INDEX.

ACCORD AND SATISFACTION.

A board of levee commissioners made a settlement with contractors employed to do the work on certain levees, by which it paid them a certain sum and took a receipt in full of all demands. The parties afterwards executed an agreement under seal, reciting the settlement and receipt in full of all demands, a complaint of the contractors that injustice had been done them in that settlement, and the desire of the board to do full justice ; and stipulating that two engineers, one designated by each party, should measure the work done, and render to the parties an estimate of the amount due to the contractors for such work according to the original contract; that if this should differ from the amount already paid, the difference should be paid or refunded accordingly; and that these two engineers and a third, to be agreed on by them, should be arbitrators for the adjustment of all questions of difference; that, in the adjustment of questions pertaining to the measurement, the contractors should have the privilege of introducing all proper evidence, and the board of rebutting that evidence; and that, before proceeding with the measurement, the contractors should give written notice to the board of the points to be proved and the character of the evidence to be offered. The contractors thereupon gave notice of their intention to introduce proof of several matters, some of which did not concern the measurement; to which the engineer of the board objected; and the arbitration fell through. *Held*, that the settlement and receipt bound the contractors as an accord and satisfaction, and they could not maintain a suit upon the original contract to recover further compensation for the work. *Hemingway* v. *Stansell*, 399.

ACTION. See *Jurisdiction; Mississippi*, 4; *Parties*, 2; *Stockholder*, 2; *United States, Suits by or against*, 1.

ADMIRALTY. See *Jurisdiction*, 2; *Maritime Law.*

1. The court, upon the facts found by the Circuit Court, affirms the decree whereby the steamer "New Orleans" was condemned to pay the damages occasioned by her collision with a schooner. *The "New Orleans,"* 13.

ADMIRALTY (*continued*).

2. The evidence which in another suit a part owner of the schooner gave as to the extent and cost of the repairs put upon her, is not in this suit admissible against the other part owners. *Id.*
3. An ocean steamer starting from a crowded slip, the motion of her propeller caused a canal-boat to break her fastenings and swing around against the propeller, whereby she was sunk. The steamer had no lookout at her stern, by whom the peril of the canal-boat might have been seen in time to stop the propeller and prevent the collision. *Held*, that the steamer was in fault. *The "Nevada,"* 154.
4. Towage should be employed, when necessary to enable a large steamer to leave a crowded slip or harbor without damaging other vessels. *Id.*
5. Steamers and locomotives should be so managed and operated as to do the least possible injury consistent with their substantial usefulness. *Id.*
6. Those in charge of the canal-boat, in this case, having done all that reasonable prudence required of them, by properly fastening their boat, were held free from blame. *Id.*
7. A decree against two vessels at fault should be, not *in solido* for the full amount of damages sustained by the libellant, but severally against each for one-half of his damage and costs, any balance which he shall be unable to enforce against either vessel to be paid by the other or its stipulators, to the extent of her stipulated value beyond the moiety due from her. *The "Sterling" and The "Equator,"* 647.
8. Inasmuch as the form of the decree was not in this case called to the attention of the Circuit Court, the parties are required to pay their respective costs in this court. *Id.*

AFFIDAVIT. See *Jurisdiction*, 1; *Michigan*, 1, 3; *Mississippi*, 1.

ALABAMA. See *Constitutional Law*, 2.

AMOUNT IN CONTROVERSY. See *Appeal*, 2, 6; *Jurisdiction*, 1–8; *Railroad Mortgage*, 7.

ANIMALS. See *Customs Duties*, 3, 4.

APPEAL. See *Conflict of Laws; Equity*, 4, 6; *Jurisdiction*, 2, 3, 8; *Levee Board*, 1; *Practice*, 11; *Railroad Mortgage*, 3, 4; *Waiver.*

1. A party to a suit cannot appeal from a decree therein rendered, if he is not thereby affected. *Farmers' Loan and Trust Company* v. *Waterman*, 265.
2. An appeal will be dismissed where it does not appear by the record, or otherwise, that the value of the matter in dispute exceeds $5,000. *Parker* v. *Morrill*, 1.
3. A decree is not final within the meaning of the act conferring appellate jurisdiction, unless upon its affirmance nothing remains but to execute it. The court therefore dismisses an appeal by the defend-

APPEAL (*continued*).

ant in a foreclosure suit from the decree therein rendered, which neither finds the amount due nor orders the sale of the mortgaged property, although it overrules his defence, declares the complainant to be holder of the mortgage, and, in order to ascertain the amount due him and other lien creditors, and for taxes, refers the case to a master, and appoints a receiver to take charge of the property. *Grant* v. *Phœnix Insurance Company*, 429.

4. A suit for the foreclosure of a mortgage commenced in a State court was removed to the Circuit Court, where a motion to remand it was made and overruled. A final decree in favor of the complainant was passed, whereunder the mortgaged property was sold. From the order confirming the sale an appeal was taken. *Held*, that the final decree, not disclosing a want of jurisdiction of the court below, as to subject-matter or parties, will be examined here only to ascertain whether the sale conformed to its provisions. *Turner* v. *Farmers' Loan and Trust Company*, 552.

5. In a foreclosure suit, pending when the lands and property were in possession of a receiver, the State of Georgia, whilst declining to become a party, presented a petition asking that he be required to withdraw from the possession of a part of the property whereon executions for State taxes had been levied prior to his appointment. The petition was denied and dismissed. *Held*, that the action of the Circuit Court cannot be reviewed upon the appeal of the State, for the reason, if there were no other, that the order did not conclude the rights which she acquired by virtue of the executions, or of the levies made thereunder. *Georgia* v. *Jesup*, 458.

6. Where a foreclosure suit was brought, and the municipal corporation within which the mortgaged property was situate was allowed to intervene and set up a claim for taxes thereon, — *Held*, that the order of the Circuit Court rejecting the claim is binding upon the corporation, and the latter is entitled to an appeal where the amount of taxes is sufficient to give this court jurisdiction. *Savannah* v. *Jesup*, 563.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy*, 3, 4.

ASSIGNMENT. See *Contract*, 5; *Equity*, 1.

ASSIGNMENT OF ERRORS. See *Writ of Error*, 3.

ATTACHMENT. See *Mississippi*, 1, 2, 5.

BANK AND BANKER. See *Taxation*, 1.

BANKRUPTCY.

1. A composition between a bankrupt and his creditors, under sect. 17 of the act of June 22, 1874, c. 390, although ratified by the proper District Court, did not discharge him from a debt or a liability incurred by him while acting in a fiduciary character. *Bayly* v. *University*, 11.

2. That section did not repeal sect. 5117, Rev. Stat. *Wilmot* v. *Mudge*, 103 U. S. 217, cited upon this point and approved. *Id.*

BANKRUPTCY (*continued*).

3. Where a judgment in a State court is rendered against one shortly thereafter declared to be a bankrupt, a writ of error to that judgment brought by his assignee is a suit, within the meaning of sect. 5057 of the Revised Statutes. *Jenkins* v. *International Bank*, 571.
4. The limitation of time in that section applies to a suit by the assignee to recover a debt or other moneyed obligation, as well as to a controversy concerning property or rights of property to which there are adverse claims. *Id.*
5. Where the trustees of a bankrupt who were appointed under sect. 5103 of the Revised Statutes distributed the proceeds of the sale of his property pursuant to an order entered by the proper District Court sitting in bankruptcy, and affirmed by the Circuit Court in the exercise of its supervisory jurisdiction, — *Held*, that the order is binding, and that the creditors are thereby concluded. *Merchants' Bank of Pittsburgh* v. *Slagle*, 558.

BILL OF EXCEPTIONS. See *Practice*, 11, 12.

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Equity*, 3; *Negotiable Instruments*.

1. Judicial notice is taken of the seal of a notary public, and such seal, impressed upon either the paper or the wax thereunto attached, entitles his certificate of protest to full faith and credit. *So held*, where, in an action against the drawer of a foreign bill of exchange payable in Norway, such a certificate made in that country was, when put in evidence by the payee, accepted as proof of the presentment and non-payment of the bill. *Pierce* v. *Indseth*, 546.
2. The question as to whether the presentment was made in due time is determined by the law of the place where the bill is payable. *Id.*
3. The deposition of a lawyer of Norway, to the effect that the holder of such a bill payable there at sight is allowed a year after its date within which to present it for payment, was, by the court below, properly admitted under the statute of Minnesota, which provides that the existence, tenor, and effect of all foreign laws may be proved by parol evidence, but that the court may, in its discretion, when the law in question is contained in a written statute, reject such evidence, unless it be accompanied by a copy thereof. *Id.*

BILL OF REVIEW.

1. The only questions open for examination on a bill of review for errors of law appearing on the face of the record are such as arise on the pleadings, proceedings, and decree, without reference to the evidence in the cause. *Shelton* v. *Van Kleeck*, 532.
2. The truth of matters of fact alleged in such a bill is not admitted by a demurrer thereto, if they are inconsistent with the decree. *Id.*
3. Where the decree in a foreclosure suit adjudged the sale of the mortgaged lands, the alleged new matter discovered, if it relates to the proceeding in selling them, can have no effect on the decree. *Id.*

BOND. See *Collector of Internal Revenue; Conflict of Laws; Constitutional Law*, 3, 4; *Customs Duties*, 7-9; *Internal Revenue*, 1-3; *Levee Board*, 2; *Negotiable Instruments; Railroad Mortgage*, 1, 2.

Bonds issued in the name of an independent school district, in the State of Iowa, contain these recitals: "This bond is issued by the board of school directors by authority of an election of the voters of said school district held on the thirty-first day of July, 1869, in conformity with the provisions of chapter 98 of acts 12th General Assembly of the State of Iowa." *Held*, 1. That the recitals imply as well that the bonds were issued by authority of the election, as that the election was lawfully held, but do not, necessarily or clearly, import a compliance with those provisions which, following substantially the words of the State Constitution, prohibit such a district from incurring indebtedness "to an amount in the aggregate exceeding five per centum on the value of its taxable property, to be ascertained by the last State and county tax lists previous to the incurring of such indebtedness." 2. That, in a suit on the bonds. the district is not estopped by the recitals from showing that the indebtedness of which the bonds are evidence exceeds the amount limited by the Constitution and laws of the State. *School District* v. *Stone*, 183.

BOND-HOLDERS. See *Railroad Mortgage*, 2, 4.

BOUNDARY RIVER.

Quœre, Are the waters of the Menominee River, which is the boundary between Michigan and Wisconsin, within the concurrent jurisdiction of both Wisconsin and Michigan. *Geekie* v. *Kirby Carpenter Company*, 379.

BOUNTY.

1. Bounty was not allowed by the act of Congress of June 30, 1864, c. 174, where vessels of the enemy were, during the rebellion, destroyed by the combined action of the sea and land forces of the United States. *Porter* v. *United States*, 607.
2. Property seized upon any waters of the United States, other than bays or harbors on the sea-coast, was not maritime prize, nor was any bounty paid by the United States for the destruction thereof. *Id.*

CAPTURED AND ABANDONED PROPERTY.

On the 12th of April, 1865, A., a resident of Memphis, purchased, in Mobile, from B., a resident of that city, — both cities being then in the occupancy of the national forces, — cotton, which was then in the military lines of the insurgent forces, in Alabama and Mississippi, the inhabitants whereof had been declared to be in insurrection. Between June 30 and December 1 of that year a portion of the cotton — while it was in the hands of the planters from whom it had been originally purchased by the Confederate government, the agent of which had sold it, in Mobile, to B. on the 5th of April — was seized by treasury agents of the United States and sold. The pro-

CAPTURED AND ABANDONED PROPERTY (*continued*).
ceeds were paid into the treasury, and A. sued to recover them. *Held*, that his purchase being in violation of law, no right arose therefrom which can be enforced against the United States. *Walker's Executors* v. *United States*, 413.

