INDEX.

ACTION.

1. Under §§ 2942 and 2943 of the Code of Alabama, of 1876, which provide for the bringing of a suit for the recovery of personal chattels in specie, and for the making of an affidavit by "the plaintiff, his agent or attorney," that the property sued for belongs to the plaintiff, and for the giving by the plaintiff of a bond for costs and damages, as prerequisites to the making of an order for the seizure of the property, an affidavit, in such a suit by the United States, in the Circuit Court of the United States, made by a special agent of the General Land Office, in which he swears, "to the best of his knowledge, information and belief," that the property sued for belongs to the United States, is sufficient. *United States* v. *Bryant*, 499.
2. Under § 1001 of the Revised Statutes of the United States, the United States are not required to give the bonds provided for by the Code of Alabama, as a condition precedent to the right to avail themselves of said provisions of that Code. *Id.*

See LOCAL LAW, 2;
PARTIES;
REMOVAL OF CAUSES, 2.

AFFIDAVIT.

See ACTION, 1;
UNITED STATES.

ALABAMA.

See ACTION.

ALIENAGE.

See CONSUL.

AMENDMENT.

See PARTIES, 2;
WRIT OF ERROR.

ANNUITY.

See DEVISE, 1;
EQUITY, 1;
LIEN.

APPEAL.

A plaintiff demanding judgment on a note for $7,500, recovered only $702; judgment being against him as to the remainder of the claim on matter of law. He appealed. The defendant took a cross-appeal. On motion to dismiss the cross-appeal for want of jurisdiction, *Held*, That it was incident to the plaintiff's appeal; and that appeal being sustained in part and overruled in part the whole cause was remanded. *Walsh* v. *Mayer*, 31.

See PRACTICE, 3.

BANK.

The rule that the relation between a bank and its general depositors is that of debtor and creditor, which was laid down in *Marine Bank* v. *Fulton Bank*, 2 Wall. 252, is affirmed and applied to deposits arising from collections on behalf of another bank, a correspondent. *Phœnix Bank* v. *Risley*, 125.

See CONFISCATION, 1; CORPORATION; INTERNAL REVENUE, 3; NATIONAL BANK.

BANKRUPTCY.

1. One hypothecating, to secure a debt due from himself, securities which had been pledged to him to secure the obligation of another, and failing to return them when such obligation is discharged, does not thereby create a debt by fraud, or in a fiduciary capacity, which is exempted by § 5117 Rev. Stat. from the operation of a discharge in bankruptcy. *Hennequin* v. *Clews*, 676.
2. A sale of real estate of a bankrupt by order of court free from the lien of a mortgage creditor is invalid, as to the creditor and as to the purpose of discharging his lien, unless he is made a party to the proceedings. *Ray* v. *Norseworthy*, 23 Wall. 128, affirmed. *Factors' & Traders' Ins. Co.* v. *Murphy*, 738.
3. In such case it is not sufficient to notify the person who holds the evidences of his debt, and claims to be his agent, if the record represents that person as acting for another party, and makes no mention of the mortgage creditor. *Id.*
4. The real estate of a bankrupt was sold by order of court free of encumbrances and purchased by A. One of the mortgages on the estate was given to secure four notes, of which at the time of the sale

A held two, and B held two. A and other mortgage creditors were made parties to the proceedings, but B was not made party. C held B's notes and claimed to represent him in the proceedings, but the record only showed C as acting for D. B brought suit to foreclose the mortgage as to his two notes, claiming that as to A's notes the lien was cut off by the purchase of the equity, and as to the rest of mortgage liens as well as to A's they were discharged by the sale. *Held* (1) that B had the right to a decree of foreclosure. (2) That this decree should be made for the benefit of all the mortgage creditors in the order of their priority, including A. (3) That the expenses of A for taxes, prior liens, improvements, &c., growing out of the former sale should be first paid out of the proceeds of the new sale. (4) That A should account for rents and profits if there were any. *Id.*

See EVIDENCE, 2;
JURISDICTION, A, 9;
LIMITATIONS, 7.

BOND.

See ACTION, 2;
OFFICER OF THE COURT, 1;
UNITED STATES.

CALIFORNIA.

See JURISDICTION, A, 7;
SWAMP LANDS.

CASES LIMITED, QUESTIONED, OR OVERRULED.

Howland v. *Vincent*, 10 Met. 371 236
Hawkins v. *Carroll County*, 50 Miss. 735 556
Miller v. *Tobin*, 8 Fed. Rep. 609 472

CERTIFICATE OF STOCK.

See CORPORATION.

CERTIORARI.

A writ of certiorari when applied for by a defendant is not a writ of right but discretionary with the court. *Ex parte Hitz*, 776.

CLAIMS AGAINST THE UNITED STATES.

If a treasury agent for the collection of cotton, who was convicted by a military commission of defrauding the United States, and was sentenced to pay a fine, and paid the fine and was then released, consents after his release that the money may pass into the treasury, he cannot

maintain an action in the Court of Claims to recover it back on an implied contract to refund it, either on the ground that the fine was illegally imposed, or that it was paid under duress. *Carver* v. *United States*, 609.

COLLECTOR OF CUSTOMS.

See VESSEL.

COMMON CARRIER.

See DAMAGES, 2;
INSURANCE, 7.

CONFISCATION.

1. A proceeding under the confiscation acts of August 6th, 1861, 12 Stat. 319, and July 17th, 1862, 12 Stat. 589, for the purpose of confiscating a general deposit in a bank, which was directed against a specific lot of money, and a condemnation and sale under such proceedings, and a payment by the bank to the purchaser at the sale, are no defence to the bank in a suit by an assignee of the depositor for valuable consideration, claiming under an assignment made before the proceedings in confiscation. *Phœnix Bank* v. *Risley*, 125.
2. The confiscation act of August 6th, 1861, was directed to the confiscation of specific property, used with the consent of the owner to aid the insurrection, and had no reference to the guilt of the owner, and could only apply to visible tangible property which had been so used. *Id.*
3. The 37th Admiralty Rule, in force before the passage of the confiscation acts provided a mode for attaching a debt in proceedings for its confiscation by giving notice to the debtor of the proceedings to charge the debtor with the debt and require him to pay it to the marshal or into court; and in the absence of such notice the District Court could obtain no jurisdiction over the debt, and could make no condemnation of it which would constitute a defence in an action by an assignee of the debt for a valuable consideration made before the proceedings in confiscation. *Id.*

CONFLICT OF LAW.

1. The decision of the highest court of a State, construing the Constitution of the State is not binding upon this court as affecting the rights of citizens of other States in litigation here, when it is in conflict with previous decisions of this court, and when the rights which it affects here were acquired before it was made. *Carroll County* v. *Smith*, 556.
2. Subject to the exclusive and paramount authority of the national government by its own judicial tribunals to determine whether persons held in custody by authority of the courts of the United States, or by

commissioners of such courts, or by officers of the general government acting under its laws, are so held in conformity with law, the States have the right, by their own courts, or by the judges thereof, to inquire into the grounds upon which any person, within their respective territorial limits, is restrained of his liberty, and to discharge him, if it be ascertained that such restraint is illegal, and this notwithstanding such illegality may arise from a violation of the Constitution and laws of the United States. *Robb* v. *Connolly*, 624.

See CONSTITUTIONAL LAW, B;
EXECUTOR AND ADMINISTRATOR, 1, 2;
HABEAS CORPUS;
OFFICER OF THE COURT, 2, 3.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. The constitutional grant of original jurisdiction to this court of all cases affecting consuls, does not prevent Congress from conferring original jurisdiction, in such cases, also, upon the subordinate courts of the Union. *Börs* v. *Preston*, 252.
2. In view of the practical construction put upon the Constitution by Congress and the courts in the statutes and decisions cited in the opinion, the court is unwilling to say that it is not within the power of Congress to grant to inferior courts of the United States jurisdiction in cases where the Supreme Court has been vested by the Constitution with original jurisdiction. *Ames* v. *Kansas*, 449.
3. A law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the Fourteenth Amendment to the Constitution, which declares that no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it, either before that amount is determined, or in subsequent proceeding for its collection. *Hagar* v. *Reclamation District*, 701.
4. When a contract is made with a municipal corporation upon the faith that taxes will be levied, legislation repealing or modifying the taxing power of the corporation, so as to deprive the holder of the contract of all adequate and efficacious remedy, is within the inhibition of the Constitution. *Nelson* v. *St. Martin's Parish*, 716.
5. On an appeal from a judgment ordering the issue of a mandamus to compel the collection of a tax to pay a judgment recovered against a municipal corporation, the appellate court may authorize an inquiry whether the judgment was founded upon a contract or a tort, with a view to determine the constitutional rights respecting it; but has no authority to re-examine the validity of the contract or the propriety of the original judgment, those questions having been finally adjudicated. *Id.*

6. The power of a State legislature to make a contract of such a character that, under the provisions of the Constitution, it cannot be modified or abrogated, does not extend to subjects affecting public health or public morals, so as to limit the future exercise of legislative power on those subjects to the prejudice of the general welfare. *Butchers' Union Company* v. *Crescent City Company*, 746.

See CONFLICT OF LAW;
COPYRIGHT;
SWAMP LANDS, 3.

B. OF THE STATES.

1. § 2, Article XII. of the Constitution of Nebraska, which took effect November 1st, 1875, conferred no power upon a county to add to its authorized or existing indebtedness, without express legislative authority; but it limited the power of the legislature in that respect by fixing the terms and conditions on which alone it was at liberty to authorize the creation of municipal indebtedness. *Dixon County* v. *Field*, 83.
2. A provision in the Constitution of Mississippi, that the legislature shall not authorize a county to lend its aid to a corporation unless two-thirds of the qualified voters shall assent thereto at an election to be held therein, does not require an assenting vote of two-thirds of the whole number enrolled as qualified to vote, but only two-thirds of those actually voting at the election held for the purpose. *Hawkins* v. *Carroll Co.*, 50 Miss. 735, disregarded, and *St. Joseph's Township* v. *Rogers*, 16 Wall. 644, and *County of Cross* v. *Johnson*, 95 U. S. 360, followed. *Carroll County* v. *Smith*, 556.

See CONFLICT OF LAW;
ESTOPPEL, 3, 4;
NEBRASKA, 3, 4;
SWAMP LANDS, 1.

CONSUL.

The alienage of a defendant is not to be presumed from the mere fact that he is the consul, in this country, of a foreign government. *Börs* v. *Preston*, 252.

See CONSTITUTIONAL LAW, A, 1;
JURISDICTION, B, 1.

CONTRACT.

1. When one party to an executory contract prevents the performance of it, or puts it out of his own power to perform it, the other party may regard it as terminated, and demand whatever damages he has sustained thereby. *United States* v. *Behan*, 110 U. S. 339, cited and affirmed. *Lovell* v. *St. Louis Mutual Life Insurance Co.*, 264.

2. By a lease from one railroad corporation of its railroad to another railroad corporation, subject to a previous mortgage, the lessee covenanted to pay as rent a certain proportion of the gross earnings, and to state accounts semi-annually, and further covenanted, if the rent for any six months should be insufficient to pay the interest due at the end of the six months on the mortgage bonds, then to advance a sufficient sum to take up, and to take up the balance of the coupons for such interest; and it was agreed that for all sums so advanced the lessee should have a lien before all other liens except the mortgage. Eighteen months later, after the lessee had accordingly paid and taken up some coupons, and had declined to take up others, on account of the refusal of the lessor to accept in payment of rent coupons so taken up, the two corporations executed a supplemental agreement, by which, in lieu of the rent reserved in the lease, and of all advances of money to take up coupons, the lessee covenanted to pay, and the lessor to accept, as rent, a larger proportion of the gross earnings, "all accounts being settled exactly, and all liabilities and obligations between the two companies being adjusted and discharged by and upon the semi-annual statements provided in said lease;" the lessor released the lessee from any obligation to make future advances of money to take up coupons, and from liability for any previous neglect to make such advances, and from any obligation to pay money in the nature of rent and advances, except the proportion of the gross earnings stipulated in the supplemental agreement; and all the provisions of the lease, except as so modified, were ratified and confirmed, and "all causes of action for breach of any agreement therein contained," which had arisen since its execution, were mutually waived and released. The lessee afterwards paid rent computed according to the supplemental agreement. *Held*, That any claim of the lessee against the lessor, or against the mortgaged property, for money paid to take up coupons, was released and discharged. *Stewart* v. *Hoyt*, 373.

