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APPEAL.

See HABEAS CORPUS, 2.

APPEAL BOND.

1. It is within the discretion of a Circuit Court to take an appeal bond in which each surety is severally bound for only a specified part of the obligation. *N. O. Insurance Co.* v. *Albro*, 506.
2. The omission in an appeal bond, to mention the term at which the judgment was rendered, is not fatal; but may be cured. *Ib.*

ARMY.

See LONGEVITY PAY;
OFFICERS OF THE ARMY AND NAVY.

ARREST OF JUDGMENT.

A motion in arrest of judgment can only be maintained for a defect apparent upon the record, and the evidence is no part of the record for this purpose. *Bond* v. *Dustin*, 604.

See JURISDICTION, A, 11.

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See CLAIMS AGAINST FOREIGN GOVERNMENTS;
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BILLS OF EXCHANGE.

See LIFE INSURANCE, 1, 2, 3;
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See APPEAL BOND;
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CASES AFFIRMED.

Hitz v. *National Metropolitan Bank*, 111 U. S. 722, was decided after elaborate argument and careful consideration, and is adhered to by the court. *Matoon* v. *McGrew*, 713.

The rulings of the court in *Chicago & Northwestern Railway Co.* v. *United States*, 104 U. S. 680, and *Chicago, Milwaukee & St. Paul Railway Co.* v. *United States*, 104 U. S. 687, maintained. *St. Paul & Duluth Railroad* v. *United States*, 733.

See JURISDICTION, A, 4, 5, 6; B, 2, 4;
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QUO WARRANTO.

CASES DISTINGUISHED.

See PUBLIC LAND, 4.

CERTIFICATE OF DIVISION.

See CONSTITUTIONAL LAW, 5.

CHINESE LABORERS.

The fourth section of the act of Congress, approved May 6, 1882, ch. 126,

as amended by the act of July 5, 1884, ch. 120, prescribing the certificate which shall be produced by a Chinese laborer as the "only evidence permissible to establish his right of re-entry" into the United States, is not applicable to Chinese laborers who, residing in this country at the date of the treaty of November 17, 1880, departed by sea before May 6, 1882, and remained out of the United States until after July 5, 1884. *Chew Heong* v. *United States*, 536.

CHARGE OF THE COURT.

See COURT AND JURY;
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CLAIMS AGAINST FOREIGN GOVERNMENTS.

An instrument, by which A, as attorney in fact by substitution, for good consideration, assigns to B an interest in claims to be established against a foreign government in a mixed commission, is valid in equity, although made before the establishment of the claim, and creation of the fund; and may work a distinct appropriation of the fund in B's favor, to the extent of the assignment, within the rule laid down in *Wright* v. *Ellison*, 1 Wall. 16. *Peugh* v. *Porter*, 737.

CLAIMS AGAINST THE UNITED STATES.

1. A voluntary transfer of a claim against the United States by way of mortgage, completed and made absolute by judicial sale, is within the provision, in Rev. Stat. § 3477, that assignments of claims against the United States shall be void, "unless they are freely made and executed, in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof." *St. Paul & Duluth Railroad* v. *United States*, 733.
2. A transfer of a contract with the United States by way of mortgage, completed and made absolute by judicial sale, is within the prohibition of Rev. Stat. § 3737, that "no contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned." *Ib.*

COLLISION.

1. A schooner was sailing E. by N., with the wind S., and a bark was

close-hauled, on the port tack. The schooner sighted the green light of the bark about half a point on the starboard bow, about three miles off, and starboarded a point. At two miles off she starboarded another point. As a result the light of the bark opened about two points. The bark let her sails shake and then filled them twice. The schooner continued to see the green light of the bark till the vessels were within a length of each other, when the bark opened her red light. At the moment the vessels were approaching collision, the schooner put her helm hard a-starboard, and headed northeast. At that juncture the bark ported, and her stem struck the starboard side of the schooner amidships, at about a right angle: *Held*, That the bark was in fault and the schooner free from fault. *The Elizabeth Jones*, 514.

2. If the case was one of crossing courses, under article 12 of the Rules prescribed by the act of April 29, 1864, ch. 69, 13 Stat. 58, the schooner being free and the bark close-hauled on the port tack, the bark did not keep her course, as required by article 18, and no cause for a departure existed under article 19, and she neglected precautions required by the special circumstances of the case, within article 20. *Ib.*
3. The final porting by the bark was not excusable as being done *in extremis*, because it was not produced by any fault in the schooner. *Ib.*
4. The decree of the Circuit Court was affirmed, without interest. *Ib.*

COMMON CARRIER.

1. When a contract of carriage, signed by the shipper, is fairly made with a railroad company, agreeing on a valuation of the property carried, with the rate of freight based on the condition that the carrier assumes liability only to the extent of the agreed valuation, even in case of loss or damage by the negligence of the carrier, the contract will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, and of protecting himself against extravagant and fanciful valuations. *Hart* v. *Pennsylvania Railroad Co.*, 331.
2. H shipped five horses, and other property, by a railroad, in one car, under a bill of lading, signed by him, which stated that the horses were to be transported "upon the following terms and conditions, which are admitted and accepted by me as just and reasonable. First. To pay freight thereon" at a rate specified, "on the condition that the carrier assumes a liability on the stock to the extent of the following agreed valuation: If horses or mules, not exceeding two hundred dollars each. . . . If a chartered car, on the stock and contents in same, twelve hundred dollars for the car load. But no carrier shall be liable for the acts of the animals themselves, . . . nor for loss or damage arising from condition of the animals themselves, which

risks, being beyond the control of the company, are hereby assumed by the owner and the carrier released therefrom." By the negligence of the railroad company or its servants, one of the horses was killed and the others were injured, and the other property was lost. In a suit to recover the damages, it appeared that the horses were race-horses, and the plaintiff offered to show damages, based on their value, amounting to over $25,000. The testimony was excluded, and he had a verdict for $1,200. On a writ of error, brought by him: *Held*, (1) The evidence was not admissible, and the valuation and limitation of liability in the bill of lading was just and reasonable, and binding on the plaintiff; (2) The terms of the limitation covered a loss through negligence. *Ib.*

See RAILROAD, 1, 2.

COMPENSATION.

See INTERNAL REVENUE, 1.

CONDITION PRECEDENT.

See LOCAL LAW, 4.

CONFLICT OF LAW.

1. Where proceedings *in rem* are commenced in a State court and analogous proceedings *in rem* in a court of the United States, against the same property, exclusive jurisdiction for the purposes of its own suit is acquired by the court which first takes possession of the *res;* and while acts of the other court thereafter, necessary to preserve the existence of a statutory right, may be supported, its other acts in assuming to proceed to judgment and to dispose of the property convey no title. *Heidritter* v. *Elizabeth Oil Cloth Co.*, 294.
2. A derived title to the premises in suit through a seizure by officers of the United States for violation of the internal revenue laws, and condemnation and sale of the same in the Circuit Court of the United States: B derived title to the same premises under judgment and decree in a State court to enforce a mechanic's lien. The proceedings in the State court were commenced and prosecuted to judgment after the marshal had taken the premises into his possession and custody under the proceedings in the Circuit Court. *Held*, That B did not hold the legal title of the premises as against A claiming under the marshal's sale and the decree of the District Court. *Ib.*

See SUPERSEDEAS, 2.

CONSOLIDATION OF CORPORATIONS.

See CORPORATION, 2.

CONSTITUTIONAL LAW.

