*, 6, 7.

PARTIES. See *Equity*, 5; *Negotiable Instruments*, 2.

PARTNERSHIP. See *Equity*, 3.

PATENT OF THE UNITED STATES FOR LAND. See *Public Lands*, 3.

PATENT RIGHT. See *Damages*, 2; *Equity*, 1, 2; *Letters-patent*.

PAYMASTER. See *Limitations, Statute of*, 4.

PENNSYLVANIA. See *Bank and Banker*, 1.

PLEADING. See *Bills of Exchange and Promissory Notes*; *Letters-patent*, 9; *Maritime Law*, 5, 6; *Practice*, 16; *Taxation*, 9.

PRACTICE. See *Appeal*; *Bill of Exceptions*; *Causes, Removal of*; *Constitutional Law*, 1; *County Bonds*, 5, 6; *Court and Jury*; *Equity*, 4, 5; *Injunction*; *Judgment*; *Jurisdiction*; *Letters-patent*, 25; *Limitations, Statute of*; *Mandamus*; *Shipping Commissioner*, 2; *State Laws*; *Writ of Error*.

1. Where the court below, when thereunto requested, refuses to give any finding upon an ultimate disputed fact, established by competent evidence and which is involved in the cause, and material to its determination, or where, against remonstrance, it finds such a fact, in the absence of all evidence, the ruling, if excepted to at the time, and incorporated in a bill of exceptions which states the alleged error and the ground relied on below to sustain the objection presented, may, as a question of law, be reviewed here. *The "Francis Wright,"* 381.
2. The court condemns the practice of drawing up bills of exception, which, so far from being "prepared as in actions at law," are so framed as, if possible, to secure here a re-examination of the facts. *Id.*
3. A judgment will not be reversed because the court below erred in directing the order in which the evidence was introduced, unless it clearly appears that the complaining party was thereby injured. *Clark v. Fredericks*, 4.
4. An objection to matters which was not brought to the attention of the court below will not be considered here. *Id.*
5. The finding below covering all the issues is conclusive, and where a request for special findings was refused, this court will assume that they were not established by the evidence. *Id.*
6. The judgment rendered in an action at law where the judges of the Circuit Court were opposed in opinion cannot be re-examined here otherwise than on a writ of error. *Bartholow v. Trustees*, 6.
7. At the hearing in the Circuit Court of an appeal from the District Court, the district judge who rendered the decision appealed from cannot, under sect. 614 of the Revised Statutes, give a vote, even by consent of parties, when another judge is present; and the case cannot be brought to this court upon a certificate of division of opinion between him and the other judge. *United States v. Emholt*, 414.
8. An appeal is the only form of proceeding by which this court can review the judgment or the decree of a Territorial court in a case where there was not a trial by jury. *Hecht v. Boughton*, 235; *United States v. Railroad Company*, 263.
9. A writ of error or an appeal will not lie from the final judgment or decree of the Supreme Court of the Territory of Wyoming, unless the amount in controversy exceeds \$1,000, or the decision be rendered upon a writ of *habeas corpus* involving the question of personal freedom. *United States v. Railroad Company*, 263.
10. The same provision applies to a suit where the United States is the plaintiff, unless it be brought for the enforcement of a revenue law. *Id.*

PRACTICE (*continued*).

11. The findings of fact which, in admiralty cases in the Circuit Court, the act of Feb. 16, 1875, c. 77 (18 Stat., pt. 3, p. 315), requires, are in the nature of a special verdict, and constitute a part of the record. The law arising thereon will therefore be determined here, although no exception thereto was taken. *The "S. C. Tryon,"* 267.
12. A bill of exceptions is required to reserve for review the rulings below upon questions of law during the progress of the trial. *Id.*
13. The court in this case, while refusing to dismiss the appeal, grants a motion to affirm the decree, it appearing from the record that the appeal was taken for delay. *Id.*
14. A party in whose favor judgment is rendered in a common-law cause, by a court of the United States sitting in the State of New York, is, in order to reach the property of the judgment debtor, entitled to the remedy provided by the statute of that State, and known as proceedings supplementary to execution. *Ex parte Boyd*, 647.
15. Section 916 of the Revised Statutes which authorizes, as a matter of procedure, the resort to that remedy is not in conflict with the Constitution. *Id.*
16. A statute prohibiting defendants, in an action upon a written instrument, from denying their signatures, except under plea verified by affidavit, does not apply to a case in which they demur because the instrument declared on appears upon its face to be the contract of their principal and not of themselves. *Hutchcock v. Buchanan*, 416.

