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ADMINISTRATOR.

See EXECUTOR AND ADMINISTRATOR.

ADMIRALTY.

1. A final decree in a collision suit in admiralty where the *res* has been surrendered, on a stipulation under the provisions of § 941, Rev. Stat., may be entered against both principal and sureties at the time of its rendition. *The Belgenland*, 153.

See CONTRACT, 1; SALVAGE, 1, 2; JURISDICTION, A, 17, 18; SUPERSEDEAS, 1, 2.

AFFREIGHTMENT.

See CONTRACT, 1.

APPEAL.

1. Cross-appeals must be prosecuted like other appeals. When a party making a cross-appeal fails, for a period long after the time allowed by law, to perfect his cross-appeal, the court, of its own motion, will dismiss it for want of prosecution. *Hilton* v. *Dickinson*, 165.
2. When it appears on the face of the record that the value of the matter in dispute is not sufficient to give jurisdiction, the court will, of its own motion, dismiss an appeal. *Id.*

See JURISDICTION, A, 4; PRIZE, (1); SUPERSEDEAS, 1, 2.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

1. A general assignment for the benefit of creditors, made without intent to hinder, delay, or defraud creditors, is valid for the purpose of securing an equal distribution of the estate of the assignor among his creditors, in proportion to their several demands, except as against

proceedings instituted under the Bankrupt Act for the purpose of securing the administration of the property in a bankruptcy court. *Boese* v. *King*, 379.

2. A general assignment of a debtor's property made for the benefit of creditors, purporting to be made under a State Insolvent Law, which had, at the time of the assignment, been suspended in whole or in part by a bankrupt act, may nevertheless be sustained as sufficient to pass a title to assignees in the absence of proceedings in bankruptcy impeaching it, or of appropriate steps by the assignor for its cancellation. *Id.*

See CONFLICT OF LAW, 3.

BANK.

See INDICTMENT, 1, 2, 3, 4, 5.

BANKRUPTCY.

1. One of two partners files a voluntary petition in bankruptcy, alleging that the other partner will not join him, and praying to have him declared a bankrupt: *Held*, That this, as to the other partner, is a case of involuntary bankruptcy within the meaning of the act of June 22d, 1874, ch. 130, § 10, 18 Stat. 180. *Medsker* v. *Bonebrake*, 66.

See ASSIGNMENT FOR BENEFIT OF CREDITORS, 1, 2;
CONFLICT OF LAW, 3;
FRAUDULENT CONVEYANCE, 1, 2.

BOND.

1. The State of Rhode Island authorized the B. H. & E. Company, a Connecticut corporation, to extend within the limits of the State a road acquired by lease. The act further contained the following proviso: "This act shall not go into effect unless the said B. H. & E. Company shall, within ninety days from the rising of this general assembly, deposit in the office of the general treasurer their bond, with sureties satisfactory to the governor of this State, in the sum of $100,000, that they will complete their said road before the first day of January, A. D. 1872." Within the time named the requisite bond was filed in the sum of $100,000 conditioned as follows: "Now, therefore, if said B. H. & E. Company shall complete their said railroad before the first day of January, A. D. 1872, then the aforewritten obligation shall be void; otherwise be and remain in full force and effect;" and as the requisite security for the payment of the bond, a loan certificate of the city of Boston for $100,000 was deposited with the State treasurer. The B. H. & E. Company became bankrupt. The assignees in bankruptcy filed a bill in equity to restrain the treasurer of the State from collecting the certificate. The treasurer demurred on the ground

that the real party in interest was the State. In the course of the proceedings the money was paid into court on an interlocutory decree. The State then came in and claimed it: *Held*, That the sum named in the bond in question was not a penalty to secure the performance of a condition, which could be discharged on payment of such damages as might be proved to have arisen from non-performance; but that it was in the nature of a statutory penalty for the non-performance of a statutory duty, and that it was not necessary for the State to show any actual damage or injury from the breach, in order to be entitled to recover when the breach was proved. The law and cases on this subject considered and reviewed. *Clark* v. *Barnard*, 436.

CERTIORARI.

See JURISDICTION, A, 6;
PRACTICE, 6.

CHARITABLE GIFTS.

See DISTRICT OF COLUMBIA, 1 (2).

COMMON CARRIER.

It is culpable negligence in the managers of a railroad, if their servants permit a car to stand upon a side track for five or ten minutes before the arrival of a train upon the main track, and to remain there until the arrival of that train in such a position that the incoming train must strike it; and it entails liability upon the company as a common carrier for accidents happening in consequence. *Farlow* v. *Kelley*, 288.

See RAILROADS.

CONFISCATION.

See PRACTICE, 3.

CONFLICT OF LAW.

1. While the local law, giving the right of redemption first to the mortgagor, then to judgment creditors, is a rule of property obligatory upon the federal court, it is competent for the latter by rules to prescribe the mode in which redemption from sales under its own decrees may be effected. *Connecticut Mutual Life Insurance Company* v. *Cushman*, 51.
2. The rule in the Circuit Court of the United States for the Northern District of Illinois, requiring a judgment creditor to pay the redemption money to the clerk of that court, and not to the officer holding the execution, sustained as being within the domain of practice, and

not affecting the substantial right to redeem within the time fixed by the local statute. *Id.*

3. The assignees of a debtor under a general assignment for the ratable distribution of his property among his creditors, purporting to be made under a local insolvent law of the State in which the debtor resides, deposited for convenience the proceeds of the sales of the debtor's property in a bank in another State. In the latter State, creditors of the debtor obtained judgment and execution against him. The execution being returned unsatisfied, the judgment creditors, under a local law of the latter State, obtained the appointment of a receiver of the debtor's property within that State. The receiver thereupon brought suit against the assignees for the sum so deposited, claiming it as the property of the debtor: *Held*, That the receiver was not entitled by reason of any conflict between the local statute and Bankrupt Act, or by force of the judgment and the proceedings thereunder, to the possession of the assigned property or of its proceeds, as against the assignees, or to a priority of claim, or the benefit of the judgment creditors upon such proceeds. *Boese* v. *King*, 379.
4. Where a State court enjoined a municipal officer from enforcing a tax to pay a municipal obligation, and subsequently to the injunction a judgment for payment of the interest which it was agreed should be made by the assessment and collection of the tax was recovered in a Circuit Court of the United States, the injunction cannot stand in the way of the enforcement of the tax by the circuit court, to carry its judgment into execution. *Hawley* v. *Fairbanks*, 543.

See CORPORATION, 3;
EXECUTOR AND ADMINISTRATOR;
JUDGMENT, 1.

CONSTITUTIONAL LAW.

1. The history of article XI. of the amendment to the Constitution which provides that the judicial power of the federal courts shall not extend to suits against a State by a citizen of another State, or by citizens or subjects of a foreign State, and the causes which led to its adoption, reviewed. *New Hampshire* v. *Louisiana: New York* v. *Same*, 76.
2. That amendment prohibits the court from entertaining jurisdiction of a cause in which one State seeks relief against another State on behalf of its citizens, in a matter in which the State prosecuting has no interest of its own unless the State prosecuted consents. One State cannot create a controversy with another State, within the meaning of that term as used in the judicial clauses of the Constitution, by assuming the prosecution of debts owing by the other State to its citizens. *Id.*
3. The relation of one of the United States to its citizens is not that of an independent sovereign State to its citizens. A sovereign State seeking

redress of another sovereign State on behalf of its citizens can resort to war on refusal, which a State cannot do. *Id.*

4. The qualification of the duty of a sovereign State to assume the collection of the debts of its citizens from another sovereign State considered and stated. *Id.*
5. The question considered as to when the opinion of the highest court of a State may be examined for the purpose of ascertaining whether the judgment involves the denial of any asserted right under the Constitution, laws, or treaties of the United States. *Gross* v. *United States Mortgage Company*, 477.
6. In view of the statutory requirement that the justices of the Supreme Court of Illinois shall file and spread at large upon the records of the courts written opinions in all cases submitted to it, such opinions may be examined, in connection with other portions of the record, to ascertain whether the judgment or decree necessarily involves a federal question within the reviewing power of this court. *Id.*
7. The act of the general assembly of Illinois, in force July 1st, 1875, validating loans or investments previously made in that State by corporations of other States or countries authorized by their respective charters to invest or loan money, is not in conflict with the contract clause of the federal Constitution, nor with that part of the Fourteenth Amendment forbidding a State from depriving any person of property without due process of law. *Id.*
8. The Civil Code of Louisiana provided, in respect of tutors of minors, as follows: "The property of the tutor is tacitly mortgaged in favor of the minor from the day of his appointment as tutor, as security for his administration, and for the responsibility which results from it." The Constitution of Louisiana subsequently adopted (in April, 1868), provided as follows: "No mortgage or privilege shall hereafter affect third parties, unless recorded in the parish where the property to be affected is situated. The tacit mortgages and privileges now existing in this State shall cease to have effect against third persons after the 1st January, 1870, unless duly recorded. The general assembly shall provide by law for the registration of all mortgages and privileges." The legislature of Louisiana, on the 8th March, 1869, enacted the necessary legislation to carry this provision of the State Constitution into effect: *Held,* (1) That these provisions of the Constitution and of the statute requiring owners of tacit mortgages to record them for the protection of innocent persons dealing with the tutor, and giving ample time and opportunity to do what was required, and what was eminently just to everybody, did not impair the obligation of contracts. (2) That these provisions are in the nature of statutes of limitations. Previous decisions of the court respecting limitations referred to and approved. (3) That the fact that the plaintiff was a minor when the law went into operation makes no difference. In the absence of a provision in the Constitution of the United States giving

minors special rights, it is within the legislative competency of a State to make exceptions in their favor or not, and the act in question made no exception. *Vance* v. *Vance*, 514.

