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ACKNOWLEDGMENT.

In a suit to set aside a deed of trust executed to secure the payment of a note signed by husband and wife, and the acknowledgment of which was certified as required by law, it was in proof that the wife signed the note and the deed, having an opportunity to read both before signing them; she was before an officer competent to take her acknowledgment, and he came into her presence, at the request of the husband, to take it; and she knew, or could have ascertained, while in the presence of the officer, as well to what property the deed referred as the object of its execution. *Held*, That the certificate must stand against a mere conflict of evidence as to whether she willingly signed, sealed, and delivered the deed, or had its contents explained to her by the officer, or was examined privily and apart from her husband; and that even if it be only *prima facie* evidence of the facts therein stated, it cannot be impeached, in respect to those facts, except upon proof which clearly and fully shows it to be false or fraudulent. *Young* v. *Duvall*, 573.

ACTION.

See CONTRACT 5,
EQUITY, 2;
PRINCIPAL & AGENT, 1, 2.

ADMINISTRATION.

For the purpose of founding administration, a simple contract debt is assets where the debtor resides, even if a bill of exchange or promissory note has been given for it, and without regard to the place where the bill or note is found or payable. *Wyman* v. *Halstead*, 654.

See CLAIMS AGAINST THE UNITED STATES;
DISTRICT OF COLUMBIA, 4.

ADMINISTRATOR DE BONIS NON.

1. When an administrator duly appointed in the District of Columbia, is

removed, and an administrator *de bonis non* appointed in his place, the administrator *de bonis non* is not entitled to demand of the administrator so removed the proceeds of a claim against the United States due the intestate and collected by the former administrator; and cannot maintain suit against a surety of the former administrator to recover damages for failure by the former administrator to pay such sum to the administrator *de bonis non*. *United States* v. *Walker*, 258.

2. A decree by the Supreme Court of the District of Columbia, directing an administrator who has been removed to pay over to an administrator *de bonis non* appointed in his place a sum collected by the former from the United States for a claim due to the intestate, is void for want of jurisdiction, and furnishes no ground for maintaining an action against a surety of the former administrator for failure of that administrator to comply with the decree. *Id.*

ADMIRALTY.

See CONTRACT, 1, 2;
JURISDICTION, C.

AGREEMENT.

See CONTRACT.

ALABAMA CLAIMS.

An agreement, made a fortnight before the Treaty of Washington of 1871, and by which the owners of a ship and cargo taken by the armed rebel cruiser, the Florida, employed a person, whether an attorney at law or not, to use his best efforts to collect their "claim arising out of the capture," and authorized him to employ such attorneys as he might think fit to prosecute it, and promised to pay him "a compensation equal to twenty-five per cent. of whatever sum shall be collected on the said claim," applies to a sum awarded to them by the Court of Commissioners of Alabama Claims, established by the act of June 23d, 1874, c. 459; and is not affected by § 18 of that act, providing that that court should allow, out of the amount awarded on any claim, reasonable compensation to the counsellor and attorney for the claimant, and issue a warrant therefor, and that all other liens or assignments, either absolute or conditional, for past or future services about any claim, made or to be made before judgment in that court, should be void. *Bachman* v. *Lawson*, 659.

AMENDMENT.

See APPEAL, 2;
RECEIVER, (3).

APPOINTMENT.

See CONSTITUTIONAL LAW, 12.

AMUSEMENT, PLACES OF.

See CONSTITUTIONAL LAW, 3, 4, 5, 6.

APPEAL.

1. The authority conferred by R. S. § 1000 to take the security on an appeal cannot be delegated; and if the security is not given until after the term is over, citation must issue and be served. *Haskins* v. *St. L., &c., Railway Co.*, 106.

2. A brought suit against B upon bonds aggregating $24,000, on which over $5,000 interest was claimed as overdue. Before trial A, by leave of court, amended so as to include only 90 of the coupons originally sued on. He took judgment for less than $5,000. *Held*, that this court had no jurisdiction in error over the judgment. *Opelika City* v. *Daniel*, 108.

3. The decree of the Circuit Court was entered May 24th, 1880. June 26th, a cross-appeal to this court, returnable at its October term following, was allowed. The bond thereon was filed in the Circuit Court July 5th, but the appellants in it did not docket it, or enter their appearance on it, in this court, until Sept. 27th, 1883. *Held*, That it must be dismissed. *The Tornado*, 110.

4. When it was within the discretion of the court below to grant or to refuse leave to file a cross-bill, the refusal to grant such leave is no ground of appeal. *Indiana Southern R. Co.* v. *Liverpool, L. & G. Ins. Co.* 168.

5. A person not a party in a suit cannot take an appeal in it. *Guion* v. *Liverpool, London & G. Ins. Co.*, 173.

6. Stockholders in a corporation filed a bill praying to have proceedings at a meeting of stockholders in the corporation and proceedings of the board of directors, under a supposed authority derived therefrom, set aside as fraudulent and void, and a receiver appointed. The court below made a decree setting aside the proceedings and appointed a receiver, and added to the decree a clause reserving to itself such further directions respecting costs, &c., as might be necessary to carry the decrees into execution. An appeal being taken, a motion was made to dismiss the appeal on the ground that the decree appealed from was not a final decree. *Held*, That the decree appealed from was final as to all the relief prayed for in the bill. *Winthrop Iron Co.* v. *Meeker*, 180.

7. When a claim presented for proof in bankruptcy as a debt against the bankrupt's estate is rejected by the district court, an appeal from the decision to the circuit court is incomplete and invalid, if the appellant fails to give to the assignee the notice thereof which the statute re-

quires, within ten days after the decision—even though such notice may have been given to the objecting creditor. *Ex parte Mead*, 230.

8. It is within the discretion of a circuit court of the United States, sitting in the State of Texas, if a plaintiff appears in open court and remits a part of the verdict in his favor, to make the proper reduction and enter judgment accordingly. If by such remission the judgment be reduced to $5,000 or less, errors in the record will be shut out from re-examination, in cases where the jurisdiction of this court depends upon a larger amount being involved in the controversy. *Alabama Gold Life Ins. Co.* v. *Nichols*, 232.

See ERROR; FORECLOSURE; JUDGMENT, 3; KANSAS; RECEIVER; WRIT, 1.

APPEAL BOND.

See APPEAL, 1.

ARMY OFFICERS.

See CONSTITUTIONAL LAW, 12.

ASSIGNEE.

See JURISDICTION, B, 1.

ASSIGNEE IN BANKRUPTCY.

See DOWER.

ASSIGNMENT.

See ALABAMA CLAIMS; DOWER; JURISDICTION, B, 1; MISTAKE, 1; MORTGAGE, 3; POWER OF ATTORNEY.

ATTORNEY.

See POWER OF ATTORNEY; MORTGAGE, 3.

BAILMENT.

See COMMON CARRIER.

BANKRUPTCY.

A district court of the United States sitting in bankruptcy has jurisdiction to order the seizure and detention of goods, the property of the

bankrupt, although in possession of another under claim of title. The officer, in a subsequent action against him for obedience to that order, may justify by proof that the title to the property at the time of seizure was in the bankrupt. If the local State laws are in conflict with this right, they will not be regarded as having any application to it. *Sharpe* v. *Doyle*, 102 U. S. 686, approved and followed. *Feibelman* v. *Packard*, 421.

See APPEAL, 7; CORPORATIONS, 6; DOWER; EQUITY, 3, 4; JURISDICTION, B, 5.

BURDEN OF PROOF.

See EQUITY, 1.

BRIDGES.

See CONSTITUTIONAL LAW, 13, 14.

CASES APPROVED.

See BANKRUPTCY; CONSTITUTIONAL LAW, 7; CONTRACT, 8; DIVISION OF OPINION; EMINENT DOMAIN, 1, 2; EQUITY, 5; JURISDICTION, B, 6, 8; MUNICIPAL BONDS, 1, 2, 4.

CASES LIMITED, QUESTIONED OR OVERRULED.

See CONSTITUTIONAL LAW, 24, 25; WASHINGTON CITY, 5.

CIVIL RIGHTS.

See CONSTITUTIONAL LAW, 1, 2, 3, 4, 5, 6.

CLAIMS AGAINST THE UNITED STATES.

Debts due from the United States are not local assets at the seat of government only. *Wyman* v. *Halstead*, 654.

See DISTRICT OF COLUMBIA, 4; POWER OF ATTORNEY.

COLLATERAL PROCEEDINGS.

See WRIT, 2, 3.

COLLECTOR OF INTERNAL REVENUE.

See INTERNAL REVENUE, 1, 2; LIMITATIONS, 1, 2.

COLLECTOR OF CUSTOMS.

See CUSTOMS DUTIES, 4;
LIMITATIONS, 4, 5.

COLORADO.

See PLEADING, 3.

COMMON CARRIER.

1. Proceedings in the district court of the United States under the act of 1851, 9 Stat. 635, to limit the liability of ship owners for loss or damage to goods, supersede all other actions and suits for the same loss or damage in the State or federal courts, upon the matter being properly pleaded therein. *Providence & N. Y. Steamship Co.* v. *Hill Manufacturing Co.*, 578.
2. The effect of such proceedings in superseding other actions and suits does not depend upon the award of an injunction by the district court, but upon the object and intrinsic character of the proceedings themselves, and the express language of the act of Congress. *Id.*
3. The power of Congress to pass the act of 1851, and of this court to prescribe the rules adopted in December term, 1871, for regulating proceedings under the act, reaffirmed. *Id.*
4. Loss and damage by fire on board of a ship are within the relief of the 3d, as well as the 1st, section of the act. *Id.*
5. Goods transported by steamer from Providence to New York were injured by fire on board the vessel at her dock in the latter place, and suits for damage were commenced against the owners of the steamer in New York and Boston; thereupon proceedings were instituted by such owners in the District Court of the United States for New York, under the act of 1851, to limit their liability: *Held*, That said proceedings, properly pleaded and verified, superseded the actions in other courts, and that it was error to proceed further therein. *Id.*

CONFLICT OF LAW.

See BANKRUPTCY;
COMMON CARRIER;
CORPORATION, 1, 2, 3, 5;
DOMINION OF CANADA, 1, 2;
EMINENT DOMAIN, 2;
EQUITY, 3, 4;
JURISDICTION, B, 2, 5.
LIMITATIONS, 5.

CONSTITUTIONAL LAW.

1. The first and second sections of the Civil Rights Act passed March 1st, 1875, are unconstitutional enactments, as applied to the several States, not being authorized either by the XIIIth or XIVth Amendments of the Constitution. *Civil Rights Cases*, 3.
2. The XIVth Amendment is prohibitory upon the States only, and the

legislation authorized to be adopted by Congress for enforcing it is not *direct* legislation on the matters respecting which the States are prohibited from making or enforcing certain laws, or doing certain acts, but is *corrective* legislation, such as may be necessary or proper for counteracting and redressing the effect of such laws or acts. *Id.*

3. The XIIIth Amendment relates only to slavery and involuntary servitude (which it abolishes); and although, by its reflex action, it establishes universal freedom in the United States, and Congress may probably pass laws directly enforcing its provisions; yet such legislative power extends only to the subject of slavery and its incidents; and the denial of equal accommodations in inns, public conveyances and places of public amusement (which is forbidden by the sections in question) imposes no badge of slavery or involuntary servitude upon the party, but, at most, infringes rights which are protected from State aggression by the XIVth Amendment. *Id.*
4. Whether the accommodations and privileges sought to be protected by the 1st and 2d sections of the Civil Rights Act, are, or are not, rights constitutionally demandable; and if they are, in what form they are to be protected, is not now decided. *Id.*
5. Nor is it decided whether the law as it stands is operative in the Territories and District of Columbia; the decision only relating to its validity as applied to the States. *Id.*
6. Nor is it decided whether Congress, under the commercial power, may or may not pass a law securing to all persons equal accommodations on lines of public conveyance between two or more States. *Id.*
7. The court adheres to the rulings in *Ex parte Siebold*, 100 U. S. 371, and *Ex parte Clarke*, 100 U. S. 399, that §§ 5512 and 5515 Rev. St., relating to violations of duty by officers of elections, are not repugnant to the Constitution of the United States, and holds them to be valid. *United States* v. *Gale*, 65.
8. In deciding the federal question whether a State court gave effect to a State law which impairs the obligation of a contract, and in determining whether there was a contract, this court is not necessarily governed by previous decisions of State courts, except where they have been so firmly established as to constitute a rule of property. *Louisville & Nashville Railroad Co.* v. *Palmes*, 244.
9. The fact that a statutory right to demand reimbursement from a municipal corporation for damages caused by a mob has been converted into a judgment does not make of the obligation such a contract as is contemplated in the provision of Article I. Section 10 of the Constitution, that no State shall pass any law impairing the obligation of contracts. *Louisiana* v. *New Orleans*, 285.
10. The term "contract," as used in the Constitution, signifies the agreement of two or more minds for considerations proceeding from one to the other, to do or not to do certain acts. *Id.*

11. To deny to a municipal corporation the right to impose taxes to such an extent as to make it impossible to pay a judgment recovered against it for injuries done by a mob is not depriving the owner of the judgment of property within the meaning of the Fourteenth Amendment to the Constitution. *Id.*

12. The President has power to supersede or remove an officer of the army by appointing another in his place, by and with the advice and consent of the Senate; and such power was not withdrawn by the provision in § 5 of the act of July 13th, 1866, c. 176 (14 Stat. 92), now embodied in § 1229 of the Revised Statutes, that "no officer in the military or naval service shall, in time of peace, be dismissed from service, except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof. *Keyes* v. *United States*, 336.