CASES AFFIRMED.
The following among others expressly approved and affirmed: —
Atwood v. *Weems*, 99 U. S. 183. See *United States* v. *Lee*, 196.
Baltimore and Ohio Railroad Company, Ex parte, ante, 5. See *Farmers' Loan and Trust Company* v. *Waterman*, 265.
Bennett v. *Hunter*, 9 Wall. 324. See *United States* v. *Lee*, 196.
Brine v. *Insurance Company*, 96 U. S. 627. See *Mason* v. *Northwestern Insurance Company*, 163.
Burley v. *Flint*, 105 U. S. 247. See *Mason* v. *Northwestern Insurance Company*, 163.
Hawes v. *Oakland*, 104 U. S. 450. See *Detroit* v. *Dean*, 537.
Howell v. *Western Railroad Company*, 94 U. S. 463. See *Chicago and Vincennes Railroad Company* v. *Fosdick*, 47.
Insurance Company v. *Eggleston*, 96 U. S. 572. See *Phœnix Insurance Company* v. *Doster*, 30.
Insurance Company v. *Norton*, 96 U. S. 234. See *Phœnix Insurance Company* v. *Doster*, 30.
Pennoyer v. *Neff*, 95 U. S. 714. See *St. Clair* v. *Cox*, 350.
Root v. *Railroad Company*, 105 U. S. 189. See *Hayward* v. *Andrews*, 672.
Smelting Company v. *Kemp*, 104 U. S. 636. See *Steel* v. *Smelting Company*, 447.
Suitterlin v. *Connecticut Mutual Insurance Company*, 90 Ill. 483. See *Mason* v. *Northwestern Insurance Company*, 163.
Thompson v. *Perrine*, 103 U. S. 806. See *Thompson* v. *Perrine*, 589.
Tracey v. *Irwin*, 18 Wall. 549. See *United States* v. *Lee*, 196.
Wilmot v. *Mudge*, 103 U. S. 217. See *Bayly* v. *University*, 11.

CASES EXPLAINED OR NOT FOLLOWED.
Chapman v. *Royal Netherlands Steam Navigation Company*, 4 P. D. 157. See *The "North Star,"* 17.
Troy v. *Evans*, 97 U. S. 1. See *Elgin* v. *Marshall*, 578.

CAUSES, REMOVAL OF. See *Appeal*, 4; *Negotiable Instruments*, 2; *Practice*, 1, 2.
1. Where a citizen of a State sues in a court thereof a citizen of the same State and an alien, the latter is not entitled to remove the suit to the Circuit Court. *King* v. *Cornell*, 395.
2. The act of March 3, 1875, c. 137, repealed the second clause of section 639 of the Revised Statutes. *Id.*
3. Where the complainants are citizens of the State in a court whereof the suit was brought, and the defendant, who is the real party to the controversy, and against whom relief is sought, is a citizen of another State, his right to remove the suit to the Circuit Court of the United States cannot be defeated upon the ground that the citi-

CAUSES, REMOVAL OF (*continued*).
zenship of another defendant who is a stranger to that controversy, and who occupies substantially the position of a mere garnishee, is the same as that of the complainants. *Bacon* v. *Rives*, 99.

4. A suit, the parties thereto being citizens of the same State, was brought in a court thereof, for moneys alleged to be due to the complainant under a contract whereby certain letters-patent granted to him were transferred to the defendant. *Held*, that the suit, not involving the validity or the construction of the patents, is not one arising under a law of the United States, and cannot be removed to the Circuit Court. *Albright* v. *Teas*, 613.
5. A paper writing purporting to be the last will and testament of A., wherein certain persons are named as executors, was by them offered for probate. They were citizens of Michigan, as were the contestants, with the exception of two, who, by reason of their citizenship, prayed for the removal of the cause to the Circuit Court. *Held*, that the cause was not removable, as it involves no controversy wholly between citizens of different States. *Fraser* v. *Jennison*, 191.
6. The members of a foreign corporation, when it sues or is sued in a court of the United States, are conclusively presumed to be citizens or subjects of the State or country which created it. *Steamship Company* v. *Tugman*, 118.
7. The citizenship of the parties, if it be shown by the record, need not be set out in the petition for the removal of a suit from the State court to the Circuit Court of the United States. *Id.*
8. Upon the filing of the requisite petition and bond in a suit which is removable, the State court is absolutely divested of jurisdiction of such suit, and its subsequent orders are *coram non judice*, unless its jurisdiction be, in some form, actually restored. *Id.*
9. A failure to file the transcript within the time prescribed by the statute does not restore that jurisdiction, and the Circuit Court must determine whether, in the absence of a complete transcript, or when one has not been filed in proper time, it will retain jurisdiction, or dismiss the suit, or remand it to the State court. *Id.*
10. A party having filed his petition and bond for the removal of a suit pending in a State court, the court ruled that the suit was not removable, but should there proceed. He subsequently consented to an order requiring the issues to be heard and determined by a referee, and thenceforward, until final judgment, contested the case as well before the referee as in the courts of the State. *Held*, 1. That the jurisdiction of the State court was not thereby restored, and that his consent to the order of reference must be construed as merely denoting a preference for that mode of trial. 2. That his objection to the exercise of jurisdiction by the referee and the State court, after he had filed his petition and bond, added nothing to the legal strength of his position on the question of removal. *Id.*

CERTIFICATE OF DIVISION. See *Division, Certificate of.*

CERTIFICATE OF REASONABLE CAUSE. See *Practice*, 8.

CHOSE IN ACTION, ASSIGNEE OF. See *Equity*, 1.

CITIZENSHIP. See *Causes, Removal of*, 1-7; *Negotiable Instruments*, 2.

CLAIMS AGAINST THE UNITED STATES. See *Captured and Abandoned Property; Contract*, 2; *United States, Suits against*.

CLOUD ON TITLE. See *Land Grants*, 8.

COLLECTOR OF INTERNAL REVENUE.

1. In a suit by the United States upon the official bond of a collector of internal revenue, transcripts from the books of the Treasury Department of his accounts, containing the usual items and showing the balances between the debits and credits, were put in evidence by the plaintiff. *Held*, that the papers, being in proper form and duly certified, are admissible; and an objection disclosed only by comparing them with other transcripts offered by him lies not to the competency of the evidence, but to its effect. *United States* v. *Stone*, 525.
2. Where he served for two successive terms, his sureties under his second appointment are liable for taxes which he, during service thereunder, collected upon assessment rolls received during the first term, and for moneys or stamps remaining on hand at the expiration of that term. *Id.*
3. Although the transcripts are evidence of the amount, date, and manner of the officer's indebtedness, his sureties may, by other treasury transcripts, show that his default, in whole or in part, occurred during his first term; that credits were applied on a prior account, although they belonged to subsequent accounts; and that to the latter debits were improperly transferred. *Id.*
4. It is not a valid objection to the introduction of the transcripts offered by the sureties that they do not on their face establish errors in the adjustment upon which the plaintiff relies, but require further evidence. The failure to produce such evidence furnishes ground only for their ultimate exclusion, or for an instruction to the jury as to their effect. *Id.*

COLLISION. See *Admiralty; Jurisdiction*, 2; *Maritime Law*.

COLORADO. See *Jurisdiction*, 11.

1. When judgment is rendered against either party to an action for the recovery of real property in Colorado, he is, without showing cause therefor, entitled, by a provision of the Code of Civil Procedure of the State, to one new trial. *Equator Company* v. *Hall*, 86.
2. That provision is binding on the courts of the United States sitting in Colorado. *Id.*

COLUMBIA, DISTRICT OF. See *District of Columbia*.

COMPOSITION. See *Bankruptcy*, 1, 2.

CONFISCATION.

Where, pursuant to the act of Aug. 6, 1861, c. 60, entitled "An Act to confiscate property used for insurrectionary purposes," lands were seized

CONFISCATION (*continued*).
and condemned, the purchaser of them under the decree took an estate in fee. *Kirk* v. *Lynd*, 315.

CONFLICT OF LAWS. See *Bills of Exchange and Promissory Notes*, 2; *Limitations*, *Statute of*, 1.

A. and B. executed and delivered to C., in New York, a bond of indemnity, conditioned to hold harmless and fully indemnify him against all loss or damage arising from his liability on an appeal bond, which he had signed in Louisiana as surety on behalf of a certain railroad company, defendant in a judgment rendered against it in the courts of the latter State, and which, being affirmed, he was compelled to pay. By the law of New York, any written instrument, although under seal, was subject to impeachment for want of consideration; and a pre-existing liability, entered into without request, which was the sole consideration of that bond of indemnity, was insufficient. It was otherwise in Louisiana. A suit on the bond was brought in Louisiana. *Held*, 1. That the question of the validity of the bond, as dependent upon the sufficiency of its consideration, is not a matter of procedure and remedy, to be governed by the *lex fori*, but belongs to the substance of the contract, and must be determined by the law of the seat of the obligation. 2. In every forum a contract is governed by the law with a view to which it is made, because, by the consent of the parties, that law becomes a part of their agreement; and it is, therefore, to be presumed, in the absence of any express declaration or controlling circumstances to the contrary, that the parties had in contemplation a law according to which their contract would be upheld, rather than one by which it would be defeated. 3. The obligation of the bond of indemnity was either to place funds in the hands of the obligee, wherewith to discharge his liability when it became fixed by judgment, or to refund to him his necessary advances in discharging it, in the place where his liability was legally solvable; and as this obligation could only be fulfilled in Louisiana, it must be governed by the law of that State as the *lex loci solutionis*. *Pritchard* v. *Norton*, 124.

CONGRESS. See *Contract*, 4.

CONSIDERATION. See *Contract*, 5.

CONSPIRACY. See *Criminal Law*.

CONSTITUTIONAL LAW. See *Bond*; *Criminal Law*.

1. The sixth section of the act of Aug. 15, 1876, c. 287, prohibiting, under penalties therein mentioned, certain officers of the United States from requesting, giving to, or receiving from, any other officer money or property or other thing of value for political purposes, is not unconstitutional. *Ex parte Curtis*, 371.

2. Section 4189 of the Code of Alabama, prohibiting a white person and a negro from living with each other in adultery or fornication, is not in conflict with the Constitution of the United States, although it prescribes penalties more severe than those to which the parties

CONSTITUTIONAL LAW (*continued*).
would be subject, were they of the same race and color. *Pace* v. *Alabama*, 583.

3. The act of the legislature of West Virginia, of Dec. 15, 1868, c. 118, authorizing the city of Parkersburg to issue its bonds for the purpose of lending the same to persons engaged in manufacturing, is invalid, and the bonds issued under it are, as against the city, void. *Parkersburg* v. *Brown*, 487.
4. As the consideration for bonds to the amount of $20,000, issued by the city to M., under that act, he, to secure the payment to the city of the semi-annual interest on $20,000, and of annual instalments on the principal, conveyed to J., as trustee, certain real estate and personal property, with a power of sale in case of default. The bonds were payable to M. or order. He indorsed them in blank and sold them to A. and B., who bought them for value, in good faith. M. paid one instalment of interest on them to the city. The latter made five payments of interest. It then took into its possession the property, and refused to make further payments. A suit in equity was instituted by the holders of the bonds against the city, but was not brought to a hearing for nearly three years. M., although a party thereto, made no defence. The bill prayed for a receiver of the property, but none was applied for; and the city having been allowed to control and manage the property meantime, acted in good faith and with reasonable discretion, in taking care of it and disposing of some of it. *Held*, 1. The bonds are void because the necessary amount to pay them and the interest thereon was to be raised by taxation, which, not being for a public object, the Constitution of the State did not authorize, and the legislature had no power to pass the act. 2. Neither the payment of interest on the bonds by the city, nor the acts of its officers or agents in dealing with the property, operate, by way of estoppel, ratification, or otherwise to render the city liable on the bonds. 3. M. had a right to reclaim the property and to call on the city to account for it, in disaffirmance of the illegal contract, the transaction being merely *malum prohibitum*, and the city being the principal offender. Such right passed to the complainants as an incident to the bonds. 4. This court orders a decree to be entered declaring that the city exceeded its lawful powers in issuing the bonds, and that they cannot be enforced as its obligations, and providing for a sale of the remaining property, and for an account, wherein the city is to be credited with the sums it had in good faith paid for the acquisition, protection, preservation, and disposition of the property, and for insurance and taxes, and for interest on the bonds, and to be charged with what it had received, but not with any sum for loss of, or damage to, or depreciation of, the property, and ordering the distribution among the complainants of the net proceeds of the sale and the net amount of money, if any, remaining in the hands of the city, received from M. or from the sales by it of any of the property. *Id.*

CONTRACT. See *Accord and Satisfaction; Conflict of Laws; Constitutional Law*, 4; *Corporation*, 1, 7; *Fraudulent Conveyance; Levee Board*, 2; *Life Insurance; Limitations, Statute of*, 1; *Mississippi*, 4; *Parties*, 2; *Railroad Mortgage; Sale.*