1. A municipal ordinance of the city of New Orleans, to establish the rate of license for professions, callings and other business, which assesses and directs to be collected from persons owning and running towboats to and from the Gulf of Mexico, and the city of New Orleans, is a regulation of commerce among the States, and is an infringement of the provisions of article I., § 8, paragraph 3, of the Constitution of the United States. *Moran* v. *New Orleans*, 69.

2. § 5508 Rev. Stat. is a constitutional and valid law. *Ex parte Yarbrough*, 110 U. S. 661, affirmed. *United States* v. *Waddell*, 76.

3. The exercise by a citizen of the United States of the right to make a homestead entry upon unoccupied public lands which is conferred by § 2289 Rev. Stat. is the exercise of a right secured by the Constitution and laws of the United States within the meaning of § 5508 Rev. Stat. *Ib.*

4. An information which charges in substance that a citizen of the United States made, on a given day, at a land office of the United States, a homestead entry on a quarter section of land subject to entry at that place, and that afterwards, while residing on that land for the purpose of perfecting his right to the same under specified laws of the United States on that subject, the defendants conspired to injure and oppress him and to intimidate and threaten him in the free exercise and enjoyment of that right, and because of his having exercised it, and to prevent his compliance with those laws; and in the second count that, in pursuance of the conspiracy they did upon said homestead tract, with force and arms, fire off loaded guns and pistols in his cabin, and did then and there drive him from his home on said homestead entry; and in the third count that the defendants went in disguise on the premises when occupied by him, with intent to prevent and hinder the free exercise of and enjoyment by him of the right and privilege to make said homestead entry on lands of the United States secured to him by the Constitution and laws of the United States, and the right to cultivate and improve said lands and mature his title as provided by the statute, states the facts with precision so as to bring the case within § 5508 Rev. Stat. *Ib.*

5. The certificate of division contained two questions which this court decided, and a third whether the demurrer below was well taken. No ground of demurrer was assigned which raised any question except the two decided, but the record disclosed a grave constitutional question which was not argued or suggested by counsel. *Held*, That the case should be remanded, with answers to the two questions, and for further proceedings. *Ib.*

6. An Indian, born a member of one of the Indian tribes within the United States, which still exists and is recognized as a tribe by the government of the United States, who has voluntarily separated him-

self from his tribe, and taken up his residence among the white citizens of a State, but who has not been naturalized, or taxed, or recognized as a citizen, either by the United States or by the State, is not a citizen of the United States, within the meaning of the first section of the Fourteenth Article of Amendment of the Constitution. *Elk* v. *Wilkins*, 94.

7. A State law prohibiting the manufacture and sale of intoxicating liquors, is not repugnant to the Constitution of the United States. *Bartemeyer* v. *Iowa*, 18 Wall. 129, and *Beer Co.* v. *Massachusetts*, 97 U. S. 25, affirmed. *Foster* v. *Kansas*, 201.

8. A State statute regulating proceedings for removal of a person from a State office is not repugnant to the Constitution of the United States, if it provides for bringing the party into court, notifies him of the case he has to meet, allows him to be heard in defence, and provides for judicial deliberation and determination. *Kennard* v. *Louisiana*, 92 U. S. 480, affirmed. *Ib.*

9. The act of Congress of August 3, 1882, "to regulate immigration," which imposes upon the owners of steam or sailing vessels who shall bring passengers from a foreign port into a port of the United States, a duty of fifty cents for every such passenger not a citizen of this country, is a valid exercise of the power to regulate commerce with foreign nations. *Head Money Cases*, 580.

10. Though the previous cases in this court on that subject related to State statutes only, they held those statutes void, on the ground that authority to enact them was vested exclusively in Congress by the Constitution, and necessarily decided that when Congress did pass such a statute, which it has done in this case, it would be valid. *Ib.*

11. The contribution levied on the shipowner by this statute, is designed to mitigate the evils incident to immigration from abroad, by raising a fund for that purpose; and it is not, in the sense of the Constitution, a tax subject to the limitations imposed by that instrument on the general taxing power of Congress. *Ib.*

12. A tax is uniform, within the meaning of the constitutional provision on that subject, when it operates with the same effect in all places where the subject of it is found, and is not wanting in such uniformity because the thing taxed is not equally distributed in all parts of the United States. *Ib.*

See JURISDICTION, C, 2, 3;
PLEADING, 1;
TREATY, 2.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTRACT.

1. Four parties made an agreement respecting transportation of freight.

The parties of the first part were carriers by water to Ogdensburgh. The parties of the second part were made by the agreement trustees to hold and apply certain moneys raised for the purpose. The parties of the third part were owners in severalty of lines over which it was proposed that the freight brought by party 1 to Ogdensburgh should pass in transit to Boston. The parties of the fourth part were owners of a line of railway between Ogdensburgh & Lake Champlain over which the freight would pass to reach the roads of party 3. The agreement, among other things, provided that party 3 should pay to party 2 in semi-annual payments a part of the gross receipts derived from the transportation of this freight, and further that "the party of the fourth part will, in case it shall be necessary to secure the regular and efficient running of said steamers to and from Ogdensburgh, when called upon by parties of the second part, advance from time to time sums not exceeding in all $600,000, to be used by said parties of the second part for the same purposes as said semi-annual payments, and to be pro tanto in lieu thereof, and to be repaid out of said semi-annual reservation as hereinafter provided, it being understood and agreed that each of said parties of the third part shall only be liable to reserve and advance or pay to the parties of the second part or to the party of the fourth part, as the case may be, its share of such reservation, advance, or payment, to be ascertained by the proportion which said gross receipts of each of said parties bear to the entire amount of said gross receipts between Ogdensburgh and points eastward upon roads owned, leased, or operated by any of said third parties:" *Held*, That this agreement raised no promise by implication on the part of any of the parties of the third part to repay to the party of the fourth part any advances which it might make under the agreement to the parties of the second part in excess of the semi-annual payments which the parties of the third part were bound to make. *Ogdensburgh Railroad Co.* v. *Nashua & Lowell Railroad Co.*, 311.

2. The consignee of a manufacturing company under a written agreement, providing for sales of goods manufactured by the company by him, united with another person in a bond to the company, conditioned that the former should pay to it all moneys which should become due under, or arise from, the written agreement, and waiving notice of non-payment: *Held*, That the liability of the surety arose on the bond, and that of the consignee on the bond or the written agreement; the condition of the bond extended to the payment of notes made or indorsed by the consignee, and transferred to the company; that, so far as the surety was concerned, his waiver of notice applied to a default by the consignee; and that the statute of limitations in regard to written instruments governed the case. *Streeper* v. *Victor Sewing Machine Co.*, 676.

See CORPORATION, 1.

CONTEMPT.

When a judgment of a State court removes a State officer and thereby vacates the office, and a writ of error from this court is allowed for the reversal of that judgment, one appointed to the vacancy with knowledge of the granting of the writ of error on the part of the judge of the Supreme Court of the State making the appointment, but before the filing of the writ in the clerk's office where the record remains, is guilty of no contempt of this court in assuming to perform the duties of the office. *Foster* v. *Kansas*, 201.

CORPORATION.