PRE-EMPTION. See *Public Lands*.

PREFERENCE. See *Fraudulent Conveyance*.

PRESUMPTION. See *Trust and Trustee*, 1.

PRINCIPAL AND AGENT. See *Bank and Banker*; *Bills of Exchange and Promissory Notes*; *Bills of Lading*, 2; *Constitutional Law*, 2; *Insurance*, 3; *Negotiable Instruments*, 3; *Practice*, 16.

PRINCIPAL AND SURETY. See *Louisiana*, 1-3.

PROXIMATE CAUSE. See *Negligence*.

PUBLIC LANDS.

1. Where, in a suit involving the right to lands, the equities of the respective parties are equal, the legal title must prevail. *Simmons v. Ogle*, 271.
2. Against the United States the presumption of a party's claim of right to a tract of public land, growing out of his mere possession of it, is but very slight, and so long as the United States retains the legal title the Statute of Limitations does not run against it, nor does any equity in his favor arise from such possession and the non-assertion of that title. *Id.*
3. A. recovered in ejectment possession of lands conveyed to him by the United States. The judgment defendant thereupon filed his bill,

PUBLIC LANDS (*continued*).

setting up that B., under whom he claimed, had long previously to the inception of A.'s title duly entered them at the proper office, and praying that A. be compelled to convey the legal title to the complainant. Neither the receipt of the receiver to B. for the purchase-money, nor the register's certificate of purchase entitling B. to a patent, was produced or accounted for, and the defendant's evidence strongly conduced to show that the papers never existed and that the sale was never made. Upon the facts, — *Held*, that the bill should be dismissed. *Id.*

PURCHASER IN GOOD FAITH. See *Bankruptcy*, 1; *Bills of Lading*; *Constitutional Law*, 7; *County Bonds*, 1, 12; *Municipal Subscriptions*, 1; *Negotiable Instruments*, 3; *Railroad Companies, Subscriptions to the Capital Stock of*, 4.

RAILROAD. See *Constitutional Law*, 9; *Illinois*, 3, 4; *Negligence*; *Wharf and Wharfage*.

RAILROAD COMPANIES, SUBSCRIPTIONS TO THE CAPITAL STOCK OF. See *County Bonds*; *Evidence*, 3; *Municipal Subscriptions*; *Taxation*, 1.

1. The charter of the Decatur, Sullivan, and Mattoon Railroad Company, which took effect March 26, 1869, authorized the board of supervisors of the county of Moultrie, Illinois, to subscribe to the capital stock of that company to an amount not exceeding \$80,000, and also, should it be sanctioned by a popular vote, to make a donation in aid of the company, and in each case to issue the requisite amount of county bonds. *County of Moultrie v. Fairfield*, 370.
2. Where, before the adoption of the Constitution of Illinois of 1870, a donation in aid of a railroad company had, pursuant to law, been voted by a county, bonds to pay that donation might be thereafter issued. *Id.*
3. That vote cannot be held for naught, although in the notice of, and the petition for, the election at which it was cast, the company is misnamed, if it sufficiently appears that the company was meant. *Id.*
4. In this case the power to levy a tax was conferred, the company performed all the conditions which, by the vote cast Nov. 2, 1869, entitled it to receive the donation bonds, and they were delivered Nov. 1, 1871, reciting the law authorizing their issue. *Held*, that, in a suit by a *bona fide* holder of the coupons cut therefrom, a recovery cannot be defeated upon the ground that, in order to pay the principal and interest and the county expenses, the assessment must exceed the limitation imposed by sect. 8, art. 9, of the Constitution of 1870. *Id.*
5. *Quere*, Is there any limit upon the power of taxation to raise means to meet the indebtedness of which the bonds in question are the evidence. *Id.*

RECEIPT. See *Evidence*, 5.

RECEIVER. See *Costs*, 6; *Illinois*, 1.

RECORD. See *Evidence*, 1, 2; *Execution*; *State Laws*, 5.

REDEMPTION.

1. A sale under a decree of foreclosure ordering that the mortgaged premises in Illinois be sold without any right of redemption, was confirmed by the proper court. After the expiration of the time, within which the defendant was, under the statute, entitled to redeem, he, without leave, filed his bill praying that so much of the decree as excluded that right be reviewed and reversed. *Held*, that the bill was properly dismissed. *Burley v. Flint*, 247.
2. A., whose debt was secured by deed of trust on lands, purchased them when, in default of payment, they were offered at a public sale by the trustee, and on taking a deed therefor entered into possession thereof. He subsequently paid off a prior lien. On a bill filed by a junior incumbrancer, the court granted the latter the right to redeem on his paying to A. the debt and the money expended in discharging the older incumbrance, with interest, and also the amount paid for taxes, repairs, and insurance, less the rents and profits while A. was in possession. *Held*, that the decree is correct. *McCormick v. Knox*, 122.