1. A., the owner of lands, covenanted that by making certain payments within a period named B. might become equally interested in them. B. did not agree to purchase, and he never made any payment. *Held*, that an estate in the lands was not by the contract vested in B., and that his failure to make payment within the time limited therefor worked a forfeiture of his privilege under the contract. *Richardson* v. *Hardwick*, 252.
2. A. was appointed occasional weigher and measurer, at a fixed compensation per annum *when employed*. He rendered accounts for his services each month, Sundays being deducted; was paid on that basis, and gave his receipts therefor. He subsequently brought suit to recover pay for the Sundays excepted from those accounts. *Held*, that he is not entitled to recover. *Pray* v. *United States*, 594.
3. Where, by a contract for the construction of a ship, the builder is to furnish the requisite labor and materials, and to receive therefor a sum payable in instalments as the work progresses, this court will not enforce any arbitrary rule of construction in determining the question whether the title remains in the builder until the ship is delivered or ready for delivery, or whether the property in so much of her as on the payment of any instalment is completed passes to the other party; but it will carry into effect the intent of the parties, to be gathered from the terms of the contract and the circumstances attending the transaction. *Clarkson* v. *Stevens*, 505.
4. Being thereunto authorized, the Secretary of the Navy entered into a contract with S., whereby the latter covenanted to construct a shot-and-shell-proof war-steamer for harbor defence. The Secretary was to appoint an agent to receive and, on account of the Navy Department, receipt for all materials delivered at S.'s establishment for the construction of the steamer, — the materials, when receipted for, to become the property of the United States, and to be marked "U. S." The agent's certificate to S.'s accounts for materials and labor was the evidence on which payments were to be made to the latter. S. executed a mortgage to the United States to secure his faithful performance of the contract, conferring upon the mortgagee, in case of his failure to fulfil it, power to enter upon his establishment and sell the steamer. When the steamer should be fully completed by S. and accepted by the United States, the balance of the purchase price was then to be paid and the mortgage surrendered. The period within which the vessel was to be completed was from time to time extended. S. died, and the vessel was never finished. *Held*, 1. That the title to the unfinished vessel remained in S., and that no property therein vested in the United States. 2. That by the resolution of Congress, releasing and conveying to his heirs-at-

CONTRACT (*continued*).

law "all the right, title, and interest of the United States in and to" the vessel, nothing passed to them. *Id.*

5. A woman married a man by whom she became the mother of two children. She subsequently discovered that he had a wife living from whom he had not been divorced. He then made to her an assignment of a mortgage. *Held*, that the assignment was a meritorious act and not impeachable for immorality of consideration. *Gay* v. *Parpart*, 679.

CONVERSION. See *Damages.*

CONVEYANCE. See *Evidence; Fraudulent Conveyance; Wisconsin.*

CORPORATION. See *Causes, Removal of*, 6; *Internal Revenue*, 5; *Jurisdiction*, 12–14; *Levee Board*, 1; *Michigan*, 4; *Stockholder.*

1. The South Georgia and Florida Railroad Company having power, by its charter, to construct a railroad from Albany to Thomasville, Georgia, and from Thomasville to the Florida line, and to purchase and sell all kinds of property of every nature and quality, and to incorporate its stock with that of any other company, contracted with the Albany and Gulf Railroad Company to construct its road from Thomasville to Albany, and to sell and deliver it to the latter company in sections as completed, together with the franchise of using the same, and to incorporate its stock created for building said road with that of the Albany and Gulf Railroad Company. The latter had the same general power, except that of incorporating its stock with the stock of other companies, and had the right under its charter to construct a railroad from Thomasville to Georgia. *Held*, that the contract was not *ultra vires*, and that the latter company could lawfully make the purchase, and pay for the same by issuing its own stock therefor; which was delivered to and accepted by the contractors in lieu of the stock of the other company, which latter stock they had subscribed for and agreed to take in payment for the work of construction. *Branch* v. *Jesup*, 468.

2. A railroad company having the right of constructing a particular line of railroad, with general power to purchase all kinds of property of whatever nature or kind, may purchase from another company a road constructed upon that line, if the latter company had power to sell and dispose of the same. *Id.*

3. As a general rule, a corporation cannot transfer its franchises, nor a railroad company its road, without legislative authority. *Id.*

4. Prior to the purchase, the Albany and Gulf Railroad Company had executed a trust deed by way of mortgage upon all its railroad and property acquired or to be acquired. *Held*, that inasmuch as the road purchased was within the chartered limits of the company, and might have been constructed if it had not been purchased, the mortgage extended to and covered it as effectually as if the company had constructed it. *Id.*

5. The contractors who built the road and accepted in payment therefor the stock, and the assignees and purchasers of the stock, after the

CORPORATION (*continued*).
transaction between the two companies had been carried into effect and the road possessed and operated by the Atlantic and Gulf Railroad Company for several years, are estopped from claiming the right to be regarded as stockholders of the South Georgia and Florida Railroad Company, or as preferred creditors as against the road. Having voluntarily accepted the position of stockholders of the purchasing company, they cannot question the validity of the transaction adversely to it, or to the mortgage given by it, covering the road in question. *Id.*

6. The stock thus issued and accepted was preferred stock, on which interest was payable. *Held*, that the holders thereof, and their assigns, having accepted it, and received interest on it for several years, are estopped from questioning the power of the company to issue it. *Id.*
7. The South Georgia and Florida Railroad Company having received the stipulated consideration, and incorporated its stock with that of the Albany and Gulf Railroad Company, by accepting the stock of that company, and being in fact amalgamated therewith so far as the road in question is concerned, has no ground to complain that the terms of the contract have not been fulfilled by that company. It has lost nothing; and the liability which it incurred is protected by first liens on the road, the priority of which is conceded by all parties. *Id.*

COSTS. See *Admiralty*, 7, 8; *Equity*, 4.

COTTON-TIES. See *Customs Duties*, 5, 6.

COUNTIES. See *Illinois*.

COUPONS. See *Jurisdiction*, 12; *Negotiable Instruments*.

COURTS OF THE UNITED STATES. See *Causes, Removal of; Colorado*, 2; *Jurisdiction*.

COVENANT. See *Parties*, 2.

CRIMINAL LAW. See *Constitutional Law*, 2; *Division, Certificate of*, 2; *Habeas Corpus*.

Section 5519 of the Revised Statutes (*ante*, p. 632) is unconstitutional. *United States* v. *Harris*, 629.

CUSTOMS DUTIES.

1. Section 21 of the act of July 14, 1870, c. 255, which provided that, in lieu of the duties then imposed by law, certain duties specified should thereafter be imposed on certain enumerated articles, did not repeal, as to such articles, sect. 6 of the act of March 3, 1865, c. 80, which declared that there should be thereafter paid on all goods the growth or produce of countries east of the Cape of Good Hope, when imported from countries west of that Cape, a duty of ten per cent *ad valorem* in addition to the duties imposed thereon when imported directly from the place of their growth or production. *Russell* v. *Williams*, 623.

CUSTOMS DUTIES (*continued*).

2. The latter provision is a general commercial regulation, made to encourage direct importation from countries east of the Cape, as well as to benefit American shipping, and is applicable without regard to the regular duties imposed for purposes of revenue, and even where the articles are otherwise entirely free of duty. *Id.*
3. Animals, specially imported from beyond the seas for breeding purposes, are not subject to duty. *Morrill* v. *Jones*, 466.
4. The Secretary of the Treasury has no authority to prescribe a regulation requiring that, before admitting them free, the collector shall "be satisfied that they are of superior stock, adapted to improving the breed in the United States." *Id.*
5. Cotton-ties, each consisting of an iron strip and an iron buckle, were, in 1880, imported in bundles, each bundle consisting of thirty strips and thirty buckles, each strip eleven feet long, the whole blackened. *Held*, that they are subject to a duty of thirty-five per cent *ad valorem*, as "manufactures of iron, not otherwise provided for," under schedule E of sect. 2504 of the Revised Statutes, and not to a duty of one cent and one-half per pound, under said schedule, as "band, hoop, and scroll iron." *Badger* v. *Ranlett*, 255.
6. The question as to whether the ties are subject to some other rate of duty than one of those two not having been raised below, cannot be raised by the plaintiff in error in this court. *Id.*
7. An importer of sugars having entered them at the custom-house by a warehouse entry, under sect. 12 of the act of Aug. 30, 1842, c. 270, as amended by sect. 1 of the act of Aug. 6, 1846, c. 84, gave, with sureties, a bond, conditioned to be void if he or his "assigns" should, within a specified time, withdraw them from the warehouse in the mode prescribed by law, and pay to the collector a sum specified, "or the true amount, when ascertained, of the duties imposed." The act required the sugars to be kept subject to the order of the importer, "upon payment of the proper duties," to be ascertained on entry, "and to be secured by his bond," with surety. He afterwards sold the sugars in bond, and gave to the purchaser, who agreed to pay the duties as part of the purchase price, a written authority, on which the sugars were withdrawn; but the full amount of the proper duties, which was less than the sum specified in the condition of the bond, was not paid. In a suit on the bond, to recover the unpaid duties, — *Held*, that the obligors are liable. *Minturn* v. *United States*, 437.
8. Although it is the usage of trade to sell goods in bond, and deliver them by an order for their withdrawal, the purchaser withdrawing them and paying the duties, the obligors do not become merely sureties, with the goods as the primary security for the duties, nor are they released because the officers of the United States unlawfully part with the goods without exacting payment of the duties chargeable thereon. *Id.*
9. The negligence of the officers does not affect the liability of either the principal or the surety in a bond to the United States. *Id.*

DAMAGES. See *Admiralty*, 2, 7; *Equity*, 1; *Maritime Law*.

Where the plaintiff, in an action for timber cut and carried away from his land, recovers damages, the rule for assessing them against the defendant is: 1. Where he is a wilful trespasser, the full value of the property at the time and place of demand, or of suit brought, with no deduction for his labor and expense. 2. Where he is an unintentional or mistaken trespasser, or an innocent vendee from such trespasser, the value at the time of conversion, less the amount which he and his vendor have added to its value. 3. Where he is a purchaser without notice of wrong from a wilful trespasser, the value at the time of such purchase. *Wooden-ware Company* v. *United States*, 432.

DECREE. See *Appeal*, 1, 3, 4; *Bill of Review; District of Columbia; Equity*, 4, 6, 7; *Jurisdiction*, 5, 7, 10; *Levee Board*, 1; *Maritime Law; Partition; Railroad Mortgage*, 3, 4; *Waiver*.

DEED. See *Evidence; Fraudulent Conveyance; Wisconsin*.

DEED OF TRUST. See *District of Columbia*.

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

DISTRICT OF COLUMBIA. See *Practice*, 11.

Where a mortgage of lands in the District of Columbia, or a deed of trust in the nature thereof, to secure the payment of money, is foreclosed, sect. 808, Rev. Stat., relating to the District, authorizes a decree *in personam* against the debtor for the balance remaining due after the proceeds of the sale of the lands have been applied to the satisfaction of the debt. *Dodge* v. *Freedman's Savings and Trust Company*, 445.

DIVISION, CERTIFICATE OF.

1. Where the judges below are opposed in opinion, this court will not take jurisdiction of the case, if their certificate, instead of being confined to single points of law, presents either questions of fact or the whole case for adjudication. *Weeth* v. *New England Mortgage Company*, 605.
2. The omission to state, in the certificate of division of opinion between the judges of the Circuit Court in a criminal proceeding, that the point of difference is certified "upon the request of either party or their counsel," is not fatal to the jurisdiction of this court where such request can be fairly inferred. *United States* v. *Harris*, 629.

DUE PROCESS OF LAW. See *United States, Suits by or against*, 3.

DUTIES. See *Customs Duties*.

EJECTMENT. See *Land Grants*, 4; *Tax Sale*, 1.

ELECTIONS. See *Bond; Michigan*, 2.

EMINENT DOMAIN. See *United States, Suits by or against*, 2, 3.

EQUITY.

I. Jurisdiction and General Principles. See *Land Grants*, 2, 8; *Partition; Stockholder.*

1. The assignee of a chose in action cannot proceed in equity to enforce, for his own use, the legal right of his assignors, merely upon the ground that he cannot maintain an action at law in his own name. *So held*, where the owner of letters-patent assigned them, together with all claims for damages by reason of the previous infringement of them, and the assignee filed his bill to recover such damages. *Hayward* v. *Andrews*, 672.
2. *Root* v. *Railroad Company*, 105 U. S. 189, cited and approved. *Id.*
3. The loss of a draft is not sufficiently proved, to support a suit in equity thereon against the drawer or acceptor, by evidence that it was left with a referee appointed by order of court to examine and report claims against an estate in the hands of a receiver, and that unsuccessful inquiries for it have been made of the referee, the receiver, and the attorney for the present defendant in those proceedings, without evidence of any search in the files of the court to which the report of the referee was returned, or any application to that court to obtain the draft. *Rogers* v. *Durant*, 644.
4. A decree of the Circuit Court, dismissing upon the merits a bill of which this court on appeal holds that there is no jurisdiction in equity, will be reversed, and the cause remanded with directions to dismiss the bill without prejudice to an action at law, and with costs in the court below, and each party to pay his own costs on the appeal. *Id.*

II. Pleading and Practice. See *Appeal*, 3; *Levee Board*, 1; *Limitations, Statute of*, 2; *Mississippi*, 2; *Railroad Mortgage*, 4.