See JUDGMENT, 1 ;
JURISDICTION, A, 24, B ;
PRIZE (3).

CONTRACT.

1. Where a vessel, before she breaks ground for a voyage, is so injured by fire that the cost of her repairs would exceed her value when repaired, and she is rendered unseaworthy and incapable of earning freight, a contract of affreightment for the carriage of cotton by her to a foreign port, evidenced by a bill of lading, containing the usual and customary exceptions, and providing for the payment of the freight money on the delivery of the cotton at that port, is thereby dissolved, so that the shipper is not liable for any part of the freight money, nor for any of the expenses paid by the vessel for compressing and stowing the cotton. *The Tornado*, 342.

2. Several insurance companies having policies on the same property agreed together to defend against claims for insurance, by a written instrument of which the following is the material part : the said companies will unite in resisting the claim made upon said policies, and on each thereof, and in the defence of any and all suits and legal proceedings that have been or may be instituted against any of said companies upon any of said policies, and will, when and as required by the committee hereinafter mentioned, contribute to and pay the costs, fees, and expenses of said suits and proceedings *pro rata ;* that is to say, each company shall pay such proportion of said costs, fees, and expenses as the amount insured by said company shall bear to the whole amount insured on said property by all the companies subscribing to this agreement. The management and conduct of said resistance to said claims and defence of said suits and proceedings shall be and is fully entrusted to and devolved upon a committee to be composed of W. H. Brazier and James R. Lott, of the city of New York, Charles W. Sproat, of the city of Boston, L. S. Jordan, of the city of Boston, which committee shall have full power and authority to employ counsel and attorneys to appear for said companies and each thereof, and defend said suits and legal proceedings, and to employ other persons for other services relative thereto, and to assess upon and demand and receive from such companies, from time to time, as such committee shall deem proper, such sum or sums of money for the compensation of such counsel and attorneys, and such other persons, and all other expenses of such defence of said suits as said committee shall deem necessary and expedient ; such assessment upon and payment by each of said companies to be *pro rata*, as above mentioned. The committee

named in the agreement communicated it to the defendant in error, and employed him as counsel in resisting the suits. On a suit for professional service brought by him against the company jointly: *Held*, That any contract there may have been between him and the companies was several not joint. *Adriatic Fire Insurance Company*, v. *Treadwell*, 361.

See DISTRICT OF COLUMBIA, 1; INTEREST; MISTAKE; PRINCIPAL AND AGENT; SURETY; USURY.

CONTRIBUTORY NEGLIGENCE.

A passenger who rests his elbow on the sill of an open window in a car, but without protruding it beyond the car, and whose arm is then thrown by the force of a collision outside of the car, and is injured in the collision, does not contribute to the cause of the injury by his own negligence. *Farlow* v. *Kelley*, 288.

CORPORATIONS.

1. Corporations may recover as plaintiffs for injuries done to their property by a nuisance; and where the corporation plaintiff is a religious corporation, and its members suffer personal discomfort and apprehension of danger in the use of the corporate property, the corporation may recover for such injuries. A religious congregation has the same right to the comfortable enjoyment of its church for its own purposes, that a private individual has to the comfortable enjoyment of his house. *Baltimore & Potomac Railroad* v. *Fifth Baptist Church*, 317.
2. Certificates of preferred stock of the Ohio and Mississippi Railway Company were issued containing the following language: "The preferred stock is to be and remain a first claim upon the property of the company, after its indebtedness, and the holder thereof shall be entitled to receive from the net earnings of the company seven per cent. per annum, payable semi-annually, and to have such interest paid in full, for each and every year, before any payment of dividend upon the common stock; and whenever the net earnings of the corporation which shall be applied in payment of interest on the preferred stock and of dividends on the common stock shall be more than sufficient to pay both said interest of seven per cent. on the preferred stock in full, and seven per cent. dividend upon the common stock, for the year in which said net earnings are so applied, then the excess of such net earnings after such payments shall be divided upon the preferred and common shares equally, share by share:" *Held*, That the preferred stockholders had no claim on the property superior to that of creditors under debts contracted by the company subsequently to the issue of the

preferred stock, and that their only valid claim was one to a priority over the holders of common stock. *Warren* v. *King*, 389.

3. The B. H. & E. Railroad, a corporation created by the State of Connecticut, purchased the franchises and railroad of the H. P. & F. Railroad, a corporation created under the laws of Rhode Island and Connecticut. The legislature of Rhode Island ratified the sale, and authorized the B. H. & E. Company to exercise the rights, privileges, and powers of the H. P. & F. Company : *Held*, That the B. H. & E. Company thereby became the legal successor of the H. P. & F. Company in Rhode Island ; and, in respect to its railroad in Rhode Island, a corporation of that State. *Clark* v. *Barnard*, 436.
4. Grants of immunity from legitimate governmental control are never to be presumed ; unless an exemption is clearly established the legislature is free to act on all subjects within its general jurisdiction, as the public interests may require. *Ruggles* v. *Illinois*, 526.

See NUISANCE, 2 ;
PRINCIPAL AND AGENT ;
RAILROADS.

COURTS OF THE UNITED STATES.

See CONFLICT OF LAW;
JURISDICTION.

CUSTOMS DUTIES.

1. Under Schedule B of § 2504 of the Revised Statutes, which imposes a duty of 30 *per cent. ad valorem* on "glass bottles or jars filled with articles not otherwise provided for," such duty is chargeable on bottles filled with natural mineral water, although, by § 2505, mineral water, not artificial, is declared to be exempt from duty. *Merritt* v. *Stephani*, 106.
2. The decision of this court, in *Schmidt* v. *Badger*, 107 U. S. 85, that, under the statutory provisions in question in this case, the proper duty on the importation of glass bottles containing beer, was a duty of 30 *per cent. ad valorem* on the bottles, in addition to a specific duty of 35 cents a gallon on the beer, confirmed and applied to this case. *Merritt* v. *Park*, 109.
3. A non-enumerated article, if found to bear a substantial similitude to an enumerated article, either in material, quality, texture, or use to which it may be applied, is made by section 2499 Rev. Stat., liable to the duty imposed upon the enumerated article. *Arthur* v. *Fox*, 125.
4. A non-enumerated article composed of cow-hair and cotton, resembling and used for the same purposes as an enumerated article of goat's hair and cotton, is liable to the same duty as the latter. *Id.*
5. Marble statues, executed by professional sculptors in the studio and

under the direction of another professional sculptor, whether from models just made by a professional sculptor, or from antique models whose author is unknown, are "professional productions of a statuary or of a sculptor," liable to a duty of only ten per cent. ad valorem, under the Revised Statues, § 2504, Schedule M. *Tutton* v. *Viti*, 312.

DAMAGES.

The measure of damages in an action at law against the maintenance of a nuisance affecting real estate is not simply the depreciation of the property. The jury are authorized also to take into consideration personal discomfort which may be caused by the nuisance, and any causes which produce a constant apprehension of danger in their estimate of damages, even if there be no arithmetical rule for the estimate. *Baltimore & Potomac Railroad* v. *Fifth Baptist Church*, 317.

See NUISANCE, 1, 2, 4.

DEED.

See EVIDENCE, 2, 3, 4, 6, 7.

ILLINOIS, 1, 2.

DEMURRAGE.

See PRIZE.

DEPOSITION.

See EVIDENCE, 5.

DISTRICT OF COLUMBIA.