REISSUED LETTERS-PATENT. See *Letters-patent*, 13-15, 17-21.

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

RENT. See *Canals*.

REVENUE OFFICERS. See *Causes, Removal of*, 3.

SALE.

1. The recital in the contract (*ante*, p. 711), that the vendors "hereby deliver said machines at the places named in the list" to the vendee, passes to him the title and right of possession, but does not prove a delivery of actual possession. *Marsh v. McPherson*, 709.
2. If the machines were not delivered at the stipulated time and places, or were not then in a proper condition, proof that they were subsequently delivered, or that the vendee, after accepting them, permitted the vendors to make the requisite repairs and additions thereto, is admissible to reduce his damages for a breach of the contract. *Id.*
3. In case of a total failure by the vendors to perform the contract, the vendee is entitled to recover the amount wherewith he, at the time of the breach, could have purchased machines of equal value; if those delivered were defective, the measure of his damages is the actual cost of supplying the deficiency. *Id.*

SCIENTER. See *Forgery*.

SEAMEN. See *Shipping Commissioner*.

SEIZURE AND SALE OF LANDS. See *Louisiana*, 1-4.

SHIP-OWNERS. See *Admiralty; Maritime Law*.

SHIPPING COMMISSIONER.

1. A shipping commissioner who has received two dollars for services in connection with the shipment of a seaman is not entitled to a fee on his reshipment on subsequent successive voyages of the same vessel. *Young v. Steamship Company*, 41.
2. This court will not review the decision of a State court, that the fee exacted by the commissioner on the seaman's reshipment can be recovered back, although no objection thereto was made at the time it was paid. *Id.*

SLAVES. See *Bond*.

SNUFF. See *Customs Duties*, 2.

SOUTH CAROLINA. See *Negotiable Instruments*, 1.

SPECIFIC PERFORMANCE. See *Jurisdiction*, 6.

STATE LAWS. See *Bridge; Constitutional Law*, 3; *Evidence*, 1, 2.

1. The courts of the United States, in cases within their jurisdiction involving contract obligations and rights depending upon the laws of the State, will conform to the settled construction which the highest court of the State gave to those laws at the time when the rights accrued or the obligations were incurred. *Taylor v. Ypsilanti*, 60.
2. Whether a seeming act of the legislature is or is not a law, is a judicial question to be determined by the court, and not a question of fact to be tried by a jury. *Post v. Supervisors; Amoskeag Bank v. Ottawa*, 667.
3. The construction uniformly given to the Constitution of a State by its highest court is binding on the courts of the United States as a rule of decision. *Id.*
4. An act of the legislature of a State, which has been held by its highest court not to be a statute of that State, because never passed as its Constitution requires, cannot be held by the courts of the United States, upon the same evidence between different parties, to be a law of the State, although referred to in later statutes of the State as an existing law, and assumed to be such in earlier cases in the State court, in which its validity was not, and by the settled practice of that court could not be, controverted. *Id.*
5. The act of the General Assembly of Illinois of Feb. 18, 1857, purporting to authorize the issue of certain municipal bonds, is of no force or effect, by reason of its not appearing by the legislative journals to have been passed as required by the Constitution of 1848. *Id.*

STATUTES AND CONSTITUTIONS, CONSTRUCTION OF. See *Bridge; Constitutional Law*, 7, 8; *Illinois*, 2; *Louisiana*, 9, 10; *Missouri*, 3; *Practice*, 16; *State Laws*.

STATUTES OF THE UNITED STATES.

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

1851. March 3. c. 43. See *Maritime Law*, 1, 2, 5-7.
 1867. March 2. c. 176. See *Bankruptcy; Fraudulent Conveyance*, 2.
 1870. July 14. c. 255. See *Internal Revenue*, 3, 4.
 1875. Feb. 16. c. 77. See *Constitutional Law*, 1; *Practice*, 11.
 1875. March 3. c. 137. See *Causes, Removal of*.
 1876. June 30. c. 159. See *Officer of the Navy*.
 1876. Aug. 14. c. 279. See *Contract*, 3.
 Rev. Stats., sect. 614. See *Practice*, 7.
 “ “ “ 629. See *Jurisdiction*, 6.
 “ “ “ 643. See *Causes, Removal of*, 3.
 “ “ “ 916. See *Practice*, 15.
 “ “ “ 989. See *Judgment*.
 “ “ “ 1059, 1062, 1069. See *Limitations, Statute of*, 4.
 “ “ “ 2504. See *Customs Duties*, 1.
 “ “ “ 4282 *et seq.* See *Admiralty*, 3; *Jurisdiction*, 5;
Maritime Law, 1, 2, 5-7.
 “ “ “ 5057. See *Limitations, Statute of*, 1.
 “ “ “ 5263 *et seq.* See *Constitutional Law*, 2, 3.
 “ “ “ 5431. See *Forgery*.