5. A bill is bad on demurrer when it appears therefrom that there have been unreasonable delay and laches on the part of the complainant, or those under whom he claims, in asserting the rights which he seeks to enforce. *Landsdale* v. *Smith*, 391.
6. An appeal may lie from a decree in an equity cause, notwithstanding it is merely in execution of a prior decree in the same suit, for the purpose of correcting errors which originate in it; but when such decrees are dependent upon the decree, to execute which they were rendered, they are vacated by its reversal; in which case, the appeal which brings them into review will be dismissed for want of a subject-matter on which to operate. *Chicago and Vincennes Railroad Company* v. *Fosdick*, 47.
7. A decree *in personam* for the amount remaining due upon a mortgage debt, after the execution of a decree of foreclosure and sale, is of this description; but, when rendered in favor of other parties than the complainant, it will be reversed for the same error that required the reversal of the decree of foreclosure and sale. *Id.*

ESTOPPEL. See *Bond; Constitutional Law*, 4; *Corporation*, 5, 6; *Land Grants*, 2, 5; *Life Insurance*, 1; *Mississippi*, 4; *Partition*, 1.

EVIDENCE. See *Admiralty*, 2; *Bills of Exchange and Promissory Notes*, 1, 3; *Collector of Internal Revenue*, 1, 3, 4; *Equity*, 3; *Internal Revenue*, 3; *Jurisdiction*, 11, 14; *Practice*, 4, 7; *Sale*, 1.

When a party offers in evidence an instrument concerning real estate which has been acknowledged or proved so as to be admitted to record, and read in evidence, the burden of proof is on the party denying its execution. The fact that a person whose name is signed as a subscribing witness is alive and is not called to testify, leaves a strong inference that its execution cannot be disproved. *Gay* v. *Parpart*, 679.

EXCEPTIONS. See *Practice*, 11, 12.

EXECUTION. See *Appeal*, 5; *Homestead Exemption.*

EXEMPTION. See *Customs Duties*, 3, 4; *Homestead Exemption.*

FINAL DECREE. See *Appeal*, 3, 4.

FORECLOSURE. See *Appeal*, 3-6; *Bill of Review*, 3; *District of Columbia; Equity*, 7; *Married Woman; Railroad Mortgage*, 1; *Waiver.*

FOREIGN LAWS. See *Bills of Exchange and Promissory Notes*, 3.

FORFEITURE. See *Contract*, 1; *Land Grants*, 7; *Life Insurance.*

FRAUD. See *Mississippi*, 2–4.

FRAUDULENT CONVEYANCE. See *Mississippi*, 2, 3.

1. A deed which a man caused to be made to his wife, for lands whereon they resided, will not be set aside at the instance of his subsequent creditors, it appearing that at its date, and when he paid for the lands and the improvements which he afterwards erected thereon, his property largely exceeded his debts, and that there was no intent to defraud. *Wallace* v. *Penfield*, 260.

2. A misdescription of the lands will not defeat the wife's right to them, to the exclusion of those creditors, there being no doubt as to the lands intended to be conveyed. *Id.*

GEORGIA. See *Appeal*, 5.

GRIST-MILL. See *Internal Improvements.*

HABEAS CORPUS.

The reviewing power of this court in a criminal case is, on a writ of *habeas corpus*, confined to the determination of the question whether the court which sentenced the prisoner had jurisdiction to try him for the offence whereof he was indicted and to sentence him to imprisonment. *Ex parte Carll*, 521.

HOMESTEAD EXEMPTION.

The homestead of a defendant is not subject to seizure and sale by virtue of an execution sued out on a judgment recovered by the United States in a civil action, if, had a private party been the plaintiff, it would be exempt therefrom, by the law of the State where it is situate. *Fink* v. *O'Neil*, 272.

HUSBAND AND WIFE. See *Fraudulent Conveyance; Married Woman.*

ILLINOIS.

1. The charter of the Kankakee and Illinois River Railroad Company did not limit the operation and effect of the general laws of Illinois, which confer power upon counties to subscribe for stock in railroad companies and issue bonds in payment therefor. *County of Kankakee* v. *Ætna Life Insurance Company*, 668.
2. The county of Kankakee, in that State, having been organized under the act of April 1, 1851, to provide for township organization, it was the duty of its board of supervisors to discharge the duties enjoined by the general laws upon the county courts in those counties which did not adopt that organization. *Id.*
3. The bonds issued by that board to pay for the subscription to the stock of that company are valid obligations of the county. *Id.*

IMPORTS, DUTIES ON. See *Customs Duties.*

IMPROVEMENTS. See *Internal Improvements; Land Grants*, 5; *Married Woman.*

INCOME TAX. See *Internal Revenue*, 5.

INFRINGEMENT. See *Equity*, 1; *Letters-patent*, 1, 10, 11.

INSOLVENCY. See *Bankruptcy; Mississippi*, 3.

INTEREST. See *Public Officer; Railroad Mortgage*, 1.

INTERNAL IMPROVEMENTS.

A steam grist-mill is not a work of internal improvement, within the meaning of the act of Nebraska of Feb. 15, 1869, entitled "An Act to enable counties, cities, and precincts to borrow money on their bonds, or to issue bonds to aid in the construction or completion of works of internal improvement in this State, and to legalize bonds already issued for such purpose." *Osborne* v. *County of Adams*, 181.

INTERNAL REVENUE. See *Collector of Internal Revenue; Practice*, 8.

1. Section 161 of the act of June 30, 1864, c. 173, entitled "An Act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," does not require that when, pursuant to its provisions, adhesive and other stamps are furnished to the manufacturer on credit, the bond to secure the payment therefor shall be executed to the Treasurer of the United States. *Jessup* v. *United States*, 147.
2. Even if taken without the authority of a statute, a bond payable to the United States, with a condition that the manufacturer shall pay such sums as he shall owe the United States for adhesive stamps, would be binding at common law, and an action might be maintained thereon. *Id.*
3. Under such a bond, any competent evidence to establish the manufacturer's indebtedness for stamps is admissible, whether they were from time to time furnished by the Commissioner of Internal Revenue or the Assistant Treasurer of the United States. *Id.*

INTERNAL REVENUE (*continued*).

4. During the period when sect. 122 of the act of June 30, 1864, c. 173, as amended by the act of July 13, 1866, c. 184, was in force, a railway company paid to alien non-resident holders of its bonds the entire interest due from time to time thereon. *Held*, that the company, no claim having been made here against it for any penalty, is liable to the United States for five per cent on the amount so paid, with interest thereon at the rate of six per cent per annum. *United States* v. *Erie Railway Company*, 327.

5. The court, in 22 Wall. 604, when this case was then before it, passed upon the character and effect of certain certificates therein described, which were issued by a railroad company pursuant to a resolution passed by the board of directors, Dec. 19, 1868, declaring that each stockholder was entitled to eighty per cent of his capital stock, the earnings which the company, with a view to increase its traffic, had thitherto expended in constructing and equipping its road and in purchasing property. The court adheres to its former ruling that the certificates were dividends in scrip, within the meaning of sect. 122 of the act of June 30, 1864, c. 173, as amended by the act of July 13, 1866, c. 184; but further holds that the company could show what were its earnings from Sept. 1, 1862, to Dec. 19, 1868, when the income-tax law was in force, as its earnings during any other period were not subject to the tax in question. *Bailey* v. *Railroad Company*, 109.

IOWA. See *Bond.*

IRON. See *Customs Duties*, 5, 6.

JUDGMENT. See *Bankruptcy*, 3; *Jurisdiction*, 5–11, 13; *Mississippi*, 5; *Parties*, 1; *Practice*, 4–6, 10–13; *Verdict.*

JUDICIAL NOTICE. See *Bills of Exchange and Promissory Notes*, 1.

JURISDICTION.

I. Of the Supreme Court. See *Appeal; Division, Certificate of; Habeas Corpus; Practice*, 8; *Railroad Mortgage*, 7; *Writ of Error.*

1. The value of the matter in dispute, when the jurisdiction of this court depends thereon, must be such as can be ascertained in money, and, if not disclosed by the record, may be shown by affidavits. *Youngstown Bank* v. *Hughes*, 523.

2. An appeal will not lie from a decree of the Circuit Court, which adjudged to none of the libellants in a collision suit, who had distinct causes of action against the vessel at fault, a sum exceeding $5,000. *Ex parte Baltimore and Ohio Railroad Company*, 5.

3. Where parties severally assert in the same suit a separate cause of action, the decrees which are rendered in favor of them respectively cannot be joined to render the amount involved sufficient to give this court jurisdiction. *Ex parte Baltimore and Ohio Railroad Company*, *supra*, cited and approved. *Farmers' Loan and Trust Company* v. *Waterman*, 265.

JURISDICTION (*continued*).

4. Distinct decrees in favor of or against distinct parties cannot be joined to render the aggregate sum sufficient to give this court jurisdiction. *Adams* v. *Crittenden*, 576.
5. Except in special cases, this court has no jurisdiction to re-examine the judgment or the decree of the Circuit or the District Court, unless the matter in dispute, exclusive of costs, although it arises upon the Constitution or a statute of the United States, exceed the sum or value of $5,000. *Id.*
6. Judgment was rendered by the Circuit Court for $1,660.75 against a town, on interest coupons detached from bonds which it had issued under a statute, the unconstitutionality of which it set up as a defence. The bonds were for a larger sum than $5,000. *Held*, that this court has no jurisdiction to re-examine the judgment. *Elgin* v. *Marshall*, 578.
7. Sections 691 and 692, Rev. Stat., as amended by sect. 3 of the act of Feb. 16, 1875, c. 77, in limiting the appellate jurisdiction of this court in cases of the character therein mentioned, refer to the sum or value of the matter actually in dispute in the suit wherein the judgment or decree sought to be reviewed was rendered, and exclude, in determining such sum or value, any estimate of the effect of the judgment or decree in a subsequent suit between the same or other parties. *Id.*
8. Certain creditors, who severally recovered judgments against A. amounting in the aggregate to more than $5,000, but none of which exceed that sum, filed their bill against him and B. in the Circuit Court. A decree was passed, subjecting to the payment of the complainants goods seized by virtue of an execution sued out upon an older judgment confessed by A. in favor of B. The amount of that judgment and the value of the goods are each more than $5,000. A. and B. appealed. *Held*, that the value of the matter in dispute between them and the respective appellees is not sufficient to give this court jurisdiction. *Schwed* v. *Smith*, 188.
9. A judgment of reversal by a State court, with leave for further proceedings in the court of original jurisdiction, is not subject to review here. *Bostwick* v. *Brinkerhoff*, 3.
10. Where a party sues out a writ of error to a State court, this court has no jurisdiction to re-examine the judgment or the decree, although it be adverse to the Federal right, if he set up and claimed the right, not for himself, but for a party in whose title he had no interest. *Miller* v. *Lancaster Bank*, 542.
11. The State of Colorado brought ejectment in one of her courts, and offered in evidence the defendant's deed to the Territory of Colorado for the demanded premises. He objected to its introduction, upon the ground that at its date "the Territory had no right to take a conveyance of real estate without the consent of the government of the United States." The objection was overruled. *Held*, that the judgment rendered for the State is not subject to review here, it not

JURISDICTION (*continued*).

appearing that any Federal question was either raised and passed upon or necessarily involved. *Brown* v. *Colorado*, 95.

II. Of the Circuit Court. See *Causes, Removal of; Practice*, 1, 2, 8.

12. Where the amount involved is sufficient, the citizen of a State other than Michigan, who holds bonds of a municipal corporation in Michigan, may, in the proper Circuit Court of the United States, maintain an action against it on them, or on the coupons thereto attached, although each is payable to a citizen of the State or bearer, or to bearer. *Chickaming* v. *Carpenter*, 663.

III. In General. See *Causes, Removal of*, 8, 10; *Habeas Corpus*.

13. The courts of the United States do not regard as valid or as importing verity a judgment *in personam* rendered by a State court for the recovery of a debt or demand, unless the defendant either entered a voluntary appearance, or he or some one authorized to receive process for him was personally cited to appear. *Pennoyer* v. *Neff*, 95 U. S. 714, cited and approved, and the doctrines announced in that case declared to be applicable to personal judgments against corporations. *St. Clair* v. *Cox*, 350.