13. A bridge erected over the East River, in the harbor of New York, in accordance with authority derived from Congress and from the legislature of New York, is a lawful structure which cannot be abated as a public nuisance. So far as it obstructs navigation, it obstructs it under an authority which is empowered to permit the obstruction. *Miller* v. *Mayor, &c., of New York*, 385.

14. It is competent for Congress, having authorized the construction of a bridge of a given height, over a navigable water, to empower the secretary of war to determine whether the proposed structure will be a serious obstruction to navigation, and to authorize changes in the plan of the proposed structure. *Id.*

15. The navigable waters of the United States include such as are navigable in fact, and which by themselves or their connections, form a continuous channel for commerce with foreign countries or among the States: Over these Congress has control by virtue of the power vested in it to regulate commerce with foreign nations and among the several States. *Id.*

16. The former cases, in which the court has considered the power of Congress to authorize the construction of bridges over navigable streams, referred to and considered. *Id.*

17. The legislative grant of a privilege to erect, establish and construct gas works, and make and vend gas in a municipality for a term of years, does not exempt the grantees from the imposition of a license tax for the use of the privilege conferred. *Memphis Gas Light Co.* v. *Taxing District of Shelby County*, 398.

18. In order to establish a legislative contract to exempt from taxation, the statute must be explicit and unmistakable, and without doubtful words. *Id.*

19. The Constitution of the United States does not profess in all cases to protect against unjust or oppressive taxation. *Id.*

20. A provision in an act for the reorganization of an embarrassed corporation, which provides that all holders of its mortgage bonds who

do not, within a given time named in the act, expressly dissent from the plan of reorganization, shall be deemed to have assented to it, and which provides for reasonable notice to all bondholders, does not impair the obligation of a contract, and is valid. *Gilfillan* v. *Union Canal Co.*, 401.

21. The State of Georgia indorsed the bonds of a railroad company, taking a lien upon the railroad as security. The company failing to pay interest upon the indorsed bonds, the governor of the State took possession of the road, and put it into the hands of a receiver, who made sale of it to the State. The State then took possession of it, and took up the indorsed bonds, substituting the bonds of the State in their place. The holders of an issue of mortgage bonds issued by the railroad company subsequently to those indorsed by the State, but before the default in payment of interest, filed a bill in equity to foreclose their own mortgage and to set aside the said sale and to be let in as prior in lien, and for other relief affecting the property, and set forth the above facts, and made the governor and the treasurer of the State parties. Those officers demurred. *Held*, That the facts in the bill show that the State is so interested in the property that final relief cannot be granted without making it a party, and the court is without jurisdiction. *Cunningham* v. *Macon & Brunswick Railroad*, 446.
22. Whenever it is clearly seen that a State is an indispensable party to enable the court, according to the rules which govern its procedure, to grant the relief sought, it will refuse to take jurisdiction. *Id.*
23. The cases at law and in equity in which the court has taken jurisdiction, when the objection has been interposed that a State was a necessary party to enable the court to grant relief, examined and classified. *Id.*
24. The case of the *United States* v. *Lee*, 106 U. S. 196, examined, and the limits of the decision defined. *Id.*
25. The case of *Davis* v. *Gray*, 16 Wall. 203, questioned. *Id.*
26. The legislation of the United States may be constitutionally extended over Indian country by mere force of a treaty, without legislative provisions. *Ex parte Crow Dog*, 556.
27. The declaration contained a count in trespass for entering the plaintiff's premises and carrying away his goods. The plea set up that the goods were lawfully taken by the defendant as collector, to satisfy a tax due the State of Virginia; the replication averred that the plaintiff before the levy, under authority of a law of that State enacted in 1879, tendered the defendant in payment of the taxes coupons cut from bonds of the State; the rejoinder set up a subsequent law of the State forbidding him to receive in payment of taxes anything but gold, silver, United States treasury notes, or national bank currency. *Held*, That this raised a federal question sufficient to lay the foundation for removing the cause from a State court

to the Circuit Court of the United States. *Smith* v. *Greenhow*, 669.

See COMMON CARRIER;
CORPORATION, 6;
CRIMINAL LAW;
DOMINION OF CANADA, 1, 2;
EMINENT DOMAIN, 1, 2;
EVIDENCE, 4;
JURISDICTION, B, 8;
WILL.

CONSOLIDATION OF CORPORATIONS.

See RAILROADS, 1.

CONSTRUCTION OF STATUTES.

See ALABAMA CLAIMS;
COMMON CARRIER;
CORPORATION, 1, 2, 3;
CUSTOMS DUTIES, 1, 2, 3;
EXPRESS BUSINESS;
FLORIDA;
JURISDICTION, B, 1, 4, 10;
KANSAS;
LAND GRANTS;
LIMITATIONS, 2, 4;
MINERAL LANDS;
NEW ORLEANS;
POWER OF ATTORNEY;
PRINCIPAL AND AGENT, 2;
STATUTES.

CONSTRUCTIVE NOTICE.

A, having acquired the right to occupy a tract of land in Salt Lake City, took possession of it and erected a public house thereon, and lived in it with his wife and B, his polygamous wife, carrying on a hotel there. He ceased to maintain relations with B, as his polygamous wife, but he being desirous to have the benefit of her services, both concealed this fact. He made a secret agreement with her, that if she would thus remain she should have one-half interest in the property. He acquired title to the property from the mayor under the provisions of the act of March 2d, 1867, 14 Stat. 541, without any disclosure of the secret agreement. Subsequently A's interest therein passed into the hands of innocent third parties for value, without notice of the claim of B under the secret agreement. *Held*, 1. That B had no rights in the premises as against innocent *bona fide* encumbrancers and purchasers without notice of her claim. 2. That the joint occupation of the premises by A and B, under the circumstances, was no constructive notice of B's claim of right. *Townsend* v. *Little*, 504.

CONTRACT.

1. The owners of three steam-tugs which had pumping machinery were employed by the master and agent of a ship sunk at a wharf in New Orleans, with a cargo on board, to pump out the ship for a compensation of $50 per hour for each boat, "to be continued until the boats

were discharged." When the boats were about to begin pumping, the United States marshal seized the ship and cargo on a warrant on a libel for salvage. After the seizure the marshal took possession of the ship and displaced the authority of the master, but permitted the tugs to pump out the ship. After they had pumped for about eighteen hours, the ship was raised and placed in a position of safety. The tugs remained by the ship, ready to assist her in case of need for twelve days, but their attendance was unnecessary, and not required by any peril of ship or cargo. In libels of intervention, in the suit for salvage, the owners of the tugs claimed each $50 per hour for the whole time, including the twelve days, as salvage. The claims were resisted by insurers of the cargo, to whom it was abandoned. The District Court allowed $500 to each tug, and $500 to the crew of each tug. On appeal by the owners of the tugs, the Circuit Court decreed to each of them $1,000. On further appeal by them, this court affirmed that decree. *The Tornado*, 110.

2. *Held*, that to enforce the contract as one continuing during the time claimed would be highly inequitable ; and, as against the insurers of the cargo, the right of the tugs to compensation must be regarded as having terminated when the ship and cargo were raised, and the tugs must be regarded as having been then discharged. *Id.*

3. Where the language of a contract is susceptible of two meanings, the court will infer the intention of the parties and their relative rights and obligations from the circumstances attending the transaction. *United States* v. *Gibbons*, 200.

4. The parties contracted for the rebuilding of a shop at the Norfolk Navy Yard, which had been destroyed by fire. The specifications provided that "the foundation and the brick walls now standing that were uninjured by the fire will remain and will be carried up to the height designated in the plan by new work." After taking down so much of the old wall as was supposed to be injured, the government officers directed parties to examine the then condition of the walls before bidding on the specifications. Defendant in error did so, then bid, and his bid was accepted. *Held*, That the United States through its officers was bound to point out to bidders the parts of the walls which were to enter into the new structure, and that this was done by the act of dismantling a portion and leaving the rest of the wall to stand. *Id.*

5. The right to demand reimbursement from a municipal corporation for damages caused by a mob is not founded on contract. It is a statutory right, and may be given or taken away at pleasure. *Louisiana* v *New Orleans*, 285.

6. A railway company, in consideration of the undertakings of S. in a written agreement, agreed therein to send all live stock coming over its road to East St. Louis, to the stock-yard of S. at that place, except such as should be specially ordered otherwise by shippers or

owners, and to pay him therefor an agreed rate for loading and an agreed rate for unloading. *Held*, That this agreement applied to all live stock shipped in the ordinary course of the company's business over its road, the direction of which is not otherwise specially ordered by shippers, and which it was possible for the company to have loaded at the stock-yard of S.; and, that on a breach on the part of the company being proved, without fault on the part of S., he could recover from the company damages in consequence of stock being sent by the company to another stock-yard at that terminus. *Terre Haute & Indiana Railway Company* v. *Struble*, 381.

7. When a contract with the United States for building a wall provides that payment for the work contracted for shall not be made until an agent, to be designated by the United States, certifies that it is in all respects as contracted for, and after completion of work, the designated agent refuses to give the certificate, and there is no fraud, nor such gross mistake as would necessarily imply bad faith, nor failure to execute honest judgment on the part of the agent, the engineer's certificate is a condition precedent to payment. *Sweeney* v. *United States*. 618.

8. The ruling in *Kihlberg* v. *United States*, 97 U. S. 398, adhered to, and applied to this case. *Id.*

9. For the purpose of settling a debt, the debtor gave to the creditor orders for 25 wagons, and the creditor gave to the debtor a written receipt, which he accepted, stating that the wagons were to be received in payment of the claim, provided they were delivered to the creditor in good condition and merchantable order, and that it was understood and agreed that if the wagons were so delivered in good condition they were to be sold for the highest prices that could be obtained for them, and the surplus, after paying the debt and cost of selling, should be refunded to the debtor; 21 of the wagons were delivered, but none of them were in good condition and merchantable order; the creditor sold 19 of them and made ineffectual efforts to sell the other 2, and, after crediting the net proceeds of sale, sued the debtor to recover the balance of the debt. *Held*, That the receiving the 21 wagons and proceeding to sell them was an acceptance of them *pro tanto* in payment of the claim; that the contract for the payment in wagons was unfulfilled as to the 4 wagons not delivered; and that the price for which the 19 wagons were sold, and the selling value of the 2 not sold, had no bearing on the case, unless there was a surplus of the proceeds of sale to be refunded to the debtor under the contract. *Winchester & Partridge Manufacturing Company* v. *Funge*, 651.

See CONSTITUTIONAL LAW, 9, 10, 11, 17, 18, 19, 20;
CORPORATION, 1, 2, 3, 4; INSURANCE, 2, 3;
DOMINION OF CANADA; LIMITATIONS;
FRAUD; PRINCIPAL AND AGENT, 1, 2.

CORPORATION.

1. The liability created by a provision in a general act of the State of New York for the formation of corporations, that all the stockholders of every company incorporated under it shall be severally individually liable to creditors of the company until the whole amount of the capital stock shall be paid in and certified, is in contract, and not a penalty; and can be enforced by an action *in contractu* against a stockholder found in another State. *Flash* v. *Conn*, 371.

