INDEX.

ABATEMENT.

1. The rule at common law, that *qui tam* actions on penal statutes do not survive, prevails in the federal courts as to actions on penal statutes of the United States, even in States where the statutes of the State allow suits on State penal statutes to be prosecuted after the death of the offender. *Schreiber* v. *Sharpless*, 76.
2. An action to recover penalties and forfeitures for the infringement of a copyright under the provisions of § 4965 Rev. Stat. is abated by the death of the defendant. *Id.*

ACTION.

See ABATEMENT;
JURISDICTION, B, 7;
PARTNERSHIP, 2.

ALABAMA.

See EXECUTOR AND ADMINISTRATOR;
LIMITATIONS, Statute of, 3, 4;
PLEADING, 2, 3.

AMENDMENT.

See JURISDICTION, A. 14.

APPEAL.

See JURISDICTION, A, 8, 9, 10;
SUPERSEDEAS.

ASSIGNEE IN BANKRUPTCY.

A, residing in Maryland, and a stockholder in a manufacturing corporation in Rhode Island, pledged with B, also residing in Maryland, as security for a debt due from A to B, bonds of the company secured

by mortgage of all its property. The company became embarrassed and unable to pay its debts, and its stockholders became individually liable to its creditors. A became bankrupt, and B agreed with the assignee to receive the bonds and a sum of money in payment of A's debt, and to indemnify the assignee against loss or damage as holder of the stock. B then instituted proceedings to enforce the individual liability of other stockholders: *Held*, That, the agreement with the assignee was not an agreement to save A harmless against liability as stockholder; that neither the assignee in bankruptcy nor the bankrupt's property in his hands was subject to the liability which attached to the stock, and that B assumed no liability which could be set up by a stockholder as a defence against his individual liability to B. *American File Company* v. *Garrett*, 288.

ATTORNEY AT LAW.

A contract with an attorney to prosecute a claim against the United States for a contingent fee is not void; and under the circumstances of the case, the parties having agreed upon fifty per cent. of the claim as a contingent fee, the court is not prepared to assume that the division is extortionate. *Stanton* v. *Embrey*, 93, U. S. 548, approved and followed. *Bemiss* v. *Bemiss*, 42.

See CONTRACT, 3.

AWARD.

See CLAIMS CONVENTION WITH MEXICO, 1.

BANK.

See ESTOPPEL, 1;
PRINCIPAL AND AGENT, 1.

BANKRUPTCY.

Property was sold to H, by order of a court of bankruptcy. He not paying for it, the court, without notice to him, vacated the order of sale, and made an order selling it to C, who paid for it, and went into possession of it. Afterwards, on review, the sale to C was set aside, and the sale to H reinstated. H, having paid for the property, received possession of it, and afterwards the money paid by C was repaid to him: *Held*, that C was not liable to pay to H the profits derived by him from the use of the property while he had it. *Conro* v. *Crane*, 403.

See JURISDICTION, A, 19.

BILL OF EXCHANGE.

When a bank, the owner and holder of a bill of exchange on a foreign country, remits it for collection to its correspondent abroad, and the bill is not paid at maturity, and is protested, the correspondents are not entitled to damages on the protest, as against the owner, even though the owner may have failed before maturity of the bill, being largely indebted to the correspondent. *Hambro* v. *Casey*, 216.

BOND.

See INTERNAL REVENUE, 2.

BOUNDARIES.

See COUNTY.

BRIDGE.

See COUNTY;
NEBRASKA.

BROKERS.

See CUSTOM.

CHAMPERTY.

See CONTRACT, 3.

CIRCUIT COURTS OF THE UNITED STATES.

See JURISDICTION, B.

CLAIMS AGAINST FOREIGN GOVERNMENT.

See CLAIMS CONVENTION WITH MEXICO.

CLAIMS AGAINST THE UNITED STATES.

Payment of a claim against the United States, to a tutrix appointed under the laws of Louisiana is a valid payment making her responsible to the minors, if wronged, for the receipt of the money by herself or by her authorized attorney. *Bemiss* v. *Bemiss*, 42.

See ATTORNEY AT LAW;
GUARDIAN AND WARD;
TAX SALE.

CLAIMS CONVENTION WITH MEXICO.

1. By the Claims Convention of July 4th, 1868, between the United States and Mexico, it was agreed that "all claims on the part of corporations, companies or private individuals, citizens of the United States, upon the Government of the Mexican Republic, arising from injuries to their persons or property by authorities of the Mexican Republic," should be submitted to the decision of a commission to be created under the treaty; that it should "be competent for each government to name one person to attend the commission as agent on its behalf, to present and support claims on its behalf;" and that the parties would "consider the result of the proceedings of this commission as a full, perfect and final settlement:" *Held*, That, though the awards made by the commissioners under this authority are on their face final and conclusive as between the United States and Mexico, they are only so until set aside by agreement between the two governments or otherwise; and that the United States may treat with Mexico for a retrial of any case decided by the commission, and that the President may withhold from any claimant his distributive share of any sums paid by Mexico under the treaty, while negotiating with that republic for a retrial of his case. *Frelinghuysen* v. *Key*, 63.
2. When it is alleged that a decision in an international tribunal against a foreign government was obtained by the use of fraud, no technical rules of pleading as applied in municipal courts should be allowed to stand in the way of the national power to do what is right. *Id.*
3. The relations between a claimant in an international tribunal and the foreign government, and between the claimant and his own government examined and considered. *Id.*
4. § 1, act of June 18th, 1878, ch. 262, 20 Stat. 144, authorized and required the Secretary of State to receive all sums paid by Mexico in pursuance of that convention, and to distribute them in ratable proportions among those in whose favor awards had been made: *Held*, That this only provided for the receipt and distribution of the sums paid without such a protest or reservation on the part of Mexico as in the opinion of the President was entitled to further consideration, and that it did not set new limits on executive power. *Id.*
5. § 5 of that act requested the President to investigate charges of fraud made by Mexico respecting the proof of certain claims before the commission, and pointed out some subsequent executive acts that might be done in the premises: *Held*, That this was only an expression of the desire of Congress to have the charges investigated, but did not limit or increase the executive powers in that respect under pre-existing laws. *Id.*

COLORADO.

See CORPORATION, 1; DIVORCE; JUDGMENT, 3; PLEADING, 1; RAILROAD; SHERIFF'S SALE.

COMMON CARRIER.

See EVIDENCE, 1.

COTTON.

See REBELLION.

CONFESSION.

See EVIDENCE, 6, 7.

CONFISCATION.

See DEED, 2.

CONFLICT OF LAW.

See ABATEMENT;
LIMITED LIABILITY.

CONNECTING RAILROADS.

See RAILROADS.

COPYRIGHT.

See ABATEMENT.

CONSTITUTIONAL LAW.

A, OF THE UNITED STATES.

1. Laws requiring gas companies, water companies and other corporations of like character to supply their customers at prices fixed by the municipal authorities of the locality, are within the scope of legislative power unless prohibited by constitutional limitation or valid contract obligation. *Spring Valley Water Works* v. *Schottler*, 347.
2. The Constitution of a State provided that corporations might be formed under general laws, and should not be created by special act, except for municipal purposes, and that all laws, general and special, passed pursuant to that provision might be from time to time altered and repealed. A general law was enacted by the legislature for the formation of corporations for supplying cities, counties and towns with water, which provided that the rates to be charged for water should be fixed by a board of commissioners to be appointed in part by the corporations and in part by municipal authorities. The Constitution and laws of the State were subsequently changed so as to take away from corporations which had been organized and put into oper-

ation under the old Constitution and laws the power to name members of the boards of commissioners, and so as to place in municipal authorities the sole power of fixing rates for water: *Held*, That these changes violated no provision of the Constitution of the United States. *Id.*

3. Congress has the constitutional power to make the treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war. *Legal Tender Case*, 421.

4. The words "due process of law" in the Fourteenth Amendment of the Constitution of the United States do not necessarily require an indictment by a grand jury in a prosecution by a State for murder. *Hurtado* v. *California*, 516.

5. The Constitution of California authorizes prosecutions for felonies by information, after examination and commitment by a magistrate, without indictment by a grand jury, in the discretion of the legislature. The Penal Code of the State makes provision for an examination by a magistrate, in the presence of the accused, who is entitled to the aid of counsel and the right of cross-examination of witnesses, whose testimony is to be reduced to writing, and upon a certificate thereon by the magistrate that a described offence has been committed, and that there is sufficient cause to believe the accused guilty thereof, and an order holding him to answer thereto, requires an information to be filed against the accused in the Superior Court of the county in which the offence is triable, in the form of an indictment for the same offence: *Held*, That a conviction upon such an information for murder in the first degree and a sentence of death thereon are not illegal by virtue of that clause of the Fourteenth Amendment to the Constitution of the United States, which prohibits the States from depriving any person of life, liberty or property without due process of law. *Id.*

6. A statute which simply enlarges the class of persons who may be competent to testify, is not *ex post facto* in its application to offences previously committed; for it does not attach criminality to any act previously done, and which was innocent when done, nor aggravate past crimes, nor increase the punishment therefor; nor does it alter the degree, or lessen the amount or measure, of the proof made necessary to conviction for past offences. Such alterations relate to modes of procedure only which the State may regulate at pleasure, and in which no one can be said to have a vested right. *Hopt* v. *Utah*, 574.

7. Congress has the constitutional power to prescribe the law of limitations for suits which may by law be removed into the courts of the United States; and when Congress has exercised that power it is binding upon State courts as well as upon Federal courts. *Anson* v. *Murphy*, 109 U. S. 238, cited and approved. *Mitchell* v. *Clark*, 633.

8. In construing the Constitution of the United States, the doctrine that what is implied is as much a part of the instrument as what is ex-

pressed is a necessity by reason of the inherent inability to put all derivate powers into words. *Ex parte Yarbrough*, 651.

9. § 4 of article I. of the Constitution, which declares that "the times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time make or alter such regulations, except as to the place of choosing senators," adopts the State qualification as the federal qualification for the voter; but his right to vote is based upon the Constitution and not upon the State law, and Congress has the constitutional power to pass laws for the free, pure and safe exercise of this right. *Id.*

10. Although it is true that the Fifteenth Amendment gives no affirmative right to the negro to vote, yet there are cases, some of which are stated by the court, in which it substantially confers that right upon him. *United States* v. *Reese*, 92 U. S. 214, qualified and explained. *Id.*

See CLAIMS CONVENTION WITH MEXICO, 1, 4, 5;
JURISDICTION, A, 3;
REBELLION (2).

B, OF THE STATES.