1. A vote by a County Court in Missouri subscribing to the capital stock of a railroad company on certain conditions named in the vote, and directing a designated agent to make the subscription on the stock books of the company, and to copy the conditions in full thereon; and a presentation of the subscription and of the conditions in writing by the agent in person to the directors at a directors' meeting; and the acceptance of them by the board with a direction that the same be spread upon the record books of the company, constituted a subscription to the stock, although no actual subscription was made by the agent personally on the stock books. *Bates County* v. *Winters*, 325.
2. In Missouri the consolidation of two or more railroad companies organized under the general law does not avoid subscriptions made to the stock of either, or invalidate the delivery of municipal bonds to the consolidated company in payment of such subscriptions. *Ib.*
3. A statute exempting a corporation from taxation confers the privilege only on the corporation specially referred to, and the right will not pass to its successor unless the intent of the statute to that effect is clear and express. *Morgan* v. *Louisiana*, 93 U. S. 217; *Wilson* v. *Gaines*, 103 U. S. 417; and *Louisville & Nashville Railroad Company* v. *Palmes*, 109 U. S. 244, affirmed. *Memphis & Little Rock Railroad* v. *Railroad Commissioners*, 609.
4. The franchise to be a corporation is not a subject of sale and transfer, unless made so by a statute, which provides a mode for exercising it. *Ib.*
5. A franchise to be a corporation is distinct from a franchise, as a corporation, to maintain and operate a railway: the latter may be mortgaged without the former, and may pass to a purchaser at a foreclosure sale. *Ib.*
6. A mortgage of the charter of a corporation, made in the exercise of a power given by statute, confers no right upon purchasers at a foreclosure sale to exist as the same corporation: if it confers any right of corporate existence upon them, it is only a right to reorganize as a

corporation, subject to laws, constitutional and otherwise, existing at the time of the reorganization. *Ib.*

See MUNICIPAL CORPORATION.

COURT OF CLAIMS.

See JURISDICTION, C.

COURT AND JURY.

1. A & B, residents in New York, were owners of one undivided half of a tract of land in Cleveland. C, residing in Cleveland, was owner of the other undivided half. A & B gave C their power of attorney to sell their undivided half in a proposed sale to a railroad company. C sold the whole tract for $500,000, the consideration being $200,000 for the half belonging to A & B, and $300,000 for the half belonging to C, and A & B received the said consideration coming to them. At the trial of an action brought by A & B against C to recover one-half of the surplus above $200,000 received by him, there was evidence tending to show that A & B before sale consented that C might negotiate for the sale of the whole tract, and get what he could for his own half, if he got $200,000 for their moiety. *Held*, That a charge that the plaintiffs were entitled to recover unless the defendant informed them at what price he could sell or had sold his share and they assented to it, virtually withdrew this evidence from the jury, and instructed them that nothing but the assent of A & B after the sale could be effectual; and that it was error. *Ranney* v. *Barlow*, 207.
2. If one of the issues at a trial be whether parties cohabiting together in a State in which marriage is a civil contract, to which no attending ceremonies are necessary, were man and wife, it is the duty of the court to direct the jury, in the absence of statutory regulations on the subject, to the necessity of proof of some public recognition of the marriage, by which it can be known, or reputation of the relation may obtain. *Maryland* v. *Baldwin*, 490.

See PRACTICE, 5, 6.

CRIMINAL LAW.

See CONSTITUTIONAL LAW, 4;
VERDICT, 1, 2.

CUSTOMS DUTIES.

1. A carriage in use abroad for a year by its owner, who brings it to this country for his own use here, and not for another person nor for sale, is "household effects" under § 2505 Rev. Stat. (p. 484, 2d ed.), and free from duty. *Arthur* v. *Morgan*, 495.

2. A protest against paying 35 per cent. duty on the carriage, which states that the carriage is "personal effects," and had been used over a year (as shown by affidavit), and that, under § 2505 of the Revised Statutes, "personal effects in actual use" are free from duty, is a sufficient protest, on which the amount paid for duty can be recovered back on the ground that the carriage was free from duty as "household effects," under the same section. *Ib.*

DEED.

S, the wife of B, joined with him in a deed to H of land of B, in trust for the use of S, during her life, and, at any time, on the written request of S, and the written consent of B, to convey it to such person as S might request or direct in writing, with the written consent of B. Afterwards B made a deed of the land to W, in which H did not join and in which B was the only grantor, and S was not described as a party, but which was signed by S and bore her seal, and was acknowledged by her in the proper manner: *Held*, That the latter deed did not convey the legal title to the land, and was not made in execution of the power reserved to S. *Batchelor* v. *Brereton*, 396.

See FRAUDULENT CONVEYANCE;
MORTGAGE, 3;
PUBLIC LAND, 10.

DEMURRER.

See JURISDICTION, A, 11, B, 4.

DEVISE.

1. Under a devise to one person in fee, and, in case he should die under age and without children, to another in fee, the devise over takes effect upon the death at any time of the first devisee under age and without children. *Britton* v. *Thornton*, 526.

2. A testator devised to E, daughter of his son N, a parcel of land in fee, provided that should E die in her minority, and without lawful issue then living, the land should revert and become a part of the residue of his estate; devised other land to his son W for life, and to J, son of W, in fee, with a like proviso; gave to his widow certain real and personal property for life; and devised the residue of his estate to his executors, and directed that the income be suffered to accumulate until his eldest grandchild then living should attain the age of twenty-one years, or until the decease of his son W, whichever should first occur, and then the whole to be equally divided among all his grandchildren then living, and in making such division the amount of the devises to J and to E, according to an estimate of their present value, to be made by three appraisers, to be charged to them as part of their

respective shares. *Held*, That the estate of E in the land specifically devised to her was devested by her dying under age and without issue, though after the deaths of the testator and of W. *Ib.*

DISCLAIMER.

See PATENT, 18, 19, 20.

DISTRICT OF COLUMBIA.

See TRUST;
USURY, 1, 2.

DIVISION OF OPINION.

See CONSTITUTIONAL LAW, 5.

DOMICIL.

1. The widow of a citizen of one State does not, by marrying again, and taking the infant children of the first husband from that State to live with her at the home of the second husband in another State, change the domicil of the children. *Lamar* v. *Micou*, 452.
2. A guardian, appointed in a State in which the ward is temporarily residing, cannot change the ward's domicil from one State to another. *Ib.*
3. A guardian, appointed in a State which is not the domicil of the ward, should not, in accounting in the State of his appointment for his investment of the ward's property, be held, unless in obedience to express statute, to a narrower range of securities than is allowed by the law of the State of the ward's domicil. *Ib.*

EJECTMENT.

See LOCAL LAW, 1, 2.

EMIGRANT TAX.

See CONSTITUTIONAL LAW, 9, 10, 11, 12.

EMINENT DOMAIN.

See JURISDICTION, C, 2, 3.

EQUITY.

See CLAIMS AGAINST FOREIGN GOVERNMENTS;
JURISDICTION, B, 2;
LEASE;
LIEN;
MORTGAGE, 1;
PATENT, 5.

ERROR.

See HABEAS CORPUS, 1;
PRACTICE, 5, 6.

ESTOPPEL.

1. The facts in this case do not estop the defendant in error from objecting to the list of swamp lands in Buena Vista County, which was filed by the agent of the county in the office of the Surveyor-General in Iowa in accordance with provisions of a law of that State. *Buena Vista County* v. *Iowa Falls Railroad*, 165.
2. The judgment of a State court in Missouri adverse to the validity of bonds issued by a county in that State in payment of the subscription to stock in a railroad company, which judgment was made in a suit brought by citizens and tax-payers against county officers in order to enjoin the issue of the bonds, and to have them declared invalid, is a binding adjudication in a suit against the county by a holder of the bonds who took with notice of the pendency of the suit. The fact that this court, in another case, and on a different state of facts, held the same issue to be valid does not affect this result. *Scotland County* v. *Hill*, 183.