2. The courts of New York having held that a liability of a stockholder to creditors arising under one of its general statutes for forming corporations was in contract, when the attempt was made to enforce it in New York, this court follows that interpretation in a suit to enforce such a liability in another State. *Id.*

3. The liability of a stockholder to a creditor under the 10th section of the general act of the State of New York for forming corporations for manufacturing purposes is a liability in contract, which may be enforced by an action at law. It is not necessary to resort to equity. *Id.*

4. When a corporation, being embarrassed, and owing money to its mortgage bondholders and to others, was authorized by the legislature from which it obtained its franchises to make settlement with its creditors on a plan which provided that all holders of its mortgage bonds who did not, within a fixed period, dissent in writing from the proposed settlement, should be deemed to have assented; and when a large majority of such bondholders assented to such plan, and some dissented, and the plan went into operation: *Held*, That a holder of such bonds who had due notice, and opportunity to act, and who neither assented to nor dissented from the plan within the time, was bound by its terms as fully as if he had expressly assented to it. *Gilfillan* v. *Union Canal Co.*, 401.

5. A corporation dwells in the place of its creation, but may do business wherever its charter allows and local laws do not forbid. A corporation of one country, doing business in another country, is subject to such control, in respect to its powers and obligations, as the government which created it may properly exercise. Every person who deals with it anywhere impliedly subjects himself to such laws of its own country affecting its power and obligations, as the known and established policy of that government authorizes. Anything done in that country under the authority of such law, which discharges it from liability there, discharges it everywhere. *Canada Southern Railway* v. *Gebhard*, 527.

6. As individual holders of mortgage bonds issued by a railroad corporation, and secured by the same mortgage, have mutual contract interests and relations, there is nothing inequitable, when the power exists, in subjecting a small minority to the will of a decided majority,

in reorganizing the mortgage indebtedness when the corporation is embarrassed. *Semble*, That if this were done by virtue of a statute of the United States, enacted under the provision of the Constitution conferring power to establish uniform laws on the subject of bankruptcy, it would not be regarded as impairing the obligation of a contract. *Id.*

See CONSTITUTIONAL LAW, 20.
RAILROAD, 1 ;

COURTS.

A. OF THE UNITED STATES.

See JURISDICTION, A, B, C.

B. OF A STATE.

See BANKRUPTCY ; COMMON CARRIER ;
EMINENT DOMAIN, 2 ; FLORIDA, 1.

COURTS MARTIAL.

Where a court-martial has cognizance of the charges made, and has jurisdiction of the person of the accused, its sentence is valid, when questioned collaterally, although irregularities or errors are alleged to have occurred in its proceedings, in that the prosecutor was a member of the court and a witness on the trial. No opinion is expressed as to the propriety of such proceedings. *Keyes* v. *United States*, 336.

COTTON.

On the question of the fact as to whether the proceeds of certain cotton had been recovered and received from the United States as part of the proceeds of cotton recovered for in the court of claims, this court reversed the decree of the circuit court. *Lamar* v. *McCay*, 235.

See CUSTOMS DUTIES, 1, 2.

CRIMES.

See JURISDICTION, B, 10, 11.

CRIMINAL LAW.

Where a defendant pleads not guilty to an indictment, and goes to trial without making objection to the mode of selecting the grand jury, the objection is waived; even though a law unconstitutional, or assumed to be unconstitutional, may be followed in making the panel. *United States* v. *Gale*, 65.

CUSTOM.

See INSURANCE, 3.

CUSTOMS DUTIES.

1. The rule that where words are used in an act imposing duties upon imports, which have acquired, by commercial use, a meaning different from their ordinary meaning, the latter may be controlled by the former, is not applicable when the language used in the statute is unequivocal. *Newman* v. *Arthur*, 132.
2. The fact that at the date of the passage of an act imposing duties, goods of a certain kind had not been manufactured, does not withdraw them from the class to which they belong, when the language of the statute clearly and fairly includes them. *Id.*
3. The statute imposing duties divides foreign wool into three classes, and enacts, among other things, that the duty on wool of the first class, which shall be imported washed, shall be twice the amount of the duty to which it would be subjected if imported unwashed ; and further, that wools of that class shall pay a specific duty per pound, and an ad valorem duty in addition. *Held*, That the specific duty by weight is to be calculated on the same number of pounds in each case, and is to be twice the amount for washed wool that it is for unwashed ; and that the ad valorem duty on washed wool is to be twice the ad valorem duty on the same number of pounds of unwashed wool. *Arthur* v. *Pastor*, 139.
4. The common-law right of action against a collector to recover back duties illegally collected is taken away by statute, and a remedy given based on statutory liability which is exclusive. *Arnson* v. *Murphy*, 238.

See LIMITATION, 2, 3.

DAKOTA.

See JURISDICTION, B, 10.

DAMAGES.

See EMINENT DOMAIN, 2.

DECREE.

See TEXAS.

DEED.

See ACKNOWLEDGMENT ; EVIDENCE, 2, 3 ; CONSTRUCTIVE NOTICE ; WASHINGTON CITY, 1.

DEFAULT.

See EQUITY, 2;
ERROR, 2.

DELAWARE.

See JURISDICTION, C, 1.

DEMURRER.

See PLEADING, 1, 2.

DISTRICT OF COLUMBIA.

1. A transcript of the record of a probate of a will in Virginia, sufficient to pass real estate there, is not proof of the validity of the will in the District of Columbia for the same purpose there. *Robertson* v. *Pickrell*, 608.
2. In order to pass real estate situated in the District of Columbia, a will must be executed as provided by the laws in force there, and its validity must be established in the manner provided by those laws. *Id.*
3. Probate of a will in the District of Columbia is evidence of its validity only so far as it affects personal property. As a will devising real estate the instrument itself must be produced with the evidence of the ubscribing witnesses, or if they be dead, or their evidence legally unattainable, with proof of their handwriting. *Id.*
4. The treasurer of the United States cannot be compelled by writ of mandamus to pay to an administrator appointed in the District of Columbia, of an inhabitant of one of the States of the Union, the amount of a draft payable to the intestate at the treasury out of an appropriation made by Congress, and held by such administrator. *Wyman* v. *Halstead*, 654.

See ADMINISTRATOR DE BONIS NON, 1, 2; RECEIVER;
CONSTITUTIONAL LAW, 5; WASHINGTON CITY.

DIVISION OF OPINION.

This court cannot take cognizance of a division of opinion between the judges of a circuit court on a motion to quash an indictment. *United States* v. *Rosenburg*, 7 Wall. 580, approved and followed; *United States* v. *Hamilton*, 63.

DOMINION OF CANADA.

1. The Parliament of Canada has authority to grant to an embarrassed railway corporation within the Dominion power to make an arrangement with its mortgage creditors for the substitution of a new security in

the place of the one they hold, and to provide that the arrangement shall be binding on all the holders of obligations secured by the same mortgage when it shall have received the assent of the majority, provision being made for the protection of the minority in the enjoyment of rights and privileges in the new security identical with those of the majority. *Canada Southern Railway* v. *Gebhard*, 527.

2. When the Parliament of the Dominion of Canada authorizes a corporation, existing under its authority, to enforce upon its mortgage creditors a settlement by which they are to receive other securities of the corporation in place of their mortgage bonds, and the scheme is assented to by a large majority of bondholders, and goes into effect, and the right of citizens of the United States who are bondholders to participate in the reorganization on the same terms as Canadians or other British subjects is preserved and recognized, the settlement is binding upon bondholders who are citizens of the United States, and who sue in courts of the United States to recover on their bonds. *Id.*

DOWER.

In Pennsylvania, as in other States, dower is not barred by an assignment of the husband's estate under the Bankrupt Act of the United States, and a sale by the assignee in bankruptcy under order of the court. *Porter* v. *Lazear*, 84.

EAST RIVER BRIDGE.

See CONSTITUTIONAL LAW, 13.

ELECTIONS.

See CONSTITUTIONAL LAW, 7.

EMINENT DOMAIN.

1. The power to take private property for public uses, in the exercise of the right of eminent domain, is an incident of sovereignty, belonging to every independent government, and requiring no constitutional recognition, and it exists in the government of the United States. *Boom* v. *Patterson*, 98 U. S. 406, cited and approved. *United States* v. *Jones*, 513.

2. The liability to make compensation for private property taken for public uses is a constitutional limitation of the right of eminent domain. As this limitation forms no part of the power to take private property for public uses, the government of the United States may delegate to a tribunal created under the laws of a State, the power to fix and determine the amount of compensation to be paid by the United States for private property taken by them in the exercise of their right of

eminent domain ; or it may, if it pleases, create a special tribunal for that purpose. On this point *Kohl* v. *United States*, 91 U. S. 367, cited and approved. *Ib.*

EQUITY.

1. In a serious conflict of testimony, a bill in equity may be dismissed on the ground that the complainant failed to establish the facts on which he claimed relief. *Hewitt* v. *Campbell*, 103.
2. A defendant, against whom a judgment has been rendered on default by a circuit court of the United States in an action at law, cannot maintain a bill in equity to avoid it, upon the ground that the plaintiff at law falsely and fraudulently alleged that the parties were citizens of different States, without showing that the false allegation was unknown to him before the judgment. *Cragin* v. *Lovell*, 194.
3. A marshal of the United States, who, under a provisional warrant in bankruptcy, has, after receiving a bond of indemnity under General Order No. 13, in bankruptcy, seized goods as the property of the debtor and been sued for damages for such seizure, in an action of trespass in a State court, by a third person, who claimed that the goods were his property at the time of the seizure, cannot maintain a suit in equity in a circuit court of the United States, for an injunction to restrain the further prosecution of the action of trespass, the parties to the suit in equity being citizens of the same State. *Leroux* v. *Hudson*, 468.
4. Such marshal having delivered the goods seized to the assignee in bankruptcy appointed, after an adjudication of bankruptcy, in the proceeding in which the provisional warrant was issued, and the assignee having sold the golds, under the order of the court in bankruptcy, without giving to the plaintiff in the action of trespass any notice, under § 5063 of the Revised Statutes, of the application for the order of sale or of the sale, and such plaintiff not having brought any action against the assignee to recover the goods, or applied to the bankruptcy court for the proceeds of sale, and the assignee not being sued in the action of trespass, he cannot bring a suit in equity in a circuit court of the United States, joining the marshal as plaintiff, against the plaintiff in the action of trespass, to have the title to the goods determined, on the allegation that they were transferred to such plaintiff in fraud of the bankruptcy act, and for an injunction restraining the prosecution of that action. *Id.*
5. When an heir at law brings a suit in equity to set aside the probate of a will in Louisiana as null and void, and to recover real estate ; and prays for an accounting of rents and profits by an adverse party in possession, who claims under the will, this court will refuse to entertain the prayer for recovery of possession, if the complainant has a plain, adequate, and complete remedy at the common law. *Hipp* v. *Babin*, 19 Howard, 271, affirmed. *Ellis* v. *Davis*, 485.

6. Where, in a suit in equity several defendants have independent rights in the subject-matter of the controversy, and one defendant, having answered setting up his particular right, files a cross-bill to enforce it, and the causes proceed together and are heard together, and an interlocutory decree is entered to protect and enforce the rights thus set up, entitled as of both suits, the complainant in the original suit cannot, unless upon consent, dismiss his bill and thus deprive the defendant of the right acquired by the decree. *Chicago & Alton Railroad Company* v. *Union Rolling Mill Co.*, 702.

7. When one defendant in a suit in equity pleads to the jurisdiction, and another defendant answers setting up independent rights in the subject-matter of the controversy, and no notice is taken of the plea to the jurisdiction, and a decree is entered sustaining the rights set up in the answer, the complainant cannot have his bill dismissed under the 38th Rule for failure to reply to the plea : especially when appeal has been taken and the defendant pleading to the jurisdiction is not party to the appeal. *Id.*

8. Under the statutes of Illinois, Rev. Stat. Ill. ch. 82, § 51, a person who contracted to deliver rails to a railroad company for use in the construction of its road, the deliveries to extend over a period of time, and who complied with his contract, and who commenced proceedings within six months after the date of the last delivery to enforce a lien therefor under the statute, had a valid lien upon the property superior to that acquired by a trust created between the date of the last delivery of the rails and the commencement of the proceedings to enforce the lien ; and such lien was not affected by a special agreement that the contractor should have a lien on the rails till payment, and that the possession of the railroad should be the possession of the contractor ; nor by any agreement to give credit to the purchaser beyond the time within which the statutory lien should be enforced, when the purchaser failed to perform the conditions upon which that credit was agreed to be given. *Id.*

9. Under the circumstances in this case there was no error in rendering a personal decree against the Chicago & Alton Railroad Company, and awarding execution against it in favor of the contractor. *Id.*

See CORPORATION, 3;
FRAUD;
INTERNAL REVENUE, 1, 2;
JURISDICTION, B, 4;
MISTAKE, 2;
RECEIVER;
TEXAS.