1. Under the Constitution of Illinois in force in 1868, an act authorizing a city council to borrow money on the credit of the city, and issue bonds under the seal of the city therefor, did not confer authority to subscribe to the stock of a railroad company, and issue bonds therefor, even when the legal voters of the city at a regular election voted to authorize such subscription: but the want of power could be cured by an act declaring an election theretofore held to be binding, and granting power to issue bonds to pay for a subscription authorized thereat: and such a curative act was within the legislative power, and that power was not taken away by the Constitution of 1870. *Jonesboro* v. *Cairo & St. Louis Railroad*, 192.

2. An act entitled "An Act to amend the charter of the Cairo & St. Louis Railroad Company," which legalized an election previously held in a municipality, at which the people voted to subscribe to the stock of that company and to issue bonds for the payment of the subscription, and which granted authority to issue such bonds, is no violation of that provision in the Constitution of Illinois, which provides that "no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title." Any provision in the title of a bill which calls attention to its subject, although in general terms, is all that is required by the Constitution. *Id.*

See MUNICIPAL BONDS, 1;
RAILROAD.

CONTRACT.

1. A bridge company, having partially executed a contract for the construction of a bridge, entered into a written agreement with a person whereby the latter undertook, for a named sum and within a specified time, to complete its erection. The subcontractor agreed to assume and pay for all work done and material furnished up to that time by the company. Assuming this work to have been sufficient for the purposes for which it was designed, the subcontractor proceeded with his undertaking, but the insufficiency of the work previously done by the company was disclosed during the progress of the erection of the bridge. No statement or representation was made by the company as to the quality of the work it had done. Its insufficiency, however, was not apparent upon inspection, and could not have been discovered by the subcontractor until actually tested during the erection of the bridge: *Held,* That the law implied a warranty that the work sold or transferred to the subcontractor was reasonably sufficient for the purposes for which the company knew it was designed. *Kellogg Bridge Company* v. *Hamilton,* 108.
2. An agreement to lay down a certain kind of pavement in the streets of a city, and if at any time during the period of three years from the completion of the work any part shall become defective from imperfect or improper material or construction, and in the opinion of the other party shall require repair, then that the contractor will, on being notified thereof, commence and complete the same to the satisfaction of the other party, is not a warranty against effects of weather, or wear in use, or against defects resulting from other causes than those specified: and in a suit against the contractor to recover the cost of repairs made by the municipal authorities after notice to the contractor and neglect by him to make the repairs, it is necessary to prove that the alleged defects resulted from improper construction, or from the use of imperfect or improper materials. *District of Columbia* v. *Clephane,* 212.
3. K died in Missouri, in 1871, having a policy of insurance on his life. J was appointed there his administrator. L and T, copartners as attorneys at law, brought a suit on the policy, in which, after a long litigation, there was a judgment for the plaintiff for $13,495, in 1877, in a Circuit Court of the United States. J had died in 1873, and C had been appointed administrator in his place, and substituted as plaintiff. The case was brought into this court, by the defendant, by a writ of error. Before it was heard here L compromised the judgment with the defendant, in 1879, receiving in full $9,401.42, and entered satisfaction of the judgment on the record. C then moved the Circuit Court to vacate the satisfaction, on the grounds that L had no authority to enter it, and had been notified by C, after the compromise had been made and before the satisfaction had been entered, that he would not ratify the compromise, and that the com-

promise was unlawful because not authorized by the Probate Court. The Circuit Court heard the motion on affidavits, and found as a fact, that J while administrator, entered into a contract with L and T, whereby they agreed to prosecute the claim for a portion of the proceeds, with full power to compromise it as they should please, and that the claim was a doubtful one, and held that the compromise was rightly made, and that the plaintiff was bound by the contract of J and denied the motion. On a writ of error by the plaintiff: *Held*, 1. This court cannot review such finding of fact, there being evidence on both sides, and the error, if any, not being an error of law; 2. The contract made was not champertous or unlawful, and J had authority to make it; 3. The contract having given to L and T a power coupled with an interest, the death of J did not impair the authority to compromise, and C was bound by it; 4. L having continued to be a copartner with T so far as this case was concerned, had authority to make the compromise without the co-operation or consent of T. *Jeffries* v. *Mutual Life Insurance Company of New York*, 305.

4. Real estate and personal property were held in trust by two trustees. One trustee at the request of the other and of a third person resigned his trust, without requiring previous payment of his demands against the trust estate, and the third person was appointed trustee in his place. The two trustees then executed a written agreement with the outgoing trustee, undertaking to apply to the payment of his said claims "all the moneys which shall come into our hands as trustees as aforesaid after first paying therefrom all taxes and current expenses of said property and trust:" *Held*, That this was a contract to be enforced at law, against the parties individually and not a trust to be enforced in a court of equity; and that the current expenses of the trust did not include the construction of fire-proof buildings and unusual expenditures for protecting the property. *Taylor* v. *Davis*, 330.

5. In an action for breach of a contract by wrongfully putting an end to it, the party committing the wrong is estopped from denying that the other party has been damaged to the extent of his actual loss and outlay fairly incurred. *United States* v. *Behan*, 338.

6. If a party injured by the stoppage of a contract elects to rescind the contract, he cannot recover either for outlay or for loss of profits; but only for the value of services actually performed, as upon a quantum meruit. *Id.*

See ASSIGNEE IN BANKRUPTCY; COURT OF CLAIMS; DAMAGES; PARTNERSHIP, 4; PRINCIPAL AND AGENT; SUBROGATION; WAGERS, 1, 2, 3, 4.

CORPORATION.

1. A certificate signed and acknowledged by the president and secretary

of a foreign corporation, and filed with the Secretary of State and in the office of the recorder of deeds for the county in which it is proposed to carry on business, stating that "the principal place where the business shall be carried on in the State of Colorado shall be at Denver, in the County of Arapahoe, in said State, and that the general manager of said corporation, residing at the said principal place of business, is the agent upon whom process may be served in all suits that may be commenced against said corporation," is a sufficient compliance with the requirements of the Constitution and laws of Colorado in that respect. *Goodwin* v. *Colorado Mortgage Investment Co.*, 1.

2. In order to give a standing in a court of equity to a small minority of stockholders contesting as *ultra vires* an act of the directors against which a large majority makes no objection, it must appear that they have exhausted all the means within their reach to obtain redress of their grievances within the corporation itself, and that they were stockholders at the time of the transactions complained of, or that the shares have devolved on them since by operation of law. *Dimpfel* v. *Ohio & Mississippi Railway*, 209.

See ASSIGNEE IN BANKRUPTCY;
ESTOPPEL, 1;
JURISDICTION, A, 3.

COUNTY.

1. At common law a county may be required or have authority to maintain a bridge or causeway across its boundary line and extending into the territory of an adjoining county. *Washer* v. *Bullitt County*, 558.
2. A statute of Kentucky which enacts that "County Courts have jurisdiction to . . . erect and keep in repair necessary . . . bridges and other structures and superintend the same, . . . provide for the good condition of the public highways of the county; and to execute all of its orders consistent with law and within its jurisdiction" confers upon a County Court authority to erect a bridge across a boundary stream and construct approaches to it in the adjoining county. *Id.*
3. The power conferred upon County Courts of adjoining counties by statute, to construct bridges across boundary streams at joint expense is not exclusive, and does not take away the common-law right in each of the counties to erect such bridges at its sole cost. *Id.*

COURT OF CLAIMS.

If, in a suit in the Court of Claims for breach of contract by the United States by preventing the petitioner from performing his contract, the petition prays judgment for damages arising from the loss of profits, and also for outlay and expenses, the petitioner may recover for such

part of the outlay and expenses as he may prove, although he may fail to establish that there would have been any profits. *United States* v. *Behan*, 338.

See JURISDICTION, A, 8.

CRIMINAL LAW.

1. The trial, in Utah, by triers, appointed by the court, of challenges of proposed jurors, in felony cases, must be had in the presence as well of the court as of the accused; and such presence of the accused cannot be dispensed with. *Hopt* v. *Utah*, 574.
2. Where, under the statute, it is for the jury to say whether the facts make a case of murder in the first degree or murder in the second degree, it is error for the court to say, in its charge, that the offence, by whomsoever committed, was that of murder in the first degree. *Id.*

See CONSTITUTIONAL LAW, A, 4, 5, 6; JURISDICTION, A, 16; EVIDENCE, 6, 7; SUBROGATION.

CUSTOM.

A custom among brokers in the settlement of differences which works a substantial and material change in the principal's rights or obligations is not binding upon the principal without his assent; and that assent can be implied only from knowledge of the custom which it is claimed authorizes it. *Irwin* v. *Williar*, 499.

CUSTOMS DUTIES.

1. The valuation of merchandise made by customs officers, under the statutes, for the purpose of levying duties thereon, is, in the absence of fraud on the part of the officers, conclusive on the importer. *Hilton* v. *Merritt*, 97.
2. §§ 2931, 3011, Rev. Stat., which give the right of appeal to the Secretary of the Treasury, when duties are alleged to have been illegally or erroneously exacted, and the right of trial by jury in case of adverse decision by the Secretary of the Treasury, do not relate to alleged errors in the appraisement of goods, but to the rate and amount of duties imposed upon them after appraisement. *Id.*

DAMAGES.

When one party enters upon the performance of a contract, and incurs expense therein, and being willing to perform, is, without fault of his own, prevented by the other party from performing, his loss will consist of two distinct items of damage: 1st, his outlay and expenses, less the value of materials on hand; 2d, the profits he might have

realized by performance ; which profits are related to the outlays and include them and something more. The first item he may recover in all cases, unless the other party can show the contrary; and the failure to prove profits will not prevent him from recovering it. The second he may recover when the profits are the direct fruit of the contract, and not too remote or speculative. *United States* v. *Behan*, 338.

See BILL OF EXCHANGE ; CONTRACT, 5, 6 ; COURT OF CLAIMS ; JUDGMENT, 1, 2.

DEED.

1. A deed of real estate in blank in which the name of the grantee is not inserted, by the party authorized to fill it, before the deed is delivered, passes no interest. *Allen* v. *Withrow*, 119.
2. In a sale under the Confiscation Act of July 17th, 1862, 12 Stat. 589, the purchaser is presumed to know that if the offender had no estate in the premises at the time of seizure, nothing passed to the United States by decree or to him by purchase, and general language of description in his deed will not operate as a warranty or affect this presumption ; and this rule prevails as to the United States, although a different rule may prevail in the State where the property is situated as to judicial sales under State laws. *Waples* v. *United States*, 630.

DISTILLERY BOND.

See INTERNAL REVENUE, 2.

DISTRICT OF COLUMBIA.

See JUDGMENT LIEN.

DIVISION OF OPINION.

See JURISDICTION, A, 11.

DIVORCE.