3. The fact that a railroad company gives a shipper a bill of lading when the goods are delivered does not preclude the shipper, in an action against the company as common carriers, from showing, when such is the fact, that the bill of lading does not express the terms of the transportation contract. *Mobile & Montgomery Railway* v. *Jurey*, 584.

4. A court instructing a jury as to the construction of a writing offered in evidence as a contract, should take into consideration not only the language of the paper, but the subject matter of the contract and the surrounding circumstances. *Id.*

5. An agreement signed by the maker on Sunday, but not delivered to the other party on that day of the week, is no violation of a statute making it a penal offence to do business on the first day of the week. *Gibbs & Sterrett Manufacturing Co.* v. *Brucker*, 597.

6. A contract made on Sunday with an agent of the other party without his knowledge, the agent having no authority to bind his principal,

and ratified by the principal on another day of the week and then exchanged, is not void as a violation of a statute making it penal to do business on Sunday. *Id.*

7. A conveyed to B a large quantity of land for $5 an acre, to be paid in instalments with legal interest on deferred payments from June 3d, 1873. Suits were pending as to some of the lands, and it was agreed that if recovery should be had against A as in any of the suits, the land so recovered should not form part of the land sold, and the last instalment of $50,000 was agreed to be reserved until decision of the suits and ascertainment of quantity. *Held*, (1) That A was entitled to interest according to the agreement on deferred payments as to all lands of which he was in possession whether in suit or not; (2) that as to all lands held adversely he was entitled to interest from the entry of judgment in his favor in the ejectment suits; (3) as to lands within the bounds of the description, the title to which was acquired by him after its date, to interest only from the date of the acquisition of the title; (4) and as to the last instalment of the deferred payments, to interest from June 3d, 1873. *Baines* v. *Clarke*, 789.

See INSURANCE.

CONTRIBUTORY NEGLIGENCE.

See RAILROAD, 4.

COPYRIGHT.

1. It is within the constitutional power of Congress to confer upon the author, inventor, designer, or proprietor of a photograph the rights conferred by Rev. Stat. § 4952, so far as the photograph is a representation of original intellectual conceptions. *Burrow-Giles Lithographic Company* v. *Sarony*, 53.
2. The object of the requirement in the act of June 18th, 1874, 18 Stat. 78, that notice of a copyright in a photograph shall be given by inscribing upon some visible portion of it the words Copyright, the date, and the name of the proprietor, is to give notice of the copyright to the public; and a notice which gives his surname and the initial letter of his given name is sufficient inscription of the name. *Id.*
3. Whether a photograph is a mere mechanical reproduction or an original work of art is a question to be determined by proof of the facts of originality, of intellectual production, and of thought and conception on the part of the author; and when the copyright is disputed, it is important to establish those facts. *Id.*

CORPORATION.

A lent money to B for his own use, and, as security for its repayment, and on his false representation that he owned, and had transferred

to A, a certificate of stock to an equal amount in a national bank of which B was cashier, received from him such a certificate, written by him in one of the printed forms which the president had signed and left with him to be used if needed in the president's absence, and certifying that A was the owner of that amount of stock "transferable only on the books of the bank on the surrender of this certificate," as was in fact provided by its by-laws. B did not surrender any certificate to the bank, or make any transfer to A upon its books; never repaid the money lent, and was insolvent. The bank never ratified, or received any benefit from, the transaction. *Held*, That A could not maintain an action against the bank to recover the value of the certificate. *Held, also*, That the action could not be supported by evidence that in one or two other instances stock was issued by B without any certificate having been surrendered; and that shares, once owned by B, and which there was evidence to show had been pledged by him to other persons before the issue of the certificate to A, were afterward transferred to the president, with the approval of the directors, to secure a debt due from B to the bank, without further evidence that such issue of stock by B was known or recognized by the other officers of the bank. *Moores* v. *Citizens' National Bank of Piqua*, 156.

See EQUITY, 2, (5); REMOVAL OF CAUSES, 2, 3; EXECUTOR AND ADMINISTRATOR, 1, 2; STATUTES, A, 1.

COSTS.

1. Under the act of March 3d, 1875, 18 Stat. 470, costs may be awarded in a court of the United States against a party wrongfully removing a cause from a State court, when the cause is remanded for want of jurisdiction. *Mansfield, Coldwater & Lake Michigan Railway* v. *Swan*, 379.
2. A judgment of this court remanding to a Circuit Court a cause wrongfully removed into it, with directions to remand it to the State court, is an exercise of jurisdiction. In such case costs will be awarded against the party wrongfully removing the cause, when justice and right require. *Id.*

COURT AND JURY.

1. When in the course of dealings A gives to B one series of his own notes payable to his own order to be used for purchase of an article on his account; another series of like notes as accommodation paper to be protected by the other party at maturity; and a third series, part of which is accommodation paper and a part is issued for the purchase of the article, it is for the jury to say, on a suit against A by a bank to which B had hypothecated one of the third series as collateral, whether B had the right to pledge it for his own debt. *Corn Exchange Bank* v. *Scheppen*, 440.

2. Where the complaint in an action on the case for deceit by false representations whereby a party was induced to enter into a contract, charged a positive misrepresention of an existing fact, and all the evidence intended to establish fraud was directed to the proof of that specific misrepresentation, it was error in the presiding judge not to confine his instructions to the point in issue, and when requested by the jury for instruction as to the effect of withholding information concerning the subject of the contract, not to instruct them that there was no evidence in the case which authorized their request for instructions on that point. *Thorwegan* v. *King*, 549.

3. The rule reaffirmed, that a case should not be withdrawn from the jury unless the testimony be of such a conclusive character as to compel the court in the exercise of a sound legal discretion, to set aside a verdict in opposition to it. *Connecticut Mutual Life Ins. Co.* v. *Lathrop*, 612.

See EXCEPTIONS.

CREDITOR'S BILL.

In a creditor's bill, brought on behalf of the plaintiff and such other creditors as may become parties, it is error in granting relief to confine it to the creditor complaining. The usual and correct practice is, by means of a reference to a master, to give to all valid creditors an opportunity to come in and have the benefit of the decree. *Johnson* v. *Waters*, 640.

CURTESY.

1. In the absence of a fraud a husband who is embarrassed may convey his estate in curtesy in the realty of his wife to trustees for her benefit and for the benefit of their children, when a consideration is received for it which a court of equity may fairly take to be a valuable one. *Hitz* v. *National Metropolitan Bank*, 722.

2. A statute enacting that the property of a married woman shall not be liable for the debts of her husband exempts his estate in the curtesy in her real estate from being taken for his debts contracted after the passage of the act. *Id.*

CUSTOMS DUTIES.

A citizen of the United States, arriving home from a visit to Europe, with his family, in the end of September, by a vessel, brought with him wearing apparel, bought there for his and their use, to be worn here during the season then approaching, "not excessive in quantity for persons of their means, habits and station in life," and their ordinary outfit for the winter. A part of the articles had not been worn, and duties were exacted by the collector on all those articles : *Held*,

That under § 2505 of the Revised Statutes (now § 2503, by virtue of § 6 of the act of March 3d, 1883, chap. 121, 22 Stat. 521), exempting from duty "wearing apparel in actual use and other personal effects (not merchandise), . . . of persons arriving in the United States," the proper rule to be applied was to exempt from duty such of the articles as fulfilled the following conditions: (1) Wearing apparel owned by the passenger, and in a condition to be worn at once without further manufacture; (2) brought with him as a passenger, and intended for the use or wear of himself or his family who accompanied him as passengers, and not for sale, or purchased or imported for other persons, or to be given away; (3) suitable for the season of the year which was immediately approaching at the time of arrival; (4) not exceeding in quantity or quality or value what the passenger was in the habit of ordinarily providing for himself and his family at that time, and keeping on hand for his and their reasonable wants in view of their means and habits in life, even though such articles had not been actually worn. *Astor* v. *Merritt*, 202.

DAMAGES.

1. Where a person is induced by false representations to buy an article at an agreed price, to be delivered on his future order, the measure of damages, in an action to recover for the injury caused by the deceit, is the diminution caused thereby in the market price at the time of delivery. *Cooper* v. *Schlesinger*, 148.
2. The measure of damages in an action against a common carrier for loss of goods in transit is their value at the point of destination with legal interest. *Mobile & Montgomery Railway Co.* v. *Jurey*, 584.

See INSURANCE, 3;
PATENT, 6, 7.

DECEIT.

See COURT AND JURY, 2.

DEED.

1. A conveyance of specifically described real and personal estate to a trustee on the trust that he shall sell the same and any and all property belonging to the grantor not exempt from execution, which by any oversight may have been omitted in the foregoing list, and apply the proceeds to the payment of the grantor's debts passes all the estates and interest in property which the grantor at the date held and could alien, or which were then liable at law or in equity for the payment of his debts. *Spindle* v. *Shreve*, 542.
2. When a deed in trust recites a nominal consideration as the sum paid by the trustees, it is no contradiction to show that a valuable

consideration passed to the grantor from the *cestui que trust*. *Hitz* v. *National Metropolitan Bank*, 722.

3. Under the recording act which took effect in the District of Columbia, April 29th, 1878, an unrecorded conveyance is subject to the lien of a judgment recovered subsequent to it, although execution was not issued and levied till after the record, unless it appears that the judgment debtor had notice of its existence before issue and levy of execution. *Id.*

DEMURRER.

See JUDGMENT.

DETINUE.

See ACTION, 1, 2.

DEVISE.

1. A devise of land was made by a will, upon specified conditions, "under the penalty, in case of non-compliance, of loss of the above property," the conditions being to pay certain money legacies, and a life annuity in money. Then other legacies in money were given. Then there was a provision, "that all the legacies which I have given in money and not charged upon any particular fund" should not be payable for two years "after my decease," followed by a provision as to the payment by the devisee of interest on the first-named money legacies after she should come into possession of the land devised. No other money legacies were given payable by any person on conditions, and there were no other legacies in money which could answer the description of legacies in money charged on a particular fund: *Held*, that the life annuity was a charge on the land devised. *Canal Bank* v. *Hudson*, 66.
2. The will being proved and recorded in the county where the land was situated, it was not necessary, in such suit in chancery by the life annuitant, to make as defendant the trustee in a deed of trust made by the devisee under the will, provided, in a suit to enforce the deed of trust, brought by the beneficiaries under it, they were given the right to contest the validity of the lien claimed by the life annuitant and to relieve the land from such lien, when established. *Id.*
3. The defendants claiming title under the devisee, and she being entitled to a distributive share of the entire estate of the life annuitant, who died during the pendency of such suit in chancery, it is not proper to abate from the allowance to the defendants of the amount paid by them to discharge the decree in such suit, any sum on account of the distributive share of such devisee in the amount so paid. *Id.*

DIPLOMATIC PRIVILEGE.