EVIDENCE.

1. The provision in the New York Civil Code that "a person, duly authorized to practise physic or surgery, shall not be allowed to disclose any information which he acquired in attending a patient, in a professional capacity, and which was necessary to enable him to act in that capacity," is obligatory upon the courts of the United States, sitting within that State, in trials at common law. *Connecticut Insurance Co.* v. *Union Trust Co.*, 250.
2. Section 721 of the Revised Statutes, declaring that "the laws of the several States, except where the Constitution, treaties, and statutes of the United States otherwise require or provide, shall be regarded as rules of decision, in trials at common law in the courts of the United States, in cases where they apply," relates to the nature and principles of evidence, and also to the competency of witnesses, except as the latter subject may be regulated by specific provisions of the statutes of the United States. *Ib.*
3. To the question, in an application for insurance upon life, whether the applicant had ever had the disease of "affection of the liver," the answer was No : *Held*, That the answer was a fair and true one, within the meaning of the contract, if the insured had never had an affection of that organ which amounted to disease, that is, of a character so well defined and marked as to materially disturb or derange for a time its vital functions ; that the question did not require him to state every instance of slight or accidental disorders or ailments, affecting the

liver, which left no trace of injury to health, and were unattended by substantial injury, or inconvenience, or prolonged suffering. *Ib.*

4. In Louisiana the certificate of a judge under article 127 of the Code, that he has examined a married woman apart from her husband touching a proposed borrowing of money by her, and that he is satisfied that the proposed debt is not to be contracted for her husband's debt or for his separate advantage, or for the benefit of his separate estate, or for the community, is not conclusive, but casts on the wife the burden of proving that the money borrowed did not inure to her benefit. *Fortier* v. *New Orleans National Bank*, 439.
5. Admissions by a ward's next of kin during the ward's lifetime cannot be set up in defence of a bill by such next of kin as the ward's administrator. *Lamar* v. *Micou*, 452.
6. Testimony as to admissions and conduct of a deceased person cannot be impeached by proof of that person's statement concerning the character of the witness testifying to them. *Maryland* v. *Baldwin*, 490.

See COURT AND JURY, 1, 2; FRAUDULENT CONVEYANCE; LOCAL LAW, 1, 2; PRACTICE, 2; PUBLIC LAND, 1, 4, 9.

EXCEPTION.

An exception to the modification by the court, in its general charge, of a particular proposition submitted by one of the parties, without stating specifically the modification to which objection is made, is too vague and indefinite. *Connecticut Insurance Co.* v. *Union Trust Co.*, 250.

See JURISDICTION, A, 10, 11; PRACTICE, 7.

EXECUTIVE.

See PATENT, 1, 4.

EXECUTOR AND ADMINISTRATOR.

See JURISDICTION, B, 3.

EXEMPTION FROM TAXATION.

See CORPORATION, 3.

EXTRA PAY.

See OFFICERS OF THE ARMY AND NAVY.

FINDING OF FACTS.

See PRACTICE, 3, 7.

FRANCHISE.

See CORPORATION, 4, 5.

FRAUD.

See PUBLIC LANDS, 1, 2, 3, 4.

FRAUDULENT CONVEYANCE.

A creditor of a grantor of real estate, attacking the conveyance as made to defraud creditors, should show affirmatively that he was a creditor of the grantor when the alleged fraudulent conveyance was made. *Horbach* v. *Hill*, 144.

FRIVOLOUS DEFENCE.

A defence to a suit on a policy against perils of the sea and barratry, that the sale of the cargo after loss of the vessel was made with a want of diligence which the evidence in the case showed was equivalent to barratry, *Held* to be frivolous. *N. O. Insurance Co.* v. *Albro*, 506.

GENEVA AWARD.

See JURISDICTION, C, 1.

GUARDIAN AND WARD.

1. The war of the rebellion, and the residence of both guardian and ward in the enemy's territory throughout the war, did not terminate the obligation of a guardian appointed before the war in a State never within that territory, nor discharge him from liability to account to the ward in the courts of that State after the war. *Lamar* v. *Micou*, 452.
2. A receipt given to a guardian appointed in one State, by a guardian afterwards appointed in another State, for specific personal property of the ward, transferred by the former to the latter, does not discharge the former from responsibility to account for previous loss by his mismanagement of the ward's property. Nor is such responsibility lessened by the person last appointed guardian having before his appointment concurred and aided in the acts complained of. *Ib.*
3. By the law of Georgia before 1863, and by the law of Alabama, a guardian might invest his ward's money in bank stock in Georgia or in New York, or in city bonds, or in bonds issued by a railroad corporation and indorsed by the State which had chartered it. *Ib.*
4. A guardian may, without order of court, sell personal property of the ward in his possession, and reinvest the proceeds. *Ib.*
5. A guardian appointed in New York, before the war of the rebellion, of an infant then temporarily residing there, but domiciled in Georgia,

sold bank stock of his ward in New York during the war, and there invested the proceeds in bonds issued before the war by the cities of Mobile, Memphis and New Orleans, and in bonds issued by a railroad corporation chartered by the State of Tennessee and whose road was in Tennessee and Georgia, and the railroad bonds indorsed by the State of Tennessee at the time of their issue ; and deposited the bonds in a bank in Canada. *Held*, That if in so doing he used due care and prudence, having regard to the best pecuniary interests of his ward, he was not accountable to the ward for loss by depreciation of the bonds, although one object of the sale and investment was to save the ward's money from confiscation by the United States. *Ib.*

6. An investment by a guardian, of money of his ward, during the war of the rebellion, and while both guardian and ward were residing within the enemy's territory, in bonds of the so-called Confederate States, was unlawful, and the guardian is responsible to the ward for the sum so invested. *Ib.*

See DOMICIL, 1, 2, 3 ;
EVIDENCE, 5.

HABEAS CORPUS.

1. The writ of habeas corpus from this court cannot be used to correct or prevent possible future errors, in violation of the Constitution of the United States, by a State court in a cause pending in that court in which the parties and the subject matter are within its jurisdiction. *Crouch, ex parte*, 178.
2. The act of March 27, 1868, 15 Stat. 44, took from this court the jurisdiction to review on appeal a decision of a Circuit Court upon a writ of habeas corpus. The court has no jurisdiction to review it on a writ of error. *Royall, ex parte*, 181.

HUSBAND AND WIFE.

See COURT AND JURY, 2; EVIDENCE, 4;
DEED; MORTGAGE, 2.

IMMIGRATION.

See CONSTITUTIONAL LAW, 9, 10, 11, 12.

INDIAN.

See CONSTITUTIONAL LAW, 6;
PLEADING, 1.

INFORMATION.

See CONSTITUTIONAL LAW, 4;
VERDICT, 1.

INSURANCE.

See LIFE INSURANCE.

INTERNAL REVENUE.

1. A person appointed and commissioned as a collector of internal revenue, under the act of July 1, 1862, 12 Stat. 432, is entitled to the compensation, provided for by § 34 of that act, of a percentage commission to be computed on the moneys accounted for and paid over by him, from the time he enters on the duties of his office and his services are accepted, and not merely from the time he takes the oath of office and files his official bond. *United States* v. *Flanders*, 88.
2. A collector of internal revenue appointed under that act is entitled, in a suit against him on such bond, brought to recover public money collected by him and not paid over, to have allowed, as a set-off, money paid by him for publishing advertisements required to be made by § 19 of that act, if the amount is found to be reasonable and proper, although the item was not formally allowed or certified by the accounting officers in the Treasury Department or otherwise. *Ib.*

See CONFLICT OF LAW, 2.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 7.