A decree of divorce from the bond of matrimony, obtained by a husband in a Territorial Court, upon notice to his absent wife by publication, insufficient to support the jurisdiction to grant the divorce under the statutes of the Territory, as repeatedly and uniformly construed by the highest court of the State after its admission into the Union, is no bar to an action by the wife, after the husband's death, in the Circuit Court of the United States, to recover such an estate in his land as the local statutes give to a widow. *Cheely* v. *Clayton*, 701.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, A, 4, 5.

EJECTMENT.

See EQUITY, 8.

EQUITY.

1. A statute of Nebraska provided that an action might be brought and prosecuted to final decree, judgment, or order, by any person or persons, whether in actual possession or not, claiming the title to real estate, against any person or persons who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and quieting the title to such real estate: *Held*, That it dispensed with the general rule of courts of equity, that in order to maintain a bill to quiet title, it is necessary that the party should be in possession, and in most cases that his title should have been established by law, or founded on undisputed evidence, or long-continued possession. *Clark* v. *Smith*, 13 Pet. 195, with reference to a Kentucky statute in some respects similar, approved and followed. *Holland* v. *Challen*, 15.
2. Jurisdiction over proceedings to quiet title and prevent litigation is inherent in courts of equity; and although the courts have imposed limitations upon its exercise, it is always competent for the legislative power to remove those restrictions. *Id.*
3. Under the Nebraska statute cited above, a bill to quiet title which, on its face, presented a good title in the complainant, gave him the right to call upon the defendant to produce and disclose whatever estate he had in the premises in question to the end that its validity might be determined, and, if adjudged invalid, that the title of the plaintiff might be quieted. *Id.*
4. In order to obtain equitable relief against a judgment alleged to have been fraudulently obtained it must be averred and shown that there is a valid defence on the merits. *White* v. *Crow*, 183.
5. The powers both of courts of equity and courts of law over their own process to prevent abuse, oppression, and injustice are inherent and equally extensive and efficient; as is also their power to protect their own jurisdiction and officers in the possession of property that is in the custody of the law. *Krippendorf* v. *Hyde*, 276.
6. A bill of interpleader will not lie if the complainant sets up an interest in the subject-matter of the suit, and the relief sought relates to that interest. *Killian* v. *Ebbinghaus*, 568.
7. A bill in the nature of a bill of interpleader cannot be maintained unless the relief sought is equitable relief. *Id.*
8. A bill in equity will not lie if it is in substance and effect an ejectment

bill, and if the relief it seeks can be obtained at law by an action in ejectment. *Id.*

See CONTRACT, 4 ; CORPORATION, 2 ; GUARDIAN AND WARD, 2 ; JURISDICTION, B, 7, 8.

EQUITABLE ASSETS.

See JUDGMENT-LIEN.

ERROR.

When the record does not contain all the evidence in a case, the appellate court is not warranted in assuming that the refusal by the court at *nisi prius* to permit a question to be put to a witness worked no injury to the party questioning. The farthest that any court has gone has been to hold that when it can be seen affirmatively that the refusal worked no injury to party appealing, it will be disregarded. *Gilmer* v. *Higley*, 47.

See JURISDICTION, A, 16, 18 ; B, 6 ; LIMITATIONS, STATUTE OF, 5.

ESTOPPEL.

1. That which directors of a bank ought, by proper diligence, to have known as to the general course of the bank's business, they may be presumed to have known in any contest between the corporation and those who are justified by the circumstances in dealing with it upon the basis of that course of business. *Martin* v. *Webb*, 7.
2. A municipal corporation which issues a bond reciting on its face that it is issued in part payment of a subscription to the capital stock of a railroad made by the corporation in pursuance of the several acts of the general assembly of the State and of a vote of the qualified electors of the corporation taken in pursuance thereof, is estopped thereby from denying that an election was held, or that it was called and conducted in the mode required by law ; but it is not estopped from showing that the corporation was without legislative authority to issue the bonds. *Northern Bank of Toledo* v. *Porter Township*, 608.
3. The facts which a municipal corporation, issuing bonds in aid of a railroad, is not permitted, against a *bona fide* holder to question, in face of a recital in the bonds of their existence, are those connected with or growing out of the discharge of the ordinary duties of such of its officers as were invested with authority to execute them, and which the statute conferring the power made it their duty to ascertain and

determine before the bonds were issued. The cases relating to this point examined and reviewed. *Id.*

See CONTRACT, 5 ; MORTGAGE, 1, 2 ;
EVIDENCE, 4 ; MUNICIPAL BONDS, 4, 5.

EVIDENCE.

1. In a suit by a passenger on a stage coach against the proprietors as common carriers, to recover damages for personal injuries sustained by the upsetting of the coach, the plaintiff as witness stated that he was received by the driver as passenger from Boulder to Helena, without charge, and that one of the defendants had said since the accident that the driver had orders to carry him without fare to Helena. On cross-examination he was asked whether his fare was not demanded before the accident at Jefferson—a station between Boulder and Helena—whether he had not refused to pay it, or to leave the coach when required to do so. These cross-questions were objected to, and the objections sustained below. *Held*, That they related to the same transaction inquired of in chief, and should have been allowed. *Gilmer* v. *Higley*, 47.

2. A decree of a State court for the removal of a cloud upon the title of land within the State, rendered against a citizen of another State, who has been cited by publication only, as directed by the local statutes, is no bar to an action by him in the Circuit Court of the United States to recover the land against the plaintiff in the former suit. *Hart* v. *Sansom*, 151.

3. In a suit to recover land, and to remove a cloud upon the title thereof, brought in a court of the State in which the land is, against W. H. and others, the petition alleged that W ejected the plaintiff and unlawfully withheld possession from him ; That H set up some pretended claim or title to the land ; that the other defendants held recorded deeds thereof, which were fraudulent and void ; and that the pretended claims and deeds cast a cloud upon the plaintiff's title. Due service was made upon the other defendants ; and a citation to H, who was a citizen of another State, was published as directed by the local statutes. All the defendants were defaulted ; and upon a writ of inquiry the jury found that H claimed the land, but had no title, of record or otherwise, and returned a verdict for the plaintiff. Judgment was rendered that the plaintiff recover the land of the defendant, and that the deeds mentioned in the petition be cancelled and annulled, and the cloud thereby removed and for costs, and that execution issue for the costs. *Held*, That this judgment was no bar to an action by H in the Circuit Court of the United States to recover the land against the plaintiff in the former suit. *Id.*

4. B and E were tenants, under a lease from W, of an undivided interest in a mine. After the expiration of the lease they remained in possession

of the property recognizing the superior title to the whole mine of H, owner of another undivided interest therein, and denying the title of W. W then filed in the State Court of Tennessee a bill in equity, charging that B, E, and H had confederated together to defraud W of the property, and of the rents and profits, and praying for affirmance of his title and other affirmative relief. The defendants appealed and answered, and a decree was entered recognizing and enforcing the rights of W. Pending the litigation a corporation, of which H was president, organized under the laws of another State, was put in possession of the whole mine and property. In a suit in equity by W against B, E, H, and the corporation, to obtain partition, and an accounting, and such rents in arrear as might be found due : *Held* : That the decree in the former suit was conclusive of the rights of W, as against B, E, H, and the corporation. *Whiteside* v. *Haselton*, 296.

5. The rule that hearsay evidence is incompetent to establish any specific fact which in its nature is susceptible of being proved by witnesses who speak from their own knowledge, reaffirmed. *Hopt* v. *Utah*, 574.

6. A confession freely and voluntarily made is evidence of the most satisfactory character. But the presumption upon which weight is given to such evidence, namely that an innocent man will not imperil his safety or prejudice his interests by an untrue statement, ceases when the confession appears to have been made, either in consequence of inducements of a temporal nature held out by one in authority, touching the charge preferred, or because of a threat or promise made by, or in the presence of, such person, in reference to such charge. *Id.*

7. A confession made to an officer will not be excluded from the jury merely because it appears that the accused was previously in the custody of another officer ; and the court will not, as a condition precedent to the admission of such evidence, require the prosecution to call the latter, unless the circumstances render it probable that the accused held a conversation with the first officer upon the subject of a confession, or justify the belief of collusion between the officers. *Id.*

8. When the records of a County Court show that orders for subscriptions to stock were made at adjourned and special terms at which all the judges were present, and that the last order was made at a regular term, it will be presumed, in the absence of anything to the contrary, that the adjourned and special terms were regularly called and held. *Dallas County* v. *McKenzie*, 686.

See ESTOPPEL ;
ERROR.

EXCEPTIONS.

See JURISDICTION, A, 1.

EXECUTION.

1. All the proceedings under a levy of execution have relation back to the time of the seizure of the property. *Freeman* v. *Dawson*, 264.
2. A levy of execution, for a debt of the lessee, upon the leasehold estate, and upon a cotton press, with its engine, boilers, and machinery, erected by him, under which the officer has seized the property, and given due notice of a sale thereof, is not defeated by an order from the clerk, under seal of the court, pursuant to a direction of the judge in vacation, without notice to the judgment creditor, requesting the officer to return the execution unexecuted; nor by the officer's, upon receiving such order, ceasing to keep actual possession of the property, and returning the execution, with his doings indorsed thereon, to the court, for further directions. *Id.*

See SHERIFF'S SALE.

EXECUTIVE POWER AND DISCRETION.

See CLAIMS CONVENTION WITH MEXICO, 1, 4, 5.

EXECUTIVE PROCLAMATION.

See REBELLION.

EXECUTOR AND ADMINISTRATOR.

A decree of a Probate Court, in Alabama, in 1864, finding that a distributee's share was so much, expressed in money, and had been invested in Confederate bonds, and ordering the executor to pay the amount in such bonds, was not a decree on which the executor could be sued to pay in anything but the bonds, or one on which a surety on the bond of the executor could be sued to pay in lawful money of the United States; and a failure of the executor to comply with such decree did not fix the liability of the surety. *Alexander* v. *Bryan*, 414.

FORECLOSURE.

See MORTGAGE.

FRAUD.

See INSURANCE.

FRAUDS, STATUTE OF.

See TRUST, 2.

FUTURES.

See PARTNERSHIP, 4;
WAGERS.

GUARDIAN AND WARD.