On application by a person indicted for an offence committed while president of a national bank against the provisions of § 5209 Rev. Stat., for certiorari to bring up the indictment on the ground that when the alleged offence was committed he was a political agent of a foreign government, the application was refused when it appeared that his own government had requested his resignation prior to the finding of the indictment, although it was not actually given till subsequent thereto, and that the political defendant of the Government of the United States had refused him the privilege of free entry of goods usually accorded to a diplomatic representative. *Ex parte Hitz*, 766.

DISTRICT OF COLUMBIA.

See DEED, 3.

DIVORCE.

See DOWER.

DONATION INTER VIVOS.

In Louisiana a donation of land *inter vivos*, reserving the use to the donor until his death, is void if made without consideration:—if made with a partial consideration, the value of the object given exceeding by one-half or more that of the charges or services—*quære* whether the gift will not be of a mixed nature, one part sale and valid, and one part donation and invalid. *Johnson* v. *Waters*, 640.

DONATION MORTIS CAUSA.

In Louisiana a donation to take effect at the death of the donor, so far as it is gratuitous, is a donation *mortis causâ*, which can be made only by will and testament, or by an instrument clothed with the forms required for validity as such, and clearly showing by its provisions that it is a disposition by will. *Johnson* v. *Waters*, 640.

DOWER.

1. A divorce from the bond of matrimony bars the wife's right of dower, unless preserved by the *lex rei sitæ*. *Barrett* v. *Failing*, 523.
2. Under § 495 of the Oregon Code of Civil Procedure, as amended by the statute of December 20th, 1865, providing that whenever a marriage shall be declared void or dissolved the party at whose prayer the decree shall be made shall be entitled to an undivided third part in fee of the real property owned by the other party at the time of the decree, in addition to a decree for maintenance under § 497, and that it shall be the duty of the court to enter a decree accordingly, a wife obtain-

ing a decree of divorce in a court of another State, having jurisdiction of the cause and of the parties, acquires no title in the husband's land in Oregon. *Id.*

EJECTMENT.

See JURISDICTION, A, 8.

EQUITY.

1. The plaintiffs, as creditors, whose debts were secured by a deed of trust on land in Mississippi, having brought a suit in equity to enforce the trust and to sell the land, joined as defendants, by a supplemental bill, persons in possession, who claimed to own the land under a title founded on a sale made under a judgment recovered prior to the execution of the deed of trust, but which judgment had been held by this court, in the same suit (*Bank* v. *Partee*, 99 U. S. 325), before the filing of the supplemental bill, to be void, as against the plaintiffs. The defendants in possession set up a claim to be allowed for the amount they had paid in discharge of a lien or charge on the land created by a will devising the land to the original grantor in the deed of trust, and for taxes paid, and for improvements. These claims were allowed. *Canal Bank* v. *Hudson*, 66.
2. In 1876, K brought a suit in a Circuit Court of the United States in Missouri, to foreclose a mortgage on a railroad, making the railroad corporation (a citizen of Missouri) and others defendants. There was a decree of sale, and a sale, and it was confirmed in October, 1876. In February, 1877, the corporation appealed to this court. The case was affirmed here in April, 1880. In June, 1880, the corporation filed a bill in the same court against another Missouri corporation (a citizen of Missouri) and other citizens of Missouri, alleging fraud in fact in the foreclosure suit, in the conduct of the solicitor and directors of the corporation defendant in that suit, and praying that the decree in the K suit be set aside. On demurrer to the bill, *Held:* (1.) The record in the K suit, not being made a part of the bill or the record in this suit, could not be referred to; (2.) The charges of fraud, in the bill, were sufficient to warrant the discovery and relief based on those charges; (3.) The case set forth in the bill, being one showing that no real defence was made in the K suit, because of the unfaithful conduct of the solicitor and directors of the defendant in that suit, was one of which a court of equity would take cognizance; (4.) There was no laches in filing the bill, as the time during which the appeal to this court was pending could not be counted against the plaintiff; (5.) As the bill showed hostile control of the corporate affairs of the plaintiff by its directors during the period covered by the K suit, mere knowledge by, or notice to, the plaintiff, or its directors, or officers, or stockholders, of the facts alleged in the bill during that

period, was unimportant, a case of acquiescence, assent, or ratification, or of the intervention of the rights of innocent purchasers, not being shown by the bill, and the corporation having acted promptly when freed from the control of such directors; (6.) It did not follow that parties who became interested in the plaintiff's corporation, with knowledge of the matters set forth in the bill, were entitled to the same standing as to relief with those who were interested in the corporation when the transactions complained of occurred; (7.) The Circuit Court had jurisdiction of the bill, although the plaintiff and some of the defendants were citizens of Missouri. *Pacific Railroad of Missouri* v. *Missouri Pacific Railway Co.*, 505.

3. § 49, ch. 22 of the Chancery Practice Act of Illinois (Hurd's Rev. Stat. Ill. 195), providing for creditors' bills of discovery, and to reach and apply equitable estates to the satisfaction of debts applies to all cases in which the creditor can obtain a lien only by filing a bill in equity for that purpose. *Spindle* v. *Shreve*, 542.
4. A creditor of the estate of a deceased person may maintain an independent suit in equity to set aside for fraud a sale of real estate of the deceased made under order of court, though a party to the proceedings, if he was no party to the fraud, and was ignorant of it until after confirmation or homologation of the sale, and no question about it was before the court which confirmed the sale and passed upon the executor's accounts. *Johnson* v. *Waters*, 640.

See CREDITOR'S BILL;
DEVISE;
IMPROVEMENTS, 1, 2, 3;
LIMITATIONS, 5;
MISTAKE;
STATUTES, A. 1.

ERROR.

1. A decree will not be reversed for error in improperly excluding evidence when it is clear that the exclusion worked no prejudice to the excepting party. *Hornbuckle* v. *Stafford*, 389.
2. An exception cannot be sustained to the exclusion of evidence which is not shown by the bill of exceptions to have been material. *Thompson* v. *First National Bank of Toledo*, 529.
3. When it plainly appears on the face of a record that the judgment below was right, it will not be reversed for a technical error which worked no injury to the plaintiff in error. *Mobile & Montgomery Railway Co.* v. *Jurey*, 584.

See EXCEPTIONS;
JURISDICTION, A, 1;
WRIT OF ERROR.

ESTOPPEL.

1. A course of business and a periodical settlement between the commis-

sioner of internal revenue and a regular periodical purchaser of revenue stamps entitled by statute to commission on his purchases payable in money, which shows that the commissioner asserted, and the purchaser accepted, that the business should be conducted upon the basis of payments of the commissions in stamps at their par value instead of in money, does not preclude the purchaser from asserting his statutory right, if he had no choice, and if the only alternative was to submit to an illegal exaction or discontinue his business. *Swift Company* v. *United States*, 22.

2. When the commissioner of internal revenue adopted a rule of dealing with purchasers of stamps which deprived them of a statutory right to be paid their commissions in money, and obliged them to take them in stamps, and made known to those interested that the rule was adopted and would not be changed, the rule dispensed with the necessity of proving, in each instance of complying with it, that the compliance was forced. *Id.*
3. When the Constitution or a statute of a State requires as essential to the validity to municipal bonds that they shall be registered in a State registry and receive by indorsement a certificate of one or more State officers showing that they are issued in pursuance of law, and the Constitution or law gives no conclusive effect to such registration or to such certificate, the municipality is not concluded by the certificate from denying the facts certified to. *Dixon County* v. *Field*, 83.
4. A recital in a municipal bond of facts which the corporate officers had authority by law to determine and to certify, estops the corporation from denying those facts; but a recital there of facts which the corporate officers had no authority to determine, or a recital of matters of law, does not estop the corporation. *Id.*
5. Proof that a bankrupt when being examined respecting his property refused to answer questions on the ground that the answers might criminate him, as an indictment was pending against him for a criminal offence, under the bankrupt laws, does not so put the assignee on inquiry as to fraudulent transfers of the bankrupt's property as to deprive him of the benefit of the rule respecting the statute of limitations laid down in *Bailey* v. *Grover*, 21 Wall. 342, and affirmed in this case. *Rosenthal* v. *Walker*, 185.
6. The issuing of a temporary injunction, which was afterwards made permanent by a State court, restraining municipal officers from issuing municipal bonds, does not estop a *bona fide* holder for value, who was no party to the suit, from maintaining title to such bonds issued after the temporary injunction. *Carroll County* v. *Smith*, 556.

See HOT SPRINGS RESERVATION, 3;
MUNICIPAL BONDS.

EVIDENCE.

1. Evidence that a letter properly directed was put in the post office is

admissible to show presumptively that the letter reached its destination; and if the party to whom the letter was addressed denies its receipt, it is for the jury to determine the weight of the presumption. *Rosenthal* v. *Walker*, 185.

2. It is competent, as tending to prove a fraudulent transfer of property in contemplation of bankruptcy, to show a prior valid sale from the bankrupt to the same party, if it can be connected with other evidence tending to show a secret agreement by which the bankrupt was to acquire an interest in the goods so sold. *Id.*
3. Entries in the books of one party to a transaction, not contemporaneous, or made in the due course of the business, as a part of the *res gestæ*, but made after the rights of the other party had become fixed, are not competent evidence. *Burley* v. *German National Bank*, 216.
4. Where the issue was as to whether A or B owned a note, and A, having testified that he owned it, afterwards testified that B owned it, and gave as a reason that he had never directed the proceeds of the note to be applied to any purpose, it is competent to prove by C that A gave directions to C as to how to apply such proceeds. *Id.*
5. A transcript from the books of the treasury, certified to by the Fourth Auditor, showing the account of the Treasury Department with a paymaster of the navy, accompanied by a certificate of the Secretary of the Treasury that the certifying officer was the Fourth Auditor at the time of the certificate, is competent evidence in a suit upon the paymaster's bond. *United States* v. *Bell*, 477.
6. Upon an issue, in a suit upon a life policy, as to the insanity of the insured at the time he took his own life, the opinion of a non-professional witness as to his mental condition, in connection with a statement of the facts and circumstances, within his personal knowledge, upon which that opinion is based, is competent evidence. *Connecticut Mutual Life Ins. Co.* v. *Lathrop*, 612.
7. It is not necessary that a transcript of a decree of naturalization should be accompanied by a certificate that the judge of the court was commissioned and qualified, in order to entitle it to be received in evidence. *St. Paul, Minneapolis & Manitoba Railway* v. *Burton*, 788.

See CONTRACT, 3; CORPORATION, 1; COURT AND JURY; ERROR, 1, 2; ESTOPPEL, 5.

EXCEPTIONS.

1. Where a charge embraces several distinct propositions, a general exception is of no effect if any one of them is correct. *Cooper* v. *Schlesinger*, 148.
2. When the issue made up by the pleadings and evidence for the jury is whether one party was induced to enter into the contract in suit by

false and fraudulent representations of the other party, and isolated passages from the charge are excepted to, if the charge as a whole and in substance instructs the jury that a statement recklessly made without knowledge of its truth was a false statement knowingly made, within the settled rule, and, taken as a whole, it is sufficient and will be supported. *Id.*

3. If it is intended to raise, on a writ of error, the point that a cross-examination was not responsive to anything elicited on the direct, an objection must have been taken on that ground at the trial. *Burley* v. *German National Bank*, 216.
4. A judgment will not be reversed upon a general exception to the refusal of the court to grant a series of instructions, presented as one request, because there happens to be in the series some which ought to have been given. *Moulor* v. *American Life Insurance Co.*, 335.
5. When a common exception is taken to a part of a charge involving two propositions, one of which is sound and the other error, the exception is of no avail unless unless the erroneous part be specially brought to the attention of the court before the jury retires. *Mobile & Montgomery Railway Co.* v. *Jurey*, 584.

See ERROR, 2;
JURISDICTION, A, 1;
PLEADING, 2.

EXECUTOR AND ADMINISTRATOR.