ERROR.

1. The court will not review an alleged error respecting the proof in a railroad foreclosure suit and the allowance of amounts due to holders of mortgage bonds, if the evidence presented before the master is not before it, and if no objection to the proof was taken below. *Indiana Southern R. R. Co.* v. *Liv., London, & G. Ins. Co.*, 168.

2. A judgment, rendered on default, upon a declaration setting forth no cause of action, may be reversed on writ of error, and the case remanded with directions that judgment be arrested. *Cragin & Lowell*, 194.
3. No error in law can be predicated of a finding of fact by the court below in a case submitted without the intervention of a jury. *Booth* v. *Tiernan*, 205.
4. When the court below finds generally for a defendant, and also makes special findings on the issues, no error can be assigned on the special findings. *Meath* v. *Board of Mississippi Levee Com'rs*, 268.

See WRIT, 1.

ESTOPPEL.

1. The doctrine that a dismissal of a suit for want of jurisdiction is no bar to a second suit for the same cause of action reaffirmed and the authorities cited. *Smith* v. *McNeal*, 426.
2. The plaintiffs claimed as heirs of R. They showed a deed by R to S of an estate in the premises for the life of M, but without covenants by S to surrender to R or his heirs, or as to any further interest in R. They also showed that the life estate of S passed by mesne conveyances to the defendants. *Held*, That the defendants were not estopped from setting up an adverse superior title. *Robertson* v. *Pickrell*, 608.

See JUDGMENT, 1, 2, (4), (5), 3.
MUNICIPAL BOND, 5, 6.

EVIDENCE.

1. The court will take judicial notice of matters of common knowledge, and of things in common use. *King* v. *Gallun*, 99.
2. It being proved that a deed had been lost, and not intentionally destroyed or disposed of for the purpose of introducing a copy, it is competent under the statute of Illinois to use in evidence a certified copy of the deed from the proper recorder's office in the place of the original, although it was admitted that there was an error in the copy. *Booth* v. *Tiernan*, 205.
3. It is competent to prove the error in such case by evidence of witnesses who had read the original deed; or by a copy of the registry of the original deed as entered in the file book. *Id.*
4. Records and judicial proceedings of each State affecting property or estate within it have in every other State the force and effect which they possess in the State of origin; but as to similar property or estate situated in another State they have no greater or other force

than similar records or proceedings in the courts of that State. *Robertson* v. *Pickrell*, 608.

See COURTS MARTIAL;
EQUITY, 1;
ESTOPPEL;
INSURANCE, 2, 3;
JUDGMENT, 1;
MASTER AND SERVANT, 1;
VERDICT;
WILL.

EXECUTION.

See RECEIVER.

EXECUTIVE.

When the head of an executive department is required by law to give information on any subject to a citizen, he may ordinarily do this through subordinate officers in his department. *Miller* v. *Mayor, &c., of New York*, 385.

See CONSTITUTIONAL LAW, 12.

EXECUTOR AND ADMINISTRATOR.

See ADMINISTRATION;
ADMINISTRATOR;
DISTRICT OF COLUMBIA, 4.

EXPRESS BUSINESS.

The idea of regularity, as to route or time, or both, is involved in the words "express business," under § 104 of the act of June 30th, 1864, c. 173, 13 Stat. 276, and those words do not cover what is done by a person who carries goods solely on call and at special request, and does not run regular trips or over regular routes. *Retzer* v. *Wood*, 185.

FEES.

See MORTGAGE, 4.
PRACTICE.

FLORIDA.

The legislature of Florida, acting under the Constitution of the State, passed an improvement act, exempting from taxation the capital stock of railroad companies accepting its provisions. The Alabama and Florida Railroad Company was organized, and constructed a railroad within the State limits, and became entitled to enjoy the exemption. In 1868 the State of Florida adopted a Constitution which provided for a uniform and equal rate of taxation, and that the prop-

erty of corporations theretofore or thereafter to be incorporated should be subject to taxation. The road and property, rights, privileges, and franchises of the A. & F. Co. being sold under decree of foreclosure, became by mesne conveyances vested in the Pensacola and Louisville Railroad Co. In 1872 the legislature enacted that the P. & L. Co., as assignees of the A. & F. Co., should be exempted from taxation during the remainder of the period for which the A. & F. Co. would have been exempted. In 1877 the title of the P. & L. Co. to its road and other property, and its franchises, rights, privileges, easements, and immunities, were conveyed to the Pensacola Railroad Company, and the legislature authorized the P. R. Co. to acquire and enjoy them. The P. & L. Co. possessed, among other things, the power to lease to a railroad company out of the State. It was claimed that this right passed to the P. R. Co., and the latter leased its railroad and property, rights, privileges, easements and immunities to the plaintiff in error. *Held* (1), That the right of exemption from taxation did not pass from the A. & F. Co. to the P. & L. Co. by the sale under the mortgage. (2), That the language of the act of 1877 was broad enough to create that right anew, if the legislative grant was valid; but that (3), The legislature of Florida, after the adoption of the Constitution of 1868, could not make an original grant to a railroad, exempting its railroad property from taxation. (4), That any right of this kind that could have been created by the act of 1877, was personal, and not assignable. *Louisville & Nashville Railroad Company* v. *Palmes*, 244.

FORECLOSURE.

When mortgage creditors take no appeal from a decree of foreclosure, the court will not, in an appeal by the debtor, inquire whether the creditor should not have had more. *Indiana Southern Railroad Company* v. *London & Liv. & G. Ins. Co.*, 168.

See ERROR, 1;
WRIT, 2.

FRANCHISE.

See FLORIDA;
RAILROAD, 1.

FRAUD.

A railway company contracted with parties associated together as a construction company for the construction of a portion of its road, the payment to be made in mortgage bonds. Two of the directors were also parties in the construction contract. As part of the transaction the other parties in the construction contract agreed to assume subscriptions by all

individual directors of the railroad company to the capital stock of that company (which was worthless), and relieve them from all liability under it: *Held*, That the contract could not be enforced in equity when resisted by stockholders in the corporation; and that mortgage bonds issued under it to the construction company were voidable at election of the parties affected by the fraud, while in the hands of parties who took from the construction company not in the ordinary course of business, but under circumstances which threw doubt upon their being holders for value or without notice: also, *Held*, That, notwithstanding the invalidity of the contract, the holders of the bonds in a suit for the foreclosure of the mortgage were entitled to a decree for the payment of the sums actually expended for construction under the contract, and remaining unpaid, which were payable and paid in bonds declared void. *Thomas* v. *Brownville, Fort Kearney & Pac. Railroad Co.*, 522.

See CONSTRUCTIVE NOTICE;
EQUITY, 2.

FRAUDULENT REGISTRATION.

See CONSTITUTIONAL LAW, 7.

HUSBAND AND WIFE.

See ACKNOWLEDGMENT.

ILLINOIS.

See EVIDENCE, 2, 3.

IMMUNITIES.

See FLORIDA.

INDIANS.

See JURISDICTION, B, 10, 11;
STATUTES, A, 4.

INDIAN TERRITORY.

See JURISDICTION, B, 10, 11;
STATUTES, A, 4;
CONSTITUTIONAL LAW, 26.

INDICTMENT.

See CRIMINAL LAW.

INJUNCTION.

See INTERNAL REVENUE, 1;
RECEIVER, (1.)

INNS.

See CONSTITUTIONAL LAW, 3, 4, 5, 6.

INSANITY.

See INSURANCE, 1.

INSURANCE.

1. A self-killing by an insane person, understanding the physical nature and consequences of his act, but not its moral aspect, is not a death by suicide, within the meaning of a condition in a policy of insurance upon his life, that the policy shall be void in case he shall die by suicide, or by the hands of justice, or in consequence of a duel, or of the violation of any law. *Manhattan Life Ins. Co.* v. *Broughton*, 121.
2. A fire insurance policy contained this clause: "This insurance may be terminated at any time at the request of the assured, in which case the company shall retain only the customary short rates for the time the policy has been in force. The insurance may also be terminated at any time at the option of the company, on giving notice to that effect and refunding a ratable proportion of the premium for the unexpired term of the policy. It is a part of this contract that any person other than the assured, who may have procured the insurance to be taken by this company, shall be deemed to be the agent of the assured named in this policy, and not of this company under any circumstances whatever, or in any transactions relating to this insurance:" *Held*, That this clause imports nothing more than that the person obtaining the insurance was to be deemed the agent of the insured in matters immediately connected with the procurement of the policy; that where his employment did not extend beyond the procurement of the insurance, his agency ceased upon the execution of the policy, and subsequent notice to him of its termination by the company was not notice to the insured. *Grace* v. *American Central Ins. Co.*, 278.
3. Parol evidence of usage or custom among insurance men to give such notice to the person procuring the insurance was inadmissible to vary the terms of the contract. *Id.*

INTERNAL IMPROVEMENTS.

See FLORIDA;
MUNICIPAL BONDS, 1.

INTERNAL REVENUE.

1. A bill in equity will not lie to enjoin a collector of internal revenue from collecting a tax assessed by the commissioner of internal revenue against a manufacturer of tobacco, although the tax is alleged in the bill to have been illegally assessed. *Snyder* v. *Marks*, 189.
2. The remedy of a suit to recover back the tax after it is paid, which the statute provides, is exclusive. *Id.*

See EXPRESS BUSINESS.

IOWA.

See LAND GRANTS.

JUDGMENT.

1. A judgment of nonsuit is no bar to a new action, and of no weight as evidence at the trial of that action. *Manhattan Life Ins. Co.* v. *Broughton*, 121.
2. Defendants in error issued to A their bonds with interest coupons attached. A indorsed to B, and B indorsed to the plaintiff in error after the bonds were overdue. While the bonds were in B's possession, overdue, B was party defendant in a suit in chancery in a State court in which D, an owner of real estate alleged to be encumbered by a mortgage to secure payment of the bonds, sought to have them declared invalid ; and party plaintiff to a cross-bill in that suit in which it was sought to have the same bonds declared valid, and the mortgage foreclosed. In these proceedings the bonds were adjudged to be invalid for want of authority in the trustees to issue them. During the same period B, as holder of the bonds, applied to the State court for a writ of mandamus to compel the trustees of the township to levy a tax for payment of interest on the bonds. In this suit it was decided that the bonds were issued without legal authority. On these facts, *Held*, (1.) That the general rule that a purchaser of overdue bonds, after judgment rendered that the bonds are void, is bound by that judgment, applies here. (2.) That when a mandamus is refused on grounds that are conclusive against the right of the plaintiff to recover in any action whatever, the judgment is conclusive of that fact. (3.) When a proceeding in mandamus is used in an action at law to recover money, it is subject to the principles which govern money actions. (4.) The judgment of the State court that the bonds were void in the hands of B, is conclusive of that fact in the hands of his vendee and privy in action. (5.) If the parties have had a hearing and an opportunity of asserting their rights, they are concluded by final decree so far as it affects rights presented to the court and passed upon, even though all were defendants in the suit, and as between them no issue

was raised and no adverse proceedings had. *Louis* v. *Brown Township*, 162.

3. When a decree decides the right to and possession of the property in contest, and the party is entitled to have it immediately carried into execution, it is a final decree, although the court below retains possession of so much of the decree as may be necessary for adjusting accounts between the parties. *Winthrop Iron Co.* v. *Meeker*, 180.

See APPEAL, 6, 8 ; EQUITY, 2 ;
CONSTITUTIONAL LAW, 9, 11 ; WILL, 8.
COURTS MARTIAL;

JUDICIAL NOTICE.

See EVIDENCE, 1.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

See APPEAL ;
DIVISION OF OPINION.
ERROR.