1. A citizen of Louisiana in his life time had a valid claim against the United States for the recovery of which a remedy was given in the Southern Claims Commission. After his decease his widow was duly appointed tutrix to his minor children and heirs. *Held*, That it was her duty to take legal steps to recover the money from the United States, and that whether the action was brought in her own name, or in hers jointly with the children, she was equally bound to prosecute it with diligence. *Bemiss* v. *Bemiss*, 42.
2. A being executor of the estate of C and testamentary guardian of D, minor son of deceased, purchased on behalf of D, but with his own money, a parcel of real estate of deceased which had been devised to another heir. While D was still a minor a bill was filed in the State court of Georgia, where the property was situated and the parties resided, in the name of D, suing by his mother as next friend, praying to have the purchase set aside as to D, and the estate decreed to be the individual property of A, and a final decree to that effect was made and A went into possession. Subsequently D, by his next friend, filed a bill setting up title to the property, and praying to have the cloud upon his title removed, and for an accounting: *Held*, That the State court of Georgia had jurisdiction to make the decree which it made; that it was not voidable as to D; and that, notwithstanding the relations between the parties, the judgment was conclusive in the absence of an impeachment for unfairness and fraud. *Corker* v. *Jones*, 317.

HABEAS CORPUS.

See JURISDICTION, A, 11, 18.

HOMESTEAD.

See PLEADING, 1.

HUSBAND AND WIFE.

See PLEADING, 1.

ILLINOIS.

See CONSTITUTIONAL LAW, B, 1, 2.

IMPLIED WARRANTY.

See CONTRACT, 1.

INDICTMENT.

An indictment which charges in the first count that the defendants conspired to intimidate A B, a citizen of African descent, in the exercise of his right to vote for a member of Congress of the United States, and that in the execution of that conspiracy they beat, bruised, wounded, and otherwise maltreated him; and in the second count that they did this on account of his race, color, and previous condition of servitude, by going in disguise and assaulting him on the public highway and on his own premises, contains a sufficient description of an offence embraced within the provisions of §§ 5508, 5530 Rev. Stat. *Ex parte Yarbrough*, 651.

See CONSTITUTIONAL LAW, A, 4, 5.

INFORMATION.

See CONSTITUTIONAL LAW, A, 5.

INJUNCTION.

See LIMITED LIABILITY.

INSURANCE.

A policy of insurance against loss by fire contained a clause to the effect that in case of loss the assured should submit to an examination under oath by the agent of the insurer, and that fraud or false swearing should forfeit the policy. The assured, after loss, submitted to such examination, and made false answers under oath respecting the purchase and payment of the goods assured. Although it appeared that the statements were not made for the purpose of deceiving the insurer, but for the purpose of covering up some false statements previously made to other parties: *Held*, That the motive which prompted them was immaterial, since the questions related to the ownership and value of the goods, and were material, and that the attempted fraud was a breach of the condition of the policy and a bar to recovery. *Claflin* v. *Commonwealth Insurance Company*, 81.

INTEREST.

See JUDGMENT, 1, 2.

INTERNAL IMPROVEMENTS.

See NEBRASKA.

INTERNAL REVENUE.

1. Under the act of July 1st, 1862, 12 Stat. 492–3, and the acts in addition to it, a land-grant railroad plaintiff in error received from the United States subsidy bonds, which were made by statute a lien upon its road: *Held*, That, in a suit to collect an internal revenue tax on the undivided net earnings of the road, carried to a fund or to construction account, the railroad company was not entitled to have the interest upon these bonds deducted from its net earnings before settling the amount to be subject to the tax; but that the amount of that interest, if earned and carried to a fund or charged to construction, was taxable. *Sioux City & Pacific Railroad* v. *United States*, 205.
2. The Secretary of the Treasury, under authority derived from the act of May 27th, 1872, 17 Stat. 162, abated taxes on spirit in a bonded warehouse destroyed by fire. The commissioner of internal revenue notified the principal and sureties of the distillery warehouse bond of this decision: *Held*, That this was a virtual cancellation of the bond. *United States* v. *Alexander*, 325.

See LIMITATIONS, STATUTES OF, 1, 2.

INTERNATIONAL COMITY.

See CLAIMS CONVENTION WITH MEXICO, 3.

INTERPLEADER.

See EQUITY, 6, 7.

IOWA.

See TRUST, 2.

JUDGMENT.

1. A plaintiff obtained a verdict against the United States in the court below, subject to the opinion of the court on a case to be made, and then rested nearly thirty years before entry of judgment: *Held*, That under these circumstances interest should run only from the entry of the judgment. *Redfield* v. *Ystalyfera Iron Co.*, 174.
2. Interest is recoverable of right when it is reserved in the contract; but when it is given as damages, it is within the discretion of the court to allow or disallow it, and it will not be allowed if the plaintiff has

been guilty of laches in unreasonably delaying the prosecution of his claim. *Id.*

3. When, in Colorado, the agent of an absent defendant, upon whom process had been duly served, appeared and consented to the entry of a judgment against the defendant before the time for filing answer had expired, and no fraud was shown: *Held*, On an attempt to attack the judgment collaterally by reason of entry before the time for answering had expired, that the court would make all necessary presumptions to sustain it. *White* v. *Crow*, 183.
4. A judgment duly recovered is not affected, nor the right to take out execution upon it impaired, by an application made to the court to set it aside, and "continued until the next term, without prejudice to either party." *Freeman* v. *Dawson*, 264.

See EVIDENCE, 2, 3, 4;
GUARDIAN AND WARD, 2;
JURISDICTION, A, 8.

JUDGMENT-LIEN.

1. It was decided in *Morsell* v. *First National Bank*, 91 U. S. 357, that in the District of Columbia, following the laws of Maryland, judgments at law were not liens upon the interest of judgment-debtors who had previously conveyed lands to a trustee in trust for the payment of a debt secured thereby. It is now decided that the creditor of such judgment debtor, by filing his bill in equity to take an account of the debt secured by the trust deed, and to have the premises sold subject thereto and the proceeds of the sale applied to the satisfaction of the judgment, may obtain a priority of lien upon the equitable interest of the judgment debtor in the property, subject to the payment of the debt. *Freedman's Saving and Trust Co.* v. *Earle*, 710.
2. The doctrine of equitable assets considered and the English and American cases reviewed. *Id.*

See MORTGAGE, 1, 2.

JUDICIAL SALE.

See DEED, 2.

JURISDICTION.

A, JURISDICTION OF THE SUPREME COURT.

1. When it appears that an exception to the rejection of evidence was taken after the trial was over, and at the time when the bill of exceptions was tendered for signature, it does not constitute a proper subject for assignment of error. *United States* v. *Carey*, 51.

2. When a judgment below is for an amount sufficient to give jurisdiction above, but it appears affirmatively on the record that after deducting from it an amount not in contest below, there remains less than the jurisdictional sum, this court has no jurisdiction. *Jenness* v. *Citizens' National Bank*, 52.

3. Where the federal question insisted on in this court, respecting a contract between a State and a corporation in the grant of franchises by the former to the latter, was not raised at the trial in the State court, or where it does not appear unmistakably that the State court either knew or ought to have known prior to its judgment that the judgment, when rendered, would necessarily involve that question, this court cannot take jurisdiction of the case for the purpose of reviewing the judgment of the State court. It is not sufficient that the question was raised after judgment, on a motion for a rehearing. *Brown* v. *Colorado*, 105 U. S. 95, cited and approved. *Susquehanna Boom Company* v. *West Branch Boom Company*, 57.

4. It appearing on examination of the record after argument that the jurisdiction of the court over the cause is in doubt, the court of its own motion took notice of the question and ordered it argued. *Claflin* v. *Commonwealth Ins. Co.*, 81.

5. When the record discloses two defences to an action brought in a State court, one presenting a federal question, and one presenting no federal question, either of which if sustained, was a complete defence to the suit, and that the State court gave judgment in favor of the defendant on both, and the cause is brought here by writ of error, this court will affirm the judgment below without considering the federal question. *Jenkins* v. *Loewenthal*, 222.

6. When the value of the matter in dispute in this court is less than five thousand dollars, the court is without jurisdiction of the cause, although an amount more than five thousand dollars may have been involved below. *Hilton* v. *Dickinson*, 108 U. S. 165, approved and followed. *Dows* v. *Johnson*, 223.

7. When the plaintiff below in open court, by permission of court, remits all of the verdict in excess of five thousand dollars, and judgment is entered for that sum and costs, the writ of error will be dismissed for want of jurisdiction. *First National Bank of Omaha* v. *Reddick*, 224.

8. An act which directs the Court of Claims to reopen and readjudicate a claim, and, in case it finds a further amount due, that the same shall be a part of the original judgment, confers no right of appeal from the final action of the court under it; and if the time for the right of appeal from the original judgment has expired before appeal from such final action is claimed and taken, the appeal will be dismissed. *United States* v. *Grant*, 225.

9. From a decree of the Circuit Court, awarding a fund of $6,000 to one claiming under a distinct title, the grantee in a deed of trust to secure debts to various other persons, exceeding that amount in all, but of

less than $5,000 each, may appeal to this court. *Freeman* v. *Dawson*, 264.

10. The relief sought for in equity was partition of real estate in defendant's possession with denial of plaintiff's title, accounting, and recovery of rents in arrear. The record did not show affirmatively that the amount in controversy exceeded $5,000. On a motion to dismiss the appeal for want of jurisdiction, the court received affidavits as to the value of the property, and finding it established at over $5,000, retained jurisdiction of the cause. *Whiteside* v. *Haselton*, 296.
11. This court cannot take jurisdiction of a certificate of division in opinion in proceedings under writ of *habeas corpus*, until entry of final judgment, *Ex parte Tom Tong*, 108 U. S.—approved and followed. *Ex parte Clodomiro Cota*, 385.
12. When the pleadings plainly show that a sum below the jurisdictional amount is in controversy, the court cannot accept a stipulation of the parties that judgment may be entered for a sum in excess of that amount. *Webster* v. *Buffalo Insurance Company*, 386.
13. Distinct judgments in favor of or against distinct parties, though in the same record, cannot be joined to give this court jurisdiction. *Tupper* v. *Wise*, 398.
14. When an amended complaint demands a sum different from that demanded in the original, the amended and not the original complaint is to be looked to in determining the question of jurisdiction. *Washer* v. *Bullitt County*, 558.
15. When a defendant in a suit pending in a State court pleads a provision of the State constitution as a defence, a judgment there overruling the plea presents no federal question to give jurisdiction to this court. *Mitchell* v. *Clark*, 633.
16. This court has no general authority to review on error or appeal the judgments of Circuit Courts in cases within their criminal jurisdiction. *Ex parte Yarbrough*, 651.
17. When a prisoner is held under sentence of a court of the United States in a matter wholly beyond the jurisdiction of that court, it is within the authority of the Supreme Court, when the matter is properly brought to its attention, to inquire into it, and to discharge the prisoner if it be found that the matter was not within the jurisdiction of the court below. *Id.*
18. Errors of law committed by a Circuit Court which passed sentence upon a prisoner, cannot be inquired into in a proceeding on an application for *habeas corpus* to test the jurisdiction of the court which passed sentence. *Id.*
19. This court has no jurisdiction to review a judgment of a Circuit Court rendered in a proceeding upon an appeal from an order of a District Court rejecting the claim of a supposed creditor against the estate of a bankrupt. *Wiswall* v. *Campbell*, 93 U. S. 347, affirmed. *Leggett* v. *Allen*, 741.