1. In May, 1870, Congress authorized the Washington Market Company to construct a market building on a tract in Washington between Pennsylvania and Louisiana avenues and B street, and between Seventh and Ninth streets, then belonging to the United States, and to occupy the same for a term of 99 years, paying a rental therefor to the city of Washington of $25,000 a year. Buildings were to be constructed thereon by the company, within a period named and in accordance with specified plans. In 1871, some changes were made in the plans, and in March, 1873, no building having been erected, Congress authorized the governor and board of public works of the District of Columbia (the successor of the city), to erect a building for District offices and to "make arrangements to secure sufficient land fronting on Pennsylvania avenue between Seventh and Ninth streets." Under this authority the market company conveyed to the District a part of the tract described in the act of 1870; the District assumed

the obligations of the company respecting that part, and released it on the payment of an agreed sum from liability for back rents, and from the obligation to pay in future any other rental than $7,500 a year; and the company paid the back rents and bound itself to pay the newly agreed rental for the future; and has paid rent since then at the rate of $7,500 per annum. On suit by the District to recover at the rate of $25,000: *Held*, (1) That the act of 1873 fully empowered the District and the company to make the new agreement, transferring a part of the land to the District and diminishing the rent for the remainder. (2) That there was nothing in the act of 1870 which established an irrevocable charitable trust for the benefit of the poor of Washington. (3) That in this case the debates on the passage of the act are not to be accepted as evidence of the meaning of the clause in controversy. *District of Columbia* v. *Washington Market Company*, 243.

2. The relation between the railroad company and the District respecting the maintenance and repair of the streets in the District through which the railroad passes considered and settled. *Washington & Georgetown Railroad* v. *District of Columbia*, 522.

DIVISION OF OPINION.

See JURISDICTION, A, 21.

EQUITY.

1. A proposed in writing to B to exchange A's real estate for B's real estate with a cash bonus. B accepted in writing. A complied in full, B in part only. Suit is brought for specific performance of the remainder: *Held*, That it is unnecessary to determine whether the memorandum was sufficient under the Statute of Frauds, as it was the duty of the court below on the facts disclosed, and in view of the full performance by A, to decree performance by B. *Bigelow* v. *Armes*, 10.

2. Under the circumstances of this case there was no error in charging the amount found due to the appellees as next of kin, upon the real estate conveyed to Devereux by his mother, and in the hands of his assignees in bankruptcy; and the assignees took the estate charged with the specific equity to which it was subject in the bankrupt's hands, and must hold and apply it to the purposes to which in equity it is devoted. *Hawkins* v. *Blake*, 422.

3. The facts in the case showed no claim in the plaintiff against the county defendant. The claim, if any, was against the district in the county benefited by the levees which he claims to have constructed. It being conceded that an action at law for the enforcement of the claims set up in the suit was barred when the suit was brought, no

equitable reason was found why the limitation of the statute should not be applied in equity. *Meath* v. *Phillips County*, 553.

See HUSBAND AND WIFE; LEASE; MISTAKE; PRACTICE, 5; SUBROGATION, 1, 2; TRADE MARK, 1, 2, 3.

ESTOPPEL.

See JUDGMENT, 1, 2.

EVIDENCE.

1. Suggestion of the death of a plaintiff in the record, and an order to make his devisees parties, is *prima facie* evidence of his death for the purposes of the trial. *Stebbins* v. *Duncan*, 32.
2. The existence of a deed, and its destruction by fire being proven, it is competent for the party offering it to prove its contents by a witness who knows them. *Id.*
3. It being shown that a paper produced is a copy of a lost deed (but without the official certificate), the copy is competent evidence. *Id.*
4. The witnesses to a deed being dead, the execution of the deed is to be proven by proof of the handwriting of the subscribing witnesses. *Id.*
5. When a deposition has been destroyed by fire, and a copy, admitted to be such, is offered in evidence, it is not sufficient to object that it has not been shown that the witness is dead, or is incompetent to testify, or that the deposition cannot be retaken. It should be also objected that the witness does not live in another State, or more than one hundred miles distant from the place of trial, in order to lay ground for excluding the copy. *Id.*
6. The execution of the deed being proven according to law, slight proof of the identity of the grantor is sufficient. In tracing titles, identity of names is *prima facie* proof of identity of persons. *Id.*
7. The deed under which the plaintiff claimed was not acknowledged and certified as required by the laws of Illinois to admit it to record. It was, however, recorded. A duly certified copy of this record, and a certified copy of the original memorandum of record were offered, and a witness testified that the deed was a copy of the original deed: *Held*, That under the decisions of the courts in Illinois, this was proof that such deed and memorandum were of record, so as to give notice to subsequent purchasers. *Id.*
8. When the question at issue is whether certain contracts for the sale and purchase of merchandise were gambling, and the defendant who impeaches them in his pleadings, says as a witness testifying about them, "I could not say that I had any understanding on the subject of the nature and character of the board of trade deals, whether the property was to be actually delivered or whether it was settled for," the court rightly instructed the jury that there was no evidence in

regard to this issue which they could consider. *Roundtree* v. *Smith*, 269.

9. In a suit to recover taxes alleged to be in arrear on the profits of a railroad company carried to a fund or expended in construction, the burden of proof is on the United States to show that the company earned such profits, and that losses shown by the company were not suffered during the period. *Little Miami & Columbus & Xenia Railroad* v. *United States*, 277.

EXCEPTIONS.

See PRACTICE, 7.

EXECUTIVE.

See PRIZE.

EXECUTOR AND ADMINISTRATOR.

When a debt due to a deceased person is voluntarily paid by the debtor at his own domicil in a State in which no administration has been taken out, and in which no creditors or next of kin reside, to an administrator appointed in another State, and the sum paid is inventoried and accounted for by him in that State, the payment is good as against an administrator afterwards appointed in the State in which the payment is made, although this is the State of the domicil of the deceased. *Wilkins* v. *Ellett*, 256.

FEME COVERT.

See HUSBAND AND WIFE.

FRAUD.

See INSURANCE;
TRADE MARK.

FRAUDULENT CONVEYANCE.

1. If the husband, being insolvent, mortgages his real estate to secure a debt to his wife, previously incurred, a court of equity will not set aside the mortgage as fraudulent against the assignee in bankruptcy if the wife was ignorant of the insolvency and if there was no fraud. *Medsker* v. *Bonebrake*, 66.
2. A creditor, dealing with a debtor whom he may suspect to be in failing circumstances, but of which he has no sufficient evidence, may receive payment or take security without necessarily violating the bankrupt law. When such creditor is unwilling to trust a debtor further, or

feels anxious about his claim, the obtaining additional security, or the receiving payment of the debt is not prohibited, if the belief which the act requires is wanting. *Grant* v. *National Bank*, 97 U. S. 80, approved and followed. *Stucky* v. *Masonic Savings Bank*, 74.

FREIGHT.

See CONTRACT, 1.

GUARDIAN AND WARD.

See CONSTITUTIONAL LAW, 8.

HABEAS CORPUS.

See JURISDICTION, A, 20.

HUSBAND AND WIFE.

1. Where a wife lends to her husband money which is her separate property, upon his promise to repay it, it creates an equity in her favor which a court of equity will enforce in the absence of fraud. *Medsker* v. *Bonebrake*, 66.

See FRAUDULENT CONVEYANCE, 1;
LEASE.

ILLINOIS.

1. It is a general rule in the State of Illinois that when a person has executed two deeds for the same land, the first deed recorded will hold the title. *Stebbins* v. *Duncan*, 32.
2. The statutes of Illinois relating to the redemption of mortgaged property from sales under decree of the federal courts, examined. *Connecticut Mutual Life Insurance Company* v. *Cushman*, 51.

See CONSTITUTIONAL LAW, 6, 7;
EVIDENCE, 7;
MORTGAGE;
MUNICIPAL BONDS, 4;
RAILROADS.

INCOME TAX.

See INTERNAL REVENUE.

INDIAN COUNTRY.

The payment of a special internal revenue tax for selling liquors in a collection district does not authorize the licensee to introduce or to attempt to introduce spirituous liquors or wines into Indian country in violation of the act of June 30th, 1834, 4 Stat. 729, as amended by

the act of March 15th, 1864, 13 Stat. 29, when an Indian treaty, ceding lands embraced within the territory covered by the license, provides that the laws of the United States then in force, or which might thereafter be enacted, prohibiting the introduction and sale of spirituous liquors in the Indian country, should be in full force and effect throughout the country ceded, till otherwise ordered by Congress or the President. *United States* v. *Forty-three Gallons of Whiskey*, 491.

Same case in 93 U. S. 188, referred to. *Id.*

INDICTMENT.