B. JURISDICTION OF THE CIRCUIT COURTS OF THE UNITED STATES.

1. Pending an action in a court of the State of New York against a corporation established in that State, by a widow, a citizen of New Jersey, upon a policy of insurance on the life of her husband, the plaintiff assigned the policy to a citizen of New York in trust for her benefit, and was afterwards nonsuited by order of the court. Upon a subsequent petition by the trustee to another court of the State to be relieved of his trust, a citizen of New Jersey was, at her request, appointed trustee in his stead. One object of this appointment was to enable a suit on the policy to be brought in the circuit court of the United States, which was afterwards brought accordingly. *Held*, That the suit should not be dismissed under the act of 3d March, 1875, c. 137, §§ 1, 5. *Manhattan Life Ins. Co.* v. *Broughton*, 121.
2. When jurisdiction of the circuit court depends upon the citizenship of the parties, such citizenship, or the facts which in legal intendment constitute it, must be distinctly and positively averred in the pleadings, or appear affirmatively and with equal distinctness in other parts of the record. An averment that parties reside, or that a firm does business, in a particular State, or that a firm is "of" that State, is not sufficient to show citizenship in such State. *Grace* v. *American Central Ins. Co.*, 278.
3. Where the record does not show a case within the jurisdiction of a circuit court, this court will take notice of that fact, although no question as to jurisdiction had been raised by the parties. *Id.*

4. A bill in equity in the circuit court of the United States against a town in one State by a citizen of another, for relief against the accidental omission of seals from bonds of the defendant, payable to bearer, and held by the plaintiff, some of which are owned by him, and others of which are owned in different amounts, part by citizens of the State in which the town is, and part by citizens of other States, and have been transferred to him by the real owners for the mere purpose of being sued, should be dismissed, under the act of March 3d, 1875, c. 137, § 5, so far as regards all bonds held by citizens of the same State as the defendant, and bonds held by a citizen of another State to a less amount than $500. *Bernard's Township* v. *Stebbins*, 341.

5. An action against a marshal of the United States for seizing a stock of goods more than $500.00 in value, under authority of a writ from a district court of the United States in proceedings in bankruptcy, the suit being on his official bond, and the sureties therein being joined as codefendants, is a suit of a civil nature arising under the Constitution and laws of the United States, which may be removed from the State courts to the federal courts. *Feibelman* v. *Packard*, 421.

6. Circuit courts, as courts of equity, have no general jurisdiction for annulling or affirming the probate of a will. *Broderick's Will*, 21 Wall. 503, affirmed. *Ellis* v. *Davis*, 485.

7. Jurisdiction as to wills, and their probate as such, is neither included in nor excepted out of the grant of judicial power to the courts of the United States. So far as it is *ex parte* and merely administrative, it is not conferred, and it cannot be exercised by them at all, until, in a case at law or in equity, its exercise becomes necessary to settle a controversy of which a court of the United States may take cognizance by reason of the citizenship of the parties. *Id.*

8. If by the law obtaining in a State, a suit whose object is to annul and set aside the probate of a will of real estate can be maintained, it may be maintained in a federal court, when the parties are on one side citizens of the State in which the will is approved, and on the other citizens of other States. *Gaines* v. *Fuentes*, 92 U. S. 18, approved. *Id.*

9. By the laws of Louisiana an action of revendication is the proper one to be brought for the purpose of asserting the legal title and right of possession of the heir at law to the succession, when another is in possession under claim of title by virtue of a will admitted to probate. In a proper case as to parties this action can be brought in the circuit court of the United States. And, as it furnishes a plain adequate and complete remedy at law, it is a bar to the prosecution of a suit in chancery. *Id.*

10. The 1st Judicial District Court of Dakota, sitting as a circuit court of the United States, has jurisdiction under the laws of the United

States, over offences made punishable by those laws committed within that part of the Sioux reservation which is within the limits of the Territory. *Ex parte Crow Dog*, 556.

11. Neither the provisions of article 1 in the treaty of 1868 with the Sioux, that "if bad men among the Indians shall commit a wrong or depredation upon the person or property of any one—white, black, or Indian—subject to the authority of the United States and at peace therewith, the Indians herein named solemnly agree that they will, upon proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws," nor any other provision in that act, nor the provision in article 8 of the agreement embodied in the act of February 28th, 1877, c. 72, 19 Stat. 256, that they "shall be subject to the laws of the United States," nor any other provision in that agreement or act, operated to repeal the provision of Rev. Stat. § 2146, which excepts from the general jurisdiction of courts of the United States over offences committed in Indian country, "crimes committed by one Indian against the person or property of another Indian," and offences committed in Indian country by an Indian who has been punished by the local law of the tribe; and offences where by treaty stipulations the exclusive jurisdiction over the same is or may be secured to the Indian tribes respectively. *Id.*
12. The objects sought to be accomplished by the treaty of 1868 with the Sioux, and the humane purposes of Congress in the legislation of 1877, examined and shown to be inconsistent with the assumption of such a general jurisdiction by the courts of the United States. *Id.*

See APPEAL, 3, 4, 6.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

1. The District Court of the U. S. for the Eastern District of Pennsylvania has jurisdiction over the claim of a pilot appointed under the laws of Delaware for fees when the vessel is seized within the jurisdiction of the court, and properly brought before it. *Ex parte Pennsylvania*, 174.
2. The District Court of the United States for the Northern District of Illinois, as a court of admiralty, has jurisdiction of a suit *in rem* against a steam canal-boat, to recover damages caused by a collision between her and another canal-boat, while the two boats were navigating the Illinois and Lake Michigan Canal, at a point about four miles from its Chicago end, and within the body of Cook County, Illinois, although the libellant's boat was bound from one place in Illinois to another place in Illinois. *Ex parte Boyer*, 629.

See BANKRUPTCY;
COMMON CARRIER.

KANSAS.

1. A recovered judgment June 11th, 1881, against a township in Cherokee County, Kansas, on bonds issued in payment of a subscription by the township to stock in a railway company. The township had no trustee then or since. An alternative writ of mandamus having been sued out to compel the board of county commissioners for the county to levy a tax sufficient to pay the judgment, and to compel the county clerk to extend the tax when levied, and to compel the county treasurer to collect it when extended, and to pay it to A when collected, judgment was entered for a peremptory writ in accordance therewith. On appeal by the county commissioners, *Held*, 1. That by the statutes of Kansas which were in force at that time, it was made the duty of the board of county commissioners of Cherokee County, in consequence of the vacancy in the office of trustee of the township, to levy a tax sufficient to pay the judgment recovered by A. 2. That the alternative writ of mandamus was not issued prematurely. 3. That the clerk and treasurer having taken no appeal, the writ of error brought up for review only the objections of the board of commissioners. *County Commissioner of Cherokee County* v. *Wilson*, 621.
2. The removal of a treasurer of a township in the State of Kansas from the limits of the township into the limits of an adjoining township, without resigning his office, does not vacate the office so as to invalidate service of summons upon him in his official capacity for the purpose of commencing an action against the township. *Salamanca Township* v. *Wilson*, 627.

LAND GRANTS.

Previous decisions of this court have settled: (1.) That the grant of lands in 1846 to Iowa Territory for the improvement of the Des Moines River did not extend above the Raccoon Fork. (2.) That the odd numbered sections within five miles of the river above Raccoon Fork and below the east branch, to which Indian title has been extinguished, did not pass under the act of 1856, granting lands to Iowa to aid in the construction of railroads. (3.) That the act of 1862 transferred the title from the United States and vested it in Iowa for the use of its grantees under the river grant. The court now decides: (4.) That when the act of 1862 took effect, there was no Indian title in the way of the grant, and the title of the defendants in error in this suit was perfected. (5.) That the reservation made by the executive under the act of 1846 is to have effect according to its terms, and not according to any mistaken interpretation which may at some time have been given to it. *Dubuque & Sioux City Railroad* v. *Des Moines Valley Railroad*, 329.

LETTER OF ATTORNEY.

See POWER OF ATTORNEY.

LEX LOCI.

See CLAIMS AGAINST THE UNITED STATES;
DISTRICT OF COLUMBIA.

LICENSE.

See MISTAKE, 1;
PATENT, 1.

LIEN.

See EQUITY, 8.

LIFE INSURANCE.

See INSURANCE, 1.

LIMITATIONS, STATUTE OF

1. In the absence of a statutory rule to the contrary, the defence of a statute of limitations, which is not raised either in pleading, or on the trial, or before judgment, cannot be availed of. *Retzer* v. *Wood*, 185.
2. In a suit to recover back internal revenue taxes, tried by the circuit court, without a jury, the court having found the facts, and held that the taxes were illegally exacted, but that the suit was barred by a statute of limitation, rendered a judgment for the defendant. On a writ of error by the plaintiff, the record not showing that the question as to the statute of limitations was raised by the pleadings, or on the trial or before judgment, and the conclusion of the law as to the illegality of the taxes being upheld, this court reversed the judgment, and directed a judgment for the plaintiff to be entered below. *Id.*
3. Payments under a contract were to be made in instalments and the balance when the work should be entirely completed. The contract also contemplated extra work. *Held*, that the cause of action for such extra work arose on the entire completion of the work. *United States* v. *Gibbons*, 200.
4. The time fixed by statute for commencing an action against a collector of customs duties to recover back duties alleged to have been illegally exacted is within ninety days after the adverse decision of the secretary of the treasury on appeal, but if the secretary fails to render a decision within ninety days, the importer has the option either to begin suit, treating the delay as a denial, or to await the decision, and sue within ninety days thereafter. *Arnson* v. *Murphy*, 238.
5. The limitation laws of the State in which such suit is brought do not

furnish the rule for determining whether the action is brought in time. *Id.*

6. A suit was begun, within the seven years prescribed by the Statute of Limitation of the Code of Tennessee, in the Circuit Court of the United States for the Western District of Tennessee, for the recovery of land, which was dismissed for want of jurisdiction, by reason of the omission in the pleadings of a jurisdictional fact which actually existed. Within one year thereafter the plaintiff in the former suit commenced another suit in the same court against the same parties, to recover the same land, and set up the jurisdictional fact: *Held*, That, although the second suit was begun more than seven years after the cause of action arose, it was within the saving clause of article 2755 of the Code of Tennessee, providing that: "If the action is commenced within the time limited, but the judgment or decree is rendered against the plaintiff and upon any ground not concluding his right of action, or where the judgment or decree is rendered in favor of the plaintiff and is arrested or reversed on appeal, the plaintiff, or his representatives and privies, as the case may be, may from time to time commence a new action within one year after the reversal or arrest." *Smith* v. *McNeal*, 426.

LIMITED LIABILITY.

See COMMON CARRIERS.

LOUISIANA.

See JURISDICTION, B, 9;
MORTGAGE, 2.

MANDAMUS.

See DISTRICT OF COLUMBIA, 4;
JUDGMENT, 2, (2) (3);
KANSAS, 1.

MASTER AND SERVANT.

1. A brakeman, working a switch for his train on one track in a railroad yard, is a fellow servant with the engineman of another train of the same corporation upon an adjacent track; and cannot maintain an action against the corporation for an injury caused by the negligence of the engineman in driving his engine too fast and not giving due notice of its approach, without proving negligence of the corporation in employing an unfit engineman. *Randall* v. *B. & O. Railroad Co.*, 478.

2. A statute which provides that a bell or whistle shall be placed on every

locomotive engine, and shall be rung or sounded by the engineman or fireman sixty rods from any highway crossing, and until the highway is reached, and that "the corporation owning the railroad shall be liable to any person injured for all damages sustained" by reason of neglect so to do, does not make the corporation liable for an injury caused by negligence of the fireman in this respect, to a fellow servant. *Id.*

MICHIGAN.

See MORTGAGE, 4;
WRIT, 3.

MINERAL LANDS.

1. Section 2324 Rev. Stat. enacts that where certain mining claims referred to in the section are held in common, the expenditure upon them required by the act may be made upon any one claim. *Held*, That the act contemplates that this expenditure is to be made for the common benefit, and that one enjoying a mining right defined by metes and bounds does not, by expending money upon a flume which passes over adjoining land and deposits the waste from his mine on that land without benefit to such adjoining land, and without other evidence of a claim to it, thereby make an expenditure upon it within the meaning of the Revised Statutes. *Jackson* v. *Roby*, 440.
2. In a suit under section 2326 of the Revised Statutes to determine adverse claims to lands containing valuable mineral deposits, if neither party shows a compliance with the requirements of law in regard to work done upon the claim, the finding should be against both. *Id.*
3. In an action by the patentee of a placer claim to recover possession of a vein or lode within its boundaries, an answer alleging that the vein or lode was known to the patentee to exist at the time of applying for the patent, and was not included in his application, well pleads the fact which, under § 2333 of the Revised Statutes, precludes him from having any right of possession of the vein or lode. *Sullivan* v. *Iron Silver Mining Co.*, 550.

MISTAKE.