JUDGMENT.

See ESTOPPEL, 2;
PATENT, 1;
PRACTICE, 1.

JUDGMENT LIEN.

See LIEN.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. An order awarding a peremptory writ of mandamus which directs the collector of taxes of a county to collect a tax that had been duly levied and extended on the county tax books is a final judgment subject to review when the other conditions exist. *Davies* v. *Corbin*, 36.
2. The power to review the judgment in a proceeding for mandamus to

enforce the collection of a tax to pay all judgment creditors of a specified class, depends upon the amount of the whole tax ordered to be collected, and not upon the amount of the judgment debts due to each or any individual petitioner. *Ib.*

3. When a record shows that two questions are presented by the pleadings, one Federal and one non-Federal, and that the judgment below rested upon a decision of the non-Federal question, this court has no jurisdiction to a review that judgment. *Adams County* v. *Burlington & Missouri Railroad*, 123.

4. When the jurisdiction of this court for review of the judgments and decrees of circuit courts depends upon the amount in controversy, that amount is the sum shown by the whole record, including counterclaims, and not by the claims set up by the plaintiff only. *Hilton* v. *Dickinson*, 108 U. S. 165, affirmed. *Bradstreet Co.* v. *Higgins*, 227.

5. When a cause commenced in a State court, and removed to a Circuit Court, is brought to this court, and it does not appear on the face of the record that the citizenship of the parties was such as to give the Circuit Court jurisdiction on removal, the judgment below will be reversed without inquiry into the merits, and the cause sent back with instructions to remand it to the State court from which it was improperly removed. *Mansfield, Coldwater & Lake Michigan Railway* v. *Swan*, 111 U. S. 379, affirmed. In so remanding the cause this court will make such order as to costs as is just. *Hancock* v. *Holbrook*, 229.

6. This court has no jurisdiction over the decision and judgment of a State court upon adverse claims to real estate made under a common grantor whose title was derived from the United States and is not in dispute. *Romie* v. *Casanova*, 91 U. S. 379, and *McStay* v. *Friedman*, 92 U. S. 723, affirmed. *Hastings* v. *Jackson*, 233.

7. Whether the destruction of a building by fire, communicated from buildings burned by the Confederate forces on leaving Richmond, was covered by a policy which excepted losses resulting from riots, civil commotions, insurrections, or invasions of a foreign enemy, is not a Federal question but one of general law, the decision of which by a State court is not reviewable here. *Grame* v. *Mutual Assurance Co.*, 273.

8. When a mandate of this court, made after hearing and deciding an appeal in equity, directed such further proceedings to be had in the court below as would be consistent with right and justice, and that court thereafter made a decree which prejudiced the substantial rights of a party to the suit, in respect of matters not concluded by the mandate or by the original decree, its action touching such matters is subject to review, upon a second appeal. *Mackall* v. *Richards*, 369.

9. A bill was brought in the name of A. B. "in his capacity as president of the N. O. National Bank." Throughout the pleadings and all

proceedings below it was treated as the suit of the bank. After appeal it was assigned for error that it was the suit of A. B., and as A. B. and the defendant were citizens of the same State that this court was without jurisdiction. *Held*, That the defendant was bound by the construction put upon the bill below, and the objection to jurisdiction was too late. *Fortier* v. *New Orleans Bank*, 439.

10. In an action at law, submitted to the decision of the Circuit Court by the parties waiving a trial by jury, in which the record does not show the filing of the stipulation in writing required by section 649 of the Revised Statutes, this court, upon bill of exceptions and writ of error, cannot review rulings upon the admission or rejection of testimony, or upon any other question of law growing out of the evidence; but may determine whether the declaration is sufficient to support the judgment. *Bond* v. *Dustin*, 604.
11. When there is no demurrer to the declaration, or other exception to the sufficiency of the pleadings, no exception to the rulings of the court in the progress of the trial, in the admission or exclusion of evidence, or otherwise, no request for a ruling upon the legal sufficiency or effect of the whole evidence, or no motion in arrest of judgment, and the only matter presented by the bill of exceptions which this court is asked to review arises upon the exception to the general finding by the court for the plaintiff upon the evidence adduced at the trial, no question of law is presented which this court can review. *Martinton* v. *Fairbanks*, 670.

See HABEAS CORPUS, 1, 2;
MANDAMUS, 1;
PRACTICE, 7.

B. JURISDICTION OF CIRCUIT COURTS.

1. Under the act of March 3, 1875, ch. 137, the Circuit Court has jurisdiction of a suit between citizens of different States to foreclose a mortgage made to secure the payment of a negotiable promissory note of which the plaintiff is indorsee, although the payee and mortgagee is a citizen of the same State with the defendant. *Mersman* v. *Werges*, 139.
2. A bill in equity, in Indiana, which avers that a deed is void on its face, and an answer which does not deny the averment, will support the jurisdiction of the Circuit Court of the United States in that district to quiet the title of the complainant as against the deed. *Holland* v. *Challen*, 110 U. S. 15, affirmed. *Reynolds* v. *Crawfordsville Bank*, 405.
3. A suit on an administrator's bond taken in the name of a State for the benefit of parties interested is, for the purposes of jurisdiction, regarded as a suit in the name of the party for whose benefit it is brought. *Maryland* v. *Baldwin*, 490.
4. A case cannot be removed from a State court under the act of March 3,

1875, 18 Stat. 470, after hearing on a demurrer to a complaint because it did not state facts sufficient to constitute a cause of action. *Alley* v. *Nott*, 111 U. S. 472, affirmed. *Scharff* v. *Levy*, 711.

5. Two citizens of West Virginia conveyed to a trustee certain real property in that State, to secure the payment of notes executed by them to a Missouri corporation, which was subsequently dissolved, and its assets placed in the hands of a citizen of the latter State. Upon default in the payment of the notes, the trustee, under authority given by the deed, advertised the property for sale. The grantors thereupon instituted a suit in equity in one of the courts of West Virginia to enjoin the sale, making the trustee, the Missouri corporation, and the person who held its assets, defendants. Upon the joint petition of that corporation and the defendant holding its assets, the cause was removed to the Circuit Court of the United States, and was there finally determined: *Held*, That since the trustee was an indispensable party, his citizenship was material in determining the jurisdiction of the Circuit Court; and as that was not averred, and did not otherwise affirmatively appear to be such as gave the right of removal, the decree must be reversed and the cause remanded to the State court. *Thayer* v. *Life Association*, 717.

See CONFLICT OF LAW, 1, 2; PRACTICE, 4; JURISDICTION, A, 9; REMOVAL OF CAUSES.

C. JURISDICTION OF THE COURT OF CLAIMS.

1. A claim against the United States for a part of the money received from Great Britain in payment of the award made at Geneva under the Treaty of Washington, is both a claim growing out of a treaty stipulation and a claim dependent upon such stipulation, and is excluded from the jurisdiction of the Court of Claims by § 1066 Rev. Stat. *Great Western Insurance Co.* v. *United States*, 193.