1. It is no violation of the provisions of § 5440 Rev. Stat., subjecting to penalties persons conspiring to commit an offence against the United States, and persons doing acts to effect the object of the conspiracy; and no violation of § 5209 Rev. Stat., subjecting to punishment a president or a director of a national banking association who wilfully misapplies the money, funds or credits of the association, if the president and such a director conjointly cause shares in the capital stock of such association to be purchased with the money of the association, and held on trust for its benefit. *United States* v. *Britton*, 192.
2. It is not an offence under § 5209 Rev. Stat., which forbids the wilful misapplication of the moneys of a national banking association by a president of the bank, for such officer to procure the discount by the bank of a note which is not well secured, and of which both maker and indorser are, to the knowledge of the president, insolvent when the note is discounted; and to apply the proceeds of the discount to his own use. *United States* v. *Britton*, 193.
3. Assuming that it was the duty of a president of a national banking association to prevent the withdrawal of deposits while the depositor is indebted to the association, he is nevertheless, not liable for a criminal violation of § 5209 Rev. Stat., forbidding the wilful misappropriation of the funds of the bank, solely by reason of permitting a depositor who was largely indebted to the bank to withdraw his deposits without first paying his indebtedness to the bank. *Id.*
4. In an indictment for a conspiracy under § 5440 Rev. Stat., the conspiracy must be sufficiently charged: it cannot be aided by averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy. *United States* v. *Britton*, 199.
5. The procuring by two or more directors of a national banking association of a declaration of a dividend by the bank at a time when there are no net profits to pay it, is not a wilful misappropriation of the money of the association within the provisions of § 5204 Rev. Stat.; and an allegation of a conspiracy to do that act is not an allegation of a conspiracy to commit an offence against the United States. *Id.*
6. § 5392 Rev. Stat. enacts that "every person who, having taken an oath

before a competent . . . person in any case in which a law of the United States authorizes an oath to be administered . . . that any written . . . declaration, . . . or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury." . . . On an indictment against a clerk of a circuit and district court for perjury in swearing before a district judge to his emolument returns, and an account for services rendered to the United States : *Held*, (1) That the words "declaration" and "certificate," as employed in this section of the Revised Statutes, are used in the ordinary and popular sense to signify any statement of material matters of fact sworn to and subscribed by the party charged. (2) That the returns and accounts set forth in the indictments were written declarations within the meaning of § 5392 Rev. Stat. (3) That the written statement and oath of the party together constitute the declaration or certificate of the statute, for the falsity of which a party is chargeable with perjury. (4) That the authority of the district judge to administer the oath not having been certified from below as a question of division, cannot be considered. *United States* v. *Ambrose*, 336.

INSURANCE.

A and B formed a partnership with a capital of $10,000, in which each was to contribute one-half the capital. A furnished B's moiety temporarily, and when after some time B failed to comply with his agreement, A, in May, 1869, applied for a policy on B's life for $5,000. One of the brothers of B had committed suicide. One of the questions asked A by the company was as to the number of brothers of B deceased, and causes of death; to this A made no answer. B, in the previous February, had applied to the same company for a policy, and in answer to the same question had replied: "Brothers dead, one; cause of death, accident." A policy was issued on A's application, by which the company agreed to insure the life of B for $5,000, and to pay the money "to the assured" within 90 days after notice of the death of B. B died in an insane asylum. *Held*, (1) That although by the terms of the policy the life of B was *in*sured, the person in whose favor it was *as*sured was A, and that the action on the policy was rightfully brought in his name. (2) That A had an insurable interest in B's life to the extent of the moiety of the capital which B should have contributed to the firm, without respect to the condition of the partnership accounts, unless his estimate of the interest at the time of the application was made in bad faith. (3) That the failure of A to answer the question as to the suicide of B's brother could not necessarily be imputed as a fraud; and that the concealment of the cause of the brother's death in B's application could not be imported into this suit and applied to defeat A's application. *Connecticut Life Insurance Company* v. *Luchs*, 498.

INTEREST.

When the amount of the face of a note represents a principal sum and interest thereon at a rate higher than the legal rate, and nothing is said in the note itself about interest, the note after maturity will bear interest at the legal rate. *Ewell* v. *Daggs*, 143.

INTERNAL REVENUE.

1. A manufacturer of cigars, in his statement furnished in May, 1878, under § 3387 of the Revised Statutes, according to Form 36½, set forth "the room adjoining the store in the rear, on the first floor" of certain premises, as the place where his manufacture was to be carried on. Circular No. 181, issued in March, 1878, by the commissioner of internal revenue, required that a cigar factory should be at least an entire room, separated by walls and partitions from all other parts of the building," and that the factory designated in Form 36½ should not any part of it be used, "even though marked off or separated from the remainder by a railing, counter, bench, screen or curtain, as a store where the manufacturer can sell his cigars otherwise than in legal boxes, properly branded, labelled, and stamped." This circular went into effect May 1st, 1878. The manufacturer was engaged at the same time and place in doing business as a dealer in tobacco, having paid the special tax as such, and also the special tax as a manufacturer of cigars. He did not comply with the said circular, and had no division between the factory in the rear part of the room, and the front part of the room, where he sold articles as a dealer in tobacco, except a wooden counter extending part of the way across the room, and some three feet high. He sold out of a showcase in the front part, in quantities less than 25, from stamped boxes, which were duly branded, marked and stamped, cigars which he had made in the rear part, on which cigars the tax had been paid. For doing so, as a violation of § 3400, in removing cigars made by him without the proper stamps denoting the tax thereon, a quantity of cigars, the property of the manufacturer, found in the rear part of the room, in boxes not stamped, were seized as forfeited to the United States, under § 3400 : *Held* : (1) The requirements of the circular were within the power of the commissioner to prescribe, under § 3396 ; (2) The sales at retail were in violation of the law ; (3) The forfeiture claimed was incurred. *Ludloff* v. *United States*, 176.
2. The provisions of § 3236, and subdivisions 8 and 10 of § 3244, and §§ 3387, 3388, 3390 and 3392, considered and held not to authorize such sales, they constituting, under §§ 3392, 3397 and 3400, removals of cigars from the place where they were manufactured, without the proper stamp denoting the tax thereon, because the sales were sales of cigars by their manufacturer, at retail, at the place of manufacture,

not in stamped boxes, the cigars being in his hands as a manufacturer and not as a retail dealer. *Id.*

3. A railroad company whose railroad was in the military possession of the United States during the civil war, and whose rolling stock was in the possession of the company within the confederate lines, and which earned or distributed dividends during the war by the use of its rolling stock, which dividends were paid in confederate notes, is *held* liable to pay an income tax on the dividends so earned and paid. *Memphis & Charleston Railroad* v. *United States*, 228.
4. A railroad company which after the close of the civil war, with the consent of its stockholders, applied its surplus earnings to the restoration of its property, and distributed to its stockholders bonds at a discount in lieu of money, with option, however, to take money, is *held* not liable to an income tax on the income so applied. *Id.*
5. On the facts in this case the court finds no error in the instruction to the jury respecting the exclusion of evidence in regard to the understanding of the defendants below about an alleged compromise. *Id.*
6. The provisions in the act of June 30th, 1864, 13 Stat. 284, ch. 173, § 122; and in the act of June 13th, 1866, 14 Stat. 139, ch. 184, § 9, that the profits of a railroad company carried to the account of any fund, or used for construction, shall be subject to and pay a tax, do not apply to earnings by a railroad company which are used for construction or carried to a fund, unless, on a rest made and balance struck for the period for which the tax is demanded, the operations of the company show a profit. In this respect the rule in the statute differs from that which it lays down in respect to earnings used to pay interest or dividends, which were taxable whether there were actual profits or not. *Little Miami & Columbus & Xenia Railroad* v. *United States*, 277.
7. When an indorsement is made upon a distiller's bond, "We hereby accept the within survey and consider the same as binding upon us on and after this date," which is signed by the obligees in the bond, the parties thereby waive the delivery of a copy of the survey, and the difference between the capacity of the still and the returns of production may be recovered in a suit on the bond. *Wright* v. *United States*, 281.

See INDIAN COUNTRY.

JUDGMENT.

1. A judgment of a State court set up as an estoppel cannot be corrected in a collateral proceeding in a court of the United States. Until reversed or brought for review in the manner provided by law, it is entitled to the same effect in the courts of the United States as in the

courts of the State. *Chicago & Alton Railroad Company* v. *Wiggins Ferry Company*, 18.

2. An order sustaining a defendant's demurrer, and giving the plaintiff leave to amend, does not preclude the plaintiff from renewing or the court from entertaining, the same question of law at the subsequent trial on an amended declaration. *Post* v. *Pearson*, 418.

See JURISDICTION, A, 4.

JURISDICTION.

A. OF THE SUPREME COURT.

1. Where the supreme court of a Territory on appeal reverses the judgment of a district court and sets aside findings of fact, and makes no new statement of facts in the nature of a special verdict, the judgment of the supreme court of the Territory must be affirmed on appeal. *Gray* v. *Howe*, 12.

2. A writ of error sued out by one of two or more joint defendants without a summons and severance or equivalent proceeding, must be dismissed. *Feibelman* v. *Packard*, 14.

3. A case not tried in a territorial court by a jury cannot be brought for review by a writ of error. *Woolf* v. *Hamilton*, 15.

4. A decree is final, for the purposes of appeal, when it terminates the litigation between the parties on the merits, and leaves nothing to be done but enforce by execution what has been determined. Matters relating to the administration of the cause, and accounts to be settled in accordance with the principles fixed by the decree are incidents of the main litigation which may be settled by supplemental order after final decree. *St. Louis, Iron Mountain & Southern Railroad* v. *Southern Express Company*, 24.

5. Reference below after final judgment to a master to take and state an account between the parties as to the compensation during the litigation and up to its final termination relates to matters of administration not involving the merits. *Missouri, Kansas & Texas Railway* v. *Dinsmore*, 30.