STOCKHOLDER. See *Bank and Banker; Constitutional Law*, 9, 14; *Corporation*, 1-4; *Negotiable Instruments*, 2; *Taxation*, 3-12; *Wharf and Wharfage*, 2.

SUBSCRIPTIONS TO STOCK. See *County Bonds; Municipal Subscriptions; Railroad Companies, Subscriptions to the Capital Stock of*.

SUPERSEDEAS. See *Appeal*, 3; *Writ of Error*.

SURETY. See *Louisiana*, 1-3.

SWAMP AND OVERFLOWED LANDS. See *Taxation*, 2.

TAXATION. See *Constitutional Law*, 3; *County Bonds*, 7-10; *Internal Improvements; Internal Revenue; Jurisdiction*, 1; *Louisiana*, 9-12; *Railroad Companies, Subscriptions to the Capital Stock of*, 4, 5.

1. Lands in Arkansas, granted by the State to the Memphis and St. Louis Railroad Company, and held for the purpose of raising money to build its road, are not, by its charter, exempt from taxation. *Railroad Company v. Loftin* (98 U. S. 559) cited upon this point and approved. *Quære*, Are the lands exempt which were acquired by the company in payment for its increased stock. *Railroad Company v. Loftin*, 258.
2. The swamp and overflowed lands donated by the United States to Arkansas are, unless sooner reclaimed, exempt from taxation for ten years after they have been sold by the State. *Id.*
3. The provisions of the statute of 1866 of New York, providing for the assessment and taxation of the stockholders of a bank or banking association on the value of their shares of stock, are in conflict

TAXATION (*continued*).

with the act of Congress, so far as they do not permit a stockholder of a national bank to deduct the amount of his just debts from the assessed value of his stock, while by the laws of the State the owner of all other personal taxable property can deduct such debts from its value. *Supervisors v. Stanley*, 305.

4. The statute is not, however, rendered void by reason of such conflict, nor is the assessment thereunder of the shares of stock in national banks of no effect. If the stockholder has no debts to deduct, the prescribed mode of assessment is valid, and he cannot recover the tax paid pursuant thereto; if he has debts, the assessment excluding them from computation is voidable, but the assessing officers act within their authority until they are duly notified that he is entitled to deduct such debts. *Id.*
5. If the assessing officers proceed after such notice, and act in violation of the act of Congress, he may take the requisite steps to secure that deduction, and, when secured, the residue of the statute remains valid. *Id.*
6. *Supervisors v. Stanley*, *supra*, (p. 305,) cited and approved. *Hills v. Exchange Bank*, 319.
7. A national bank may, on behalf of its stockholders, maintain a suit to enjoin the collection of a tax which has been unlawfully assessed on their shares by the State authorities. *Id.*
8. Where, under the statute of New York, such stockholder has presented to the proper board of assessors his affidavit, by showing that his personal property subject to taxation, including such shares after deducting therefrom his just debts, is of no value, and they refuse on his demand to reduce the assessment of the shares, an injunction should be awarded to restrain them from collecting the tax. *Id.*
9. Where, in a suit by the bank, it is entirely clear from the proofs that all affidavits and demands of the other stockholders for a deduction from the assessed value of their respective shares, by reason of just debts which they owe, would, for purposes of taxation, be disregarded, and the assessors have evinced a fixed purpose to reject every such deduction, this court, in reversing the case, permits an amendment of the pleadings to allow each stockholder to show the amount of the deduction to which he is entitled. *Id.*
10. The taxation of national bank shares by the statute of Indiana, without permitting the owner of them to deduct from their assessed value the amount of his *bona fide* indebtedness, as he may in the case of other investments of moneyed capital, is a discrimination forbidden by the act of Congress. *Evansville Bank v. Britton*; *Britton v. Evansville Bank*, 322.
11. *Supervisors v. Stanley*, *supra*, (p. 305,) and *Hills v. Exchange Bank*, *supra*, (p. 319,) cited, and the rulings there made approved. *Id.*
12. The points of difference between the New York statute there considered, and the Indiana statute applicable to this case, pointed out. *Id.*

TELEGRAPH COMPANIES. See *Constitutional Law*, 2, 3.