2. Where property to which the United States asserts no title, is taken by their officers or agents, pursuant to an act of Congress, as private property, for the public use, the government is under an implied obligation to make just compensation to the owner. Such an implication being consistent with the constitutional duty of the government, as well as with common justice, the owner's claim for compensation is one arising out of implied contract, within the meaning of the statute defining the jurisdiction of the Court of Claims, although there may have been no formal proceedings for the condemnation of the property to public use. *United States* v. *Great Falls Manufacturing Co.*, 645.

3. The owner may waive any objection he might be entitled to make, based upon the want of such formal proceedings, and, electing to regard the action of the government as a taking under its sovereign right of eminent domain, may demand just compensation for the property. *Ib.*

JURY.

See COURT AND JURY;
WAIVER OF JURY.

KANSAS.

See LIMITATION.

LAND GRANT.

See PUBLIC LAND, 6, 8, 11, 12, 13, 14.

LEASE.

The legal title to real estate acquired subsequent to the lease by a lessor owning the equitable title at the date of the lease, inures to the benefit of the lessee as against a judgment creditor of the lessor whose judgment is subsequent to the lease. *Skidmore* v. *Pittsburgh & Cincinnati Railway*, 33.

LEGISLATIVE CONFIRMATION.

See MUNICIPAL CORPORATION.

LIEN.

1. F conveyed to W, as trustee, real estate in Illinois on trust to permit F's wife to use and occupy and receive the rents and profits during her lifetime and to her own use, and at any time to convey on the written request of F and the wife, to the person designated, and in case of the wife's death in the husband's lifetime to convey to the husband for life with remainder to their children : *Held*, That, under the laws of Illinois in force when the rights of the parties became fixed, a judgment creditor of F had no lien at law upon his interest in the property, and could acquire one only by filing a bill in equity. *Brandies* v. *Cochrane*, 344.
2. At the common law (in force in Illinois when the rights of the parties became fixed), the lien of a judgment against one having a power of appointment, with the estate vested in him until, and in default of, appointment, was liable to be defeated by execution of the power, even though the purchaser had actual notice of the judgment. *Ib.*
3. The general doctrine in equity that where a person has a general power of appointment, and executes this power, the property appointed is deemed, in equity, part of his assets, cannot be invoked to support a claim of a judgment lien at law upon the antecedent estate, which the exercise of the power had displaced. *Ib.*

LIFE INSURANCE.

1. Policy of life insurance being conditioned to be void if the annual premium, or any obligation given in payment thereof, should not be paid at maturity; and the annual premium being paid by a foreign bill drawn by the party insured, with a condition that if not paid at maturity the policy should be void: *Held*, That the forfeiture was incurred by non-payment of the bill, on presentment, at maturity, without protest for non-payment, although protest might be necessary to fix the liability of the drawer. *Semble*, if it had been the bill of a stranger, protest would have been necessary for the forfeiture also. *Knickerbocker Life Insurance Co.* v. *Pendleton*, 696.

2. Presentment and non-acceptance of the bill before maturity, without protest, did not dispense with presentment for payment, in order to produce the forfeiture. *Ib.*

3. Want of funds in the hands of the drawee was no excuse for not presenting the bill, if the drawer had reasonable expectation to believe that it would be accepted and paid. *Ib.*

4. Preliminary proof of death not required, if the insurer, on being notified, denies his liability, and says that the insurance will not be paid. *Ib.*

See EVIDENCE, 3.

LIMITATION, STATUTES OF.

1. The statute of the State of Kansas (Gen. Stat. of Kansas, ch. 80, art. 3, sec. 24, p. 634), providing that, in a case founded on contract, when "an acknowledgment of an existing liability, debt or claim" shall have been made, an action may be brought within the period prescribed for the same, after such acknowledgment, if it was in writing, signed by the party to be charged thereby, requires, as interpreted by the Supreme Court of Kansas, that the acknowledgment, to be effective, be made, not to a stranger, but to the creditor, or to some one acting for or representing him. *Fort Scott* v. *Hickman*, 150.

2. An acknowledgment cannot be regarded as an admission of indebtedness, where the accompanying circumstances are such as to repel that inference, or to leave it in doubt whether the party intended to prolong the time of legal limitation. *Ib.*

3. A committee of a city council, appointed to consider the city indebtedness, made a report containing a statement of the assets and liabilities of the city, and including among the latter a certain issue of bonds called M. bonds. The report further proposed a plan of compromise to be made with the holders of city bonds, the proposal being made in the form of a circular which the committee recommended "to be sent to each person holding city bonds, except M. bonds, as to which we make no report." The circular, by its terms, purported to be addressed "to each person holding bonds of the city,"

and requested "each bondholder to express his views fully." The city council adopted the report of the committee, and ordered the circular to be sent to the holders of the city bonds; and it was so sent to holders of bonds other than M. bonds, but not to holders of the latter: *Held*, That neither the note nor the circular was an acknowledgment of the M. bonds as a debt of the city, so as to take them out of the statute of limitations. *Ib.*

See CONTRACT, 2.

LOCAL LAW.

1. A statute of a State, enacting that two concurring verdicts and judgments in ejectment shall be conclusive of the title, establishes a rule of property in land within the State, and binds the courts of the United States. *Britton* v. *Thornton*, 526.
2. Under the statute of Pennsylvania of April 13, 1807, enacting that two concurring verdicts and judgment thereon between the same parties in ejectment shall be conclusive and bar the right, one judgment on a special verdict is not conclusive of any fact found by that verdict; and two verdicts and judgments are not conclusive upon a title not therein adjudicated. *Ib.*
3. A statute of a State, providing that a verdict returned on several counts shall not be set aside or reversed if one count is sufficient, governs proceedings in cases tried in Federal courts within that State, and is applicable to judgments lawfully rendered without a verdict. *Bond* v. *Dustin*, 604.
4. In Iowa, a general denial by a defendant, in an action on a contract, of each and every allegation in a petition which sets forth the contract and avers that the plaintiff had duly performed all the conditions on his part to be performed, admits the performance of a condition precedent in the contract, that the plaintiff should deposit a sum of money for his faithful performance thereof. *Halferty* v. *Wilmering*, 713.

See ESTOPPEL, 2;
EVIDENCE, 1, 4;
GUARDIAN AND WARD, 3, 5;
JURISDICTION, A, 7, B, 2;
LIEN, 1, 2;
LIMITATION, STATUTES OF, 1;
SUPERSEDEAS, 2.

LONGEVITY PAY.

The time of service of a cadet in the Military Academy at West Point, from July 1, 1865, to June 15, 1869, is to be regarded as "actual time of service in the army," within the meaning of the acts of February 24, 1881, and June 30, 1882, 21 Stat. 346, and 22 Stat. 118, in computing his increase of pay "for each term of five years of service," under § 1262 of the Revised Statutes. *United States* v. *Morton*, 1.

MANDAMUS.

1. A writ of mandamus is not ordinarily granted when the party alleging the grievance has another adequate remedy, and that remedy has not been exhausted. *Virginia Commissioners, ex parte*, 177.
2. Mandamus will lie against commissioners of a county to enforce a judgment against a township within the county when the law casts upon them the duty of providing for its satisfaction, and when mandamus is, in other respects, the proper remedy. *Labette County Commissioners* v. *Moulton*, 217.
3. One writ of mandamus against all officers concerned in the separate but co-operative steps for levying and collecting a tax is the proper and effective remedy to enforce its collection. *Ib.*

See JURISDICTION, A, 1, 2.

MANDATE.

See JURISDICTION, A, 8.

MARRIAGE.