6. A certificate that the transcript is a "true, full and perfect copy from the record of all the proceedings in the suit" is sufficient to give jurisdiction. If the certificate is not correct, the remedy is by certiorari. *Id.*

7. In error the court can consider only the objections specifically taken at the trial. *Stebbins* v. *Duncan*, 32.

8. The record shows that the cause presented two questions in the court below; one not federal, the other federal. The opinion of the court below shows that the cause was decided there on the first point only: *Held*, That in cases coming from the Supreme Court of Louisiana the opinion of the court, as presented by the record, may be examined to determine whether the judgment can be reviewed; and if it appears

that the case was decided below on the non-federal question before the federal question was reached, the court is without jurisdiction. *Crossley* v. *New Orleans*, 105.

9. In a suit involving title to real estate the court will not dismiss an appeal for want of jurisdiction solely because, where there are conflicting affidavits respecting the value of the property, it may possibly reach the conclusion that the estimates acted on below were too high. *Gage* v. *Pumpelly*, 164.
10. The sum demanded governs the question of jurisdiction until it appears that it is not the sum in dispute; but when it appears that the sum demanded is not the real sum in dispute, the sum shown, and not the sum demanded, will govern. *Hilton* v. *Dickinson*, 165.
11. On appeal by the plaintiff, or by a defendant in case set-off or counterclaim has been filed or affirmative relief is demanded, the jurisdiction is to be determined by the amount of the relief additional or otherwise sought to be obtained by the appeal, having reference to the judgment below. *Id.*
12. On appeal by defendant, the sum of the judgment against him governs the jurisdiction when no affirmative relief is asked. *Id.*
13. The amount stated in the body of the declaration, and not merely the damages alleged on the prayer for judgment at its conclusion, must be considered in determining the question of jurisdiction. *Id.*
14. The previous cases bearing on this subject considered and reviewed. *Id.*
15. A decree is final for the purposes of appeal when it terminates the litigation between the parties and leaves nothing to be done but to enforce the execution which has been determined. Several cases on this point decided at this term referred to and approved. *Ex parte Norton*, 237.
16. An assignee in bankruptcy filed a bill to set aside, as fraudulent, conveyances of real estate of the debtor made before the bankruptcy and a mortgage put upon the same by the owner after the sale, and to restrain the foreclosure of the mortgage. The court denied the relief asked for, and ordered any surplus that might remain above the mortgage debt after sale or foreclosure, to be paid to the complainant. The assignee appealed to the circuit court: *Held*, That the decree appealed from was a final decree, disposing of the litigation between the parties. *Id.*
17. The libellant in a suit *in rem*, in admiralty, against a vessel for damages growing out of a collision, claimed in his libel to recover $27,000 damages. After the attachment of the vessel in the district court, a stipulation in the sum of $2,100, as her appraised value, was given. The libel having been dismissed by the circuit court, on appeal, the libellant appealed to this court: *Held*, That the matter in dispute did not exceed the sum or value of $5,000, exclusive of costs, as required by § 3 of the act of February 16th, 1875, 18 Stat. 316, and that this court had no jurisdiction of the appeal. *The Jessie Williamson, Jr.*, 305.

18. A decree against the vessel for $27,000 would not establish the liability of the claimant to respond for that amount *in personam*, unless he was the owner of the vessel at the time of the collision, and that fact must appear by the record, in order to be so far a foundation for such liability as to authorize this court to consider the $27,000 as the value of the matter in dispute on said appeal. *Id.*

19. When distinct causes of action are united in one suit for convenience, and to save expense, and the sum at issue in some of the causes is insufficient to give jurisdiction, and in others is sufficient to give it, those cases in which it is insufficient will be dismissed for want of jurisdiction, and those in which it is sufficient will be retained for adjudication. *Hawley & Fairbanks*, 543.

20. The proceedings under a petition for *habeas corpus* are in their nature civil proceedings, even when instituted to arrest a criminal prosecution and secure personal freedom; and the appellate revisory jurisdiction of this court is governed by the statutes regulating civil proceedings. *Ex parte Tom Tong*, 556.

21. As the statute authorizes a certificate of division of opinion between judges hearing in circuit in civil proceedings only after final judgment, the court cannot take jurisdiction under a certificate by which it appears that there was a difference in opinion between the judges as to the points certified, without entry of final judgment. *Id.*

22. Where, in an action of trespass in which a count of trespass *quare clausum* is joined to a count of trespass *de bonis asportatis*, the defendant sets up no plea of title, and it does not in any way appear by the record that title is involved, and the plaintiff recovers judgment for a sum less than $5,000, the defendant cannot bring the cause here on a writ of error, even though the judgment below may operate collaterally to estop the parties in another suit. *New Jersey Zinc Company* v. *Trotter*, 564.

23. Where a circuit court on demurrer vacated and quashed a writ of replevin for want of jurisdiction, it was a final judgment, and it was, if the case was otherwise within the court's jurisdiction, subject to review on a writ of error. *Ex parte Baltimore & Ohio Railroad Company*, 566.

24. Where a party seeks a writ of mandamus from a State court to compel a city government of which he is a creditor to apply to the payment of his debt the proceeds of a proposed sale of city property, and to exhaust its powers of taxation, and continue to do so until the relator's debt is paid, and the State court denies the prayer as to the application of the proceeds of the sale of the property, on the ground that the State laws require it to be applied to the retirement of other debts of the city, and grants the writ as to the residue of the prayer, no federal question arises. *Louisiana* v. *New Orleans*, 568.

See INDICTMENT, 6, (4);
PRACTICE, 7.

B. Of Circuit Courts of the United States.

The treasurer of a State, being brought into a Circuit Court of the United States to contest the ownership of a fund to which the State laid claim, demurred on the ground that the suit was really against the State; subsequently the fund was, by order of court, paid into court, when the State appeared and claimed it: *Held*, That the voluntary appearance of the State disposed of the demurrer and conferred jurisdiction to adjudicate upon the rights of the State. The case distinguished from *Georgia* v. *Jesup*, 106 U. S. 458. *Clark* v. *Barnard*, 436.

See Conflict of Law, 1;
Removal of Causes;
Review.

C. Of District Courts of the United States.

1. The District Court of the United States for the District of New Jersey has jurisdiction of a suit in admiralty, *in personam*, against a New York corporation, where it acquires such jurisdiction by the seizure, under process of attachment, of a vessel belonging to such corporation, when such vessel is afloat in the Kill van Kull, between Staten Island and New Jersey, at the end of the dock at Bayonne, New Jersey, at a place at least 300 feet below high-water mark, and nearly the same distance below low-water mark, and is fastened to said dock by means of a line running from the vessel and attached to spiles on the dock. *Ex parte Devoe Manufacturing Company*, 401.
2. A vessel so situated is within the territorial limits of the State of New Jersey and of the District of New Jersey, and is not within the territorial limits of the State of New York, or of the Eastern District of New York. *Id.*
3. The subject-matter of the dispute as to boundary between New York and New Jersey explained, and the settlement as to the same made by the agreement of September 16th, 1833, between the two States, as set forth in, and consented to by, the act of Congress of June 28th, 1834 (chap. 126, 4 Stat. 708), interpreted. *Id.*
4. When Congress enacts that a judicial district shall consist of a State, the boundaries of the district vary afterwards as those of the State vary. *Id.*

LACHES.

See Mistake, (5).

LEASE.

A railroad company agreed with A that he might erect a building on property of the company, paying a ground rent therefor for a period terminable by notice, and that at the expiration or termination of the

term the company would take the building at a valuation to be fixed by arbitration. A entered into possession, and constructed a valuable building, and then conveyed his interest in the term to his wife. A gave a note to B in which the wife joined as surety, and the husband and wife executed a mortgage of the premises to B to secure payment of the note. A and his wife gave notice to terminate the term and called for an arbitration to fix the value of the improvements. Arbitration was had, and a price was fixed by the arbitrators as the sum to be paid for the improvements under the agreement and the date when the same was payable, and judgment was entered accordingly in a court of record. Pending these proceedings A died. At the time of the arbitration there was rent in arrear, and it was agreed that this should not enter into the arbitration, but should be subject to future adjustment. The company neglecting to pay the sum fixed by the arbitrators, the wife remained in possession after A's death, receiving the rents and profits, and attempted to enforce the judgment by an execution. On a bill in equity filed by the company to restrain the enforcement of the judgment and for an account, and a bill of interpleader making B a party for the protection of his rights: *Held*, (1) That the wife was entitled to interest on the judgment sum from the date fixed in the decree for the payment, and was bound to account for the rents and profits of the premises which were received, or might reasonably have been received by her, after the date fixed by the arbitrators for the payment of the money from the railroad company. (2) That B's lien was valid under the laws of Mississippi, against the income of the property. And that, there being two funds in the possession of the court, one the decree and the other the interest upon the decree, a court of equity should so marshal the assets as to pay the lien of B from the interest on the decree. *Scruggs* v. *Memphis & Charleston Railroad Company*, 368.