TERRITORIAL COURTS. See *Practice*, 8-10.

THREAD LACE. See *Customs Duties*, 1.

TORTS. See *Admiralty*, 1; *Negligence*.

TRUST AND TRUSTEE. See *Costs*, 3-6.

1. The presumption that a trustee performed his duty by reconveying to his grantors the title to land, when the conditions became impossible upon which he was to execute the trust declared in their deed to him, is a disputable one, and may, therefore, be overcome by opposing evidence. *Lincoln v. French*, 614.
2. The outstanding title in the trustee bars ejectment by the grantors. *Id.*
3. A., and B., his wife, conveyed her separate property to a trustee upon trust for her use during her life, and in remainder in fee for the use of her children living at the time of her death. The deed reserves to her the power to sell and exchange the property, and declares "that the trustee is to permit A., as agent for the trustee, and as agent and trustee for said B. during her life, and as agent and trustee for her children after her death, to superintend, possess, manage, and control the property for the benefit of all concerned." The trustee was not to be responsible for the acts or conduct of A. The latter was, however, for the purposes of the deed, to be a co-trustee, but neither had power to charge the property for any future liability beyond the support of A. during his life. A. survived B. and died insolvent. A bill was filed against the trustee and the child of B., alleging that upon A.'s order the complainant had advanced moneys and furnished supplies which were used for the benefit of the trust estate, and praying that it be subjected to the payment of the claim. *Held*, that the bill was properly dismissed. *Hewitt v. Phelps*, 393.

ULTRA VIRES. See *Wharf and Wharfage*, 2.

VERDICT. See *Practice*, 11.

WABASH AND ERIE CANAL. See *Canals*.

WAIVER. See *Insurance*, 3; *Louisiana*, 11.

WATER-POWER. See *Canals*.

WATER-WORKS.

1. The water-works of a city are not subject to sale for its ordinary debts under execution. *New Orleans v. Morris*, 600.
2. A city which owned such works conveyed them to a corporation formed for the purpose of maintaining and enlarging them, and received therefor shares of stock, which the statute authorizing the conveyance declared should not be liable to seizure for the debts of the city, but should be reserved for the benefit of the holders of the

WATER-WORKS (*continued*).

bonds that had been issued by the city to raise the means wherewith to construct the works. *Held*, that the statute does not, by thus exempting those shares from seizure, impair the obligation of any contract, as they merely represent the city's ownership in the water-works which was, before the enactment of the statute, exempt from seizure and sale. *Id.*

3. The city may, by a suit in equity, restrain its execution creditors from selling those shares. *Id.*

WHARF AND WHARFAGE. See *Constitutional Law*, 4-6.

1. By its charter and the statutes of Louisiana the city of New Orleans was authorized to erect and maintain wharves within its limits, and to collect wharfage. *Held*, that no right of the city was infringed by a subsequent enactment of the General Assembly of that State granting to a railroad company the authority to enclose and occupy for its purposes and uses a specifically described portion of the levee and batture, and maintain the wharf it theretofore erected on its property within those limits, and exempting it from the supervision and control which the municipal authorities exercise in the matter of public wharves. *Railroad Company v. Ellerman*, 166.
2. The question as to whether the company, in constructing, pursuant to such authority, the wharf on its property, and collecting wharfage, acted *ultra vires*, cannot be raised by a claimant under the city who is not a stockholder, and whose rights have not been infringed. *Id.*

WITNESS. See *Insurance*, 1; *Jury*.

WORDS AND PHRASES.

- "Appropriate proceeding." See *The "Scotland,"* 24.
 "Compromise." See *Oglesby v. Attrill*, 605.
 "Retired from active service." See *United States v. Tyler*, 244.
 "Torts." See *Leathers v. Blessing*, 626.

WRIT OF ERROR. See *Practice*, 6, 9, 10.

1. The time within which a writ of error must be served in order that it may operate as a *supersedeas*, must be computed from the date of the judgment which is the subject of review. *Wurtz v. Hoagland; Iron Company v. Hoagland*, 701.
2. The writ of error did not in either of these cases operate as a *superse-deas*, as the required bond was filed Oct. 27, 1881, and the judgment of the Supreme Court of New Jersey was affirmed by the Court of Errors and Appeals July 18, 1881, and the record remitted Aug. 31, 1881. *Id.*

WYOMING. See *Limitations, Statute of*, 3; *Practice*, 9.



