14. Michigan permits foreign corporations to transact business within her limits, and when a suit by attachment is brought against one of them by a resident of the State, she authorizes the service of a copy of the writ, with a copy of the inventory of the property attached, on "any officer, member, clerk, or agent of such corporation" within the State, and declares that a personal service of a copy of the writ and of the inventory on one of these persons shall have the force and effect of personal service of a summons on a defendant in suits commenced by summons. A., a resident, sued out of the Circuit Court of a county an attachment against a foreign corporation, and the officer to whom the writ was directed returned that by virtue of it he had seized and attached certain property, and served a copy of the writ, with a copy of the inventory of the attached property, on the defendant, by delivering the same personally, in said county, to B., agent of the said defendant. No appearance was entered by the corporation, and A. recovered a judgment *in personam* for the amount of his demand. The record of it was in another suit offered in evidence to support a plea of set-off, and an objection was made to its admissibility that the court which rendered the judgment had not jurisdiction of the parties. *Held*, 1. That the record was properly excluded, it not appearing therefrom that the corporation was doing business in the State at the time of the service of the writ on B. 2. Had that fact appeared, the corporation might have shown that his relations to it did not justify such service. *Id.*

JURY. See *Practice*, 3, 6; *Verdict*.

LACHES. See *Equity*, 5.

LAND GRANTS.

1. A patent executed in the required form and by the proper officers, for such a portion of the public domain as is by law subject to sale or other disposal, passes the title thereto, and the finding of the facts by the Land Department, which authorize its issue, is conclusive in a court of law. *Smelting Company* v. *Kemp*, 104 U. S. 636, cited upon this point and approved. *Steel* v. *Smelting Company*, 447.

2. A party who claims to be aggrieved by such issue, although he cannot have the patent vacated or limited in its operation where it comes collaterally in question in an action for the recovery of possession, may obtain relief in a Court of Chancery, if he has such an equitable right as will estop the patentee or those claiming under him from asserting the legal title to the land. Otherwise such party must apply to the officers of the government, who, although not clothed with power to set the patent aside, may for that purpose bring suit in the name of the United States. *Id.*

3. Mineral lands belonging to the United States, although lying within a town site on the public domain, are subject to location and sale for mining purposes, and a title to them is acquired in the same manner as to lands of that description which are elsewhere situate. *Id.*

4. In ejectment for mineral lands by a party claiming under the patentee, the defendant asserted that he owned the demanded premises "by superiority of possessory title and priority of actual possession" of them as part of a town site; that the patentee was not a citizen; and that frauds, bribery, and subornation of perjury had been used to obtain the patent. *Held*, that it was the province of the Land Department to pass upon such matters before the patent was issued, and that they could not be set up to defeat the action. *Id.*

5. A party cannot invoke the doctrine of estoppel against the owners by reason of improvements which, with their knowledge, he put upon the land, if he was aware at the time that it belonged to them, and that he had no title to it. *Id.*

6. Subject to the exceptions therein mentioned, the act of July 23, 1866, c. 212, granted, for the use and benefit of the St. Joseph and Denver City Railroad Company, the odd-numbered sections of public land within a prescribed distance on each side of the proposed road. The company duly filed in the office of the Secretary of the Interior a map showing the definite location of the line of the road. *Held*, that the grant was *in præsenti*, and attached to those sections as soon as the map was so filed. No valid adverse right or title to any part of them could be acquired by a subsequent settlement or entry. *Van Wyck* v. *Knevals*, 360.

7. On the failure of the company to complete the work, a forfeiture of the grant, if it resulted therefrom, can be enforced only by the United States through judicial proceedings or the action of Congress. A third party cannot set it up to validate his title, nor avail himself of the fact that the company, in constructing, deviated from the original line, if the lands which he claims are within the prescribed distance from it and the road as built. *Id.*

LAND GRANTS (*continued*).

8. After the company had filed with the Secretary of the Interior its map of definite location, a party entered a portion of the sections covered by the grant, and a patent therefor was issued to him by the United States. *Held*, that the patent created a cloud upon the company's right and title, and furnishes ground for equitable relief. *Id.*

9. *Quære*, Where Congress conferred upon a railway company created by a State authority to construct its road within an organized Territory, can the latter, when admitted into the Union as a State, impose any impediment to the full enjoyment by the company of all the rights resulting from the exercise of that authority. *Id.*

LAW AND FACT. See *Practice*, 9.

LETTERS-PATENT. See *Causes, Removal of*, 4; *Equity*, 1.

1. The claims of letters-patent No. 104,271 granted to Theodore Clough, July 14, 1870, for an "improvement in gas-burners," *ante*, p. 168, are valid, and they are infringed by a burner constructed in accordance with the description contained in letters-patent No. 105,768 granted to John F. Barker, July 26, 1870, for an "improvement in gas-burners." *Clough* v. *Barker*, 166.

2. A burner set up as anticipating Clough's invention, if used now in a way in which it was never designed to be used, and was not shown to have ever been used before his invention, might be made to furnish a supplementary supply of gas. It was not, however, designed for the same purpose as his burner, and no person looking at it or using it would understand that it was to be used in the way that his was used, and it was not shown to have been really used and operated in that way. *Held*, that it does not amount to his invention. *Id.*

3. The combination of the first claim of Clough's is new, and he, having first applied a valve regulation of any kind thereto, is entitled to hold as infringements of the second claim all valve regulations, applied to such a combination, which perform the same office in substantially the same way as, and were known equivalents for, his form of valve regulation. *Id.*

4. The claim of letters-patent No. 105,768, granted to John F. Barker, July 26, 1870, for an "improvement in gas-burners," is valid. *Clough* v. *Manufacturing Company*, 178.

5. Although, in its method of supplying additional gas and in its valve-arrangement for regulating the supply, a gas-burner made according to the description of those letters infringes both of the claims of letters-patent, 104,271, granted to Theodore Clough, June 14, 1870, for an "improvement in gas-burners," yet, as it dispenses with the interior tubular valve of Clough, and is made in two pieces instead of three, and is less expensive to make, and as, in regulating the supply, the shell alone revolves, and the flame always remains in one position, the modifications are new and useful, and therefore patentable. *Id.*

6. Reissued letters-patent No. 6162, granted to John R. Moffitt for an

LETTERS-PATENT (*continued*).

"improvement in the manufacture of heel stiffeners for boots and shoes," are void, inasmuch as they cover a contrivance essentially different from that described in the specification of the original letters. *Moffitt* v. *Rogers*, 423.

7. Reissued letters-patent No. 1049, bearing date Sept. 25, 1860, granted to Albert S. Southworth for certain improvements in taking photographic impressions and subsequently extended for seven years from April 10, 1869, are void, the claim therein made being for a different invention from that described in the original letters. *Wing* v. *Anthony*, 142.

8. The first claim of reissued letters-patent No. 5644, granted to John W. Gosling Nov. 4, 1873, for an "improvement in step-covers and wheel-fenders for carriages," if construed to be broad enough to cover the structure made in accordance with the specification annexed to letters-patent No. 90,584, granted to John Roberts, May 25, 1869, is void, because the invention is not new, nor is it embraced in the original letters. *Gosling* v. *Roberts*, 39.

9. The invention covered by the claim of Gosling's original letters (*ante*, p. 42) was new, and they are adequate to secure it. *Id.*

10. The owner of patents for improvements in metallic cotton-bale ties, each tie consisting of a buckle and a band, granted no license to manufacture the ties, but supplied the market with them, the words, "Licensed to use once only," being stamped in the metal of the buckle. After the bands had been severed at the cotton-mill, A., who bought them and the buckles as scrap-iron, rolled and straightened the pieces of the bands, and riveted together their ends. He then cut them into proper lengths and sold them with the buckles, to be used as ties, nothing having been done to the buckles. *Held*, that A. thereby infringed the patents. *Cotton-Tie Company* v. *Simmons*, 89.

11. *Quære*, Would A.'s sale of the buckle, apart from the band, be an infringement of the patents. *Id.*

LEVEE BOARD. See *Accord and Satisfaction.*

1. A board of commissioners, one from each of five counties, having been incorporated by a State statute to construct and maintain levees, with authority to make contracts for the doing of the work, and having made such a contract, and been sued in equity thereon, in the district in which the domicile of the board was established by its act of incorporation, by persons residing out of the district, a subsequent statute of the State abolished the offices of the commissioners, and constituted the treasurer and the auditor of accounts of the State *ex officio* the levee board, with the declared purpose "to substitute the treasurer and auditor in place of the board of levee commissioners now in office;" and a bill of revivor was filed against them by leave of the court. *Held*, that the suit might be prosecuted against the new board, although both the treasurer and the auditor resided out of the district; and that an appeal from a final decree

LEVEE BOARD (*continued*).
for the complainant might be taken by the treasurer and auditor, describing themselves by their individual names, and as such officers, and as *ex officio* the levee board. *Hemingway* v. *Stansell*, 399.

2. A board of commissioners, authorized by statute to make contracts for the building of levees, and to borrow money, issue bonds, and sell and negotiate them in any market, but not at a greater rate of discount than ten per cent, may make a contract for the work at certain prices by the cubic yard, payable in such bonds, and may afterwards amend that contract by inserting "at the rate of ninety cents on the dollar," and issue bonds to the contractors accordingly, upon being satisfied that such was the agreement actually made between the parties; although the work is actually done by sub-contractors for lower prices in cash. *Id.*

LICENSE. See *Letters-patent*, 10.

LIEN. See *Corporation*, 7; *Married Woman.*

LIFE INSURANCE.

1. Circumstances stated which estop a mutual life insurance company from setting up that the policy sued on was forfeited by the non-payment *ad diem* of the stipulated annual premium. *Insurance Company* v. *Norton*, 96 U. S. 234, and *Insurance Company* v. *Eggleston*, id. 572, approved. *Phœnix Insurance Company* v. *Doster*, 30.
2. Where that premium is, by the contract, subject to a deduction equal in amount to the dividends to which the assured is entitled, it is the duty of the company to give him such notice of that amount, that he may, in due time, pay or tender the balance of the premium. *Id.*

LIMITATIONS, STATUTE OF.

1. A suit upon a contract made and to be performed in another State or country, by a person who then resided there, cannot be maintained in Virginia, after the right of action thereon is barred by the laws of such State or country. *Bacon* v. *Rives*, 99.
2. In the latter part of the year 1863, at the instance of A., then a resident of Texas, B., a resident of Virginia, forwarded to him money in trust to invest, pursuant to specific instructions. A., in 1865, reported that he had invested the fund in the transportation of cotton, but did not state what profits had accrued therefrom. No further report was made by him. In 1875, B., on discovering where A. was filed a bill against him to compel a discovery and an accounting, which, upon demurrer, was dismissed upon the ground that the suit was barred by the Statute of Limitations of both States. *Held*, that in view of the case made by the bill, and of the subsisting trust, the existence of which is admitted by the demurrer, B. is entitled to a discovery of the disposition made of the money, and that the limitation does not commence running until the trust is closed, or until A., with the knowledge of B. disavowed the trust or held adversely to his claim. *Id.*

LIMITED LIABILITY OF SHIP-OWNERS. See *Maritime Law*, 6.

MARITIME LAW. See *Admiralty; Bounty*, 2.

1. In cases of collision, where both vessels were in fault, the maritime rule is to divide the entire damage equally between them, and to decree half the difference between their respective losses in favor of the one that suffered most, so as to equalize the burden. *The "North Star,"* 17.
2. The obligation to pay that difference is the legal liability arising from the transaction. *Id.*
3. The practice, which obtains in England, of decreeing to each party half his damage against the other party, thus necessitating two decrees, is only an indirect way of getting at the true result, and grows out of the technical formalities of the pleadings, and the supposed incongruity of giving affirmative relief to a respondent. *Id.*
4. *Semble*, that there is no good reason why, in such cases, the respondent, if he claims it in his answer, should not have the benefit of a set-off or recoupment of the damage which he sustained, at least to the extent of that done to the libellants. *Id.*
5. If both parties file libels, the courts of the United States have the power to consolidate the suits, prescribe one proceeding, and pronounce one decree for one-half of the difference of the damage suffered by the two vessels. *Id.*
6. The statute of limited liability is not to be applied in such a case, until the balance of damage has been struck; and then the party against whom the decree passes may, if otherwise entitled to it, have the benefit of the statute in respect of the balance which he is decreed to pay. The decision to the contrary in *Chapman* v. *Royal Netherlands Steam Navigation Company*, 4 P. D. 157, examined and disapproved. [See Appendix, p. 705.] *Id.*
7. A collision occurred at sea, in the night, between the steamers W. and N., pursuing nearly opposite courses. W. was sunk, and N. much damaged. Both were held to have been in fault. Cross-actions were brought and heard together, and one decree was made, being in favor of the owners of W. for one-half the difference of damage sustained by the two vessels, that of W. being the greater. This decree was affirmed, and both parties appealed therefrom. The owners of W. then claimed under the limited liability act entire exoneration from liability, and a decree for half of their damage, without deducting the damage of N. *Held*, that the claim must be disallowed, because that act can only be applied to the balance decreed to be paid, and that was in favor of the owners of W. *Id.*
8. *Quœre*, Can such a claim, if there were any ground therefor, be allowed in favor of a party who does not set it up in his pleadings *Id.*

MARRIED WOMAN.