B. Jurisdiction of Circuit Courts of the United States.

1. While it is true that alterations in the jurisdiction of State Courts cannot affect the jurisdiction of the Circuit Courts of the United States, so long as the equitable rights themselves remain; yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the Courts of the State. *Holland* v. *Challen*, 15.
2. Under the act of March 3d, 1875, ch. 137, 18 Stat. 470, a cause cannot be removed from a State court to a Circuit Court of the United States after a trial has been had in a State court, and judgment rendered and set aside, and new trial ordered, and the term passed at which this was done. *Holland* v. *Chambers*, 59.
3. Under the third subdivision of § 639 Rev. Stat., a suit cannot be removed from a State court, unless all parties on one side of the controversy are different citizens from those on the other. *Sewing Machine Companies*, 18 Wall. 553, and *Vannevar* v. *Bryant*, 21 Wall. 41, adhered to. *American Bible Society* v. *Price*, 61.
4. Where a daughter of a testator commenced suit in a State court to set aside the will, and the executors were the trustees of a small trust fund under the will, the use of which was to be enjoyed by the daughter during her life, and which was to go to her children on her decease: *Held*, That the executors were necessary parties to the suit, and if they were citizens of the same State as the daughter, the cause could not be removed into the Circuit Court of the United States, under the third subdivision of § 639 Rev. Stat. even though the legatees and devisees of the great mass of the estate were citizens of other States. *Id.*
5. § 1, ch. 137, act of March 3d, 1875, 18 Stat. 470, confers upon Circuit Courts of the United States original jurisdiction in controversies between citizens of different States, or citizens of a State and foreign States, citizens or subjects, where the matter in dispute exceeds, exclusive of costs, the sum of five hundred dollars, and further provides as follows: "Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes, negotiable by the law merchant, and bills of exchange." § 2 of that act authorizes the removal of similar causes as to parties and amounts from State courts to Circuit Courts of the United States, but without imposing the restrictions as to assignees and assignments. *Held*, That the restriction upon the commencement of suits contained in § 1 does not apply to the removal of suits under § 2. *Claflin* v. *Commonwealth Insurance Company*, 81.
6. A verdict was taken, subject to the opinion of the court upon a case to be made, with liberty to either party to turn the case into a bill of exceptions. A case was made setting forth the entire evidence at the

trial, but it was not made an agreed statement of facts, nor were exceptions taken, nor was any finding of facts made: *Held*, That there was no basis for the assignment of errors. *Redfield* v. *Ystalyfera Iron Company*, 174.

7. A bill filed on the equity side of the court to restrain or regulate judgments or suits at law in the same court, and thereby prevent injustice or an inequitable advantage under mesne or final process, not being an original suit, but ancillary and dependent, supplementary merely to an original suit out of which it arose, can be maintained without reference to the citizenship or residence of the parties. *Freeman* v. *Howe*, 24 How. 450, followed, and the language of NELSON, J., in the opinion of the court adopted. *Krippendorf* v. *Hyde*, 276.
8. When property in possession of a third person claiming ownership is attached by a marshal on mesne process issuing out of a Circuit Court of the United States as the property of a defendant, citizen of the same State as the person claiming it, such person has no adequate remedy against the marshal in the State court, and may seek redress in the Circuit Court having custody of the property by ancillary proceedings; as, for instance, if the original proceeding is in equity, by a petition *pro interesse suo*, or by ancillary bill, or by summary motion, according to circumstances; or if it is at common law, by a summary motion or by a proceeding in the nature of an interpleader; or if proceedings authorized by statutes of the State in which the cause is pending afford an adequate remedy, by adopting them as part of the practice of the court. *Id.*

KANSAS.

See MUNICIPAL BONDS, 3, 4, 5.

LACHES.

See JUDGMENT, 1.

LAND GRANT.

1. It has been the invariable policy of Congress to measure the amount of public lands granted to a land-grant railroad by the length of the road as actually constructed, and not by its length as originally located; and there is nothing in the statutes of Congress or of the State of Iowa applicable to the grant of public lands in favor of the plaintiffs in error which indicates a different purpose, or which warrants the claim that the number of sections which they are entitled to receive is to be estimated by the standard of the original location of the road. *Cedar Rapids & Missouri River Railroad* v. *Herring*, 27.
2. When Congress grants to a State, for a railroad company, every alternate section of land designated by odd numbers within a given distance

from the line of the road, and directs the Secretary of the Interior, when a map shall be filed in that department, showing the location of the road, to reserve the sections, and further provides that in case it is found that the United States had disposed of any of these odd sections, or rights attached to them by pre-emption or otherwise, the grantee might select other alternate odd sections within another and greater distance from that line, the filing of the map cuts off the right of entry of the odd sections within the first named distance; but it confers no right to specify tracts within the secondary or indemnity tract, until the grantee's right of selection has been exercised; and that right cannot be exercised until the entire road has been completed. *Id.*

3. The act of June 2d, 1864, § 4, 13 Stat. 96, 97, construed. *Id.*

LEGAL TENDER.

Under the act of May 31st, 1878, ch. 146, which enacts that when any United States legal tender notes may be redeemed or received into the Treasury, and shall belong to the United States, they shall be reissued and paid out again, and kept in circulation; notes so issued are a legal tender. *Legal Tender Case*, 421.

See CONSTITUTIONAL LAW, A, 3.

LEGISLATIVE AUTHORITY.

See MUNICIPAL CORPORATIONS, 2.

LIEN.

See JUDGMENT LIEN;
MORTGAGE, 1, 2.

LIMITATIONS, STATUTE OF.

1. An action to recover back a tax illegally exacted, when the commissioner of internal revenue, on appeal, delays his decision more than six months from date of the appeal, may be brought within twelve months from that date, whether a decision shall then have been made or not; or the claimant may wait for the decision, and bring his action at any time within six months thereafter. *James* v. *Hicks*, 272.
2. An appeal to the commissioner of internal revenue against a tax alleged to have been illegally exacted being rejected by him for informality in the preparation of the papers, a second appeal was taken within the proper period and rejected: *Held*, That in fixing a date when a suit to recover back the tax alleged to have been illegally exacted would be barred by the statute of limitations, the second appeal was the one contemplated by the statute. *Id.*

3. In Alabama, by statute, an action against the surety of an executor, for any misfeasance or malfeasance of his principal, must be brought within six years after the cause of action has accrued, and not afterwards, the time to be computed from the act done or omitted by the principal, which fixes the liability of the surety; and, until there is a judicial ascertainment of the default of the principal, the liability of the surety is not fixed. *Alexander* v. *Boyan*, 414.
4. Such judicial ascertainment must be something more than auditing of accounts, or an ascertainment or judgment that a distributee's share is so much, or that the distributee is entitled to so much. There must be a decree ordering payment and on which process to collect can issue against the principal. *Id.*
5. The construction usually given to statutes of limitations, that a disability mentioned in the act must exist at the time the action accrues in order to prevent the statute from running, and that after it has once commenced to run no subsequent disability will interrupt it, is to be given to Rev. Stat. § 1008, prescribing the time within which writs of error shall be brought or appeals taken to review in this court judgments, decrees or orders of a Circuit or District Court in any civil action at law or in equity. *McDonald* v. *Hovey*, 619.
6. The English and American cases construing statutes of limitations as affected by disability provisos reviewed. *Id.*
7. A suit by a lessor to recover of a lessee rents which, during the rebellion, by order of the commanding general in the department where the property was situated, had been paid to the military authorities and appropriated to the use of the United States, is an action subject to the limitations prescribed by the act of March 3d, 1863, 12 Stat. 755, and May 11th, 1866, 14 Stat. 46, for the commencement of suits for seizures made during the rebellion by virtue or under color of authority derived from or exercised under the President or under any act of Congress. *Harrison* v. *Myer*, 92 U. S. 111, cited and approved. *Mitchell* v. *Clark*, 633.
8. In a plea setting up the defence of the limitations prescribed by the statutes of March 3d, 1863, 12 Stat. 755, and May 11th, 1866, 14 Stat. 46, it is not necessary to set forth the language of the order of the commanding general. This case distinguished from *Bean* v. *Beckwith*, 18 Wall. 510. *Id.*

See CONSTITUTIONAL LAW, A, 7;
STATUTES, A, 5.

LIMITED LIABILITY.

This court will refuse an application for an injunction to stay proceedings begun in a State court before the filing of a libel to obtain the benefit of the limited liability act, 9 Stat. 635, when it appears that both courts below decided against the petitioner's right to the benefit of

the act, and that no cause for granting the petition is shown except the expense consequent upon trials in State courts pending the appeal. *The Mamie*, 742.

LOUISIANA.

See GUARDIAN AND WARD.

MEXICO.

See CLAIMS CONVENTION WITH MEXICO.

MILEAGE.

The act of 1835, 4 Stat. 755, which provided that ten cents a mile should be allowed to naval officers for travelling expenses while travelling under orders, made no distinction between travelling in and travelling out of the country. It was not repealed by the act of April 17th, 1866, 14 Stat. 38, nor by the act of July 15th, 1870, 16 Stat. 332, and was in force during the whole time that the travel was performed which is sued for, and its plain provisions are not affected by a contrary construction long put upon it by the Naval Department. *United States* v. *Temple*, 105 U. S. 97, approved and followed. *United States* v. *Graham*, 219.

MILITARY LAND WARRANT.

See PUBLIC LANDS.

MISSOURI.

See MUNICIPAL BONDS, 6.

MORTGAGE.

1. A purchaser of a railroad at a sale under decree of foreclosure of a first mortgage and of sale of the mortgaged property, which recites that the sale shall be made subject to liens established or to be established (on references before had or then pending, to a master, with right to bondholders to appear and oppose) as prior and superior liens to the lien of the bonds issued under the mortgage, cannot dispute the validity of the liens thus established, even on the ground of fraud alleged to have been discovered after confirmation of the master's report fixing the amount of the liens. *Swann* v. *Wright*, 590.
2. Whether holders of the mortgage bonds may not contest such liens, and, if successful, be substituted to so much thereof as was estab-

lished for the benefit of the fraudulent claims is not decided. *Swann* v. *Wright*, 590. *Id.*

See RECEIVER.

MUNICIPAL BONDS.