1. After many conversations, and after a draft agreement had been made, A, in 1870, in writing, granted to B a license to make, use, and sell, and vend to others to sell, an invention. In 1873 B discovered that the agreement gave him no exclusive rights in the invention, which it was the purpose of both parties to have done. He notified A, and A at once offered to grant such right for the original consideration. In November, 1873, B refused to accept a new agreement, and took steps to terminate the existing one. A thereupon sued B for royalties

claimed to be earned under it. B filed a bill in equity, claiming that there was a mistake in the agreement, and praying to have it cancelled and A restrained from prosecuting an action under it. *Held*, That there was no mistake between the parties as to the agreement made; that the minds of the parties met, and an agreement was made, although the legal effect of it was different from what was intended; that A was not in default; and there was no ground for the relief prayed for. *Lavar* v. *Dennett*, 90.

2. If commissioners, authorized by statute to subscribe in the corporate name of a town for stock in a railroad company, and upon obtaining the consent of a certain majority of taxpayers, to issue bonds of the town under the hands and seals of the commissioners, and to sell the bonds and invest the proceeds of the sale in stock of the railroad company, which shall be held by the town with all the rights of other stockholders, issue, without obtaining the requisite consent of taxpayers, to the railroad company, in exchange for stock, such bonds signed by the commissioners, but on which the seals are omitted by oversight and mistake; and the town sets up the want of seals in defence of an action at law afterwards brought against it by one who has purchased such bonds for value, in good faith, and without observing the omission, to recover interest on the bonds; a court of equity, at his suit, will decree that the bonds be held as valid as if actually sealed before being issued, and will restrain the setting up of the want of seals in the action at law. *Bernards Township* v. *Stebbins*, 341.

MORTGAGE.

1. A mortgaged real estate to B, C, and D, including the south half of a fractional section. Two years later B assigned his interest in the mortgage to C and D, and took from A, who was embarrassed, a conveyance of all his property, including the other half of the fractional section. This was done to aid A in disposing of his property, and paying his debts. It was found in the decree below that it was for the joint benefit of B and his co-mortgagees. The mortgaged property was purchased by C at foreclosure sale. A brought suit against B, C, D, and others in possession, to redeem all the estate conveyed to B. An accounting showed a balance due A. Execution was ordered directing the defendants to surrender the lands. B and C appealed, giving security for a supersedeas. A applied for a writ of assistance putting him in possession of the north half. The court below granted the writ. On application to this court to stay the writ of assistance: *Held*, That the writ of *supersedeas* should issue. *Hunt* v. *Oliver*, 177.

2. A executed a promissory note to B, another to C, and two others to D, and secured all by a mortgage of real estate in Louisiana. The notes

to D were paid at maturity. Default being made by the others, B obtained a decree for foreclosure of the mortgage, and the property was sold to E. E, being unable to pay the purchase money, agreed in writing with the holders for time, and that the parties might enforce their judgments in case of non-payment, and that the original mortgages should remain in full force and effect, and that they were recognized as operating on the property to secure the debts. This agreement was recorded in the record of mortgages. E then conveyed to F, who mortgaged to G. The debt to B not being paid on the expiration of the extension, B instituted proceedings to foreclose, treating the agreement as a mortgage, and made G a party defendant. *Held*, That the agreement was not a mortgage ; that to constitute a mortgage there must be a present purpose to pledge the estate, and that there was no such purpose at the time of the agreement. *New Orleans National Banking Ass'n* v. *Adams*, 211.

3. The maker of a promissory note executed, to one who for his accommodation signed his name on the back of the note before its delivery to the payee, a mortgage of real estate to indemnify him against all costs and charges arising from his contract, with a power of sale in case of the mortgagor's default in paying the note. The mortgagor failing to pay the note at maturity, the mortgagee paid the amount thereof to the payee, and entered it upon his books in general account against the mortgagor, and the payee indorsed the amount as a full payment on the note, and delivered up the note to the mortgagee. The mortgagee afterwards assigned to a third person the mortgage and the obligation therein mentioned. *Held*, That the assignee might maintain a bill in equity against the mortgagor for foreclosure and sale of the land under the mortgage, and for payment by the mortgagor personally of so much of the amount of the note as the proceeds of the sale under the foreclosure were insufficient to satisfy. *Bendey* v. *Townsend*, 665.

4. A stipulation, in a mortgage of real estate, that in case of foreclosure the mortgagor shall pay an attorney's or solicitor's fee of one hundred dollars, is unlawful and void by the law of Michigan, as declared by the supreme court of the State ; and therefore cannot be enforced in the circuit court of the United States upon a bill in equity to foreclose a mortgage, made and payable in that State, of land therein. *Id.*

See ACKNOWLEDGMENT;
ERROR, 1;
FORECLOSURE;
FRAUD ;
JUDGMENT, 2;
POWER, 1, 2.

MOTION TO ADVANCE.

A case will not be taken up out of its order simply because it is of great public importance. *Poindexter* v. *Greenhow*, 63.

MOTION TO AFFIRM.

On motion to dismiss, with which is united, under Rule 6, a motion to affirm, the motion to affirm will be granted when it appears that the questions presented are frivolous, and that the case is brought here for delay only. *Evans* v. *Brown*, 180.

MUNICIPAL BONDS.

1. A steam grist-mill is not a work of internal improvement within the meaning of the statute of Nebraska, approved February 15th, 1869, authorizing counties, cities, and precincts of organized counties to issue bonds in aid of the construction of any railroad or other work of internal improvement. *Osborne* v. *Adams County*, 106 U. S. 181, approved. *Osborne* v. *Adams County*, 1.
2. The court adheres to its former rulings in regard to the liability of municipal corporations in Missouri to innocent holders of the bonds of such corporations, issued in aid of railroads. *Green County* v. *Conness*, 104.
3. The rights of such holders are to be determined by the law as it was judicially construed to be when the bonds were put on the market as commercial paper. *Id.*
4. Bonds of the kind involved in these suits are debts of the county. Holders are entitled to payment out of the general funds of the county raised by taxation for ordinary use, after exhausting the special fund. The majority of the court adhere to the rulings in *United States* v. *Clark County*, 96 U. S. 211; *United States* v. *Macon County*, 99 U. S. 582, 589; and *Macon County* v. *Huidekoper*, 99 U. S. 592. *Knox County Court* v. *United States*, 229.
5. A *bona fide* holder for value before maturity of a bond issued by a county is not bound to go behind the recitals in the bond to inquire whether the amount of the indebtedness of the corporation exceeds that authorized by law. *Sherman County* v. *Simons*, 735.
6. When a statute directs an officer to examine and determine the amount of the indebtedness of a county, for the purpose of further determining the amount of bonds to be issued by the county for a given purpose, and the officer performs the duty, the county cannot, in a suit by a holder of a bond issued as a result of the exercise of the power by the officer, set up that the finding was not true. *Id.*

See JUDGMENT, 2; JURISDICTION, B, 4; KANSAS, 1; MISTAKE, 2. NEBRASKA, 1, 2.

MUNICIPAL CORPORATIONS.

See CONSTITUTIONAL LAW, 9, 11; CONTRACT, 5; JURISDICTION, B, 4; KANSAS, 1, 2; MUNICIPAL BONDS.

NAVIGABLE WATERS.

See CONSTITUTIONAL LAW, 14, 15, 16.

NEBRASKA.

1. When the legislature of Nebraska authorized a county which was indebted to issue bonds for the amount of the indebtedness, that act was no infringement of the provision in the State Constitution then in force that, "the legislature shall pass no special act conferring corporate powers." The case of *Commissioners of Jefferson County* v. *The People*, 5 Neb. 127, followed. *Sherman County* v. *Simons*, 735.
2. The issuing of bonds under such authority was no violation of the provision of the present Constitution of Nebraska, that the legislature shall not pass any local or special laws "granting to any corporation, association or individual any exclusive privileges, immunities, or franchise whatever. In all other cases where a general law can be made applicable, no special law shall be enacted." A county is not a corporation within the meaning of this clause. *Woods* v. *Colfax County*, 10 Neb. 552, followed. *Id.*

See MUNICIPAL BONDS, 1.

NEW ORLEANS.

In the absence of fraud, a compromise made between the city authorities of New Orleans and a railroad company, respecting a disputed grant of a user of part of the city property, known as the Batture, for railroad purposes, was sustained, as authorized by the laws of Louisiana. Under the statutes of that State, the city authorities had the right to make the compromise at the time it was made, and it remained valid, notwithstanding the powers conferred upon the board of liquidation of the city debt of New Orleans by the legislature. *Board of Liquidation, &c.*, v. *Louisville & Nashville Railroad Co.*, 221.

NEW TRIAL.

1 The action of the court below in refusing a new trial is not subject to review here. *Terre Haute & Indiana Railway Co.* v. *Struble*, 381.

NEW YORK.

See CONSTITUTIONAL LAW, 13;
CORPORATIONS, 1, 2, 3.

NUISANCE.

See CONSTITUTIONAL LAW, 13.

OFFICER.

See STATUTES, A, 1, 2, 3;
WRIT, 2, 3.

PARTIES.

See JUDGMENT, 2, (5);
JURISDICTION, B, 2, 4.

PATENT.

1. The reissued letters patent No. 2979, granted to the Rumford Chemical Works, June 9th, 1868, for an "improvement in pulverulent acid for use in the preparation of soda powders, farinaceous food, and for other purposes," claimed, in claim 1, "as a new manufacture, the above described pulverulent phosphoric acid," and; in claim 2, the manufacture of such acid, and, in claim 3, the mixing with flour of such acid and an alkaline carbonate, so as to make the compound self-raising on the application of moisture or heat, or both. There was transferred to M, by the Rumford Chemical Works, the exclusive right to make, sell, and use, in a specified territory, for five years, self-raising flour by the use of the acid, he agreeing to make the flour, and to use his skill to introduce it, and to purchase all the acid from the grantor. M died in less than three months from the date of the grant: *Held*, under the provisions of §§ 11 and 14 of the act of July 4th, 1836, 5 Stat. 121, 123, that the right acquired by M was only that of a licensee; that the instrument of license did not carry such right to any one but him personally; and that such right did not, on his death, pass to his administrator, so as to authorize a suit at law, founded on the license, to be brought in the name of the grantor, for the use of the administrator, to recover damages for an infringement of the patent committed after the death of M, by the manufacture and sale of self-raising flour, by the use of such acid, in said territory. *Oliver* v. *Rumford Chemical Works*, 75.
2. A specification describes a process for placing hair in small bundles and by a baling press uniting several into a bale: *Held*, That this description does not show a patentable invention. *King* v. *Gallun*, 99.
3. The first claim of letters patent No. 147,343, granted February 10th, 1874, to the Double-Pointed Tack Company, as assignee of Purches Miles, the inventor, for an "improvement in bail-cars," namely, "1. The compound staple-fastening *d*, for bails, made with the diagonally cut penetrating points 2 and 3, loop 4, and body 5, said diagonally cut points being positioned as set forth, so as to bend upwardly in driving into the wood, as set forth," does not, in view of what existed before in the art, set forth any patentable invention. *Double-Pointed Tack Co.* v. *Two Rivers Mfg. Co.*, 117.
4. It was commonly known that the effect of a diagonal cut on a pene-

trating point was to force the point, in being driven, in a direction away from the cut. Double-pointed staples, with a diagonal cut on each point, but the diagonal cut on one point on the upper and outer side, and on the other point on the lower and outer side, as the staple was driven, were old, the effect in driving being to bring the points together; and there was nothing more than mechanical skill in putting the diagonal cuts on the same side of each leg, so as to incline both points, in driving, in the same direction. *Id.*

5. The second claim of the patent, namely: "2. The convex metallic washer *e*, in combination with the compound bail-fastening staple *d*, having upwardly penetrating points 2, 3, and loop 4, as and for the purposes specified," does not set forth a patentable combination, but only an aggregation of parts. Neither the staple nor the washer affects or modifies the action of the other. *Id.*
6. Claim 4 of reissued letters patent No. 1527, granted to John Richards, August 15th, 1863, for a "guide and support for scroll-saws," the original patent, No. 35,390, having been granted to him, May 25th, 1862, for an "improved guide and support for scroll-saws," namely, "4. An anti-friction guide which is adjustable so as to accommodate different thicknesses of saw-blades, and to compensate for wear, in combination with the upper portion of a web saw-blade, substantially as set forth," does not cover an arrangement in which a band-saw is used, passing over wheels, and running constantly in one direction, towards the table on which the stuff lies, and having a tension over the peripheries of the wheels. *Fay* v. *Cordesman*, 408.
7. Claim 5 of said reissue, namely, "5. The combination of the anti-friction saw-support and guide, or the equivalent thereof, with an adjustable guard, or its equivalent, substantially as and for the purpose set forth," is not infringed by an arrangement in which such a band-saw is used, and the guard does not hold down the stuff against the upward lifting action of the saw, because the saw is constantly passing downward. *Id.*
8. The claim of letters patent No. 78,880, granted to J. A. Fay & Co., June 16th, 1868, for an "improvement in guides for band-saws," on the invention of John Lemman, namely, "The combination of the roller *b* with fixed lateral guides, *c c c*, one or more, arranged and operated substantially in the manner and for the purposes specified," is for the combination of an anti-friction smooth faced wheel to support the back or thin edge of the saw, and to have lateral adjustment, presenting different points to wear, with the fixed guides, and is not infringed by an arrangement in which the wheel has two grooves in in it, in one of which the saw runs, and in the other of which it can be made to run by lateral adjustment. *Id.*
9. Claim 1 of letters patent No. 120,949, granted to J. A. Fay & Co., November 14th, 1871, for an "improvement in band-sawing machines," on the invention of William H. Doane and William P.