LEGISLATIVE AUTHORITY.

See NUISANCE, 3, 4.

LICENSE.

See INDIAN COUNTRY.

LIFE INSURANCE.

See INSURANCE.

LIMITATIONS, STATUTE OF.

1. If an action on the debt secured by a mortgage of real estate in the State of Texas is not barred by the statute of limitations, a suit on the mortgage itself is not barred, and this, whether the owner of the

equity or a third person be the mortgage debtor. *Excell* v. *Daggs*, 143.

2. When a suit is brought in a State court, the laws of that State will control in interpreting the provision of a federal statute of limitations as to what is the commencement of suit. *Goldenberg* v. *Murphy*, 162.
3. No judgment or decree of a State court can be reviewed in this court unless the writ of error is, within two years from the entry of the judgment, filed in the court which rendered the judgment. *Ex parte Baltimore and Ohio Railroad Company*, 566.
4. A decree was made by a circuit court, in December, 1873, against two plaintiffs. In January, 1874, they appealed to this court. In December, 1875, the appeal was dismissed for the failure of the appellants to file and docket the cause in this court. In September, 1876, a bill of review was filed for errors in law: *Held*, That the bill was filed in time, though not within two years from the making of the decree because the control of the circuit court over the decree was suspended during the pendency of the appeal. *Ensminger* v. *Powers*, 292.

See CONSTITUTIONAL LAW, 8;
EQUITY, 3.

LOUISIANA.

See CONSTITUTIONAL LAW, 8;
JURISDICTION, A, 8;
PRACTICE, 3, 4.

MANDAMUS.

1. A writ of mandamus cannot be used to bring up for review a judgment of a circuit court on a plea to the jurisdiction. *Ex parte Baltimore & Ohio Railroad*, 566.

See SUPERSEDEAS.

MANDATE.

See PARTIES.

MARBLE STATUES.

See CUSTOMS DUTIES, 5.

MARSHALLING OF ASSETS.

See LEASE.

MINERAL LANDS.

See PUBLIC LANDS.

MISSOURI.

See MUNICIPAL CORPORATIONS, 5.

MISTAKE.

By a written agreement between S and E, S agreed to convey land to E "subject to" an incumbrance on it of $9,000, and E agreed to pay to S $15,000, by conveying to him land, some of it "subject to" an incumbrance. Without any further bargain, S delivered to E a deed, conveying the land "subject to" the incumbrance, and also containing a clause stating that E assumes and agrees to pay the debt secured by the incumbrance, as a part of the consideration of the conveyance. E being ill, did not read the clause in the deed respecting the assumption of the debt, but discovered it afterwards, and promptly brought this suit to have the deed reformed. He had made two payments of interest on the incumbrance. In the negotiations prior to the agreement, S, through his agent, had solicited E to assume and agree to pay the incumbrance, but E refused. S understood the difference in meaning between the two forms of expression. D, the owner of the incumbrance, was no party to the transaction, and had done nothing in reliance on the deed. He was, on his own application, made a party to the suit, and also filed a cross-bill for a foreclosure of the incumbrance, and the inforcement of a personal liability against S and E for the debt. The circuit court made a decree dismissing the bill in the original suit, and adjudging that E had agreed with S to pay the amount due on the incumbrance; that S and E, or one of them, should pay the debt due to D, and, in default thereof, the land should be sold, and the deficiency reported; and that, if S should pay any part of the debt, he might apply for an order requiring E to repay the amount to him. On an appeal by E: *Held*, (1) The decree was a final decree, as to E. (2) The amount involved in the original suit was the $9,000. (3) The agreement created no liability on the part of E to pay the debt to D. (4) There was a departure in the deed, through mutual mistake, from the terms of the actual agreement. (5) Under the special circumstances of the case E had a right to presume that the deed would conform to the written agreement, and was not guilty of such negligence or laches in not observing the provisions of the deed as should preclude him from relief, nor was he guilty of any laches in seeking a remedy. (6) The payment by E of interest on the incumbrance was not inconsistent with his not having assumed the payment of the debt. (7) E is entitled to have the deed reformed. The case of *Snell* v. *Insurance Company*, 98 U. S. 85, cited and applied. *Elliott* v. *Sackett*, 132.

MORTGAGE.

1. The Illinois statute of 1879, entitling the purchaser in case of redemp-

tion to receive interest upon his bid at the rate of eight per cent. per annum (the previous law prescribing ten per cent.), is applicable to all decretal sales of mortgaged premises thereafter made, although the mortgage was given before the passage of that statute. Such reduction in the rate of interest did not impair the obligation of the contract between the mortgagor and mortgagee, because the amendatory statute did not diminish the duty of the mortgagor to pay what he agreed to pay, or shorten the period of payment, or affect any remedy which the mortgagee had, by existing law, for the enforcement of his contract. *Connecticut Mutual Life Insurance Company* v. *Cushman*, 51.

2. The purchaser at decretal sale is entitled to interest at the rate prescribed by statute when he purchased. The amendatory statute operated *proprio vigore*, to change the rule of court previously fixing the rate at ten per cent. *Id.*
3. The existing laws with reference to which the mortgagor and mortgagee must be assumed to have contracted are those only which in their direct or necessary legal operation controlled or affected the obligation of their contract. *Id.*

See CONFLICT OF LAW, 1, 2 ; CONSTITUTIONAL LAW, 8; LEASE, 1, (2) ; LIMITATIONS, STATUTE OF; MISTAKE ; PRACTICE, 3 ; SUBROGATION ; SURETY.

MOTION TO DISMISS.

In the absence of a printed record the court will not grant a motion to dismiss when the motion papers disclose equitable reasons why it should not be granted. *Mayer* v. *Walsh*, 17.

MUNICIPAL BONDS.

1. Bonds issued by a municipal corporation, but not under either a general authority to borrow for corporate purposes, or a special legislative authority to borrow for purposes within the power of the legislature to confer, are void in the hands of a person who is not an innocent *bona fide* holder without notice. *Ottawa* v. *Carey*, 110.
2. Unless power has been given by the legislature to a municipal corporation to grant pecuniary aid to railroad corporations, bonds issued for that purpose, and bearing evidence of the purpose on their face, are void, even in the hands of *bona fide* holders. Corporate ratification, without authority from the legislature, cannot make a municipal bond valid, which was void when issued for want of legislative power to make it. *Lewis* v. *Shreveport*, 282.
3. When an act of the legislature authorized a county to subscribe for stock in a railroad or its branches, and the inhabitants of the county

at legally convened meetings voted to exercise the power thus conferred, and the subscription was made, and county bonds issued therefor and exchanged for stock in a branch of the railroad for which the subscription was made, and the county, for a series of years, paid the interest on the bonds, and then resisted payment solely on the ground that the road constructed was not the road to whose stock the statute authorized the county to subscribe : *Held*, On the special finding found at the trial below, that the road is one of the branches for which the act authorized counties to subscribe. *Howard County* v. *Booneville Central National Bank*, 314.

4. An act of the State of Illinois authorizing subscriptions by municipalities to the stock of a railroad company required the town clerks to transmit to county clerks transcripts of votes authorizing subscriptions, and the amount voted and the rate of interest to be paid, and after issue of bonds, certificates of the amount of bonds issued, the rate of interest thereon, and the number of each bond. It also required the county clerk, after the execution and delivery of the bonds, to annually compute and assess upon the township enough to pay the accruing interest and cost of collection, and a fund for redemption. A subsequent statute authorized holders of such bonds to register them with the State auditor of public accounts, and made it the duty of the auditor to estimate the amount of assessment necessary to meet the interest, &c., and to inform the county clerk : *Held*, That the object of each act was to provide a mode for information to reach the county clerk as to the amount of money necessary to be raised for these purposes, and that certified copies of judgments recovered in the Circuit Court of the United States by such bondholders upon their bonds lodged with the county clerk, had the same force and effect as information derived in the mode provided by law, and made it the duty of the clerk to proceed with the computation and assessment of the tax. *Hawley* v. *Fairbanks*, 543.

MUNICIPAL CORPORATIONS.

1. Municipal corporations, being created only to aid the State government in the legislation and administration of local affairs, possess only such powers as are expressly granted, or as may be implied because essential to carry into effect those which are expressly granted. *Ottawa* v. *Carey*, 110.