See COURT AND JURY, 2.

MASTER AND SERVANT.

See RAILROAD 1, 2.

MECHANICS' LIEN.

See CONFLICT OF LAW, 2.

MEXICAN WAR.

See OFFICERS OF THE ARMY AND NAVY.

MILITARY ACADEMY.

See LONGEVITY PAY.

MORTGAGE.

1. In a suit in equity to foreclose a mortgage from a railroad corporation of its whole railroad, franchise, lands and property, which have since been put in the possession of a receiver, an intervening prior mortgagee of part of the lands is not entitled to have the amount of his mortgage paid out of the funds in the hands of the receiver, or out of the proceeds of a sale made pursuant to the decree of foreclosure, subject to his mortgage. *Woodworth* v. *Blair*, 8.
2. A mortgage executed by husband and wife of her land, for the accom-

modation of a partnership of which the husband is a member, and as security for the payment of a negotiable promissory note made by the husband to his partner and indorsed by the partner for the same purpose, and to which note the partner, before negotiating it, adds the wife's name as a maker, without the consent or knowledge of herself or her husband, is not thereby avoided as against one who, in ignorance of the note having been so altered, lends money to the partnership upon the security of the note and mortgage. *Mersman* v. *Werges*, 139.

3. Whether an agreement for a reconveyance of real estate conveyed by deed in fee simple, on the repayment of the purchase money and the performance of other conditions, is a mortgage, is to be determined by the accompanying circumstances which explain the object of the agreement. *Horbach* v. *Hill*, 144.

4. If holders of notes of a corporation, secured by a mortgage of its realty agree to convert their notes into stock upon a condition which fails, the right to foreclose the mortgage is not affected by the agreement. *Pugh* v. *Fairmount Mining Co.*, 238.

See CLAIMS AGAINST THE UNITED STATES, 1, 2; CORPORATION, 6; JURISDICTION, B, 1; NATIONAL BANK, 1, 2; SUBROGATION; TRUST.

MOTION TO DISMISS.

See PRACTICE, 4.

MUNICIPAL BOND.

See ESTOPPEL, 2;
LIMITATION, 3.

MUNICIPAL CORPORATION.

A municipal subscription to the stock of a railroad company, or in aid of the construction of a railroad, made without authority previously conferred, may be confirmed and legalized by subsequent legislative enactment, when legislation of that character is not prohibited by the Constitution, and when that which was done would have been legal had it been done under legislative sanction previously given. *Grenada County* v. *Brogden*, 261.

See CORPORATION, 1, 2;
JURISDICTION, A, 1, 2.

MUNICIPAL ORDINANCE.

See CONSTITUTIONAL LAW, 1.

NATIONAL BANK.

1. The fact that a national bank, at a judgment sale of real estate mortgaged to it purchases the mortgaged property and also other property not secured by the mortgage, does not invalidate the title to the mortgaged property which § 5137 Rev. Stat. authorizes the bank to acquire. *Reynolds* v. *Crawfordsville Bank*, 405.
2. A national bank may loan on security of a mortgage if not objected to by the United States. *Nat. Bank* v. *Matthews*, 98 U. S. 621, and *Nat. Bank* v. *Whitney*, 103 U. S. 99, affirmed. *Fortier* v. *New Orleans Bank*, 439.

NEGLIGENCE.

See COLLISION.

NEW ORLEANS.

See CONSTITUTIONAL LAW, 1.

NEW YORK.

See EVIDENCE, 1.

OFFICER.

See CONSTITUTIONAL LAW, 8;
INTERNAL REVENUE, 1, 2.

OFFICERS OF THE ARMY AND NAVY.

1. Officers of the regular army and officers of the navy, engaged in the service of the United States in the war with Mexico, and who served out the time of their engagement, are, since the act of February 19, 1879, 20 Stat. 316, entitled to the three months extra pay allowed under the act of July 19, 1848, 9 Stat. 248. *United States* v. *North*, 510.
2. The extra pay which such officers are entitled to receive is to be computed at the rate which they were entitled to receive at the time when they were discharged or ordered away. *Ib.*
3. Officers in the regular army or navy engaged in the military service of the United States in the war with Mexico, "served out the term of their engagement," or were "honorably discharged" within the meaning of the act of 1848, when the war was over, or when they were ordered or mustered out of that service. *Ib.*

PARTIES.

See JURISDICTION, B, 3;
REMOVAL OF CAUSES, 1.

PATENT.

1. The Secretary of the Interior has no power by law to revise the action of the Commissioner of Patents in awarding to an applicant priority of invention, and adjudging him entitled to a patent. The legislation on this subject examined and reviewed. *Butterworth* v. *Hoe*, 50.
2. The executive supervision and direction which the head of a department may exercise over his subordinates in matters administrative and executive do not extend to matters in which the subordinate is directed by statute to act judicially. *Ib.*
3. The action of the Commissioner of Patents in awarding or refusing a patent to an applicant, and in matters of that description, is quasi-judicial. *Ib.*
4. The Commissioner of Patents, after determining that a patent shall issue, acts ministerially in preparing the patent for the signature of the Secretary, and in countersigning it. And if he then refuse to perform those ministerial acts *mandamus* will be directed. *Ib.*
5. The remedy by bill in equity, under Rev. Stat. § 4915, applies only when the court decides to reject an application for a patent on the ground that the applicant is not, on the merits, entitled to it. *Ib.*
6. The patent granted to John S. McMillen, April 16, 1867, for an improvement in applying steam power to the capstans of steamboats and other crafts, was, in effect, for the application of the power of a steam engine to a vertical capstan by means of the same well-known agencies by which it had been previously applied to a horizontal windlass, and did not involve the exercise of invention ; and is invalid. *Morris* v. *McMillen*, 244.
7. The late reported cases decided in this court, holding patents to be invalid for want of invention, cited and referred to. *Ib.*
8. A patent for ball-covers issued to James H. Osgood May 21, 1872, reissued April 11, 1876, held invalid as to the new and enlarged claims, because there was unreasonable delay in applying for it, the only object of the reissue being to enlarge the claims. *Mahn* v. *Harwood*, 354.
9. The principles announced in the case of *Miller* v. *The Brass Company*, 104 U. S. 350, in reference to reissuing patents for the purpose of enlarging the claims, reiterated and explained. *Ib.*
10. It was not intended in that case to question the conclusiveness, in suits for infringement, of the decisions of the Commissioner of Patents on matters of fact necessary to be decided before issuing the patent, except as the statute gives specific defences ; but those defences are not the only ones that may be made ; if it appears that the Commissioner has granted or reissued a patent without authority of law, this will be a good defence ; as, where the thing patented is not a patentable invention, or where a reissue is for a different invention from that described in the original patent, &c. *Ib.*

11. A patent cannot be lawfully reissued for the mere purpose of enlarging the claim, unless there has been a clear mistake inadvertently committed in the wording of the claim, and the application for reissue is made within a reasonably short time. Whether there has been such an inadvertent mistake is, in general, a matter of fact for the Commissioner to decide ; but whether the application is made in reasonable time is matter of law, which the court may determine by comparing the reissued patent with the original, and, if necessary, with the records in the Patent Office when presented by the record. *Ib.*

12. The application for a reissue in such cases must be made within a reasonable time, because the rights of the public, conceded by the original patent, are directly affected and violated by an enlargement of the claim ; and the patentee's continued acquiescence in the public enjoyment of such right, for an unreasonable time, justly deprives him of all right to a reissue, and the Commissioner of lawful authority to grant it. *Ib.*

13. No invariable rule can be laid down as to what is a reasonable time within which the patentee must seek for the correction of a claim which he considers too narrow. It is for the court to judge in each case, and it will exercise proper liberality towards the patentee. But as the law charges him with notice of what his patent contains, he will be held to reasonable diligence. By analogy to the rule as to the effect of public use before an application for a patent, a delay of more than two years would, in general, require special circumstances for its excuse. *Ib.*

14. As, in the present case, there was a delay of nearly four years, and the original patent was plain, simple, and free from obscurity, it was held that the delay in seeking a correction by reissue was unreasonable, and that the Commissioner had, therefore, no authority to grant it ; and the patent was held invalid so far as the claims were broader than those in the original patent. *Ib.*

15. Judgment for and payment of nominal damages upon a bill in equity by a patentee, without joining his licensee, against one who has made and sold a machine in violation of the patent, are no bar to a bill in equity by the patentee and licensee together, for the benefit of the licensee against another person who afterwards uses the same machine. *Birdsell* v. *Shaliol*, 485.