1. A policy of life insurance, issued by a company incorporated in one State, payable to the assured, his executors or administrators, is assets for the purpose of founding administration upon his estate in another State, in which the corporation, at and since the time of his death, does business, and, as required by the statutes of that State, has an agent on whom process against it may be served. *New England Mutual Life Insurance Co.* v. *Woodworth*, 138.
2. Letters of administration which state that the intestate had at the time of death personal property in the State, are sufficient evidence of the authority of the administrator to sue in that State, in the absence of proof that there was no such property. *Id.*
3. A bequest to the executors of the testator and their successors in office, with directions to apply the income and profits to the education of minor children, and to divide the gift and its accumulations among the children on the coming of the youngest to the age of twenty-one years, vests *virtute officii* in the executors who qualify, and on the death or removal of any one of them his successor succeeds to his title. *Colt* v. *Colt*, 566.
4. As long as personal property is held by executors as part of the estate of the testator, for the payment of debts or legacies, or as a residuum to be distributed, they hold it by virtue of their office, and are accountable for it as executors. *Id.*

5. When there is a question as to the distribution of a residuum of personal property in the hands of executors, who are also trustees under the will for minor claimants to a part of it, the duty of the executors towards the minors is discharged when they are brought before the court with their guardian, and their interests are fairly placed under the protection of a court of equity. *Id.*

See PRINCIPAL AND AGENT, 2.

FALSE REPRESENTATION.

See DAMAGES.

FIDUCIARY CAPACITY.

See BANKRUPTCY, 1.

FRAUD.

See BANKRUPTCY, 1;
EQUITY, 2 (2, 3);
LIMITATION, 6.

FUGITIVE FROM JUSTICE.

See HABEAS CORPUS;
OFFICER OF THE UNITED STATES.

GUARDIAN.

See LOCAL LAW, 2.

HABEAS CORPUS.

Congress has not undertaken to invest the judicial tribunals of the United States with exclusive jurisdiction of issuing writs of *habeas corpus* in proceedings for the arrests of fugitives from justice, and their delivery to the authorities of the State in which they stand charged with crime. *Robb* v. *Connolly*, 624.

HOT SPRINGS RESERVATION.

1. The powers conferred upon the commissioners appointed under the "Act in relation to the Hot Springs Reservation in the State of Arkansas," passed March 3d, 1877, 19 Stat. 377, were analogous to those conferred upon the Receiver and Register of the Land Office in cases of conflicting claims to pre-emption. *Rector* v. *Gibbon*, 276.
2. The provision in § 5 of the act of March 3d, 1877, that the commissioners shall "finally determine the right of each claimant or occupant," relates to the legal title which under the act is to pass from the United States; but it does not preclude a court of equity, after issue of a patent in accordance with the determination of the commissioners,

from inquiring whether the legal title from the United States is not equitably subject to a trust in favor of other parties. *Johnson* v. *Towsley*, 13 Wall. 72, cited and followed. *Id.*

3. After the passage of the act of June 11th, 1870, 16 Stat. 149, referring the title in the Hot Springs Reservation to the Court of Claims, but before the adjudications under it, A, who had been in possession of a tract in the reservation for nearly forty years, leased it to B, with a covenant from B to surrender at the expiration of the term. In the proceedings under that act A's title was adjudged invalid. *Hot Springs Cases*, 92 U. S. 698. Under the act of March 3d, 1877, 19 Stat. 377, A and one claiming by assignment from B appeared before the commissioners, each claiming the right to receive the certificate for the leased tract. The commissioners adjudged it to B's assignee, and a patent issued accordingly. *Held*, That under the circumstances the assignee of B, the lessee, was estopped in equity from setting up the subsequently acquired legal title against A, the lessor. *Id.*

HOUMAS GRANT.

The original Houmas grant in Louisiana from the Indians, on the 5th of October, 1774, had a defined length on the river Mississippi, and designated coterminous proprietors to the north and to the south, but no depth to the grant was named. The Spanish governor executed a formal grant of the tract, describing it as of the common depth of forty arpents. Two years later, on the petition of the grantee, the governor directed his adjutant to give the petitioner the land which might be vacant after forty arpents in depth. This was done by a survey running the northern and southern boundaries on courses from the Mississippi for forty arpents and for two arpents additional. *Held*, That, in view of the Spanish usages, and of the action of the Spanish authorities, and of the action of Congress and of United States officials, all of which are referred to, the concession extended in the designated courses to the depth of eighty arpents from the river. *Slidell* v. *Grandjean*, 412.

HUSBAND AND WIFE.

1. A husband may settle a portion of his property upon his wife, if he does not thereby impair the claims of existing creditors, and the settlement is not intended as a cover to future schemes of fraud. *Moore* v. *Page*, 117.
2. When a husband settles a portion of his property on his wife it should not be mingled up or confounded with that which he retains, or be left under his management or control without notice that it belongs to her. *Id.*

See CURTESY.

ILLINOIS.

Under § 18, chap. 3, of the Revised Statutes of Illinois, of 1874, a husband is entitled to administration on the estate of his wife, if she left property in Illinois. *New England Mutual Life Insurance Co.* v. *Woodworth*, 138.

IMPROVEMENTS.

1. The defendants in a suit in chancery having acquired their title under a deed of trust executed after the original bill was filed, and before the grantor in such deed was served with process in this suit, it was held that they, being in fact purchasers in good faith, were not chargeable with notice of the intention of the plaintiff to bring his suit, within the provisions of the Revised Code of Mississippi, of 1871, chap. 17, article 4, § 1557, in regard to allowances for improvements on land to purchasers in good faith, until they were served with process on the supplemental bill. *Canal Bank* v. *Hudson*, 66.
2. The meaning of the words "good faith" in the statute, and as applicable to this case, defined. *Id.*
3. The amount allowed by the Circuit Court, for improvements, upheld as proper, under the special circumstances. *Id.*

See EQUITY, 1;
HOT SPRINGS RESERVATION, 3.

INDIAN TREATIES.

See PUBLIC LANDS, 2.

INSANITY.

See EVIDENCE, 6.

INSURANCE.

1. A policy of life insurance containing a provision that a default in payment of premiums shall not work a forfeiture, but that the sum insured shall then be reduced and commuted to the annual premiums paid, confers the right on the assured to convert the policy at any time, by notice to the insurer, into a paid-up policy for the amount of premiums paid. *Lovell* v. *St. Louis Mutual Life Insurance Co.*, 264.
2. The neglect to pay a premium on a policy of life insurance will not work a forfeiture of the policy if the neglect was caused by a representation made in good faith, but without authority by an agent of the insurer that it would be converted by his principal into a paid-up policy on the basis of the premiums already paid in. *Id.*
3. On the termination of its business by a life insurance company, and the transfer of its assets and policies to another company, each policy-holder may, if he desires, terminate his policy and maintain an

action to recover from the assets such sum as he may be equitably entitled to, and in such case the measure of damages will be the amount of premiums paid less the value of the insurance of which he enjoyed the benefit. *Id.*

4. When a policy of insurance contains contradictory provisions, or has been so framed as to leave room for construction, rendering it doubtful whether the parties intended the exact truth of the applicant's statements to be a condition precedent to any binding contract, the court should lean against that construction which imposes upon the assured the obligations of a warranty. *Moulor* v. *American Life Insurance Co.*, 335.
5. An applicant for life insurance was required to state, categorically, whether he had ever been afflicted with certain specified diseases. He answered that he had not. Upon an examination of the several clauses of the application, in connection with the policy, it was held to be reasonably clear that the company required, as a condition precedent to a valid contract, nothing more than that the insured would observe good faith towards it, and make full, direct and honest answers to all questions, without evasion or fraud, and without suppression, misrepresentation, or concealment of facts with which the company ought to be made acquainted. *Id.*
6. In the absence of explicit stipulations requiring such an interpretation, it should not be inferred that the insured took a life policy with the understanding that it should be void, if, at any time in the past, he was, whether conscious of the fact or not, afflicted with the diseases, or any one of them, specified in the questions propounded by the company. Such a construction of the contract should be avoided, unless clearly demanded by the established rules governing the interpretation of written instruments. *Id.*
7. An insurer against loss by fire subrogated for the assured by reason of payment of the policy may, in a suit against a common carrier brought in the name of the assured for the value of the goods insured, recover the full amount of the loss or damage, without regard to the amount of the policy. There is nothing in § 2891 Alabama Code in conflict with this general rule. *Mobile & Montgomery Railway Co.* v. *Jurey*, 584.

See EXECUTOR AND ADMINISTRATOR, 1.

INTERNAL REVENUE.

1. Under the act of July 14th, 1870, c. 255, § 4, 16 Stat. 257, the proprietor of friction matches who furnished his own dies, was entitled to a commission of ten per cent. payable in money upon the amount of adhesive stamps over $500 which he at any one time purchased for his own use from the Bureau of Internal Revenue. *Swift Company* v. *United States*, 105 U. S. 691, considered and affirmed. *Swift Company* v. *United States*, 22.

2. The sureties on a distiller's bond for payment of taxes are discharged by seizure of the spirits for fraudulent acts of the distiller, and sale of them by the marshal, and payment of the taxes by the marshal out of the proceeds of the sale. *United States* v. *Ulrici*, 38.

3. An order by A in favor of B, or bearer, upon C for "five dollars in merchandise at retail," paid out by A and used as circulation, is not a note within the meaning of the act of February 8th, 1875, imposing a tax of ten per cent. on notes used for circulation and paid out by persons, firms, associations other than national banking associations, corporations, State banks, or State banking associations. *Hollister* v. *Zion's Co-operative Mercantile Institution*, 62.

See ESTOPPEL, 1, 2;
LIMITATIONS, 1;
VOLUNTARY PAYMENT.

INTERPRETATION OF STATE LOCAL LAW.

See MUNICIPAL CORPORATIONS, 4, 5.

JUDGMENT.

It is within the discretion of the court after overruling a general demurrer to a declaration or complaint as not stating facts which constitute a cause of action to enter final judgment on the demurrer; and such judgment if entered may be pleaded in bar to another suit for the same cause of action. *Alley* v. *Nott*, 472.

See PRACTICE, 4;
TAX, 2.

JURISDICTION.

GENERALLY.

1. In cases coming from the Circuit Courts, this court will determine from its own inspection of the record, whether they are of the class excluded by statute from the cognizance of those courts; this, although the question of jurisdiction is not raised by the parties. *Börs* v. *Preston*, 252.

2. It is an inflexible rule that the judicial power of the United States must not be exerted in a case to which it does not extend, even if both parties desire to have it exerted. *Mansfield, Coldwater & Lake Michigan Railway* v. *Swan*, 379.

3. The necessary citizenship must appear in the record in order to give jurisdiction to a court of the United States, when the jurisdiction depends upon it. *Id.*

See CONSTITUTIONAL LAW, A, 1, 2.

A. Jurisdiction of the Supreme Court.

1. Where an action of law is tried by a Circuit Court, without a jury, and the facts on which, on a writ of error, the plaintiff in error seeks to raise a question of law, are not admitted in the pleadings, or specially found by the court, and there is a general finding for the defendant in error on the cause of action which involves such question of law, and there is no exception by the plaintiff in error to any ruling of the court in regard to such question, this court can make no adjudication in regard to it. *Otoe County* v. *Baldwin*, 1.

2. The defence of another action pending can only be set up by plea in abatement, and the action of the court below upon the plea is not subject to review in this court. The dictum of the court in *Piquignot* v. *Pennsylvania Railroad*, 16 How. 104, cited and approved. *Stephens* v. *Monongahela Bank*, 197.