2. A municipal corporation authorized by its charter "to borrow money on the credit of the city and to issue bonds therefor," and by the special act to borrow a named sum "to be expended in developing the natural advantages of the city for manufacturing purposes," is not thereby authorized to issue bonds by way of donation to an individual to aid in developing the water power of the city, and is not

liable to an action upon such bonds by one who takes them with notice of the facts. *Id.*

3. A statute which authorized a municipal corporation "to obtain money on loan on the faith and credit of said city for the purpose of contributing to works of internal improvement," is not repealed by implication by a subsequent statute which, reciting that doubts had arisen respecting bonds theretofore issued, enacted that "all bonds heretofore issued by the constituted authorities of the city are valid, and from and after the passage of this act, the mayor and aldermen of the city, upon a recommendation of a public meeting of the citizens called for that purpose, shall have power and authority to cause bonds to be issued and disposed of in such manner as they may direct, for purposes of internal improvement." *Savannah* v. *Kelly*, 184.
4. A statute authorizing a municipal corporation to obtain money on loan on the faith and credit of the city, for the purpose of contributing to works of internal improvement, authorizes the municipality to guarantee the payment of the bonds of a railway company. *Id.*
5. Under an act of the legislature of Missouri, county courts of counties were authorized to subscribe, in behalf of townships in their respective counties, to the capital stock of any railroad company within that State "building or promising to build a railroad into, through, or near such township," and to issue bonds in the name of the county in payment of such subscription. There was a vote of a township in favor of issuing bonds in aid of a particular railroad company. The subscription was made and the bonds issued, reciting that they were authorized by a vote of the people, and were issued under and pursuant to an order of the county court by authority of the act. When the vote was taken and the bonds issued, the company did not propose to build a road into or through the township, but it was proposing to build one from a point nine miles distant from the township to a farther distance. Interest on the bonds was paid for three years. In a suit on coupons of the bonds by a *bona fide* holder for value : *Held*, That the courts should acquiesce in the determination by the qualified voters and the local authorities that the proposed road was near the township, and hold that there was legislative authority for issuing the bonds. *Kirkbride* v. *Lafayette County*, 208.

See CONFLICT OF LAW, 4.

NATIONAL BANK.

See INDICTMENT, 1, 2, 3, 4, 5.

NEGLIGENCE.

See CONTRIBUTORY NEGLIGENCE ;
MISTAKE.

NEW JERSEY.

See JURISDICTION, C.

NEW ORLEANS.

See PRACTICE, 4.

NUISANCE.

1. In an action at law damages may be recovered against a person who maintains a nuisance which renders the ordinary use and occupation of property physically uncomfortable to its owner ; and if the cause of the annoyance and discomfort be continuous, equity will restrain it. *Baltimore & Potomac Railroad* v. *Fifth Baptist Church*, 317.
2. Corporations are equally responsible with individuals to respond in damages for injuries caused by nuisances maintained by their servants by the authority of the corporation. *Id.*
3. Legislative authority to a railroad company to bring its tracks within municipal limits and to construct shops and engine houses there, does not confer authority to maintain a nuisance. *Id.*
4. Legislative authorization exempts from liability to suits, civil or criminal, at the instance of the State ; but it does not affect claims of private citizens for damages for special inconvenience and discomfort, not experienced by the public at large. *Id.*

PARTIES.

On appeal from the decree of the court below executing the mandate of the court on the judgment entered in *Blake* v. *Hawkins*, 98 U. S. 315 : *Held*, That it was no error in the execution of the mandate to permit a new party to become party and set up rights under the decree, when it appears by the record that all parties consented. *Hawkins* v. *Blake*, 422.

PATENT.

The doctrine reaffirmed that the earlier printed and published description of a subject of a patent which is put in evidence to invalidate a patent must be in terms that would enable a person skilled in the art or science to which it appertains to make, construct and practise the invention as completely as he could do by the aid of information derived from a prior patent ; and that unless it is sufficiently full to enable such person to comprehend it without assistance from the patent, or to make it or repeat the process claimed, it is insufficient to invalidate the patent. Applying the doctrine to this case, the appellant's patent *held* to be void. *Downton* v. *Yeager Milling Company*, 466.

PENALTY.

See BOND.

PERJURY.

See INDICTMENT.

PLEADING.

See JURISDICTION, A, 19.

PRACTICE.

1. It appearing that a personal decree for money could not be given, and the circumstances of the parties not being shown to have changed since the security was taken, a motion for additional security on the supersedeas bond is denied. *Johnson* v. *Waters*, 4.
2. Motions to dismiss, with which are united motions to affirm, to strike out certain assignments of error, and to advance, denied when, in the absence of a printed record, the assignment of errors in defendant's brief presents questions of which the court has jurisdiction. *Crane Iron Company* v. *Hoagland*, 5.
3. A mortgaged real estate in New Orleans to B. Proceedings being taken against it under the Confiscation Acts as the property of A, B intervened. The estate was condemned, and sold to C, and the proceeds paid to B under decree of court. After the death of A, suit was brought on behalf of his heirs to recover possession of the property. *Held*, That C acquired only the life estate of A ; that the heirs of A are entitled to recover ; and that neither the United States nor C is subrogated to the rights of B ; also, That under the practice of Louisiana, C cannot, after going to trial on the petition, object that it is defective by reason of not setting forth the deed under which he claims title. *Waples* v. *Hays*, 6.
4. The board of liquidation of the city debt of New Orleans, a corporate body created by the legislature of Louisiana, created pending the appeal of this suit, appeared and claimed authority over the subject-matter of the controversy. The court refused to enter judgment according to the terms of stipulation made with the attorney of the city of New Orleans by authority of the city council, without first giving the board opportunity to be heard. *New Orleans* v. *New Orleans, Mobile & Texas Railroad*, 15.
5. Where on the face of the decree it appears that a case was disposed of on demurrer to the bill, the evidence on file is not necessary for the hearing of the bill. *Missouri, Kansas & Texas Railway* v. *Dinsmore*, 30.
6. When a record has not been printed, and parties do not agree as to its

contents, certiorari may be granted, reserving all questions till return. *Id.*

7. On a reference in equity to a master, the findings of the master are *prima facie* correct. Only such matters are before the court as are excepted to, and the burden of sustaining the exception is on the objecting party. *Medsker* v. *Bonebrake*, 66.
8. When the law is settled in the court above, but the findings show uncertainty as to the facts on which judgment is to be based, the cause should be remanded for such further proceedings to be had in the inferior court as the justice of the case may require. *Little Miami & Columbus & Xenia Railroad* v. *United States*, 277.

See ADMIRALTY;
APPEAL;
CONFLICT OF LAW, 1, 2;
EVIDENCE, 1;
JUDGMENT, 1, 2;
JURISDICTION, A, 1, 2, 3, 7, 22;
MOTION TO DISMISS;
PARTIES;
PRIZE, (1);
PUBLIC LANDS;
REMOVAL OF CAUSES;
SUPERSEDEAS.

PREFERRED STOCK.

See CORPORATIONS, 2.

PRINCIPAL AND AGENT.

An agreement in writing, between "W., superintendent of the Keets Mining Company, parties of the first part, and P., party of the second part," by which "the said parties of the first part" agree to deliver at P.'s mill ore from the Keets mine (owned by the company) to be crushed and milled by P.; and signed by "W., Supt. Keets Mining Co.," and by P.; is the contract of the company. *Post* v. *Pearson*, 418.

PRIZE.

The *Nuestra Señora de Regla* was seized in November, 1861, by the army. In December, 1861, the master chartered her to the quartermaster's department for two hundred dollars a day. She remained in the service of the quartermaster till January 29th, 1862, when she was delivered to the navy, by whom she was used as a transport till March 1st, 1862. She was then sent to New York and libelled as prize. A decree of restitution was made June 20th, 1863. Proceedings to fix the amount of demurrage were stayed to enable the matter to be adjusted diplomatically. In 1870 the Department of State informed the Spanish Minister that it would be more satisfactory to the United States to have the question settled by the court. A reference to a commissioner resulted in a decree for demurrage to the date of the decree for restoration, in all 268 days. On appeal the decree was set aside as excessive, and the case remanded. Under a new reference the same

demurrage was allowed, and decree therefor made: *Held*, That (1) It having been settled by the former decree in 17 Wall. 29 that the steamer was not lawful prize, and that the capture was without probable cause, these questions were no longer open. *Supervisors* v. *Kennicott*, 94 U. S. 498, followed. (2) The capture being made by the army, the vessel was not subject to condemnation as prize. (3) The executive could, without legislative authority, submit to the determination of a judicial tribunal the question of the amount of damages for the capture. (4) A captor who does not institute judicial proceedings for the condemnation of his prize without unnecessary delay is subject to demurrage in case a decree of restitution is made after proceedings are begun. (5) The United States are liable to demurrage in the present case from the date when the surrender for adjudication might have been made until the date of the surrender, at the rate fixed by the charter party. *Nuestra Señora de Regla*, 92.

PROBABLE CAUSE.

See PRIZE.

PUBLIC LANDS.

1. In a suit brought by a District Attorney of the United States to set aside a patent conveying public lands, objection was taken in this court that it did not sufficiently appear that the suit was brought under authority from the Attorney-General: *Held*, That, the objection not having been taken below, the fact of such authority could be inquired into and shown here. *Western Pacific Railroad Company* v. *United States*, 510.
2. On the evidence it appeared that the lands in question were mineral lands, and were known to be such by the applicant for the patent, and agent for the railroad company, at the time of the application. The patent was set aside. *Id.*

RAILROADS.