1. When a municipal corporation subscribes to the capital stock of a railroad company, and issues its bonds in payment therefor, the bonds must comply with the requisitions which the law makes necessary in respect of registration and certificate before they are issued ; and innocent holders for value are charged with the duty of knowing these laws, and of inquiring whether they have been complied with. *Hoff* v. *Jasper County*, 53.
2. The rulings in *Anthony* v. *County of Jasper*, 101 U. S. 693, involving the same issue of bonds, adhered to. The additional facts shown in this case present no legal aspects to distinguish it from that case. *Id.*
3. A statute of the state of Kansas directed county commissioners of a county (when the electors of a township in the county should have determined in the manner provided in the act, to issue bonds in payment of a subscription to railway stock), to order the county clerk to make the subscription, and to cause the bonds to be issued in the name of the township, signed by the chairman of the board, and attested by the clerk under the seal of the county: *Held*, That the signature of the clerk was essential to the valid execution of the bonds, even though he had no discretion to withhold it. *Bissell* v. *Spring Valley Township*, 162.
4. When bonds have been issued by a township in payment of a subscription to railway stock under a statute which makes the signature of a particular officer essential without the signature of that officer, they are not the bonds of the township ; and the municipality is not estopped from disputing their validity by reason of recitals in the bond, setting forth the provisions of the statute and a compliance with them. *Id.*
5. A statute of Kansas authorized the auditor of a State to receive from the holder of bonds issued by a township in payment of a subscription to railway stock his bonds, and to register the same, and directed the auditor to notify the officers issuing the bonds of the registration of the same ; and further, directed such officers to enter the fact in a book kept by them for the purpose ; and then provided that " the bonds shall thereafter be considered registered bonds : " *Held*, That until the notice to the township officers, and their entry of the registration in their books, the bonds were not to be regarded as registered bonds within the intent of the statute, and as entitled to the benefits of the act ; and that no estoppel against disputing the validity of the bonds by reason of a certificate of registration arose. *Lewis* v. *Com-*

missioners of Barbour County, 105 U. S. 739, distinguished from this case. *Id.*

6. The Louisiana and Missouri Railroad, through Howard County, Missouri, was constructed under authority derived from the original charter granted in 1859, and the power conferred by that act upon the county to subscribe to the capital stock of the railroad company without a vote of the people was not affected by the amendment to the Constitution in 1865. *Callaway County* v. *Foster*, 93 U. S. 567, affirmed and followed. *Howard County* v. *Paddock*, 384.

See CONSTITUTIONAL LAW, B, 1, 2;
ESTOPPEL, 2, 3;
EVIDENCE, 8.

MUNICIPAL CORPORATIONS.

1. The charter of East St. Louis limited the right of taxation for all purposes to one per centum per annum on the assessed value of all taxable property in the city, and required the city council to levy a tax of three mills on the dollar on each assessment for general purposes, and apply it to the interest and sinking fund on its bonded debt: *Held*, That the use of the remaining seven-tenths was within the discretion of the municipal authorities, and was not subject to judicial order in advance of an ascertained surplus. *East St. Louis* v. *Zebley*, 321.

2. The act of the legislature of Ohio of March 21st, 1850, as amended March 25th, 1851, authorized county commissioners to submit to the people at special elections the question whether the county would subscribe to the stock of a railroad company and issue bonds in payment thereof; and if the subscription should not be authorized by the county, then that the question of subscriptions by township trustees might be submitted to the people of the respective townships: *Held*, That until refusal by the counties to subscribe, either by direct vote or by failure within a reasonable time to call an election for the purpose, the townships were without legislative authority to subscribe, or to issue township bonds in payment of subscriptions. *Northern Bank of Toledo* v. *Porter Township*, 608.

See ESTOPPEL, 2, 3.

NAVY, OFFICER OF THE.

See MILEAGE.

NEBRASKA.

1. A wagon bridge across the Platte River is a work of internal improvement

within the meaning of the statute of Nebraska of February 15th, 1869; and that statute makes it the duty of county commissioners to levy a tax on the taxable property within a precinct in whose behalf bonds have been issued under that statute to aid in constructing such a bridge, sufficient to pay the annual interest on the bonds, and without regard to any limit imposed by, or voted in accordance with chapter 9 of the Revised Statutes of 1866. *United States* v. *Dodge County*, 156.

2. *Ralls County* v. *Douglas*, 105 U. S. 728, relating to bonds in counties in Missouri issued in payment of subscriptions to railway stock, approved and followed. *Dallas County* v. *McKenzie*, 686.
3. *Marcy* v. *Township of Oswego*, 92 U. S. 637, *Humboldt Township* v. *Long*, 72 U. S. 642, and *Wilson* v. *Salamanca*, 99 U. S. 499, relating to the validity of such bonds in the hands of a bona fide holder, approved and followed. *Id.*

See EQUITY, 1;

OFFICER.

See EQUITY, 5; JURISDICTION, B, 7, 8; SALARY, 1, 2, 3; SHERIFF'S SALE.

PARTIES.

See JURISDICTION, B, 7; REMOVAL OF CAUSES.

PARTNERSHIP.

1. Real estate owned by a partnership, purchased with partnership funds, is, for the purpose of settling the debts of the partnership, and of distributing its effects, treated in equity as partnership property. *Allen* v. *Withrow*, 119.
2. One partner cannot recover his share of a debt due to the partnership in an action at law prosecuted in his own name against the debtor. *Vinal* v. *West Virginia Oil & Oil Land Company*, 215.
3. The decree of the Circuit Court was reversed on a question of fact, as to whether an agreement of a certain character was made between the copartners in a firm, on its dissolution, as to the interest which the copartners should have in the future in a portion of its assets. *Chouteau* v. *Barlow*, 238.
4. A contract of partnership for the buying of grain, both wheat and corn, and its manufacture into flour and meal, and the sale of such grain as might accumulate in excess of that required for manufacturing, and

the use, with the knowledge of all the partners in the partnership business, of cards and letter-heads describing the firm as millers and dealers in grain, do not necessarily imply as matter of law authority to deal in the partnership name in futures by means of contracts of sale or purchase for purposes of speculating upon the course of the market, and to bind the partnership thereby. *Irwin* v. *Williar*, 499.

See CONTRACT, 3.

PATENT.

1. The first four claims of reissued letters patent No. 3,815, granted to Esek Bussey and Charles A. McLeod, February 1st, 1870, for a "cooking-stove," the original patent, No. 56,686, having been granted to said Bussey, as inventor, July 24th, 1866, and reissued to him, as No. 3,649, September 28th, 1869, namely: "1. A diving-flue cooking-stove with the exit-flue so constructed as to inclose on the sides and bottom the culinary boiler or hot-water reservoir B; 2. A diving-flue cooking-stove with the exit-flue constructed across the bottom and up the rear upright side of the culinary boiler or hot-water reservoir B; 3. A diving-flue cooking-stove constructed with an exit passage, F, below the top of the oven, and an exit-flue, E E', in combination with an uncased reservoir, B, attached to the rear of the stove, and placed just above such exit passage, and so arranged that the gases of combustion in passing through such exit-flue, will impinge upon or come in direct contact with said reservoir, substantially as and for the purposes hereinbefore specified; 4. An exit-passage, F, constructed in the rear of a diving-flue cooking-stove and below the top of the oven, in combination with an uncased reservoir, B, attached to the rear of the stove, the bottom of which reservoir is also below the top of the oven, and so arranged that the gases of combustion will come in contact with, and heat such reservoir by a direct draft from the fire-box to the smoke-pipe," are limited to a structure in which the front of the reservoir has no air space in front of it, and in which the exit-flue does not expand into a chamber at the bottom of the reservoir, and in which the vertical part of the exit-flue does not pass up through the reservoir. *Bussey* v. *Excelsior Manufacturing Company*, 131.

2. Hence, those claims are not infringed by a stove in which, although there are three flues, and an exit passage below the top of the oven, and a reservoir, the bottom of which is below the top of the oven, no part of the rear-end vertical plate is removed so as to allow the gases of combustion to come into direct contact with the front of the reservoir, nor is any such plate employed as the plate *w w* of the patent, but there is a dead air-space between the rear plate of the flue and the front of the reservoir, and the exit-flue is not a narrow one, carried across the middle of the bottom of the reservoir, as in the patent, but the products of combustion, on leaving the flue space,

pass into a chamber beneath the reservoir, the area of which is co-extensive with the entire surface of the bottom of the reservoir, and the vertical passage out of such chamber is not one outside of the rear of the reservoir, but is one in and through the body of the reservoir, and removable with it. *Id.*

3. The claim of letters patent No. 142,933, granted to David H. Nation and Ezekiel C. Little, as inventors, September 16th, 1873, for an "improvement in reservoir cooking-stoves," namely, "1. The combination, with the back-plate I of the cooking-stove A, of the reservoir C, arranged on a support about midway between the top and bottom plates of the stove, and the air-chamber *b* between the stove back and reservoir front, open at the top, and communicating with the air in the room, substantially as and for the purposes set forth; 2. The combination, with the stove A and reservoir C, of the small opening *a*, the sheet-flue G under the entire bottom of the reservoir, and the small exit-passage or pipe E, all substantially as and for the purposes herein set forth," are void for want of novelty. *Id.*
4. The claims of letters patent No. 142,934, granted to said Nation and Little, September 16th, 1873, for an "improvement in reservoir cooking-stoves," namely, "1. The detachable base-pan or flue-shell D, attached to the body at a point near the centre of the back plate of the stove, by means of hooks *a a* cast on the base-pan, and pins *b b* on the stove body, substantially for the purposes herein set forth; 2. The portable reservoir F, with the flue E in the rear side, in combination with the portable base-pan or flue-shell D, substantially as and for the purposes herein set forth; 3. The combination, with a three-flue stove having damper H arranged as described, of the portable base-pan or flue-shell D and warming-closet G, all substantially as and for the purpose herein set forth," are void for want of novelty. *Id.*
5. There was no invention, in claim 1, in using, to attach the base-pan, an old mode used in attaching other projecting parts of the stove. *Id.*
6. Claims 2 and 3 are merely for aggregations of parts and not for patentable combinations. *Id.*
7. A patent was issued June 22d, 1865, to one Jennings (and subsequently assigned to appellants), for an improvement in self-acting cocks and faucets. The first claim was for a "screw follower H in combination with the valve of a self-closing faucet, substantially as set forth, and for the purpose described." This screw follower was a round stem "provided with a coarse screw thread or threads." It projected upward through the faucet, and terminated in a handle for the purpose of turning it downward to let on the water. At its lower end it rested upon a valve, which was supported by a spiral spring, the object of this spring being to keep the valve closed when the pressure was removed. It appearing that for ten or fifteen years before the date of J's patent B had manufactured and sold faucets in which an inclined plane or cam was used as a means of producing

the result upon the valve stem which was produced by J's screw: *Held*, That J's 1st claim must be limited to a screw follower, and could not be construed to embrace an arrangement for moving the valve. *Zane* v. *Soffe*, 200.