McKee, namely, "1. The frame A, A', A'', in combination with the lower arbor-bearing, said frame being constructed as herein described, with a depression, A''', permitting the ready removal of the arbor, as explained," is not infringed by an arrangement in which the depression does not leave exposed a seat which is entirely open upward, and the arbor-bearing cannot be removed without detaching the pulley from the arbor. *Id.*

10. Claim 2, namely, "2. The arrangement of frame A A' A'' A''', and of the horizontally and vertically adjustable arbor-bearing C, D, D', E, E', G, H, A," is not infringed by an arrangement which does not have the frame and depression of claim 1, or the elements D, D', or the same or equivalent means of adjusting such arbor-bearing either horizontally or vertically. *Id.*
11. Claim 3, namely, "3. The arrangement of step or saddle K and its contained box or bearing L L'," covers, as an element of the arrangement, among other things, a spring which carries the weight of the saddle, and gives an elastic tension to the saw, and is not infringed by an arrangement in which there is a rigid saddle and no spring. *Id.*
12. Claim 4, namely, "4. In combination with the upper arbor, L', the lower arbor-bearing, E, adjustable both vertically and horizontally, as shown and described and for the purpose set forth," is not infringed by an arrangement which does not infringe claims 2 and 3. *Id.*
13. Claim 1 of letters patent No. 87,241, granted February 23d, 1869, to Riley Burdett, as inventor, for 17 years from August 24th, 1868, for an "improvement in reed-organs," namely, "The arrangement, in a reed musical instrument, of the reed-board A, having the diapason set *a*, and its octave set *b*, and the additional set L, extending from about at tenor F upward through the scale, substantially as and to the effect set forth," defined and construed. A reed-board with two sets of reeds and a third partial set was made and put into an organ by one Dayton, prior to the invention of Burdett, and, such organ being put in evidence, it was held that the alleged infringing organs contained nothing which, so far as said claim 1 was concerned, was not found in such prior organ. As to claim 2, namely, "The reed-board A, and foundation-board G, constructed with the contracted valve openings D F F, and the reeds arranged in relation thereto, all in the manner described," it was held, that, in view of the state of the art, there was no invention in making the length and size of the valve opening greater or less in a reed-board of a given width, or where the reed-board was made wider or narrower, or had more or less sets of reeds in it, either full or partial; and that the vibrating ends of the lowest and longest reeds in such prior organ were as near together as they were in the reed-boards of the alleged infringing organs. On these views, a decree was entered in favor of the defendants. *Estey v. Burdett*, 633.

Claims 1 and 3 of reissued letters patent No. 6,963, granted to Lewis R. Keizer, February 29th, 1876, for an "improvement in apparatus for cleaning privies" (the original patent, No. 115,565, having been granted, June 6th, 1871, to Henry C. Bull and Joseph M. Lowenstein, on the invention of said Bull, and the application for the reissue having been filed January 11th, 1876), namely, "1. A privy-vault cleaning apparatus, consisting of an air-pump, a deodorizer, and suitable tubular connections, in combination with an independently movable receiving cask, having an induction passage or opening, and also an air opening for connection with the air-pump, and provided with screw-necks at each opening for receiving sealing caps or covers, substantially as described, whereby the movable cask may be located in any desired position with relation to the vault and privy, and the pump and deodorizer located in any desired position with relation to the vault, privy, and cask, and also whereby the casks, when filled, may be handled as is usual with filled casks, as set forth;" "3. The combination, with a portable night-soil cask, of a float-valve located at the air-passage, substantially as described, whereby the fluid matter is prevented from entering the air-passage and clogging the suction air-pipe and pump, as set forth;" are invalid, because they are for inventions not indicated in the original patent as inventions, being for sub-combinations in combinations claimed in the original, and were made for the purpose of covering features described in patents issued to others during the interval between the granting of the original and the application for the reissue. Those features are contained in the defendant's apparatus, and that apparatus does not infringe any claim in the original patent. *Clements* v. *Odorless Excavating Apparatus Company*, 641.

See MISTAKE, 1.

PENNSYLVANIA.

See JURISDICTION, C, 1.

PILOT.

See JURISDICTION, C, 1.

PLEADING.

1. A demurrer to a bill does not admit the contrary of facts in law which appear upon the face of the bill, and of which the court must take judicial notice. *Louisville & Nashville Railroad Co.* v. *Palmes*, 244.
2. A demurrer admits all facts well pleaded. *Sullivan* v. *Iron Silver Mining Co.*, 550.
3. Under the Colorado Code of Civil Procedure, as at common law, facts may be pleaded according to their legal effect without setting out the

particulars that lead to it ; and necessary circumstances implied by law need not be expressed in the plea. *Id.*

See JURISDICTION, B, 2, 3;
LIMITATIONS, 1, 2;
MINERAL LANDS, 3.

POWER.

1. A husband and wife join in a mortgage of the wife's real estate to secure a debt of the husband contracted simultaneously with the execution of the mortgage. The wife dies before maturity of the debt, leaving a will devising all her estate to her husband in trust to enjoy the income during his life, with remainder to her children at his decease:—*But provided*, That said Cyrenius Beers may encumber the same by way of mortgage or trust deed or otherwise, and renew the same for the purpose of raising money to pay off any and all encumbrances now on said property, and which trust deed or mortgage so made shall be as valid as though he held an absolute estate in said property. The will appointed the husband as sole executor, and waived all security: *Held*, That the executor was empowered by the will to extend the mortgage debt at maturity without notice to the devisees of the remainder, and without affecting the mortgage security. *Warner* v. *Connecticut Mutual Life Ins. Co.*, 357.
2. The husband, on the maturity of the debt secured by the mortgage, extended it by an instrument which did not refer to the will, or to the power which it conferred: *Held*, That, under the circumstances, it was to be construed as an execution of the power. *Id.*

POWER OF ATTORNEY.

Payment to an attorney in fact, constituted such by power of attorney executed by the claimants before the allowance of their claim by Congress or by the proper department, is good as between the government and such claimants, where the power of attorney has not been revoked at the time payment is made, notwithstanding the provisions of the act of July 29th, 1846, entitled "An Act in relation to the payment of claims," and the act of February 26th, 1853, entitled "An Act to prevent frauds upon the treasury of the United States." 9 Stat. 41, and 10 Stat. 170. *Bailey* v. *United States*, 432.

PRACTICE.

If, through fault of the party prosecuting a cause in this court, printed copies of the record are not furnished to the justices or parties, the writ on appeal will be dismissed for want of prosecution, unless good

cause be shown to the contrary. The fees of the clerk of this court must be paid in advance when demanded. *Steever* v. *Rickman*, 74.

See APPEAL, 3;
CRIMINAL LAW;
DIVISION OF OPINION;
EQUITY, 6, 7;
ERROR, 1, 2, 3;
FORECLOSURE;
JUDGMENT, 2;
JURISDICTION, B, 3;
LIMITATIONS, 1, 2;
MOTION TO ADVANCE;
MOTION TO AFFIRM;
NEW TRIAL;
RECEIVER;
VERDICT;
WRIT, 1.

PRINCIPAL AND AGENT.

1. Upon a negotiable promissory note, made by an agent in his own name, and not disclosing on its face the name of the principal, no action lies against the principal. *Cragin* v. *Lovell*, 194.
2. In an action at law, the declaration alleged that the plaintiff sold land to a third person, who gave his notes for the purchase money, secured by mortgage of the land; that afterward the defendant, in a suit by him against that person, claimed the ownership of the land, and alleged that the other person, acting merely as his agent, illegally made the purchase in his own name, and that he was liable and ready to pay for the land; that he was thereupon adjudged to be the owner of the land, and took possession thereof; and that by reason of the premises the defendant was liable to the plaintiff in the full amount of the notes. *Held*, That the declaration showed no cause of action, even under art. 1890 of the Civil Code, and art. 35 of the Code of Practice of Louisiana. *Id.*

PROBATE OF WILLS.

See DISTRICT OF COLUMBIA, 1, 2, 8;
JURISDICTION, B, 6, 7, 8;
WILL.

PROHIBITION.

See WRIT, 1.

PROMISSORY NOTE.

See PRINCIPAL AND AGENT.

PUBLIC CONVEYANCES.

See CONSTITUTIONAL LAW, 3, 4, 5, 6.

RAILROADS.

1. A consolidation of two railroad corporations merges the franchises and privileges of each in the new company, so that they continue to exist in respect to the roads thus consolidated. *Green County* v. *Conness*, 104.

2. A ground switch, of a form in common use, was placed in a railroad yard, in a space six feet wide between two tracks; the lock of the switch was in the middle of the space; and the handle, when lying flat, extended to within a foot of the adjacent rail, and could be safely and effectively worked by standing in the middle opposite the lock, using reasonable care. The brakeman of a train on one of the tracks, while working at the switch, standing at the end of the handle, was struck by an engine on the other track. *Held*, That there was no such proof of fault on the part of the railroad corporation, in the construction and arrangement of the switch, as would support an action against it for the injury. *Randall* v. *B. & O. Railroad Co.*, 478.

See ERROR, 1;
FLORIDA;
FRAUD;
LAND GRANTS;
MASTER AND SERVANT, 1, 2.

RECEIVER.

A, being entitled to a fund in the hands of the agent of Great Britain before the Mixed Claims Commission of 1873, B, his assignee in bankruptcy, filed a bill against him and C (C claiming the fund as purchaser), to restrain them from collecting the money. A restraining order first, and then a preliminary injunction were issued. D was then appointed receiver of the fund. Meanwhile E commenced suit in the same court against A and C, claiming one-fourth of the fund, and obtained preliminary injunction restraining them from collecting more than three-fourths. Subsequently an order was made in B's suit in which, after reciting that it was made by consent of parties in both suits, both restraining orders were vacated, payment of one-half of the fund was ordered to C discharged of claims of the plaintiffs in either suit, and the payment of the other half was ordered to D, and D was directed to hold it subject to the claims of B and E. This decree was carried out. Both bills were demurred to, and in each suit decree of dismissal was entered at special term on the demurrer. In B's suit appeal was taken and the decree was affirmed. In E's suit, the decree of dismissal was entered on the 24th June, 1875, and an appeal was taken on the same day. On the 28th of the same June the decree was amended by adding an order that the receiver pay the fund to C, and notice thereof was at once given to the receiver with demand of payment. The receiver repaired to the court, and asked

the court what he should do. The court directed him to obey the decree. He then surrendered the fund to C. E's appeal was perfected on the 12th July by filing an appeal bond. Judgment was reversed on appeal, and an order entered, that the receiver should pay the money into court. Failing to do this, he was adjudged in contempt, and an order issued for an accounting. The auditor took testimony and returned it with a report that the receiver had done his duty in paying the money to C. This report being confirmed, an appeal was taken from that decree. The receiver moved to dismiss the appeal, on the ground that he was not party to the suit. *Held* (1), That though the receiver was not party to the suit, he was principal party to a side issue which had arisen in it, which was appealable, and that the judgment upon it was final, and the appeal was properly taken. (2), That under the rules and practice of the Supreme Court of the District of Columbia, the suspensive force of the appeal in E's case was not operative until the filing of the bond. (3), That the completing of the decree in that suit by amendment on the 28th June was within the power of the special term. (4), That these proceedings against the receiver being in equity, are not governed by the rules regulating a *supersedeas* of execution. (5), That a decree in equity dissolving an injunction is not affected by a supersedeas, unless the court below order the continuance of the injunction pending appeal. Whether that should not have been done in this case—*Quære. Hovey McDonald*, 150.

See APPEAL, 6.