3. In order to give this court jurisdiction in error to a State court it must appear affirmatively on the face of the record, not only that a Federal question was raised and presented to the highest court of the State for decision, but that it was decided, or that its decision was necessary to the judgment or decree rendered in the case. *Chouteau* v. *Gibson*, 200.

4. When a demurrer to a complaint for failure to state a cause of action is overruled, the defendant, by answering, does not lose his right to have the judgment on the verdict reviewed for error in overruling the demurrer. *Teal* v. *Walker*, 242.

5. This court will not take jurisdiction to review the action of a State court if the Federal question raised here was not raised below, and if no opportunity was given to the State court to pass upon it. *Santa Cruz County* v. *Santa Cruz Railroad*, 361.

6. A decree in a suit in a Circuit Court for the foreclosure of a railroad, fixing the compensation to be paid to the trustees under the mortgage from the fund realized from the sale, is a final decree as to that matter, and this court has jurisdiction on appeal. *Williams* v. *Morgan*, 684.

7. The decision of the State courts of California upon the question whether an alcalde in San Francisco after the conquest and before the incorporation of San Francisco, and before the adoption of a State Constitution by California, could make a valid grant of pueblo lands presents no Federal question, and is not reviewable here. *San Francisco* v. *Scott*, 768.

8. In ejectment in which several defendants are joined who hold separate tracts adversely to the plaintiff, this court will not dismiss the writ of error because each separate tract is not of the jurisdictional value, if their combined values are sufficient to give jurisdiction. *Friend* v. *Wise*, 797.

9. This court has jurisdiction in error over a judgment of the Supreme Court of Louisiana, in a suit by one citizen of that State against an-

other for the foreclosure of a mortgage on real estate therein, when the only controversy in the case is as to the effect to be given to a sale of the property under an order of the District Court of the United States in bankruptcy, to sell the bankrupt's mortgaged property free from incumbrances. *Factors' & Traders' Insurance Co.* v. *Murphy*, 738.

See CONSUL;
PRACTICE, 1;
SUPREME COURT.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. The jurisdiction of Circuit Courts of the United States of suits by citizens against aliens is not defeated by the fact that the defendant is the consul of a foreign government. *Börs* v. *Preston*, 252.
2. Under the act of March 3d, 1875, 18 Stat. 470, a suit cannot be removed on the ground of citizenship, unless the requisite citizenship existed both when the suit was begun and when the petition for removal was filed. *Gibson* v. *Bruce*, 108 U. S. 561, cited and followed. *Houston & Texas Central Railway* v. *Shirley*, 358.
3. A substituted party comes into a suit subject to all the disabilities of him whose place he takes, so far as concerns the right of removal of the cause. *Cable* v. *Ellis*, 110 U. S. 389, approved. *Id.*
4. When a cause is removed from a State court the difference of citizenship on which the right of removal depends must have existed at the time when the suit was begun, as well as at the time of removal. *Mansfield, Coldwater & Lake Michigan Railway* v. *Swan*, 379.
5. The judiciary act of March 3d, 1875, 18 Stat. 470, does not confer upon Circuit Courts jurisdiction over causes in which the jurisdiction of the Supreme Court is made exclusive by § 687 Rev. Stat. *Ames* v. *Kansas*, 449.
6. Suits cognizable in the courts of the United States on account of the nature of the controversy, and which are not required to be brought originally in the Supreme Court, may be brought in or removed to the Circuit Courts from State courts without regard to the character of the parties. The reasoning and language in *Cohens* v. *Virginia*, 6 Wheat. 397, concerning appellate jurisdiction of the Supreme Court, adopted and applied to the jurisdiction of Circuit Courts over causes in which a State is a party, commenced in a State court and removed to a Circuit Court. *Id.*
7. A Circuit Court of the United States has jurisdiction in equity of proceedings under a bill filed by a creditor of the estate of a deceased person to set aside for fraud a sale of the real estate of the deceased which was made and confirmed by order of a State court having competent jurisdiction when the inquiry is not into irregularities of pro-

ceeding in the other court, but into actual fraud in obtaining the judgment or decree of sale and confirmation. *Johnson* v. *Waters*, 640.

See EQUITY, 2, (7).
REMOVAL OF CAUSES.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

See CONFISCATION, 3.

LACHES.

See EQUITY, 2, (4).

LEASE.

See CONTRACT, 2.

LEGAL TENDER.

The acts of Congress making the notes of the United States a legal tender do not apply to involuntary contributions in the nature of taxes or assessments exacted under State laws, but only to debts in the strict sense of the term; that is, to obligations founded on contracts, express or implied, for the payment of money. *Hagar* v. *Reclamation District*, 701.

LEGISLATIVE AUTHORITY.

See MUNICIPAL CORPORATIONS.

LIEN.

The statute of Mississippi, Revised Code of 1857, chap. 57, article 15, p. 401, which provides, that "no judgment or decree rendered in any court held within this State shall be a lien on the property of the defendant therein for a longer period than seven years from the rendition thereof," does not apply to a decree of a Court of Chancery in Mississippi, establishing the arrears due on such life annuity as a specific lien on such land by virtue of such will, in a suit in chancery brought by the life annuitant. *Canal Bank* v. *Hudson*, 66.

LIMITATIONS, STATUTE OF.

1. In a course of dealing between a regular purchaser of stamps, through a series of years, and the Commissioner of Internal Revenue, where a separate written order was given for each purchase, and the commissioner answered each by sending the stamps asked for, "in satisfaction of the order," and where remittances were made from time to time by the purchaser on a general credit, which the commissioner so applied; and where accounts were made and balanced monthly between the parties; and where in each transaction the commissioner

withheld from the purchaser a part of the commission due him by law; the right of action accrued in each transaction as the commission was withheld, and the Statute of Limitations in each case began to run. *Swift Company* v. *United States*, 22.

2. A negotiable promissory note made in New Orleans secured by mortgage of real estate in Mississippi, the maker being a citizen of Arkansas, and the promisee being a citizen of Louisiana, and no place of payment being named in the note, is subject to the limitation of actions prescribed by the statute of Mississippi as the law of the forum, when suit is brought upon it in Mississippi. *Walsh* v. *Mayer*, 31.
3. In Mississippi a letter from the holder of a promissory note, the right of action on which is barred by the statute of limitations, asking for insurance on buildings on property mortgaged to secure payment of the note, and saying, "The amount you owe me on the $7,500 note is too large to be left in such an unprotected situation: I cannot consent to it"—and a written reply from the maker, saying, "We think you will run no risk in that time, as the property would be worth more than the amount due you if the building were to burn down," is an acknowledgment of the debt within the requirements of the Mississippi statute of limitations. *Id.*
4. When a promissory note barred by the statute of limitations is signed in their individual names by several persons forming a copartnership, and the acknowledgment in writing to take it out of the operation of the statute is signed in the partnership name, it is a sufficient acknowledgment if the note was an obligation contracted for partnership purposes, and if it can be legitimately inferred from the facts that the firm was the agent of all the makers for the purpose of the acknowledgment. *Id.*
5. If a statute enacts that when a corporation has unlawfully made a division of its property, or has property which cannot be attached, or is not by law attachable, any judgment creditor may file a bill in equity for the purpose of procuring a decree that the property shall be paid to him in satisfaction of his judgment, the right of action thus conferred, being an equitable right, does not accrue until the issue of execution on the judgment and its return unsatisfied. *Taylor* v. *Bowker*, 110.
6. If one deals with an agent as principal, and the right of action against the agent becomes barred by the statute of limitations, it is also barred against the principal, unless circumstances of equity are shown to prevent the operation of the statute, or unless it appears that there was fraud in the concealment of the agency. *Ware* v. *Galveston City Company*, 170.
7. Where an action by an assignee in bankruptcy is intended to obtain redress against a fraud concealed by the party, or which from its nature remains secret, the bar of the statute of limitations, Rev. Stat.

§ 5057, does not begin to run until the fraud is discovered. *Bailey* v. *Glover*, 21 Wall. 342, cited and affirmed. *Wood* v. *Carpenter*, 101 U. S. 135, and *National Bank* v. *Carpenter*, 101 U. S. 567, distinguished. *Rosenthal* v. *Walker*, 185.

8. In Missouri the excuse for avoiding the operation of the statute of limitations, that the debtor by absconding or concealing himself prevented the commencement of an action, is available in actions at law as well as in equity. § 3244 Rev. Stat. Mo. *Gaines* v. *Miller*, 395.
9. If a petition for a rehearing is presented in season and entertained by the court, the time limited for a writ of error does not begin to run until the petition is disposed of. *Texas & Pacific Railway Co.* v. *Murphy*, 488.
10. In Louisiana the acknowledgment of a succession debt by an executor or administrator, and the ranking of it by the judge in the manner provided by the Code of Practice, suspend the prescription. *Johnson* v. *Waters*, 640.

See ESTOPPEL, 5.

LOCAL LAW.

1. Whether an equitable interest in real estate is liable to be appropriated by legal process to the payment of the debts of the beneficiary is to be determined by the local law where the property has its *situs*. *Nichols* v. *Levy*, 5 Wall. 433, cited and approved. *Spindle* v. *Shreve*, 542.
2. When an infant, properly served in a suit pending before a State court, is before the court, the question whether to proceed by general guardian or by guardian *ad litem* is local to the law of jurisdiction; and when passed upon by the courts of that jurisdiction the proceedings cannot be questioned collaterally in Federal courts. *Colt* v. *Colt*, 566.

See LIMITATIONS, 3, 8, 10.

LORD'S DAY.

See CONTRACT, 5, 6.

LOUISIANA.

See DONATION; HOUMAS GRANT; LIMITATIONS, 10; USAGE AND CUSTOM.

MANDAMUS.

See PRACTICE, 4.

MASTER AND SERVANT.

1. The obligation of a master to provide reasonably safe places and struct-

ures for his servants to work upon does not oblige him to keep a building, which they are employed in erecting, in a safe condition at every moment of their work, so far as its safety depends on the due performance of that work by them and their fellow servants. *Amour* v. *Hahn*, 313.

2. Carpenters, under charge of a foreman, and bricklayers, all employed by the owner through his superintendent, were engaged in the erection of a building, with a cornice supported by sticks of timber passing through the wall (which was thirteen inches thick) and projecting sixteen inches, and to be bricked up at the sides and ultimately over the top of the timbers. When the wall had been bricked up on a level with, but not yet over, the timbers, the foreman of the carpenters directed two of them to take a joist for the edge of the cornice, and to push it out to the ends of the projecting timbers. In so arranging the joist, a carpenter stepped on the projecting part of one of the timbers, which tipped over, whereby he fell and was hurt. *Held*, That the owner of the building was not liable to him for the injury. *Id.*

MERGER.

See MORTGAGE, 4.

MINERAL LANDS.

See PUBLIC LANDS, 3, 4.

MISSISSIPPI.

See IMPROVEMENTS;
LIEN.

MISSOURI.

See LIMITATIONS, 8.

MISTAKE.

Where in a recorded deed of land subject to a mortgage, an agreement of the grantee to assume and pay it is inserted by mistake of the scrivener and against the intention of the parties, and on the discovery of the mistake the grantor releases the grantee from all liability under the agreement, a court of equity will not enforce the agreement at the suit of one who, in ignorance of the agreement, and before the execution of the release, purchased the notes secured by the mortgage; although the grantee, after the deed of conveyance to him, paid interest accruing on the notes. *Drury* v. *Hayden*, 223.

MORTGAGE.