Where a woman, with the consent of her husband, bought land, and gave her promissory notes for part of the purchase-money, which bear ten per cent interest per annum, a rate allowed by the laws of the State when a special contract therefor is made, and the vendor

MARRIED WOMAN (*continued*).
reserved in the deed a lien to secure the payment of the notes, and she and her husband went into possession, erected permanent improvements, and made payments on the notes, — *Held*, 1. That she, though consenting to account for rents and profits, is not entitled, by reason of her coverture, to have the sale set aside and the purchase-money already paid refunded; nor will she or her husband be allowed anything for the improvements. 2. That for the amount remaining due upon the notes, according to their tenor and effect, the lien may be enforced by a sale of the land. *Bedford* v. *Burton*, 338.

MENOMINEE RIVER. See *Boundary River*.

MICHIGAN. See *Boundary River; Jurisdiction*, 12, 14.

1. A rule of court in Michigan provides, that where a defendant pleads matter of set-off, founded on a written instrument, he cannot "be put to the proof of the execution of the instrument or the handwriting" of the opposite party, unless an affidavit is filed "denying the same." *Held*, that the want of such affidavit does not preclude the plaintiff from showing that such an instrument, dated January 2, was executed on Sunday, January 1, or that his duplicate of an instrument executed in duplicate by him and the defendant differs in its contents from the one retained by the defendant. *Ames* v. *Quimby*, 342.
2. By the terms of the act of Michigan of March 22, 1869, township bonds in aid of a railroad company are not invalid because they were issued after the expiration of sixty days from the date when the vote in favor of issuing them was cast by the electors. *Chickaming* v. *Carpenter*, 663.
3. In Michigan, where the execution of the instrument sued on is not put in issue by an appropriate plea, verified by affidavit, proof thereof is not required The effect of the pleadings in this suit is to raise the question whether the bonds, if issued after such period of sixty days, are valid. *Id.*
4. Such bonds may be delivered to a corporation lawfully formed by the consolidation of a corporation with that to which they were voted. *Id.*

MINES AND MINING. See *Land Grants*, 3, 4.

MINNESOTA. See *Bills of Exchange and Promissory Notes*, 3; *Statutes and Constitutions, Construction of*, 2, 3.

MISSISSIPPI.

1. Leave to amend the affidavit, by inserting a new ground for an attachment sued out in Mississippi, is not the subject of a valid exception, it not appearing that the defendant was thereby prejudiced. *Fitzpatrick* v. *Flannagan*, 648.
2. Where a firm is dissolved by the death of one of its members, and no bill is filed by his representatives, or by the firm creditors seeking the intervention of a court of equity to wind up the business of the

MISSISSIPPI (*continued*).

firm, marshal its assets and apply them to the firm debts, the surviving partner may, by paying his individual indebtedness with those assets, make a disposition of them, which is not a fraud in law upon the firm creditors, nor, in the absence of an actual intent to defraud, a just ground for suing out an attachment under the statute of Mississippi. *Id.*

3. Section 1420 of the Code of Mississippi of 1871, *ante*, p. 658, did not forbid an insolvent debtor to give a preference to one or more of his creditors, if it were *bona fide* and with no intent to secure a benefit to himself. *Id.*

4. A continued recognition of his liability, and his agreement to discharge it after he has a full knowledge of all the facts in relation to which the alleged false representations were made at the time of his original promise, estops the party from setting them up as a defence to an action on that promise. *Id.*

5. According to the practice of the Circuit Court in Mississippi, the judgment sustaining the attachment and the personal final judgment on the merits against the defendant are separate, and may be considered here separately on a writ of error brought to review the latter judgment. *Id.*

MORTGAGE. See *Appeal*, 3–6; *Corporation*, 4; *District of Columbia; Equity*, 7; *Railroad Mortgage; Waiver.*

'UNICIPAL BONDS. See *Constitutional Law*, 3, 4; *Internal Improvements; Jurisdiction*, 12; *Michigan*, 2–4; *Negotiable Instruments; Statutes and Constitutions, Construction of*, 2, 3.

MUNICIPAL CORPORATION. See *Appeal*, 6; *Constitutional Law*, 3, 4.

MUNICIPAL SUBSCRIPTIONS. See *Illinois; Michigan*, 2–4.

NEBRASKA. See *Internal Improvements.*

NEGLIGENCE. See *Admiralty; Customs Duties*, 9.

The plaintiff, in the course of his employment as an engine-driver for the defendant, a railroad company, was injured by the collision of the train on which he was with another train of the company. *Held*, that the court did not err in charging the jury that the company, if its negligence had a share in causing the injuries of the plaintiff, was liable, notwithstanding the contributory negligence of his fellow-servant. *Grand Trunk Railway Company* v. *Cummings*, 700.

NEGOTIABLE INSTRUMENTS. See *Bills of Exchange and Promissory Notes; Equity*, 3.

1. Overdue coupons detached from a municipal bond which has not matured are negotiable by the law merchant. *Thompson* v. *Perrine*, 589.

2. Where coupons are payable to bearer, the right of the holder thereof to sue thereon in a court of the United States does not depend upon the citizenship of any previous holder. He is not an assignee, within the meaning of the act of March 3, 1875, c. 137. *Id.*

3. *Thompson* v. *Perrine*, 103 U. S. 806, cited and reaffirmed. *Id.*

NEW TRIAL. See *Colorado; Practice*, 5, 11; *Verdict*.

NOTARY PUBLIC. See *Bills of Exchange and Promissory Notes*, 1.

NOTICE. See *Life Insurance*, 2.

OFFICERS OF THE UNITED STATES. See *Collector of Internal Revenue; Constitutional Law*, 1; *Customs Duties*, 9; *Land Grants*, 1, 2; *Public Officer; United States, Suits by or against*, 2, 3.

OFFICIAL BONDS. See *Collector of Internal Revenue*.

OREGON. See *Stockholder*, 2.

PARTIES. See *Appeal*, 1, 5; *Railroad Mortgage*, 4.

1. A sheriff having possession of property under a writ of attachment is not bound by the judgment in a replevin suit to which he was not a party, and in which he was not served with process, and did not appear, and which he did not defend, although his under sheriff, as an individual, was a party to the suit. *Geekie* v. *Kirby Carpenter Company*, 379.
2. In an action upon a covenant, — contained in an agreement between the covenantor and "S. and such other parties as he may associate with him under the name of S. and Company," signed and sealed by the covenantor, and signed "S. & Co." by the hand of S., acting in behalf and by authority of the partnership, — to pay to "the said S. and Company, parties of the second part," for work to be done by them, all those who are partners at the time of the signing of the agreement may join. *Seymour* v. *Western Railroad Company*, 320.

PARTITION.

1. The difference between a judgment and writ of partition at common law, and a partition by decree in chancery as it affects the title, is, that the former operates by way of delivery of possession and estoppel, while in the latter the transfer of title can be effected only by the execution of conveyances between the parties, which may be decreed by the court and compelled by attachment. *Gay* v. *Parpart*, 679.
2. Some of the States confer upon their Chancery Courts authority to make such a conveyance by a master commissioner, or they provide that the decree itself shall operate as such conveyance and vest the title in the parties to whom the premises have been severally allotted; but where, in a suit in equity for partition, no such authority or provision exists, the proceeding, while it may be effectual as a division and an allotment of the property, does not pass the title thereto. *Id*.
3. Where a decree erroneously declared the nature of the estate of each co-tenant, and three days thereafter deeds *inter partes* were made which do not follow the decree, and where, twelve years afterwards, a bill in chancery was brought to perfect the partition by compelling conveyances in accordance with the decree, the court may inquire

PARTITION (*continued*).
into the equities of the parties arising out of the surrounding circumstances, and refuse to order conveyances in accord with the title as found by the former decree, when it would be inequitable to make such order. *Id.*

4. If such former decree was made by consent of the party against whom the error was committed, and who received no valuable consideration, and if no one is interested but volunteers, or those who purchased with full notice of the facts, no order for conveyances will be made, but the parties will be left to rely for their title on those which were interchangeably made to each other in accordance with the respective allotments. *Id.*
5. No person can be an innocent purchaser for value under the first decree who was attorney for the plaintiff, and who purchased from him while the suit to enforce it was pending. *Id.*

PARTNERSHIP. See *Mississippi*, 2; *Parties*, 2.
The court below instructed the jury that it was the duty of a surviving member of a firm to convert its property into money, collect debts due to it, and first apply them to the payment of its debts due, and that if he mingled the goods of the firm with his own so that they could not be identified, he rendered his own liable for the firm debts; and that the application of the proceeds of the goods to the payment of his individual debts was a fraud upon the firm creditors. *Held*, that the instruction was erroneous. *McGinty* v. *Flannagan*, 661.

PATENT FOR LAND. See *Land Grants.*

PATENT-RIGHT. See *Letters-patent.*

PLEADING. See *Equity*, II.; *Maritime Law*, 3–5, 8; *Michigan*, 1, 3; *Practice*, 7; *Sale*, 2.

PRACTICE. See *Admiralty*, 8; *Appeal; Bill of Review; Causes, Removal of; Customs Duties*, 6; *Division, Certificate of; Equity*, II.; *Habeas Corpus; Jurisdiction; Maritime Law*, 3–5; *Michigan*, 1; *Mississippi; Parties; Railroad Mortgage*, 4; *Verdict; Writ of Error.*

1. Rule 32 applies only to cases remanded to a State court by the Circuit Court, or dismissed under the authority of sect. 5 of the act of March 3, 1875, c. 137. *Call* v. *Palmer*, 39.
2. Under the act of March 3, 1875, c. 137, the Circuit Court should dismiss a suit where the name of the complainant who has no real interest in the subject-matter thereof, has been improperly and collusively used for the purpose of creating a case cognizable there. *Hayden* v. *Manning*, 586.
3. A case should not be withdrawn from the jury, unless the facts are undisputed, or the testimony is of such a conclusive character that a verdict in conflict therewith would be set aside. *Phœnix Insurance Company* v. *Doster*, 30.
4. Where the evidence is such that, as to a given matter, there is no

PRACTICE (*continued*).
question for the jury, a charge and a refusal to charge in regard to such matter are not a ground for reversing the judgment, because they work no injury to the party excepting. *Ames* v. *Quimby*, 342.

5. After a new trial has been had, pursuant to the mandate of this court, and a second judgment rendered, no errors other than those committed after the mandate was received below can be considered here. *Id.*
6. Although the refusal, at the close of the testimony of the plaintiff, to direct a verdict for the defendants would justify a reversal of a judgment against them, yet if they proceed with their defence and introduce testimony which is not in the record, the judgment on the verdict which the jury, under proper instructions, find against them will not be reversed on account of that refusal. *Grand Trunk Railway Company* v. *Cummings*, 700.
7. Where *nil debet* is pleaded, it is not error to strike out a notice of special matter to be given in evidence, where evidence of such matter is admissible under the plea. *United States* v. *Stone*, 525.
8. Where an information against a distillery for an alleged violation of the revenue laws was filed, and the District Court, after rendering judgment in favor of the claimant, denied the motion of the United States that a certificate of reasonable cause of seizure be entered of record, — *Held*, that the action on the motion cannot be reviewed here or in the Circuit Court. *United States* v. *Abatoir Place*, 160.
9. The court, in affirming the decree below, declines to deliver an extended opinion, as the determination of the case depends upon matters of fact, and no doubtful or difficult question of law is involved. *Tyler* v. *Campbell*, 322.
10. Although there was no general verdict in this case, and no special verdict in any form known to the common law, and no waiver in writing of a jury trial, and no such finding of the court below upon the facts as is provided for by sect. 649 of the Revised Statutes, this court, on a written stipulation filed here by the parties, agreeing upon the facts, reviewed the case on a writ of error, reversed a judgment below for the defendant, and directed a judgment for the plaintiff. *Geekie* v. *Kirby Carpenter Company*, 379.
11. After the adjournment without day of a term, whereat a final judgment on a verdict was rendered by one justice of the Supreme Court of the District of Columbia, and an appeal taken therefrom to the general term, but no bill of exceptions or case stated filed, a new trial cannot be granted upon a case stated filed by him at a subsequent term. *Coughlin* v. *District of Columbia*, 7.
12. When a verdict and a judgment for the plaintiff were wrongly set aside, and the error appears of record, he may, without a bill of exceptions, avail himself of it upon a writ of error to reverse a final judgment afterwards rendered against him. *Id.*
13. When a judgment for the plaintiff in a personal action was errone-

PRACTICE (*continued*).
ously set aside, and a subsequent final judgment against him is brought up by writ of error, pending which he dies, this court will affirm the first judgment *nunc pro tunc*. *Id.*

PRESUMPTION. See *Conflict of Laws.*

PRINCIPAL AND SURETY. See *Collector of Internal Revenue; Customs Duties*, 7-9.