8. Since the decision in *Loom Company* v. *Higgins*, 105 U. S. 580, it is *Held*, That under a general denial of the patentee's priority of invention, evidence of prior knowledge and use, taken without objection, is competent at the final hearing, not only as demonstrative of the state of the art, and therefore competent to limit the construction of the patent to the precise form of parts and mechanism described and claimed, but also on the question of the validity of the patent. *Id.*
9. In this case it was held, that, on the record herein, claim 2 of letters patent No. 40,156, granted to James Bing, October 6th, 1863, for an "improved shoe for car-brakes," namely, "The combination of shoe A, sole B, clevis D and bolt G, the whole being constructed and arranged substantially as specified," does not embody any lateral rocking motion in the shoe, as an element of the combination. On such a construction, there was, on the record herein, patentable novelty in said claim; and a structure having the same four parts in combination, with merely formal and not substantial mechanical differences, infringes said claim. *Lake Shore and Michigan Southern Railway* v. *National Car-Brake Shoe Company*, 229.
10. The application of an old process or machine to a similar or analogous subject, with no change in the manner of applying it, and no result substantially distinct in its nature, will not sustain a patent, even if the new form of result has not before been contemplated. *Pennsylvania Railroad* v. *Locomotive Truck Co.*, 490.
11. In trucks already in use on railroad cars, the king-bolt which held the car to each truck passed through a bolster supporting the weight of the car, and through an elongated opening in the plate below, so as to allow the swivelling of the truck upon the bolt, and lateral motion in the truck; and the bolster was suspended by divergent pendent links from brackets on the frame, whereby the weight of the car tended to counteract any tendency to depart from the line of the track. *Held*, That a patent for employing such a truck as the forward truck of a locomotive engine with fixed driving wheels was void for want of novelty. *Id.*

PAYMENT.

See CLAIMS AGAINST UNITED STATES.

PENALTY.

See ABATEMENT.

PLEADING.

1. The separate plea of a married woman which sets up the homestead law of Colorado as a defence against an action for the recovery of real estate is bad if it fails to aver that the word "homestead" is written on the margin of the recorded title of the premises occupied as a homestead, as required by law, even if it also aver a defective acknowledgment by the wife. *Goodwin* v. *Colorado Mortgage Investment Co.*, 1.
2. In Alabama a plea which denies the execution by the defendant of an instrument in writing which is the foundation of the suit, must be verified by affidavit; and the want of such affidavit may be reached by a demurrer. *Alexander* v. *Bryan*, 414.
3. In Alabama, the plea of *nil debet* in an action of debt on a bond with condition, where breaches are assigned, is bad on demurrer. *Id.*
4. Where a complaint in a suit against such surety does not state any facts to show the application of the limitation of such statute, a plea which does not state such facts is bad on demurrer. *Id.*

POWER.

See CONTRACT, 3.

PRACTICE.

1. When counsel stipulate to submit a case, fixing a time for filing of argument by the plaintiff, and a time subsequently for filing the defendant's argument, and a time still later for plaintiff's reply, and the plaintiff failing to file an argument, the defendant files one within the time allowed to him and the plaintiff files no reply, the court will take the case as submitted under the rule. *Aurrecoechea* v. *Bangs*, 217.
2. Stipulations between counsel for submitting suits, when filed, cannot be withdrawn without the consent of both parties. *Muller* v. *Dows*, 94 U. S. 277, approved and followed. *Id.*
3. *Grigsby* v. *Purcell*, 99 U. S. 505, followed; holding that if the transcript is not filed and the cause docketed during the term to which it is made returnable, or some sufficient excuse given for the delay, the writ of error or appeal becomes inoperative, and the cause may be dismissed by the court of its own motion or on motion of the defendant in error or the appellee. *Ruckman* v. *Demarest*, 400.
4. When a party has printed the transcript of the record at his own expense, the case may be docketed without security for the fee allowed the clerk by Rule 24, § 7; but the printed copies cannot be delivered to the justice or the parties for use on final hearing or on any motion in the progress of the cause unless the fee is paid when demanded by the

clerk in time to enable him to make his examinations and perform his other duties in connection with the copies. *Bean* v. *Patterson*, 401.

See CRIMINAL LAW, 2;
ERROR;
JUDGMENT, 1, 2;
JURISDICTION, A, 1, 3, 5; B, 2, 3, 4, 6;
LIMITED LIABILITY.

PRINCIPAL AND AGENT.

1. Although a cashier of a bank ordinarily has no power to bind the bank except in the discharge of his customary duties; and although the ordinary business of a bank does not comprehend a contract made by a cashier without delegation of power from the board of directors, involving the payment of money not loaned by the bank in the customary way; nevertheless: (1) A banking corporation, whose charter does not otherwise provide, may be represented by its cashier in transactions outside of his ordinary duties, without his authority to do so being in writing, or appearing in the records of the proceedings of the directors. (2) His authority may be by parol and collected from circumstances or implied from the conduct or acquiescence of the directors. (3) It may be inferred from the general manner in which, for a period sufficiently long to establish a settled course of business, he has been suffered by the directors, without interference or inquiry, to conduct the affairs of the bank; and (4) When, during a series of years, or in numerous business transactions, he has been permitted, in his official capacity and without objection, to pursue a particular course of conduct, it may be presumed, as between the bank and those who in good faith deal with it upon the basis of his authority to represent the corporation, that he has acted in conformity with instructions received from those who have the right to control its operations. *Martin* v. *Webb*, 7.
2. The deposit of a promissory note with the agent of a third party upon condition that it should be used by the agent's principal for a specified purpose, confers no authority upon the principal to hold the note for a different purpose. *Quebec Bank of Toronto* v. *Hellman*, 178.

See CUSTOM;
WAGER, 3.

PRIVILEGED COMMUNICATIONS.

See SLANDER.

PROBATE COURT.

See EXECUTOR AND ADMINISTRATOR.

PROCESS.

See EQUITY, 5;
JURISDICTION, B, 7, 8.

PROFITS.

See COURT OF CLAIMS;
DAMAGES.

PROTEST.

See BILL OF EXCHANGE.

PUBLIC LANDS.

1. Under the act of March 3d, 1845, ch. 76, relating to the admission of Iowa into the Union, or the act of April 18th, 1818, ch. 67, for the admission of the State of Illinois into the Union, by which "five per cent. of the net proceeds" of public lands lying within the State, and afterwards "sold by Congress," shall be reserved and appropriated for certain public uses of the State, the State is not entitled to a percentage on the value of lands disposed of by the United States in satisfaction of military land warrants. *Five Per Cent. Cases*, 471.
2. Claimants against the government under legislative grants of public land must show a clear title, as gifts of public domain are never to be presumed. *Rice* v. *Sioux City & St. Paul Railroad*, 695.

See LAND GRANT;
SWAMP LANDS.

QUANTUM MERUIT.

See CONTRACT, 6,

QUI TAM.

See ABATEMENT.

QUIA TIMET.

See EQUITY, 1, 2, 3.

RAILROAD.

1. The provision in the Constitution of Colorado, that "all individuals, associations, and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or facili-

ties for transportation of freight or passengers within the State, and no railroad company, nor any lessee, manager, or employee thereof, shall give any preference to individuals, associations, or corporations in furnishing cars or motive power," imposes no greater obligation on a railroad company than the common law would have imposed upon it. *Atchison, Topeka & Santa Fé Railroad* v. *Denver & N. O. Railroad*, 667.

2. The provision in the Constitution of Colorado that "every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad," only implies a mechanical union of the tracks of the roads so as to admit of the convenient passage of cars from one to the other, and does not of itself imply the right of connecting business with business. *Id.*
3. At common law a railroad common carrier is not bound to carry beyond its own line; and if it contracts to carry beyond it, it may, in the absence of statutory regulations, determine for itself what agencies it will employ; and there is nothing in the provisions of the Constitution of Colorado which takes away such right, or imposes any further obligation. *Id.*
4. A railroad company has authority to establish its own stations for receiving and putting down passengers and merchandise, and may regulate the time and manner in which it will carry them, and in the absence of statutory obligations, it is not required in Colorado to establish stations for those purposes at a point where another railroad company has made a mechanical union with its road. *Id.*
5. A provision in a State Constitution which prohibits a railroad company from discriminations in charges and facilities does not, in the absence of legislation, require a company which has made provisions with a connecting road for the transaction of joint business at an established union junction station, to make similar provisions with a rival connecting line at another near point on its line, at which the second connecting line has made a mechanical union with its road. *Id.*
6. A provision in a State Constitution which forbids a railroad company to make discrimination in rates is not violated by refusing to give to a connecting road the same arrangements as to through rates which are given to another connecting line, unless the conditions as to the service are substantially alike in both cases. *Id.*

See INTERNAL REVENUE, 1;
MORTGAGE, 1, 2;
MUNICIPAL BONDS, 6.

REBELLION.

Under authority derived from § 8 of the act of July 2d, 1864, 13 Stat.

375, and the Treasury Regulation of May 9th, 1865, a treasury agent at New Orleans took on the 6th of June, 1865, possession of cotton brought to New Orleans, from Shreveport and from the State of Texas, and before releasing it to the owners exacted the payment of one-fourth of its market value in New York. Payment was made under protest by instalments, viz.: June 12th, June 15th, and June 20th, 1865, and the money paid into the treasury. June 13th, 1865, the President issued his proclamation removing the restrictions upon trade east of the Mississippi, and on the 24th, his proclamation removing them from the country west of the Mississippi. On the 1st of July, 1871, the owners of the cotton commenced suit against the agent to recover the sums so paid. *Held*, (1) That all cotton arriving at New Orleans before the proclamation of June 13th became thereby subject to the treasury regulation. (2) That the President could not exempt it therefrom by proclamation subsequent to its arrival. (3) That the time granted by the agent to make the payments did not affect the liability to make the payments. (4) That the proclamation relating to trade east of the Mississippi did not affect cotton arriving at New Orleans from the country west of the river. (5) That the action was subject to the limitations prescribed by § 7 of the act of March 3d, 1863, 12 Stat. 757. *Cutler* v. *Kouns*, 720.

RECEIVER.

While a railroad was in the hands of a receiver, appointed in a suit for the foreclosure of a mortgage upon it, the court authorized the receiver to borrow money and to issue certificates of indebtedness, to be a lien upon the property prior to the mortgage debt, and to part with them at a rate not less than ninety cents on the dollar. The receiver borrowed money on hypothecation of some of these certificates. The property was decreed to be sold subject to liens established on then pending references. *Held*, That the hypothecated certificates were not liens to the extent of their face, but that a decree directing the debts secured by them to be paid in them at the rate of ninety cents on the dollar to the extent of the money actually advanced, and making that amount of certificates a lien, would be upheld in equity. *Swann* v. *Clark*, 602.