1. A conveyance to a trustee absolute on its face, but with an instrument of defeasance showing that it was given to secure the payment of a debt due to a third party is a mortgage, and is subject to the rule that a mortgagee is not entitled to the rents and profits until he acquires actual possession. *Teal* v. *Walker*, 242.
2. The rule that the mortgagee is not entitled to the rents and profits before actual possession, applies even when the mortgagor covenants in the mortgage to surrender the mortgaged property on default in payment of the debt, and nevertheless refuses to deliver it after default, and drives the trustee to his action to enforce the trust. *Id.*
3. The statute of Oregon which provides that "a mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law," establishes absolutely the rule that a mortgagee is not entitled to the rents and profits before foreclosure. *Id.*
4. When a mortgagee of real estate becomes owner of the equity of redemption, a court of equity will not regard the mortgage as merged by unity of possession, if it was the evident intent that the two titles should be kept distinct, or if the purchaser has such an interest in keeping them distinct that this intent can be inferred. *Factors' & Traders' Insurance Co.* v. *Murphy*, 738.

See BANKRUPTCY, 4;
JURISDICTION, A, 9;
PARTIES, 3, 4.

MUNICIPAL BONDS.

A recital in a bond issued by a municipal corporation in payment of a subscription to capital stock in a railway company, that it is authorized by a statute referred to by title and date, does not estop the municipality in a suit on the bond from setting up that the issue was not authorized by vote of two-thirds of the voters of the corporation, as required by the Constitution of the State. *Carroll County* v. *Smith*, 556.

See NEBRASKA, 1, 5.

MUNICIPAL CORPORATIONS.

1. The legislature of a State, unless restrained by its organic law, has the right to authorize a municipal corporation to issue bonds in aid of a railroad, and to levy a tax to pay the bonds and the interest on them, with or without a popular vote, and to cure, by a retrospective act, irregularities in the exercise of the power conferred. *Otoe County* v. *Baldwin*, 1.

2. There must be authority of law, by statute, for every issue of bonds of a municipal corporation as a gift to a railroad or other work of internal improvement. *Dixon County* v. *Field*, 83.
3. Where bonds of a municipal corporation in Nebraska, issued in accordance with the laws of that State, purport, on their face, to be issued by the board of county commissioners, on behalf of the precinct, and are signed by the chairman of the board, and attested by its clerk, who is also the clerk of the county, and are sealed with the seal of the county, and the coupons are signed by such clerk, and the bonds refer to the coupons as annexed, the bonds and coupons are issued by the county commissioners. *Blair* v. *Cuming County*, 363.
4. When the settled decisions of the highest court of a State have determined the extent and character of the powers which its political and municipal organizations shall possess, the decisions are authoritative upon the courts of the United States. *Claiborne County* v. *Brooks*, 400.
5. In the absence of State statutes, or of settled decisions of the highest court of a State, the rule of interpretation in respect of the powers of political and municipal corporations is to be found in the analogies furnished by their prototypes in the country of common origin, varied and modified by circumstances peculiar to our political and social condition. *Id.*
6. The power to issue commercial paper is foreign to the objects in the creation of political divisions into counties and townships, and is not to be conceded to such organizations unless by virtue of express legislation, or by very strong implication from such legislation. *Id.*
7. The power which the statutes of Tennessee confer upon a county in that State to erect a court-house, jail, and other necessary county buildings, does not authorize the issue of commercial paper as evidence or security for a debt contracted for the construction of such a building. *Ross* v. *Anderson County*, 8 Baxter, 249, shown to be consistent with this decision. *Id.*

See CONSTITUTIONAL LAW, B, 1; ESTOPPEL, 3, 4, 6; MUNICIPAL BONDS; NEBRASKA, 1, 3, 4, 5; RAILROAD, 1, 2, 3.

NATIONAL BANKS.

1. A pledgee of shares of stock in a national bank who in good faith and with no fraudulent intent takes the security for his benefit in the name of an irresponsible trustee for the avowed purpose of avoiding individual liability as a shareholder, and who exercises none of the powers or rights of a stockholder, incurs no liability as such to creditors of the bank in case of its failure. *Anderson* v. *Philadelphia Warehouse Co.*, 479.
2. A creditor of an insolvent national bank, who establishes his debt by

suit and judgment after refusal by the comptroller of the currency to allow it, is entitled to share in dividends upon the debt and interest so established as of the day of the failure of the bank; and not upon the basis of the judgment if it includes interest subsequent to that date. *White* v. *Knox*, 784.

NATURALIZATION.

See EVIDENCE, 7.

NEBRASKA.

1. Bonds to the amount of $40,000 were issued by the county of Otoe, in the State (then Territory) of Nebraska, to the Council Bluffs and St. Joseph Railroad Company, as a donation to that company to aid in the construction of a railroad in Fremont County, Iowa, to secure to said Otoe County an eastern railroad connection. Notwithstanding any defects or irregularities in the voting upon or issuing said bonds, they were validated by § 8 of the act of the legislature of the State of Nebraska, passed February 15th, 1869 (Laws of 1869, p. 92), entitled "An Act to enable counties, cities, and precincts to borrow money on their bonds, or to issue bonds to aid in the construction or completion of works of internal improvement in this State, and to legalize bonds already issued for such purpose," taken in connection with another act of said legislature of the same date. *Otoe County* v. *Baldwin*, 1.
2. The decision of this court in *Railroad Company* v. *County of Otoe*, 16 Wall. 667, cited and applied. *Id.*
3. The first of said acts of February 15th, 1869, was not in violation of section 19 of article 2 of the Constitution of Nebraska, of 1867, which provided that "no bill shall contain more than one subject, which shall be clearly expressed in its title." *Id.*
4. Section 2, Article 12 of the Constitution of Nebraska, which took effect November 1st, 1875, conferred no power upon a county to add to its authorized or existing indebtedness, without express legislative authority; but it limited the power of the legislature in that respect by fixing the terms and conditions on which alone it was at liberty to authorize the creation of municipal indebtedness. *Dixon County* v. *Field*, 83.
5. Bonds issued by the county commissioners of a county in Nebraska, on behalf of a precinct in that county, to aid a company in improving the water-power of a river for the purpose of propelling public grist-mills, are issued to aid in constructing a "work of internal improvement," within the meaning of the act of Nebraska, of February 15th, 1869, as amended by the act of March 3d, 1870, Laws of 1869, p. 92; and Laws of 1870, p. 15; and Gen. Stat. of 1873, ch. 35, p. 448. Although, in such a bond and its coupons, the precinct is

the promisor, a suit to recover on such coupons is properly brought against the county. *Blair* v. *Cuming County*, 363.

See MUNICIPAL CORPORATIONS, 3.

NEW YORK.

See PLEADING, 1, 2.

OFFICER OF THE COURT.

1. The taking, by a marshal of the United States, upon a writ of attachment on mesne process against one person, of the goods of another, is a breach of the condition of his official bond, for which his sureties are liable. *Lammon* v. *Feusier*, 17.
2. The possession by a marshal of a court of the United States of property by virtue of a levy under a writ of execution issued upon a judgment recovered in a Circuit Court of the United States is a complete defence to an action in a State court of replevin of the property seized, without regard to its rightful ownership. *Freeman* v. *Howe*, 24 How. 450, affirmed and applied to the facts in this case. *Krippendorf* v. *Hyde*, 110 U. S. 276, affirmed. *Buck* v. *Colbath*, 3 Wall. 334, distinguished. *Covell* v. *Heyman*, 176.
3. The principle that whenever property has been seized by an officer of the court by virtue of its process, the property is to be considered as in the custody of the court and under its control for the time being, applies both to a taking under a writ of attachment on mesne process and to a taking under a writ of execution. *Id.*

OFFICER OF THE UNITED STATES.

An agent, appointed by the State in which a fugitive from justice stands charged with crime, to receive such fugitive from the State by which he is surrendered, is not an officer of the United States within the meaning of former adjudications of this court. *Robb* v. *Connolly*, 624.

OREGON.

See DOWER, 2;
MORTGAGE, 3.

PARTIES.

1. The heir at law of a deceased person is not the proper party to enforce an alleged trust in personal property made for the benefit of the deceased. *Ware* v. *Galveston City Company*, 170.
2. A defective description of the representative capacity of a defendant in the subpœna which summons him is cured if he is properly described in the bill, and if he appears, even by the defective title, and answers generally without objection. *Johnson* v. *Waters*, 640.

3. A holder of railroad bonds secured by a mortgage under foreclosure, has an interest in the amount of the trustee's compensation which entitles him to intervene, and to contest it, and to appeal from an adverse decision. *Williams* v. *Morgan*, 684.
4. When purchasers at a sale of a railroad under foreclosure, purchase under an agreement, recognized by the court and referred to in the decree, that a new mortgage shall be issued after the sale, a part of which is to be applied to the payment of the foreclosure debt and a part to the payment of expenses, which expenses include the compensation of the trustees under the mortgage foreclosed, the purchasing committee named in that agreement have an interest in fixing that compensation which entitles them to intervene, and to be heard, and to appeal from an adverse decision. *Id.*

See CONSUL;
EQUITY, 2, (6);
LOCAL LAW, 2.

PARTNERSHIP.

1. A person sued as a partner, and whose name is shown to have been signed by another person to the articles of partnership, may prove that before the articles were signed, or the partnership began business, he instructed that person that he would not be a partner. *Thompson* v. *First National Bank of Toledo*, 529.
2. A person who is not actually a partner, and who has no interest in the partnership, cannot, by reason of having held himself out to the world as a partner, be held liable as such on a contract made by the partnership with one who had no knowledge of the holding out. *Id.*

PATENT.

1. If a patent is granted for a combination, one part of which is of a form described in the patent as adapted by reason of its shape to perform certain specified functions, and the patent is surrendered and a reissue taken which expands some of the claims so as to cover every other form of this part of the combination, whether adapted to perform those functions or not, the reissue is void as to such expanded claims. *McMurray* v. *Mallory*, 97.
2. A patent for a combination is not infringed by using one part of it combined with other devices substantially different from those described in the patent in form or mode of arrangement and combination with the other parts. *Id.*
3. It is not competent for a patentee who has surrendered his letters patent and made oath that he believes that by reason of an insufficient or defective specification the surrendered letters are inoperative and void, and has taken out reissued letters on a new specification

and for new claims, to abandon the reissue and resume the original patent by a disclaimer. *Id.*

4. The original letters patent to Abel Barker, of May 17th, 1870, for an improvement in soldering machines was for a combination of a rod with a disk of a particular form and shape, which was essential to it. In the reissue the first three claims were so expanded as to embrace all forms of soldering irons in combination with a movable rod, and the reissue was void to that extent. *Id.*
5. The first claim in the reissue to E. M. Lang & Co., October 29th, 1878, of a patent for an improvement in soldering irons granted to Jabez A. Bostwick, June 21st, 1870, was for a different invention from that described in the original patent, and is void. *Id.*
6. When a patent is for an improvement of an existing machine or contrivance, the patentee in a suit for damages for infringement must either show by reliable, tangible proof that the value of the machine or contrivance as a whole is due to the use of his patented invention, or he must separate and apportion by proof of the same character, the part of the defendant's profits which are derivable from the use of it, in order to establish a claim for more than nominal damages. *Garretson* v. *Clark*, 120.
7. Damages must be nominal in an action where the infringement of a patent was established, and it appeared that other methods in common use produced the same results with equal facility and cost, and there was no proof of the exaction of a license fee for the use of the invention, and its general payment. *Black* v. *Thorne*, 122.
8. If the claim of reissued letters patent No. 4321, Division B, granted to Charles Graebe and Charles Liebermann, April 4th, 1871, for an "improvement in dyes or coloring matter from anthracine" (the original patent, No. 95,465, having been granted to them October 5th, 1869), namely: "Artificial alizarine, produced from anthracine or its derivatives by either of the methods herein described, or by any other method which will produce a like result," is construed so broadly as to cover a dye-stuff, imported from Europe, made by a process not shown to be the same as that described in No. 4321, and containing large proportions of coloring matters not shown to be found to any practically useful extent in the alizarine of the process of No. 4321, such as isopurpurine or anthrapurpurine, it is wider in its scope than the original actual invention of the patentees, and wider than anything indicated in the specification of the original patent. If the claim is to be construed so as to cover only the product which the process described in it will produce, it does not cover a different product, which cannot be practically produced by that process. *Cochrane* v. *Badische Anilin & Soda Fabrik*, 293.
9. When an inventor takes out a patent founded on a claim which does not include his whole invention, and rests for twelve years, and then surrenders his patent and takes a reissue with a broader claim, under

circumstances which warrant the conclusion that the act is caused by successful competition of a rival, he will be held to have dedicated to the public so much of his invention as was not included in the original claim. *Miller* v. *Brass Company*, 104 U. S. 350, cited and followed. *Turner & Seymour Manufacturing Company* v. *Dover Stamping Co.*, 319.