An amendment was made to the charter of a railroad company in Illinois providing that "the said company shall have the power to make, ordain and establish all such by-laws, rules and regulations as may be deemed expedient and necessary to fulfil the purposes and carry into effect the provisions of this act, and for the well ordering, regulating and securing the affairs, business, and interest of the company: *Provided*, That the same be not repugnant to the Constitution and laws of the United States, or repugnant to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same, as they shall from time to time by their by-laws determine, and to levy and collect the same for the use

of the said company:" *Held*, That inasmuch as the power to establish rates was to be exercised through by-laws, and the power to make by-laws was restricted to such as should not be repugnant (among other things), to the laws of the State, the amendment did not release the company from restrictions upon the amount of rates contained in general and special statutes of the State. *Ruggles* v. *Illinois*, 526.

See COMMON CARRIER; CONTRIBUTORY NEGLIGENCE; CORPORATION, 2, 3; DISTRICT OF COLUMBIA, 2; INTERNAL REVENUE, 4, 5.

REMOVAL OF CAUSES.

1. When the courts of one State give to the statutes of another State a different construction from that given by the courts of the State in which the laws were enacted, no case arises under the removal act for the transfer of the cause to the federal courts. The remedy, if any, is by writ of error after final judgment. *Chicago & Alton Railroad* v. *Wiggins Ferry Company*, 18.
2. *Hyde* v. *Ruble*, 104 U. S. 407, that "a suit cannot be removed from a State court to the circuit court unless either all the parties on one side of the controversy are citizens of different States from those on the other side, or there is in such suit a separable controversy wholly between some of the parties, who are citizens of different States which can be fully determined as between them" adhered to. *Winchester* v. *Loud*, 130.
3. When in the settlement of a controversy one of the plaintiffs and one of the defendants, necessary parties for the determination of the issues, are citizens of the same State, the cause cannot be removed from the State court under the first clause of section 2 of the act of March 3d, 1875, ch. 137, 18 Stat. 470. *Shainwald* v. *Lewis*, 158.
4. In the present case the issue is not a separable controversy which, under the provisions of the second clause in that section, can be so removed. *Id.*
5. Where, upon the removal of a cause from a State court, the copy of the record is not filed within the time fixed by statute, it is within the legal discretion of the federal court to remand the cause, and the order remanding it for that reason should not be disturbed unless it clearly appears that the discretion with which the court is invested has been improperly exercised. *St. Paul & Chicago Railway* v. *McLean*, 212.
6. If, upon the first removal, the federal court declines to proceed and remands the cause because of the failure to file the copy of the record within due time, the same party is not entitled, under existing laws, to file in the State court a second petition for removal upon the same ground. *Id.*

7. A suit cannot be removed from a State court, under the act of 1875, unless the requisite citizenship of the parties exists both when the suit was begun and when the petition for removal was filed. *Gibson* v. *Bruce*, 561.

REVIEW.

1. A decree, in a suit in equity, set forth a hearing on pleadings and proofs, and awarded relief, but it ordered that a bill of exceptions signed by the court be filed as a part of the record. The bill of exceptions showed that the judge who held the court refused to permit the counsel for plaintiff to argue the cause, and allowed the counsel for the defendant to determine whether the case fell within a prior decision of another judge, and refused to determine that question himself, and then directed that the decree be entered, which was in favor of the defendant. On a bill of review, filed by the plaintiff: *Held*, That, the decree must be held for naught. *Ensminger* v. *Powers*, 292.

RULES.

Review of the legislation and practice of the court relating to taxation of the clerk's fees for printed copies of records. Change in Rules announced, 1.

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SALVAGE.

1. A ship, towed by a steam tug down the river, came to anchor in the evening, and the tug was lashed to her side. In the night, no watch having been set, a passenger on board of her was awakened by a smell of smoke arising from a fire which had broken out in part of the cargo stowed in the poop, and which endangered the ship and cargo. He gave the alarm to the officers and crews of the ship and of the tug; and he and the officers, crew and passengers of the tug, working together, and by means of a steam pump and hose upon the tug, and unaided by the officers and crew of the ship, put out the fire in twenty minutes: *Held*, That this was a salvage service, and that the passenger on board the ship, as well as the owner, officers, crew and passengers of the tug, might share in the salvage. *The Connemara*, 352.
2. Under the act of Congress of 16th February, 1875, c. 77, a decree of salvage by the circuit court is not to be altered by this court for excess in the amount awarded, unless the excess is so great that, upon any reasonable view of the facts found, the award cannot be justified by the rules of law applicable to the case. *Id.*

SPECIFIC PERFORMANCE.

See EQUITY, 1.

SPIRITUOUS LIQUORS.

See INDIAN COUNTRY.

STATUTES.

A. CONSTRUCTION OF STATUTES.

When there is an ambiguity in the language of a statute it may be necessary to inquire into the objects of the legislature in its enactment; or if it be a private act, the purposes of the beneficiaries in asking for it; but when the language is clear, and needs no interpretation, and leads to no absurd conclusion, this will not be done. *Ruggles* v. *Illinois*, 526.

See CORPORATION, 4;
DISTRICT OF COLUMBIA, 1, (3);
MUNICIPAL CORPORATIONS, 3, 4.

B. Statutes of the United States.

See District of Columbia, 1, 2, 3, 4, 5 ;
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Salvage, 2.

C. Statutes of States and Territories.

Of Illinois: *See* Constitutional Law, 6, 7 ;
Municipal Bonds, 4 ;
Railroads.

Of Louisiana: *See* Constitutional Law, 8.

Of Missouri: *See* Municipal Corporations, 5.

Of Texas: *See* Usury.

STATUTE OF FRAUDS.

See Equity, 1.

SUBROGATION.

1. When one of two sureties gives a mortgage of his real estate to his co-surety to protect him against loss by reason of having become security for the principal, a creditor of the principal is not entitled to be subrogated in equity in place of the co-surety, and enjoy the benefit of the mortgage. *Hampton* v. *Phipps*, 260.
2. The distinction in principle between the rights of creditors of the principal debtor in the security where the debtor furnishes it to his sureties, and their rights where such security is furnished by one co-surety to the other, examined and explained. *Id.*

See Practice, 3.

SUPERSEDEAS.

1. If a decree in admiralty is entered against claimant and sureties, and claimant appeal, and sureties sign the *supersedeas* bond also as sureties, an alternative writ of mandamus will not be granted to vacate the decree below as to the sureties. *The Belgenland*, 153.
2. Nor will this court, on the stipulator's motion, order the decree set aside here as to them. *Id.*

SUPPLEMENTAL ORDER.

See Jurisdiction, A, 4.

SUPREME COURT.

See Jurisdiction, A.
Prize, (1).

SURETY.

When each of two co-sureties gives security to the other, to protect him against liability on account of the principal beyond a fixed sum, no right to resort to the security exists, until obligations on the part of the principal have been met by the surety beyond the sum named. *Hampton* v. *Phipps*, 260.

See SUBROGATION.

TACIT MORTGAGES.

See CONSTITUTIONAL LAW, 8.

TAX.

A lot of land, part of the navy yard at Memphis, Tennessee, not under lease to a private party, being exempt from State and county taxation by section 9 of the act of the legislature of Tennessee, which took effect February 20th, 1860, ch. 70, Private Acts of 1859–'60, 284, was, by section 13 of the act of Congress of August 5th, 1861, ch. 45, 12 Stat. 297, exempt from taxation under the direct tax on land authorized by that act. *Ensminger* v. *Powers*, 292.

See CONFLICT OF LAW, 4;
INTERNAL REVENUE;
MUNICIPAL BONDS, 4.

TOTAL LOSS.

See CONTRACT, 1.

TRADE-MARK.

1. A court of equity will extend no aid to sustain a claim to a trade-mark of an article which is put forth with a misrepresentation to the public as to the manufacturer of the article, and as to the place where it is manufactured, both being originally circumstances to guide the purchaser of the medicine. *Manhattan Medicine Company* v. *Wood*, 218.
2. When it is the object of a trade-mark to indicate the origin of manufactured goods, and a person affixes to goods of his own manufacture a trade-mark which declares that they are goods of the manufacture of some other person, it is a fraud upon the public which no court of equity will countenance. *Id.*
3. The plaintiff claimed to be the owner of a patent medicine and of a trade-mark to distinguish it. The medicine was manufactured by the plaintiff in New York; the trade-mark declared that it was manufactured by another party in Massachusetts: *Held*, That he was entitled to no relief against a person using the same trade-mark in Maine. *Id.*

TREATY.

See INDIAN COUNTRY.

TRUST.

See DISTRICT OF COLUMBIA, 1, (2).

USURY.

A contract of a kind which a statute in Texas makes "void" for usury, is voidable only; and a repeal of the statute declaring such contracts void deprives the debtor of the statutory defence. *Ewell* v. *Daggs*, 143.

WITNESS.

See EVIDENCE, 5.