PRIZE. See *Bounty*, 2.

PROOF, BURDEN OF. See *Evidence.*

PUBLIC LANDS. See *Land Grants.*

PUBLIC OFFICER. See *Collector of Internal Revenue; Constitutional Law*, 1; *Customs Duties*, 9; *Land Grants*, 1, 2; *United States, Suits by or against*, 2, 3.

An officer charged with the disbursement of public moneys is not liable for interest thereon, if he has not converted them to his own use, nor neglected to disburse them pursuant to law, nor, when thereunto required, failed to account for or transfer them. *United States* v. *Denvir*, 536.

PURCHASER IN GOOD FAITH. See *Damages; Partition*, 4, 5.

RAILROAD. See *Corporation; Internal Revenue*, 4, 5; *Land Grants*, 6-9; *Negligence; Railroad Mortgage; Statutes and Constitutions, Construction of*, 2, 3.

RAILROAD COMPANIES, SUBSCRIPTIONS TO THE CAPITAL STOCK OF. See *Illinois; Michigan*, 2-4.

RAILROAD MORTGAGE. See *Corporation*, 4; *Equity*, 7.

1. A railroad company executed, March 10, 1869, to a trustee, by way of security for its bonds payable thirty years thereafter, a first mortgage upon its road, and stipulated that if "default should be made in the payment of any half-year's interest on any of them, and the coupon for such interest be presented and its payment demanded, and such default continue six months after such demand without the consent of the holder of such coupon or bond, then and thereupon the principal of all of the bonds thereby secured should be and become immediately due and payable, anything in the bonds to the contrary notwithstanding; and the trustee might so declare the same, and notify the company thereof; and, upon the written request of the holders of a majority of the bonds then outstanding, should proceed to collect both principal and interest of all such bonds outstanding by foreclosure and sale of said property, or otherwise, as therein provided." Claiming that there had been a default for more than six months after a demand for the payment of the coupons due in 1873, the trustee declared the principal of the bonds to be due, and notified the company thereof. He then, without obtaining the written request of a majority of the holders of the bonds outstand-

RAILROAD MORTGAGE (*continued*).
ing, brought suit praying for a decree for a sum equal to the entire amount of the bonds and interest due thereon, and for the foreclosure and sale of the mortgaged property. *Held*, that, if there had been such default, he was not entitled to the decree. *Chicago and Vincennes Railroad Company* v. *Fosdick*, 47.

2. Where by the stipulations of the mortgage it is a security for the payment of the interest as it semi-annually accrues, as well as of the principal, the trustee, on the non-payment of either, or, on his failure to act, any bondholder, may, to enforce the security, bring suit, and if it results in a sale of the mortgaged premises as an entirety which is confirmed by the court, the purchaser takes an absolute title to them as against the parties to the suit or their privies, and the proceeds of the sale will be applied first to the arrears of interest, then to the mortgage debt, then to the junior incumbrances, according to their respective priority of lien, and the surplus, if any, will be paid to the mortgagor. *Id.*

3. In such a suit, the decree should declare the fact, nature, and extent of the default which constitutes the breach of the condition of the mortgage, and the amount then due, and a substantial error in that regard will, on appeal, vitiate the subsequent proceedings. A reasonable time for payment should be allowed, and, on such payment within the prescribed period, further proceedings will be suspended until another default occurs. At any time prior to the confirmation of the sale under the decree, the mortgagor, by bringing into court the amount then due, and costs, will be allowed to redeem. *Howell* v. *Western Railroad Company*, 94 U. S. 463, touching the form of the decree where moneys payable by instalments are secured by mortgage, cited and approved. *Id.*

4. In August, 1870, a first mortgage on a railroad was made. In January, 1873, a second mortgage on the same railroad was made. Both mortgages covered after-acquired property. A default on the first mortgage occurred in November, 1873, and on the second mortgage in January, 1874. In August, 1874, the second mortgagee filed a bill to foreclose the second mortgage, making the first mortgagee a party, acknowledging the priority of the first mortgage, not praying any relief against the first mortgagee, and praying for a receiver, and for the payment of his net revenue to those entitled to it. On the same day an order was made appointing one Schuyler receiver, and directing that a copy of the order be served on the first mortgagee, a corporation, requiring it to appear " on or before " the first Monday of November then next, and authorizing the receiver to pay the arrears due for operating expenses for a period in the past not exceeding ninety days. A copy of the order was served on the first mortgagee three days afterwards, and proof of that service was filed two days after the service. In October following, the receiver, on his petitions filed, was authorized, by order, to purchase certain rolling-stock, and to pay indebtedness, not exceeding $10,000, to other connecting lines for materials and repairs, and for ticket

RAILROAD MORTGAGE (*continued*).
and freight balances, a part of which was incurred more than ninety days before the order appointing the receiver was made, and to expend a sum named in building six miles of road and a bridge, which were part of the main line of the road, and the expenditures were charged as a first lien on the earnings of the road. The first mortgagee appeared and answered on the first Monday of November, and not before. The answer objected to the creation of fresh indebtedness. Nothing more was done in the suit for eleven months. Then the receiver reported that he had built the six miles and the bridge, and purchased rolling-stock, and incurred debts therefor. He also filed a petition showing that his trust owed $232,000, and asking leave to borrow that amount and $90,000 to put the road in order, on receivers' certificates, to be made a first lien. The petition set forth a meeting of both classes of bondholders, at which, on the report of a committee, the receiver was directed, by a resolution passed, to obtain authority to borrow $322,000 on receivers' certificates. An order was made authorizing him to borrow $201,000 on receivers' certificates, payable out of income, and to be provided for in the final order of the court in the suit, if not paid out of income. Soon after four holders of first-mortgage bonds were made defendants, with leave to answer and to file a cross-bill. They answered and filed a cross-bill, in November, 1875, to foreclose the first mortgage. The cross-bill claimed that the six miles of road, and the bridge and the rolling-stock, and the other property acquired by the receiver, were subject to the lien of the first mortgage, and that the mortgagor had been insolvent from October, 1873, and affirmed the foregoing statement as to the meeting of the bondholders and their resolution, and stated that the plaintiffs in the cross-bill had desired and sought for more than a year to have the first mortgage foreclosed; that the $201,000 ought not to be borrowed and made a first lien on the road; and that the receiver ought to be removed, and another receiver appointed under the cross-bill. In December, 1875, a reference was made to take evidence on the subject of the appointment of a new receiver. More than four months after that the first mortgagee answered the cross-bill, and, the two suits being ready for hearing, they were consolidated and heard. One decree was made in them, in May, 1876, declaring that both mortgages covered all the property held by the mortgagor when the original suit was brought and all subsequent additions thereto, and providing for a foreclosure of the right of the second mortgagee to redeem, and for the presentation to a master of claims against the property and the receiver. In July, 1876, one Claybrook was appointed additional receiver in the original suit. He acted, after Aug. 11, 1876, as sole receiver until Aug. 25, 1876, after which he and Schuyler were joint receivers, until December, 1876, when Schuyler resigned. Claybrook, on Aug. 12, 1876, took possession of the entire property which Schuyler had, including a railway twenty-three miles long, used under a lease from another company. The master reported as to

RAILROAD MORTGAGE (*continued*).
claims against the property and the receiver, from time to time. The plaintiffs in the cross-bill interposed objections to making any of the claims prior in lien to the lien of the first mortgage. In January, 1879, the court, by order, allowed certain claims, many of them not over $5,000, specifying the names of the claimants and the amounts allowed, and giving the claims allowed preference in payment out of the income and proceeds of sale, over the claims of the mortgagees. In this order the plaintiffs in the cross-bill prayed an appeal to this court. In July, 1879, the court made a decree for the sale of the road as an entirety, and for the payment out of the proceeds of sale of the claims allowed, before paying any principal or interest on the mortgage debts. In this decree the plaintiffs in the cross-suit prayed an appeal from it to this court. On a hearing of the appeal, *Held:* 1. The appeals were appeals in open court, not requiring citations, and the order and the decree appealed from sufficiently designated all the appellees by name. 2. The first mortgagee was a proper party to the original bill of foreclosure, because a receiver was prayed for; and, the order appointing the receiver having been served on the first mortgagee three days after it was made, such mortgagee was bound to protect promptly the interests of the first-mortgage bondholders. 3. The original bill did not seek to create a receivership for the sole benefit of the second-mortgage bondholders. 4. The property in court under the original bill was the entire mortgaged property, and not merely the equity of redemption of the mortgagor, as against the second mortgagee. 5. The exclusive right of a second mortgagee to the income of a receivership created under a bill filed by him is limited to a case where the first mortgagee is not a party to the suit. 6. The first mortgagee having been entitled, by the terms of the first mortgage, to take possession of the mortgaged property and operate the road, and the cross-bill not having been filed for more than a year after the receiver was appointed and the first mortgagee had appeared and answered in the original suit, and it having been, in judgment of law or in fact, fully known, all the time to the first-mortgage bondholders, what was doing by the receiver in creating the claims, it was inequitable for the appellants to lie by and see the receiver and the court dealing with the property in the manner complained of, and merely protest generally and disclaim all interest under the receivership, and yet assert in the cross-bill that the property acquired by the receiver was subject to the lien of the first mortgage, and claim the proceeds of that property without paying the debts incurred for acquiring it. *Miltenberger* v. *Logansport Railway Company*, 286.

5. A court has the power to create claims through a receiver, in a suit for the foreclosure of a railroad mortgage, which shall take precedence of the lien of the mortgage. It may therefore provide that the receiver shall pay the arrears due for operating expenses for a period in the past not exceeding ninety days, and pay indebtedness, not exceeding $10,000, to other connecting lines, for materials and

RAILROAD MORTGAGE (*continued*).
repairs, and for ticket and freight balances, a part of which had been incurred more than ninety days before the order appointing him was made, and purchase rolling-stock, and build six miles of road and a bridge, part of the main line of the road, and make such expenditures a lien prior to the lien of the mortgages. *Id.*

6. The mortgagor held a leased road, under a written lease, providing for rent and for payment for depreciation, and for the payment of a monthly rent by the lessor to the lessee for the use of a part of the road. The successive receivers took possession of the leased road and operated it as a continuation of the mortgaged road. Part of the rent which accrued before Claybrook became receiver was unpaid. Claybrook, after he became receiver, paid the rent as it accrued. The successive receivers collected the rent monthly from the lessor for the use of a part of the road. The court allowed to the lessor, as a claim preferred to the first mortgage, a sum based on the actual value of the use of the road by the receivers, and for depreciation, and allowed with a like preference, claims for supplies and materials furnished for the road, while so operated. *Held*, that the allowances were proper, and that the final decree was not erroneous in not requiring the accounts of the receiver to be settled before paying out of the proceeds of sale the debts allowed against him, nor in ordering the sale of the property as an entirety, without separating that acquired by the receiver. *Id.*

7. The question of the jurisdiction of this court, in respect of the claims not over $5,000, was not considered. *Id.*

REAL PROPERTY. See *Colorado; Jurisdiction*, 11.

REBELLION, THE. See *Bounty; Captured and Abandoned Property; Confiscation.*

RECEIVER. See *Appeal*, 5; *Railroad Mortgage*, 4–6.

RECOUPMENT. See *Maritime Law*, 4.

REDEMPTION, EQUITY OF. See *Railroad Mortgage*, 1; *Waiver.*

REISSUED LETTERS-PATENT. See *Letters-patent*, 6–8.

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

RESOLUTION OF CONGRESS. See *Contract*, 4.