10. Letters patent No. 122,001, granted to the Eagleton Manufacturing Company, December 19th, 1871, for an "improvement in japanned furniture springs," as the alleged invention of J. J. Eagleton, *held*, to be invalid, and the following points ruled: (1.) The patent is for steel furniture springs protected by japan, and tempered by the heat used in baking on the japan; (2.) Such springs, so protected and tempered, were known and used by various persons named in the answer, before the date of the patent; (3.) The specification which accompanied the original application by Eagleton, July 6th, 1868, did not set forth the discovery that moderate heat, such as may be applied in japanning, will impart temper to the springs, but set forth merely the protection of the springs by japan; (4.) Not only does the evidence fail to show that Eagleton, who died in February, 1870, in fact made and used, prior to such other persons the invention covered by the patent as issued, but it shows that he did not, and that, probably, it never came to his knowledge while he lived; (5.) Japanning, by itself, was not patentable, and Eagleton, in the specification which he signed and swore to, did not describe any mode of japanning which would temper or strengthen the steel, and did not even mention that the japan was to be applied with heat, and it now appears that the temper and strength are produced by heat, altogether, and not at all by the japan; (6.) The only invention to which the application and oath of Eagleton were referable was that of merely japanning steel furniture springs; the authority given to his attorneys was only to amend that application, and ended at his death; the amendments made were not mere amplifications of what had been in the application before; the patent was granted upon them without any new oath by the administratrix; and this defence is not required, by statute, to be specifically set forth in the answer, and can be availed of under the issues raised by the pleadings as showing that the plaintiff has no valid patent. *Eagleton Manufacturing Co.* v. *West, Bradley & Carey Manufacturing Co.*, 490.

11. The construction of the pavement described in the letters patent for "a new and useful improvement in street and other highway pavements" granted to Robert C. Phillips, December 5th, 1871, demanded only ordinary mechanical skill and judgment, and but a small degree of either, and required no invention. *Phillips* v. *Detroit*, 604.

12. In passing upon the novelty of an alleged invention the court may consider matters of common knowledge, or things in common use. *Id.*

PHOTOGRAPH.

See COPYRIGHT.

PLEADING.

1. In New York, under § 500 of the Code of Civil Procedure, an answer which makes certain statements, and then denies every allegation of the complaint, "except as hereinbefore stated or admitted," amounts to a sufficient general denial of all allegations of the complaint not admitted, to authorize evidence to be given to show any of such allegations to be untrue. *Burley* v. *German American Bank*, 216.
2. An objection that such denial is indefinite or uncertain must be taken by a motion made before trial, to make the answer definite and certain, by amendment, and cannot be availed of by excluding evidence at the trial. *Id.*
3. A complaint which sets forth as cause of action a subject which is prescribed, without setting forth the matter which takes it out of the prescription, may be amended so as to set that matter forth, if the answer admits its truth. *Johnson* v. *Waters*, 640.

See EQUITY, 2, (1);
JURISDICTION, B, 2;
PARTIES, 2.

PRACTICE.

1. When a cause is properly removed from a State court to a Federal court, and the State court nevertheless proceeds with the case, and forces to trial the party upon whose petition the removal was made, the proper remedy is by writ of error after final judgment, and not by prohibition or punishment for contempt. *Insurance Company* v. *Dunn*, 19 Wall. 214, and *Removal Cases*, 100 U. S. 457, again reaffirmed. *Chesapeake & Ohio Railroad Co.* v. *White*, 134.
2. If a record fails to present in proper form the questions argued by counsel, the judgment will be affirmed. *Greenwood* v. *Randall*, 775.
3. *Grigsby* v. *Purcell*, 99 U. S. 505, that "an appeal will be dismissed, when, at the term to which it was returnable, the transcript was, by reason of the laches of the appellant, not filed, or the cause docketed in this court" cited and affirmed. *Killian* v. *Clark*, 784.
4. A decision of the Supreme Court of a Territory dismissing a writ of error to a District Court because of failure to docket the cause in time is not a final judgment or decision with the meaning of the statutes regulating writs of error and appeals to this court. Mandamus is the proper remedy in such case. *Harrington* v. *Holler*, 796.
5. An appeal was taken from the court below by appellant under a incorrect description, not corresponding with the title in the court below. Under this incorrect title proceedings were conducted to final judgment here and a mandate issued. That mandate is now recalled and a

new one is issued conforming the title and description to those in the court below. *Killian* v. *Ebbinghaus*, 798.

See ACTION, 1, 2;
APPEAL;
ERROR;
EXCEPTIONS, 1, 2, 4;
JUDGMENT;
JURISDICTION, B, 1, 2;
LIMITATIONS, 9;
PLEADING, 2, 3;
SUPERSEDEAS;
SUPREME COURT;
TRIAL;
UNITED STATES.

B. IN CIRCUIT COURTS OF THE UNITED STATES.

See EXCEPTIONS, 3, 4;
TRIAL.

C. IN THE SUPREME COURTS OF TERRITORIES.

The Supreme Court of a Territory states as conclusion of law matter which should be stated as finding of fact. This court treats it as a finding of fact, under the act of April 7th, 1874, 18 Stat. 27. *Eilers* v. *Boatman*, 356.

PRINCIPAL AND AGENT.

1. The lawful representative of a deceased person who ratifies sales of property made by an agent of executors in their own wrong may maintain an action at law against the agent for money had and received to recover the proceeds of the sale in his hands. *Gaines* v. *Miller*, 395.
2. The ratification extends to all the dealings on the subject between the agent and his principals; and if the principals have converted the simple debt into a judgment, the lawful representative is bound by it. *Id.*

See COPORATION, 1;
LIMITATION, 6.

PROXIMATE CAUSE.

See RAILROAD, 4.

PUBLIC LANDS.

1. The aim of Congress in statutes relieving parties from the consequences of defects in title has been to protect *bona fide* settlers, and not intruders upon the original settlers, seeking by violence, or fraud, or breach of contract to appropriate the benefit of their labor. The legislation in this respect and the decisions of this court upon it reviewed. *Rector* v. *Gibbon*, 276.
2. The location of land scrip upon lands reserved for Indians under the

provisions of a treaty with an Indian tribe, and the issue of a patent therefor, are void. *United States* v. *Carpenter*, 347.

3. The decision of a court of competent jurisdiction upon adverse claims to a patent for mineral lands under §§ 2325, 2326 Rev. Stat. is subject to review in this court when the amount in controversy is sufficient. *Chambers* v. *Harrington*, 350.
4. When several adjoining claims to mineral lands are held in common, work for the benefit of all done upon any one of them in a given year to an amount equal to that required to be done upon all in that year meets the requirements of § 2324 Rev. Stat. The language of the court in *Jackson* v. *Roby*, 109 U. S. 440, cited and approved. *Id.*
5. The facts in this case show no reason why the equitable claim of the plaintiff in error to a tract of public land patented to the defendant should prevail over the legal title. *Quinn* v. *Chapman*, 445.
6. A rule formerly prevailing in the Land Office forbidding the filing of a declaratory statement based upon an alleged right of preemption, having its origin subsequent to the commencement of a contest between other parties for the same land, is not ground for rejecting the claim if it is otherwise equitable. *Id.*

See HOUMAS GRANT;
HOT SPRINGS RESERVATIONS;
SPANISH GRANTS;
STATUTES, A, 2, 5;
SWAMP LANDS;
USAGE AND CUSTOM.

QUO WARRANTO.

The remedy by information in the nature of *quo warranto*, though criminal in form, is in effect a civil proceeding. *Ames* v. *Kansas*, 449.

See REMOVAL OF CAUSES, 1, 2, 3.

RAILROAD.

1. A statute authorizing a municipal corporation to require railroad companies to provide protection against injury to persons and property confers plenary power in those respects over the railroads within the corporate limits. *Hayes* v. *Michigan Central Railroad Company*, 228.
2. When the line of a railroad runs parallel with and adjacent to a public park which is used as a place of recreation and amusement by the inhabitants of a municipal corporation, and the corporation requests the company to erect a fence between the railroad and the park, it is within the design of a statute conferring power upon the municipal corporation to require railroad companies to protect against injuries to persons. *Id.*
3. A grant of a right of way over a tract of land to a railroad company by a municipal corporation by an ordinance which provides that the company shall erect suitable fences on the line of the road and maintain gates at street crossings is not a mere contract, but is an exercise

of the right of municipal legislation, and has the force of law within the corporate limits. *Id.*

4. If a railroad company, which has been duly required by a municipal corporation to erect a fence upon the line of its road within the corporate limits, for the purpose of protecting against injury to persons, fails to do so, and an individual is injured by the engine or cars of the company in consequence, he may maintain an action against the company and recover, if he establishes that the accident was reasonably connected with the want of precaution as a cause, and that he was not guilty of contributory negligence. *Id.*
5. Debts contracted by a railroad corporation as part of necessary operating expenses (for fuel, for example), the mortgage interest of the company being in arrear at the time, are privileged debts, entitled to be paid out of current income, if the mortgage trustees take possession or if a receiver is appointed in a foreclosure suit. *Burnham* v. *Bowen*, 776.
6. If the current income of the road is diverted to the improvement of the property by the trustees in possession or by the receiver, and the mortgage is foreclosed without payment of such debts for operating expenses, an order should be made for their payment out of the fund if the property is sold, or if a strict foreclosure is had they should be charged upon income after foreclosure. *Id.*
7. An assignee of such a debt has the same rights as the original holder. *Id.*
8. When commercial paper is the evidence of such a debt it is no waiver of the privilege to renew the paper at maturity. *Id.*
9. It is not intended to decide that the income of a railroad in the hands of a receiver for the benefit of mortgage creditors can be taken away from them and used to pay the general creditors. *Id.*

See CONTRACT, 2;
PARTIES, 3, 4.

REBELLION.

A judgment of a Confederate court during the rebellion confiscating a claim due to a loyal citizen residing in a loyal State, and payment of the claim to a Confederate agent in accordance with the judgment, are no bar to a recovery of the claim. *Williams* v. *Bruffy*, 96 U. S. 176, and 102 U. S. 248, cited and its principal points restated and affirmed. *Stevens* v. *Griffith*, 48.

REMOVAL OF CAUSES.

1. A statute abolishing the common-law proceeding by information in the nature of *quo warranto*, and authorizing an action to be brought in cases in which that remedy was applicable, makes the proceed-

ing a civil action for the enforcement of a civil right, subject to removal from State courts to the courts of the United States when other circumstances permit. *Ames* v. *Kansas*, 449.