RECOGNIZANCE.

See SUBROGATION.

REDEMPTION.

See SHERIFF'S SALE.

REMOVAL OF CAUSES.

After a suit in equity involving title to real estate and priority of lien had

been long pending in a State Court, and the highest court in the State had decided some of the points in controversy, and had remanded the cause to the court below to have other issues determined, A became interested in the property by grant from one of the parties to the suit, and intervened in it by leave of the State Court to protect his rights at a time when the right of removing the cause from the State Court to the Federal Court had expired as to all the parties: *Held*, That under the circumstances the intervention of A was to be regarded as incident to the original suit; and that he was subject to the disabilities resting on the party from whom he took title; and that the time for removal having expired before he intervened, his right of removal was barred by that fact. *Cable* v. *Ellis*, 389.

See JURISDICTION, B, 2, 3, 4.

REVIEW.

See LIMITATION, STATUTE OF, 5.

SALARY.

1. A receiver of public moneys for a district of public lands subject to sale where the annual salary is $2,500, is only entitled to retain from the military bounty land fees received by him during his term of office sufficient, with his commissions on cash sales of public lands, to make up his annual salary. *United States* v. *Babbit*, 1 Black, 55, adhered to. *United States* v. *Brindle*, 688.
2. A receiver of moneys from the sale of public lands whose annual salary amounted to $2,500, was also appointed agent for the sale of Indian trust lands under the treaty of July 17th, 1854, with the Delaware Indians, 10 Stat. 1048: *Held*, That he was entitled to commissions on the sales of Indian lands made by him, although they increased his annual compensation to a greater amount than $2,500. *Id.*
3. § 18 of the Act of August 31st, 1852, 10 Stat. 100 [Rev. Stat. § 1763], which provided "that no person hereafter who holds or shall hold any office under the government of the United States, whose salary or annual compensation shall amount to the sum of $2,500, shall receive compensation for discharging the duties of any other office," did not forbid the allowance of extra compensation to such an officer for the performance of duties not imposed upon him by an office under the government of the United States. *Converse* v. *The United States*, 21 How. 463, cited and approved to this extent. *Id.*

SHERIFF'S SALE.

When a judgment creditor in Colorado, prior in lien, received from the sheriff a certificate of sale of real estate sold to the creditor on execu-

tion issued on the judgment to satisfy the debt, which certificate recited that the property was subject to an execution issued on a judgment which was in fact junior in date to that under which it was sold: *Held*, That the recital was a mistake of which a person claiming title under a conveyance from the judgment debtor and redemption from the junior judgment could not take advantage. *White* v. *Crow*, 183.

SLANDER.

A communication made to a State's attorney, in Illinois, his duty being to "commence and prosecute" all criminal prosecutions, by a person who inquires of the attorney whether the facts communicated make out a case of larceny for a criminal prosecution, is an absolutely privileged communication, and cannot, in a suit against such person to recover damages for speaking words charging larceny, be testified to by the State's attorney, even though there be evidence of the speaking of the same words to other persons than such attorney. *Vogel* v. *Gruaz*, 311.

STATUTES.

A. Construction of Statutes.

1. A statute requiring a State auditor to register municipal bonds and to certify that all the conditions of law have been complied with in their issue calls for the exercise of no judicial functions on his part. *Hoff* v. *Jasper County*, 53.
2. When this court has given a construction to relative provisions in different parts of a statute, and Congress then makes a new enactment respecting the same subject-matter, with provisions in different sections bearing like relations to each other, and without indicating a purpose to vary from that construction, the court is bound to construe the two provisions in the different sections of the new statute in the same sense which, in previous statutes, had uniformly been given to them, and not invent a new application and relation of the two clauses. *Claflin* v. *Commonwealth Insurance Company*, 81.
3. When there is ambiguity or doubt in a statute, a long continued construction of it in practice in a department would be in the highest degree persuasive, if not absolutely controlling in its effect. But when the language is clear and precise, and the meaning evident, there is no room for construction. *United States* v. *Graham*, 219.
4. Upon a revision of statutes a different interpretation is not to be given to them without some substantial change of phraseology other than what may have been necessary to abbreviate the form of the law. *Pennock* v. *Dialogue*, 2 Pet. 1, cited and approved. *McDonald* v. *Hovey*, 619.
5. Where English statutes, such as the Statute of Frauds and the Statute of Limitations, have been adopted into our own legislation, the known

and settled construction of those statutes by courts of law has been considered as silently incorporated into the acts, or has been received with all the weight of authority. *Id.*

B. Statutes of the United States.

See Abatement, 1, 2;
Claims Convention with Mexico, 4, 5;
Customs Duties, 2;
Deed, 2;
Indictment;
Internal Revenue, 1, 2;
Jurisdiction, A, 8, B, 2, 3, 4, 5;
Land Grant;
Legal Tender;
Limitations, Statute of, 7, 8;
Mileage;
Public Lands;
Rebellion;
Salary;
Subrogation;
Supersedeas;
Tax Sale, 1, 2.

C. Statutes of States and Territories.

Of Alabama: *See* Limitations, &c., 3;
Pleading, 2, 3.
Of Colorado: *See* Divorce;
Pleading, 1.
Railroad.
Of Illinois: *See* Municipal Corporations, 1.
Of Iowa: *See* Land Grant, 1;
Trust, 2.
Of Kansas: *See* Municipal Bonds, 3, 4, 5.
Of Kentucky: *See* County.
Of Missouri: *See* Municipal Bonds, 6.
Of Nebraska: *See* Equity, 1, 2, 3;
Nebraska, 1, 3.
Of Ohio: *See* Municipal Corporations, 2.
Of Utah: *See* Criminal Law.

SUBROGATION.

1. Without an express contract of indemnity, a surety on a recognizance for the appearance of a person charged with committing a criminal offence against the laws of the United States, cannot maintain an action against the principal to recover any sums he may have been obliged to pay by reason of forfeiture of the principal, and he is not entitled to be subrogated to the rights of the United States, and to enjoy the benefit of the government priority. *United States* v. *Ryder*, 729.
2. Subrogating a surety on a recognizance in a criminal case to the peculiar remedies which the government enjoys is against public policy, and tends to subvert the object and purpose of the recognizance. *Id.*
3. § 3468 Rev. Stat. conferring on sureties on bonds to the United States

who are forced to pay the obligation the priority of recovery enjoyed by the United States, does not apply to recognizances in criminal proceedings, and does not authorize an action in the name of the United States. *Id.*

SUPERSEDEAS.

If a court in session and acting judicially allows an appeal which is entered of record without taking a bond within sixty days after rendering a decree, a justice or judge of the appellate court may, in his discretion, grant a supersedeas after the expiration of that time under the provisions of § 1007 Rev. Stat., but this is not to be construed as affecting appeals other than such as are allowed by the court acting judicially and in term time. *Peugh* v. *Davis*, 227.

SUPREME COURT.

See JURISDICTION, A.

SURETY.

See EXECUTOR AND ADMINISTRATOR; SUBROGATION.

SWAMP LANDS.

The grant of swamp lands to each of the States of the Union by the act of September 28th, 1850, 9 Stat. 519, did not confer a similar grant upon the Territories; and the subsequent admission of a Territory as a State under an act which provided that all laws of the United States not locally inapplicable should have the same force and effect within that State as in other States of the Union did not work a grant of swamp lands under the act of 1850. *Rice* v. *Sioux City & St. Paul Railroad*, 695.

TAX.

See MUNICIPAL CORPORATION, 1; NEBRASKA, 1.

TAX SALE.

1. Land subject to a direct tax was sold for its non-payment, and was bought in for the United States for the sum of $1,100, under section 7 of the act of June 7th, 1862, c. 98, as amended by the act of February 6th, 1863, c. 21, 12 Stat. 640, the tax, penalty, interest and costs being $170.50. No money was paid. The United States took possession of the land and leased it, and afterwards sold all but 50

acres for $130, under the act of June 8th, 1872, c. 337, 17 Stat. 330. The land was not redeemed. Application by its owner was made to the Secretary of the Treasury for the $929.50 surplus, and, no action being taken thereon, he sued in the Court of Claims to recover that sum: *Held*, That he was entitled to recover it. *United States* v. *Lawton*, 146.

2. Whether § 12 of the act of June 7th, 1862, c. 98, 12 Stat. 422, in regard to the disposition of one-half of the proceeds of the subsequent leases and sales of land struck off to the United States at a sale for the non-payment of the tax, applies to the land in this case—*quære*. *Id.*
3. No question as to the disposition of such proceeds can affect the right of the claimant in this case to the $929.50. *Id.*
4. The rulings in *United States* v. *Taylor*, 104 U. S. 216, applied to this case. *Id.*

TRADE WITH INSURRECTIONARY DISTRICTS.

See REBELLION.

TRAVEL.

See MILEAGE.

TREATIES.

See CLAIMS CONVENTION WITH MEXICO.

TRUST.

1. A naked promise—without consideration good or valuable—of a simple donation, to be subsequently made, with no relationship of blood or marriage between the parties, is, until executed, valueless, and creates no trust which can be attached to estate or property so as to call upon a court of equity to enforce it. *Allen* v. *Withrow*, 119.
2. Under the Statute of Frauds of Iowa in force when the transactions in controversy took place, a trust could not be created in relation to real estate, except by an instrument executed in the same manner as a deed of conveyance; but a trust of personalty could be created by parol, provided the evidence of the trust was clear and convincing. Mere declarations of a purpose to create a trust were of no value, if not carried out. *Id.*

See CONTRACT, 3.

TUTRIX.

See CLAIMS AGAINST THE UNITED STATES;
GUARDIAN AND WARD, 1.

UTAH.

See CRIMINAL LAW, 1.

VESSELS.

See LIMITED LIABILITY.

WAGERS.

1. Dealing in futures by means of contracts of sale or purchase for purposes of speculating upon the course of the market, is not as matter of law an essential characteristic of every business to which the name of dealing in grain may properly be assigned. *Irwin* v. *Williar*, 499.
2. If under guise of a contract to deliver goods at a future day the real intent be to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, the whole transaction is nothing more than a wager, and is null and void. *Id.*
3. When a broker is privy to such a wagering contract, and brings the parties together for the very purpose of entering into the illegal agreement, he is *particeps criminis*, and cannot recover for services rendered or losses incurred by himself in forwarding the transaction. *Id.*
4. Generally, in this country, wagering contracts are held to be illegal and void as against public policy. *Id.*

WARRANTY.

See CONTRACT, 1, 2;
DEED, 2.

WITNESS.

See ERROR.