REVENUE. See *Customs Duties; Internal Revenue; Practice*, 8.

REVENUE STAMP. See *Wisconsin*, 1.

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

REVIVOR. See *Levee Board*, 1.

RIVER. See *Boundary River.*

SALE. See *Contract*, 3, 4.

1. The plaintiff, where the quality of goods which he furnished at a given time to the defendant is in question, may show the good

SALE (*continued*).
quality of like articles furnished at the same time by him to another party, if he further shows that those he furnished to each party were of the same kind and quality. *Ames* v. *Quimby*, 342.

2. The court charged the jury that while the plaintiff could not recover for any more goods than his bill of particulars set forth, he was not bound by a mistake in carrying out the rate or price, but could show what he was actually to have, it not appearing by the record what were the contents of the bill, but it appearing that the plaintiff claimed there was a mistake in it in that respect. *Held*, that the charge was not erroneous. *Id.*

SAVANNAH. See *Taxation*, 2.

SCHOOL DISTRICT. See *Bond.*

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

SERVICE OF PROCESS. See *Jurisdiction*, 14.

SET-OFF. See *Maritime Law*, 4; *Michigan*, 1.

SHIPS AND SHIP-OWNERS. See *Admiralty; Contract*, 3, 4; *Maritime Law.*

STAMPS. See *Collector of Internal Revenue*, 2; *Internal Revenue*, 1–3.

STATE, ADMISSION OF. See *Jurisdiction*, 11; *Land Grants*, 9.

STATE COURTS. See *Causes, Removal of; Jurisdiction*, 9, 10, 13.

STATUTES AND CONSTITUTIONS, CONSTRUCTION OF. See *Constitutional Law.*

1. A statute is not repealed by a later affirmative statute, which contains no repealing clause, unless the conflict between them cannot be reconciled, or the later covers the same ground as the former, and is clearly intended as a substitute therefor. *Red Rock* v. *Henry*, 596.

2. The statute of Minnesota of March 6, 1868, pursuant to which certain bonds were issued by the town of Red Rock, to aid in the construction of a railroad, was not repealed by the statute of March 5, 1870, *ante*, p. 599. *Id.*

3. The act of March 2, 1871, *ante*, p. 600, has no effect upon the rights of the holder of the bonds, as there had been a previous compliance with every condition upon which the town had agreed to issue them. *Id.*

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

1842. Aug.	30. *c*. 270, sect.	12.	See *Customs Duties*, 7.
1846. Aug.	6. *c*. 84, sect.	1.	See *Customs Duties*, 7.
1861. Aug.	6. *c*. 60.		See *Confiscation.*
1863. March	12. *c*. 120.		See *Captured and Abandoned Property.*

STATUTES OF THE UNITED STATES (*continued*).
1864. June 30. *c.* 173, sect. 122. See *Internal Revenue*, 4, 5.
1864. June 30. *c.* 173, sect. 161. See *Internal Revenue*, 1.
1864. June 30. *c.* 174. See *Bounty*, 1.
1865. March 3. *c.* 80, sect. 6. See *Customs Duties*, 1, 2.
1866. July 13. *c.* 184. See *Internal Revenue*, 4, 5.
1866. July 23. *c.* 212. See *Land Grants*, 6.
1870. July 14. *c.* 255, sect. 21. See *Customs Duties*, 1.
1874. June 22. *c.* 390, sect. 17. See *Bankruptcy*, 1, 2.
1875. Feb. 16. *c.* 77, sect. 3. See *Jurisdiction*, 7.
1875. March 3. *c.* 137. See *Causes, Removal of*, 2; *Negotiable Instruments*, 2; *Practice*, 1, 2.
1876. Aug. 15. *c.* 287, sect. 6. See *Constitutional Law*, 1.
Rev. Stat., sect. 639. See *Causes, Removal of*, 2.
" " " 649. See *Practice*, 10.
" " " 691, 692. See *Jurisdiction*, 7.
" " " 808. See *District of Columbia.*
" " " 997. See *Writ of Error*, 3.
" " " 2504. See *Customs Duties*, 5.
" " " 2505. See *Customs Duties*, 3, 4.
" " " 3408. See *Taxation*, 1.
" " " 4282 *et seq.* See *Maritime Law*, 6.
" " " 5057. See *Bankruptcy*, 3, 4.
" " " 5103. See *Bankruptcy*, 5.
" " " 5117. See *Bankruptcy*, 2.
" " " 5519. See *Criminal Law.*

STOCKHOLDER. See *Corporation.*

1. A stockholder of a corporation, in order to protect its rights and property against the threatened action of a third party, filed his bill against the latter and the corporation, alleging, *inter alia*, that the directors, although thereunto requested, had neglected and refused to institute proceedings. *Held*, that he must show a clear case of such absolute and unjustifiable neglect and refusal of the directors to act as would lead to his irreparable injury, should he not be permitted to bring the suit. *Hawes* v. *Oakland*, 104 U. S. 450, cited upon this point and approved. *Detroit* v. *Dean*, 537.
2. The creditor of a corporation organized under the general laws of Oregon cannot, to recover his debt against it, enforce, by an action at law, the liability of a stockholder upon an unpaid subscription to its capital stock. *Patterson* v. *Lynde*, 519.

SUBSCRIPTIONS TO STOCK. See *Illinois; Michigan*, 2, 4; *Stockholder*, 2.

SUITS BY OR AGAINST THE UNITED STATES. See *United States, Suits against.*

SUPERVISORS. See *Illinois*, 2.

SURETY. See *Collector of Internal Revenue; Customs Duties*, 7–9.

TAXATION. See *Appeal*, 5, 6; *Collector of Internal Revenue*, 2; *Constitutional Law*, 4; *Internal Revenue; Tax Sale; Wisconsin.*

1. Certificates of indebtedness issued by a person or a corporation are not taxable as "circulation," under sect. 3408, Rev. Stat., unless they were calculated or intended to circulate or to be used as money. *United States* v. *Wilson*, 620.
2. Certain taxes assessed for the years 1877 and 1878, by the city of Savannah, upon land situate within its limits, which belongs to the Atlantic and Gulf Railroad Company, *held* to be unauthorized by law. *Savannah* v. *Jesup*, 563.

TAX SALE. See *Wisconsin.*

1. In ejectment, the title relied on by the defence was a certificate of sale of the demanded premises to the United States by the commissioners under the act of Congress for the collection of direct taxes. The certificate was impeached on the ground of the refusal of the commissioners to permit the owner to pay the tax, with interest and costs, before the day of sale, by an agent, or in any other way than by payment in person. *Held*, that when the commissioners had established a uniform rule that they would receive such taxes from no one but the owner in person, it avoids such sale, and a tender is unnecessary, since it would be of no avail. *United States* v. *Lee*, 196.
2. *Bennett* v. *Hunter*, 9 Wall. 324; *Tacey* v. *Irwin*, 18 id. 549; and *Atwood* v. *Weems*, 99 U. S. 183, re-examined, and the principle they establish held to apply to a purchase at such a tax sale by the United States as well as by a private person. *Id.*

TENDER. See *Life Insurance*, 2; *Tax Sale*, 1.

TORTS. See *Negligence*, 5.

TOWAGE. See *Admiralty*, 4.

TRESPASS. See *Damages.*

TRUST AND TRUSTEE. See *Bankruptcy*, 1, 4; *Limitations, Statute of*, 2.

ULTRA VIRES. See *Corporation*, 1.

UNITED STATES, SUITS BY OR AGAINST. See *Captured and Abandoned Property; Collector of Internal Revenue; Homestead Exemption.*

1. The doctrine that, except where Congress has provided, the United States cannot be sued, examined and reaffirmed. *United States* v. *Lee*, 196.
2. That doctrine has no application to officers and agents of the United States who, when as such holding for public uses possession of property, are sued therefor by a person claiming to be the owner thereof or entitled thereto; but the lawfulness of that possession and the right or title of the United States to the property may, by a court of competent jurisdiction, be the subject-matter of inquiry, and adjudged accordingly. *Id.*

UNITED STATES, SUITS BY OR AGAINST (*continued*).

3. The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law, nor private property taken for public use without just compensation, relate to those rights whose protection is peculiarly within the province of the judicial branch of the government. Cases examined which show that the courts extend protection when the rights of property are unlawfully invaded by public officers. *Id.*

USAGE. See *Customs Duties*, 8.

VERDICT. See *Practice*, 3, 6, 10-12.

Certain questions, covering only a part of the material issues of fact, were propounded to the jury, who returned them with the answers thereto, as a special verdict. The judgment against the defendant recites that it was rendered "upon the special verdict of the jury, and facts conceded or not disputed upon the trial." The record does not disclose the evidence, and no general verdict was rendered. *Held*, that the judgment, not being sustained by the special verdict, must be reversed and a new trial ordered. *Hodges* v. *Easton*, 408.

VESSELS. See *Admiralty; Contract*, 3, 4; *Maritime Law*.

WAIVER.

1. Where the Circuit Court adjudged the sale of mortgaged lands in Illinois, and foreclosed the defendant's right to redeem them, from and after such sale, he waives no error by omitting to tender the money within the statutory period allowed for redeeming them, he having within two years after the date of the decree appealed therefrom. *Mason* v. *Northwestern Insurance Company*, 163.
2. *Brine* v. *Insurance Company*, 96 U. S. 627; *Burley* v. *Flint*, 105 id. 247; and *Suitterlin* v. *Connecticut Mutual Insurance Company*, 90 Ill. 483, commented upon. *Id.*

WEST VIRGINIA. See *Constitutional Law*, 3.

WILL. See *Causes, Removal of*, 5.

WISCONSIN. See *Boundary River*.

1. Under section 5 of chapter 138 of the General Laws of Wisconsin, of 1861, providing that "no action shall be commenced by the former owner or owners of any lands, or by any person claiming under him or them, to recover possession of land which has been sold and conveyed by deed for non-payment of taxes, or to avoid such deed, unless such action shall be commenced within three years next after the recording of such deed," land is to be regarded as having been sold for non-payment of taxes, although the sum to raise which it was sold included five cents for a United States revenue stamp, to be put, and which was put, on the certificate issued to the purchaser on the sale. *Geekie* v. *Kirby Carpenter Company*, 379.
2. A deed on a tax sale recites that "S. A. Coleman, assignee of Oconto County," has deposited certificates of sale showing that five parcels, each of which sold for so much, were sold "to the said Oconto

WISCONSIN (*continued*).
County, and by its treasurer assigned to S. A. Coleman" for so much "in the whole," the total being the sum of the five several sums. The statute, c. 50, sect. 22, of the General Laws of Wisconsin, of 1859, prescribes a form of deed, and provides that it shall be "substantially" in that or "other equivalent form," showing that the land was sold for a sum named "in the whole." *Held*, that the deed is in substantial compliance with the form prescribed. *Id.*

WITNESS. See *Evidence.*

WORDS AND PHRASES.
"Circulation." See *United States* v. *Wilson*, 620.
"Dividend in Scrip." See *Bailey* v. *Railroad Company*, 109.

WRIT OF ERROR. See *Bankruptcy*, 3; *Jurisdiction*, 10; *Mississippi*, 5; *Practice*, 10, 13.

1. Whatever was determined here on a writ of error cannot be re-examined upon a subsequent writ brought in the same suit. *Clark* v. *Keith*, 464.
2. Where, in a case tried by the court below, the record does not affirmatively show a written stipulation waiving a jury, the questions decided at the trial cannot be re-examined here on a writ of error. *County of Madison* v. *Warren*, 622.
3. A writ of error will not be dismissed for want of jurisdiction by reason of a failure to annex thereto or return therewith an assignment of errors, pursuant to the requirements of sect. 997 Rev. Stat. *School District of Ackley* v. *Hall*, 428.

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WISCONSIN (continued).
County, sold by its treasurer assigned to G. A. Coleman "for so much ($) in the whole," the total being the sum of the five several sums. The statute, c. [illegible], sect. [illegible], of the General Laws of Wisconsin, of [illegible], prescribes a form of deed, and provides that it shall be "substantially" in that or "other equivalent form," showing that the land was sold for a sum named "in the whole." Held, that the deed is in substantial compliance with the form prescribed. *Id.*

WITNESS. See *Evidence*.

WORDS AND PHRASES.
"Circulation." See *United States* v. *Wilson*, [illegible].
"Dividend in scrip." See *Bailey* v. *Railroad Company*, [illegible].

WRIT OF ERROR. See *Bankruptcy*, 3; *Jurisdiction*, 10; *Mandamus*, 5; *Practice*, 10, 14.

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