2. Proceedings by a State against a corporation created under its own laws, in the nature of *quo warranto* for the abandonment, relinquishment and surrender of its powers to another corporation with which it has been consolidated under a law of the United States, and proceedings against the directors of said consolidated company for usurping the powers of such State corporation are, when in the form of civil actions, suits arising under the laws of the United States within the meaning of the acts regulating the removal of causes. *Id.*
3. When a suit brought by a State in one of its own courts against a corporation amenable to its own process, to try the right of the corporation to exercise corporate powers within the territorial limits of the State, presents a case arising under the laws of the United States, it may be removed to the Circuit Court of the United States if the other jurisdictional conditions exist. *Id.*
4. As a demurrer to a complaint because it does not state facts sufficient to constitute a cause of action raises an issue which involves the merits, a trial of the issue raised by it is a trial of the action within the meaning of § 3 of the act of March 3d, 1875, 18 Stat. 471, relating to the time within which the causes may be removed from State courts. *Vannevar* v. *Bryant*, 21 Wall. 41; *Insurance Company* v. *Dunn*, 19 Wall. 214; *King* v. *Worthington*, 104 U. S. 44; *Hewitt* v. *Phelps*, 105 U. S. 393, distinguished from this case. *Miller* v. *Tobin*, 18 Fed. Rep. 609, overruled. *Alley* v. *Nott*, 472.
5. When all the defendants in a cause in a State court have appeared and answered, without filing counterclaims or raising new issues, the cause is ready for trial and can be tried within the meaning of § 3 of the act of March 3d, 1875, 18 Stat. 471. *Edrington* v. *Jefferson*, 770.
6. When a cause is at issue and ready for trial in a State court, and the limitation provisions of the Removal Act of March 3d, 1875, take effect, the right of removal is not revived by subsequent amendments of the pleadings, by leave of court, which make new issues, nor by the appearance of new parties whose interests are represented by a party previously in the record. *Id.*
7. When a cause is improperly removed from a State court and a motion to remand it is overruled, that judgment is error which may be corrected here. *Id.*

See JURISDICTION, B, 2, 4, 6.

REVIEW.

A bill represented as a bill of review showing no errors of law on the face of the record and not alleging a discovery of new matter since the rendering of the decree, the court below properly refused leave to file it. *Nickle* v. *Stewart*, 776.

SOLICITOR AND CLIENT.

See EQUITY, 2, (3).

SPANISH GRANTS.

In an order by a Spanish governor of Louisiana recognizing an Indian grant and directing the issue of "a complete title," these words, as translated, refer to the instruments which constitute the evidence of title, and not to the estate or interest conveyed. *Slidell* v. *Grandjean*, 412.

See HOUMAS GRANT;
USAGE AND CUSTOM.

STATUTES.

A. CONSTRUCTION OF STATUTES.

1. If a statute confers upon a judgment creditor of a corporation an equitable remedy on the issue of an execution on the judgment and its return unsatisfied, and in a revision of the statutes the same equitable remedy is given, but without mention of the issue and return of execution, it is not to be presumed that the legislature intended by the omission to abrogate or modify an established rule of equity, that when it is attempted by equitable process to reach equitable interests fraudulently conveyed, the bill should set forth a judgment, issue of execution thereon, and its return unsatisfied. *Taylor* v. *Bowker*, 110.
2. In case of doubt, a legislative grant should always be construed most strongly against the grantee. *Slidell* v. *Grandjean*, 412.
3. When a statute authorized the creation of a commission of three to decide upon land grants, a majority of whom "shall have power to decide," "which decisions shall be laid before Congress," "and be subject to their determination," their decisions have no binding force until acted upon by Congress. *Id.*
4. An act confirming "the decisions in favor of land claimants made by" A, B, and C, reciting their names, does not confirm a decision made by A and B and dissented from by C, although the act under which the commission was created provided that a majority of the commissioners should have power to decide. *Id.*
5. A legislative confirmation of a grant of land of which no quantity is given, no boundary stated, and no rule for its ascertainment furnished, is void for uncertainty. The distinction between such a confirmation and that passed upon in *Langdeau* v. *Hanes*, 21 Wall. 521, pointed out. *Id.*

See MUNICIPAL CORPORATION, 4, 5;
RAILROAD, 1, 2;
USURY.

B. STATUTES OF THE UNITED STATES.

See ACTION, 2;
CONFISCATION, 1, 2;
COPYRIGHT, 2;
COSTS, 1;
JURISDICTION, B, 5;
SURPLUS REVENUE;
USURY, 1, 2.

C. STATUTES OF STATES AND TERRITORIES.

Alabama: *See* ACTION, 1.
Illinois: *See* EQUITY, 3; ILLINOIS.
Mississippi: *See* IMPROVMENTS, 1, 2; LIEN.
Missouri: *See* LIMITATIONS, 8.
New York: *See* PLEADING, 1.
Oregon: *See* MORTGAGE, 3; DOWER, 2.
Tennessee: *See* MUNICIPAL CORPORATIONS, 7.

SUBROGATION.

See INSURANCE, 7.

SUNDAY.

See CONTRACT, 5, 6.

SUPERSEDEAS.

A supersedeas will not be vacated when the writ of error is sued out and served within twenty days after the decision of a motion for rehearing, presented in season and disposed of by the court. *Texas & Pacific Railway Co.* v. *Murphy*, 488.

SUPREME COURT.

In cases coming from the Circuit Courts, this court will determine from its own inspection of the record, whether they are of the class excluded by statute from the cognizance of those courts; this, although the question of jurisdiction is not raised by the parties. *Börs* v. *Preston*, 252.

SURETY.

See OFFICER OF THE COURT, 1.

SURPLUS REVENUE.

The Secretary of the Treasury is not authorized to use the revenues of the United States, accrued since January 1st, 1839, in order to deposit with the States in the fourth instalment of surplus revenue according to the provisions of the act of June 23d, 1836, 5 Stat. 55. *Ex parte Virginia*, 43.

SWAMP LANDS.

1. It is within the discretion of the legislature of California to prescribe a system for reclaiming swamp lands, when essential to the health and prosperity of the community, and to lay the burden of doing it upon the districts and persons benefited. *Hagar* v. *Reclamation District*, 701.
2. Lands in California derived by grant from the Mexican government are subject to State legislation respecting swamp and overflowed lands. *Id.*
3. It is not competent for the owner of land which is part of a grant to a State under the swamp land act, 9 Stat. 419, to set up in proceedings begun to enforce a tax on the land assessed under a State law for the purpose of draining and improving it, that the State law impairs the obligation of the contract between the State and the United States, and so violates the Constitution; because (1), if the swamp land act constituted a contract between the State and the United States he was no party to it; and (2), the appropriation of the proceeds of the granted swamp lands rest solely in the good faith of the State. *Mills County* v. *Railroad Companies*, 107 U. S. 557, affirmed. *Id.*

TAX.

1. The distinction between a tax which calls for no inquiry into the weight of evidence, nor for anything in the nature of judicial examination before collection, and a tax imposed upon property according to its value to be ascertained by assessors upon evidence, pointed out and commented on. In the former no notice to the owner is required. In the latter the officers in estimating the value act judicially. *Hagar* v. *Reclamation District*, 701.
2. A judgment creditor of a municipal corporation entitled by his original contract to be paid out of specific tax levies, which agreement the corporation failed to comply with, is entitled, in mandamus proceedings, to a writ ordering the levy and collection of a sufficient tax to pay his judgment according to the assessment roll of the year in which the levy is made. *Nelson* v. *St. Martin's Parish*, 716.

See CONSTITUTIONAL LAW, A, 3, 4, 5; EQUITY, 1; LEGAL TENDER; SWAMP LANDS, 1, 3.

TENNESSEE.

See MUNICIPAL CORPORATIONS.

TRIAL.

Going to the jury upon one of several defences does not preclude the defendant, at a subsequent trial, from insisting upon other defences, involving the merits, which have not been withdrawn of record or

abandoned in pursuance of an agreement with the opposite side. *Moulor* v. *American Life Insurance Co.*, 335.

See EXCEPTION, 1, 2, 3, 4, 5;
PLEADING, 2.

TRUST.

When a trustee denies the trust and refuses to perform it a court of equity will appoint a new trustee in his place, and the old trustee will not be entitled to retain the property under cover of having an account as trustee, before paying over the net proceeds. *Irvine* v. *Dunham*, 327.

UNITED STATES.

A suit being brought on behalf of the United States in the Circuit Court of Alabama for the recovery of specific personal property, in which, under the provision of § 914, Rev. Stat. the forms prescribed by the Statutes of Alabama were "as near as may be" adopted, the Circuit Court after seizure of the property vacated the order of seizure on the grounds (1) that an affidavit of ownership of the property made by the agent of the United States on information and belief was insufficient under the Alabama statute, and (2) that no bond was given as required by that statute. The United States had judgment, but brought a writ of error to review these rulings. *Held*, That the affidavit was sufficient, and that the United States were exempted by § 1001 Rev. Stat. from giving bond, and that the order of the court below vacating the seizure must be reversed. *United States* v. *Bryant*, 499.

USAGE AND CUSTOM.

1. It was a usage of the Spanish government, in granting lands on the river, to reserve lands in the rear of the grants to the depth of forty arpents, the grantee of the river front having the preference right to purchase the reservation. *Slidell* v. *Grandjean*, 412.
2. Usages and customs respecting the alienation of lands prevailing in Louisiana previous to its acquisition by the United States have, to a great extent, the efficacy of law, and are to be respected in considering the rights of grantees of the former government. *Id.*
3. When established, such usages and customs control the construction and qualify and limit the force of positive enactments. *Id.*

See SPANISH GRANTS.

USURY.

1. A statute prescribing a legal rate of interest, and forbidding the taking

of a higher rate "under pain of forfeiture of the entire interest so contracted," and that "if any person hereafter shall pay on any contract a higher rate of interest than the above, as discount or otherwise, the same may be sued for and recovered within twelve months from the time of such payment," confers no authority to apply usurious interest actually paid to the discharge of the principal debt. A suit for recovery within twelve months after payment is the exclusive remedy. *Walsh* v. *Mayer*, 31.

2. The remedy given by Rev. Stat. § 5198 for the recovery of usurious interest paid to a national bank is exclusive. *Barnet* v. *National Bank*, 98 U. S. 555; *Farmers' & Mechanics' Bank* v. *Dearing*, 91 U. S. 29; and *Driesbach* v. *National Bank*, 104 U. S. 52, cited and approved. *Stephens* v. *Monongahela Bank*, 197.
3. In an action by a national bank against a surety upon a note to recover the amount of the note, the surety has no right to have usurious interest paid by the principal in discounts and renewals of the note applied to the payment of the pricipal. *Id.*

VESSEL.

1. The papers of a vessel not under seizure in the hands of a collector of customs, but not deposited with him for purpose of entry or clearance, may not be detained by him without subjecting him to an action for the resulting damage. *Badger* v. *Gutierez*, 734.
2. When a vessel or its owner becomes subject to a statutory penalty for taking out improper papers, that does not justify a collector of customs in withholding from the vessel the papers to which it is lawfully entitled. *Id.*

VOLUNTARY PAYMENT.

A payment made to a public officer in discharge of a fee or tax illegally exacted is not such a voluntary payment as will preclude the party from recovering it back. *Swift Company* v. *United States*, 22.

WAIVER OF DEFENCE.

See TRIAL, 1.

WEARING APPAREL.

See CUSTOMS DUTIES.

WILL.

A court of competent jurisdiction may determine the proper distribution of vested bequests, even though the possession and enjoyment are deferred. *Colt* v. *Colt*, 566.

See EXECUTOR AND ADMINISTRATOR, 3, 4, 5.

WRIT OF ERROR.

Under authority conferred upon the court by § 1005 Rev. Stat., a writ of error bearing a wrong teste, signatures of justice and of clerk, and seal of court, may be amended as to teste and signature of justice by order of court, and as to seal and signature of clerk by directing them to be affixed. *Texas & Pacific Railroad Co.* v. *Kirk*, 486.

See LIMITATIONS, 9;
SUPERSEDEAS.