REMOVAL FROM OFFICE.

See CONSTITUTIONAL LAW, 12.

REPEAL.

See STATUTES, 1, 2.

REVIEW.

See ERROR;
NEW TRIAL;
WRIT, 1.

RIPARIAN RIGHTS.

See WASHINGTON CITY.

SALARY.

See STATUTES, A, 1, 2, 3.

SECRET TRUST.

See CONSTRUCTIVE NOTICE.

SHIPS AND SHIPPING.

See COMMON CARRIERS.

SLAVERY.

See CONSTITUTIONAL LAW, 3.

SUSPENSION OF STATUTES.

See STATUTES, A, 1, 2.

STATUTES.

1. In the interpretation of statutes, clauses which have been repealed may still be considered in construing provisions which remain in force. *Ex parte Crow Dog*, 556.
2. The doctrine that courts do not favor repeals of statutes by implication reasserted and authorities referred to. Especially a court of limited and special jurisdiction should not take jurisdiction over a case involving human life, through an implied repeal of a statute denying it, when the words relied on are general and inconclusive; and the fact that to hold that a statute repeals by implication a previous act would reverse a well settled policy of Congress justifies the courts in requiring a clear expression of the intention of Congress in the repealing act. *Id.*

See TABLE OF STATUTES CITED IN OPINIONS.

A. STATUTES OF THE UNITED STATES.

1. When Congress appropriates a sum "in full compensation" of the salary of a public officer, the incumbent cannot recover an additional sum in the court of claims, notwithstanding a prior statute fixes the salary at a larger amount than the sum so appropriated. *United States* v. *Fisher*, 143.
2. In such case the earlier act is suspended for the time covered by the appropriation. *Id.*
3. The Revised Statutes fixed the annual salary of an interpreter at four hundred dollars. In 1877 Congress appropriated in gross for such offices "at three hundred dollars per annum," and repeated the appropriation in like form down to and including the appropriation act of March 3d, 1881. A served as such interpreter from July, 1878, to November, 1882, and was paid at the rate of $300 per annum. In a suit to recover at the rate fixed by the Revised Statutes: *Held*, That

Congress had expressed its purpose to reduce for the time being the salaries of interpreters, and that the claimant could not recover. *United States* v. *Mitchell*, 146.

4. The definition of the term "Indian Country," contained in c. 61, § 1, of the act of 1834, 4 Stat. 729, though not incorporated in the Revised Statutes, and though repealed simultaneously with their enactment, may be referred to in order to determine what is meant by the term when used in statutes; and it applies to all the country to which the Indian title has not been extinguished within the limits of the United States, whether within a reservation or not, and whether acquired before or since the passage of that act. *Ex parte Crow Dog*, 556.

See ALABAMA CLAIMS;
APPEAL, 1;
COMMON CARRIER;
CONSTITUTIONAL LAW, 1, 7, 12, 13;
CONSTRUCTIVE NOTICE;
CUSTOMS DUTIES, 1, 2, 3;
EQUITY, 4;
EXPRESS BUSINESS;
JURISDICTION, B, 4, 11;
MINERAL LANDS;
POWER OF ATTORNEY;
WITNESS.

B.—STATUTES OF STATES AND TERRITORIES.

Of Florida: *See* FLORIDA.
Of Illinois: *See* EVIDENCE, 2, 3; EQUITY, 8.
Of Kansas: *See* KANSAS.
Of Louisiana: *See* JURISDICTION, B, 9.
NEW ORLEANS.
Of Maryland: *See* WASHINGTON CITY, 1, 4.
Of Missouri: *See* RAILROADS, 1.
Of Nebraska: *See* MUNICIPAL BONDS, 1, NEBRASKA.
Of New York: *See* CONSTITUTIONAL LAW, 13.
CORPORATIONS, 1, 2, 3.
Of Tennessee: *See* LIMITATIONS, 6.
Of Texas: *See* APPEAL, 8.
TEXAS.
Of Utah: *See* CONSTRUCTIVE NOTICE.
Of West Virginia: *See* MASTER AND SERVANT, 2.
RAILROADS, 2.

C.—FOREIGN STATUTES.

See DOMINION OF CANADA.

SUPERSEDEAS.

See MORTGAGE, 1.
WRIT, 2.

SUICIDE.

See INSURANCE, 1.

SURETY.

See ADMINISTRATOR.

SURVIVORSHIP.

See PATENT, 1.

TAXATION.

See CONSTITUTIONAL LAW, 17, 18. FLORIDA.
MUNICIPAL BONDS, 4.

TAXES.

See INTERNAL REVENUE, 1, 2.

TERRITORIES.

See CONSTITUTIONAL LAW, 5.

TEXAS.

Prior to 1844, the Congress of Texas authorized contracts to be made for settling emigrant families on vacant lands to be designated in the contracts. Subsequently, that Congress passed an act to repeal this law, and presented it to the President of Texas for his signature. He vetoed the repealing act. Congress then passed it over the veto. While the repealing act was thus suspended, the President contracted with one Mercer and associates to settle families on a designated tract, capable of identification. Preston, the appellant in one suit and appellee in the other, was assignee under Mercer. In February, 1845, the Congress of Texas enacted that, on failure of the associates to have the tract surveyed and marked by the first day of the next April, the contract should be forfeited. In October following, suit was begun to have the contract annulled for non-compliance with these provisions. A decree was entered declaring it forfeited, but it did not appear that proper service of the subpœna, or other process or notice, was made to give the court jurisdiction. After lapse of several years, suit was brought against the commissioner of the land office of Texas to obtain certificates for location of land for which claim was made under the contract, either within the limits of the grant, or in case the land there had been appropriated, then land of equal value elsewhere. The bill also prayed for an injunction to restrain the commissioner from issuing patents for lands outside the grant, until the claims under the

contract should be satisfied. The defendant denied the principal allegations of the bill, and demurred on the ground that the State of Texas had not been made a party, averring that it was a necessary party. The court below found for the plaintiff on the facts, and made a decree enjoining the commissioner and his subordinates forever from issuing patents within the boundaries of the contract tract except to Preston or his order : *Held*,

1. That the decree was defective in not defining specifically the rights of the plaintiff in the land ; in not adjusting the conflicting rights of Texas and the plaintiff ; and in tying up forever the hands of the government and all other interested parties without affording final relief.
2. That as the court could give no affirmative relief, and in the absence of the State of Texas could not settle its rights in the tract, it was without jurisdiction.
3. That even if the court had jurisdiction, the case was without equity on the merits. *Walsh* v. *Preston*, 297.

TREASURER OF THE UNITED STATES.

See DISTRICT OF COLUMBIA, 4.

TORT.

See CONTRACT, 5,
CONSTITUTIONAL LAW, 9, 10, 11.

UTAH.

See CONSTRUCTIVE NOTICE.

VERDICT.

When the evidence given at the trial, with all the inferences that the jury could justifiably draw from it, is insufficient to support a verdict for the plaintiff, so that such a verdict, if returned, must be set aside, the court may direct a verdict for the defendant. *Randall* v. *B. & O. Railroad Co.* 478.

VESSELS.

See COMMON CARRIERS.

VIRGINIA.

See DISTRICT OF COLUMBIA, 1.
WASHINGTON CITY, 3.

VOID AND VOIDABLE.

See WRIT, 2, 3.

WASHINGTON CITY.

1. In 1791, one Young, then owning a tract of land containing about 400 acres on the Potomac conveyed the same in fee simple with all its appurtenances to two trustees (who were also trustees with similar trusts, for other owners of land), as a site for the City of Washington. The trust provided that the lands laid out in streets, squares, etc., should be for the use of the United States forever, and that a fair and equal division of the remainder should be made. In 1794 the plan of the city was adopted and promulgated. On this plan a public street called Water street was represented as laid out on the margin of the river over the tract so conveyed by Young ; but this street was not in fact constructed until after the close of the late civil war. In 1796 the trustees conveyed the tract so deeded to them (including Young's), "in fee simple subject to trusts yet remaining," to commissioners appointed to receive title, under the act of July 16th, 1790, entitled, "An Act for establishing the temporary and permanent seat of the government of the United States." 1 Stat. 130. In 1797 the commissioners, in execution of the trust, and in pursuance of a statute of the State of Maryland, recorded certificates in their record book, which stated that one tract, defined by metes and bounds, had been allotted to Young, and that another tract, in like manner defined, had been allotted to the United States. Each of these tracts was on the northerly side of Water street, and was described as bounded on that street. The title to both became subsequently vested in the plaintiffs. *Held*, That these transactions were equivalent to a conveyance by Young to the United States in fee simple of all his lands ; and of a conveyance back by the United States of the first tract described by metes and bounds, leaving in the United States the title in fee simple to the other tract and to the strip known as Water street. *Van Ness* v. *The Mayor, &c., of Washington*, 4 Pet. 232 ; approved and followed. *Potomac Steamboat Company & others* v. *Upper Potomac Steamboat Company*, 672.
2. After the execution of the commissioners' certificate in 1797, allotting to Young a tract of land on the north side of Water street and to the United States another tract, also on the north side of that street, no wharfage rights remained connected with the use and enjoyment of those lots, and not being thus connected with them, such right was not annexed as an incident to them, so as to become appurtenant to them. *Id.*
3. The agreement of March 28th, 1785, between Virginia and Maryland, provides that citizens of each should have full property in the shores of the Potomac and the privilege of constructing wharves and improvements. The Maryland act of December 19th, 1791, authorized the commissioners appointed under the act of July 16th, 1790, 1 Stat. 130, to license the building of wharves on the Potomac. *Held*, That the United States, as owners in fee of Water street, in the city of

Washington, were in the enjoyment of all the rights which were attached to that property by this compact and by this legislation, or which belonged or appertained to it by virtue of general principles of law relating to riparian rights. The authorities in this court, and other federal courts, and in State courts and the courts of Great Britain, on that subject examined. *Id.*

4. The act of the legislature of Maryland of December 28th, 1793, under which the commissioners entered in their record book the certificate to Young and to the United States, provided that they should "be sufficient and effectual to vest the legal estate in the purchasers, without any deed or formal conveyance." *Held*, That parol evidence is only admissible to contradict, vary, or explain them, when it would have been admissible if they had been formal conveyances. *Id.*

5. *Chesapeake & Ohio Canal Co.* v. *Union Bank of Georgetown*, 5 Cranch C. C. 509, cannot be regarded as the law of the District of Columbia on the point involved in this case. In so far as in conflict with it, the court in that case did not follow *Van Ness* v. *Mayor, &c., of Washington*, 4 Pet. 232, or *Kennedy* v. *Washington*, 3 Cranch C. C. 595. *Id.*

WILL.

The probate of a will in one State does not establish the validity of the will as a will devising real estate in another State, unless the laws of the latter State permit it. The validity of the will for that purpose must be determined by the laws of the State in which the property is situated. *Robertson* v. *Pickrell*, 608.

See DISTRICT OF COLUMBIA, 1, 2, 3;
JURISDICTION, B, 6, 7, 8.

WITNESS.

1. A creditor of A obtained judgment against him. He levied on capital stock in a corporation claimed by B under an assignment from A, and in the original suit summoned B as garnishee of A to answer. Pending these proceedings A died, and his administrator was substituted as defendant. B and the administrator were offered as witnesses on B's behalf in regard to the transactions at the time of the assignment. *Held*, That each was a competent witness on his own motion, notwithstanding the proviso in § 858 Rev. Stat., "That in actions by or against executors, administrators, or guardians in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate, or ward unless called to testify thereto by the opposite party or required to testify thereto by the court." *Monongahela National Bank* v. *Jacobus*, 275.

WOOL.

See CUSTOMS DUTIES, 3.

WRIT.

1. Where the evident purpose of an application for a writ of prohibition is the correction of a supposed error in a judgment on the merits, the court will not grant the writ. *Ex parte Pennsylvania*, 174.
2. A writ issuing from a court of competent jurisdiction, with power to compel its enforcement, and in a case where the cause of action and the parties to it are before the court and within its jurisdiction, is not absolutely void by reason of mistakes in the preliminary acts which precede its issue. If not avoided by proper proceedings, it is in all other courts a sufficient protection to the officer executing it. *Matthews* v. *Densmore*, 216.
3. The marshal for the Eastern District of Michigan seized the goods of the defendants in error, under a writ of attachment issued from the circuit court of that district, on a defective affidavit. *Held*, That in proceeding in the State courts of Michigan against the marshal, the process is sufficient to protect him if the property seized under it was liable to be attached in that suit. *Id.*