16. Letters patent No. 27,094 were issued to Ethan Allen, February 14, 1860, for 14 years, for an "improvement in machine for making percussion cartridge cases." The patent was reissued in two divisions, No. 1,948 and No. 1,949, May 9, 1865. No. 1,948 embraced that part of the invention which concerned the mechanism for striking up the hollow rim at one stroke. The original patent and drawings showed such mechanism to be a moving die and a fixed bunter. In No. 1,948, the description was altered so as to state that the bunter might be carried against the die ; and its two claims each contained

the words "substantially as described." An extension of No. 1,948 having been applied for, it was opposed, on the ground that such arrangement of a fixed die and a moving bunter was a new invention, interpolated into the reissue. The Commissioner of Patents so held, and required such new matter to be disclaimed, as a condition precedent to the extension. A disclaimer was filed disclaiming the movable bunter as of the invention of Allen. No. 1,948 was then extended by a certificate which stated that a disclaimer had been filed to that part of the invention embraced in such new matter. In a suit in equity afterwards brought on No. 1,948, against machines having a fixed die and a moving bunter, for infringements committed both before and after the extension : *Held*, That the effect of the disclaimer was to exclude those machines from the scope of any claim in No. 1,948, without reference to the question whether they contained mechanical equivalents for the moving die and the fixed bunter. *Union Metallic Cartridge Co.* v. *U. S. Cartridge Co.*, 624.

17. Allen had not, before the granting of the original patent, made any machine in which the die was fixed and the bunter movable ; and it was never lawful to cover, by the claims of a reissue, an improvement made after the granting of the original patent. *Ib.*

18. Under § 54 of the act of July 8, 1870, ch. 230, 16 Stat. 205, a disclaimer could be made only by a patentee who had claimed more than that of which he was the original or first inventor or discoverer, and he could make a disclaimer only of such parts of the thing patented as he should not choose to claim or hold by virtue of the patent. *Ib.*

19. In so disclaiming or limiting a claim, descriptive matter on which the disclaimed claim was based might be erased ; but, if there was merely a defective or insufficient description, the only mode of correcting it was by a reissue.

20. An acquiescence and disclaimer, on a decision requiring the disclaimer as a condition precedent to an extension, are as operative to prevent the afterwards insisting on a recovery on the invention disclaimed, as to prevent a subsequent reissue to claim what was so disclaimed. *Ib.*

21. A reissue of a patent applied for with unreasonable delay, and for the purpose of enlarging the specification and claims, in order to include within the monopoly an invention patented after the original patent was granted, is void as to the new claims. *Torrent and Arms Lumber Co.* v. *Rodgers*, 659.

PAYMENT.

See SUBROGATION.

PEARL RIVER.

See STATUTES, C, 1.

PLEADING.

1. A petition alleging that the plaintiff is an Indian, and was born within the United States, and has severed his tribal relation to the Indian tribes, and fully and completely surrendered himself to the jurisdiction of the United States, and still so continues subject to the jurisdiction of the United States, and is a *bona fide* resident of the State of Nebraska and city of Omaha, does not show that he is a citizen of the United States under the Fourteenth Article of Amendment of the Constitution. *Elk* v. *Wilkins*, 94.

2. A written agreement between a company making sewing machines, and a consignee to receive and sell them on commission, provided that the commission should be calculated on the retail prices for which the machines should be sold, as reported by the consignee, and that attachments should be sold to the consignee at the lowest wholesale rates. The proceeds of sales of machines, beyond the commission, belonged to the company. In a suit by it against the consignee and a person liable with him, on a bond for his indebtedness, to recover such proceeds, and the sale price of attachments, the complaint set forth schedules showing the retail price of each machine sold, as so reported, and the excess of money, beyond commission, retained by the consignee, and the price of each attachment sold to the consignee : *Held*, That the complaint was sufficient. *Streeper* v. *Victor Sewing Machine Co.*, 676.

See LOCAL LAW, 4.

POWER.

See DEED ;
LIEN, 2, 3.

PRACTICE.

1. Where a Circuit Court of the United States, on the trial of an action at law before it, on the waiver of a jury, makes a special finding of facts, on all the issues raised by the pleadings, and gives an erroneous judgment thereon, which this court reverses, it is proper for this court to direct such judgment to be entered by the Circuit Court as the special finding requires. *Fort Scott* v. *Hickman*, 150.

2. When an offer of proof is made at the trial and rejected, and exceptions are duly taken, the appellate court must, in the absence of an indication in the record of bad faith in the offer, assume that the proof could have been made if allowed. *Scotland County* v. *Hill*, 183.

3. The Circuit Court having, on a trial before it without a jury, made a finding of facts which did not cover the issue as to damages, and given a judgment for the defendant, this court, on reversing that judgment, remanded the case for a new trial, being unable to render

a judgment for the plaintiff for any specific amount of damages. *Exchange Bank* v. *Third National Bank*, 276.

4. After a cause in equity has been set down for hearing on bill and answer, it is too late to move to dismiss, under Equity Rule 66, for want of replication. *Reynolds* v. *Crawfordsville Bank*, 405.
5. It is not error in a charge to make no reference to an issue raised by a plea, but unsupported by proof. *Carter* v. *Carusi*, 478.
6. Failure to instruct a jury upon an issue raised by a plea cannot be assigned as error, if the court below was not requested to charge the jury upon that issue. *Ib.*
7. No question of fact can be re-examined in this court on a writ of error, unless the evidence is brought into the record by a bill of exceptions, or some method known to the practice of courts of error for that purpose is adopted, such as, for instance, an agreed statement of facts, or a special finding in the nature of a special verdict. *England* v. *Gebhardt*, 502.
8. Papers on file in the court below are not part of the record in the case when brought here by writ of error, unless they are put into the record by some action of the court below, as by bill of exceptions or some equivalent act. *Ib.*
9. The opinion of the court below, when transmitted with the record in accordance with Rule 8, § 2, is no part of the record. *Ib.*
10. Motions to vacate a supersedeas, and other motions of that kind, made before the record is printed, must be accompanied by a statement of the facts on which they rest, agreed to by the parties, or supported by printed copies of so much of the record as will enable the court to act understandingly, without reference to the transcript on file. *Power* v. *Baker*, 710.

See ARREST OF JUDGMENT; CONSTITUTIONAL LAW, 5; EXCEPTION; JURISDICTION, A, 5, 8, 10; LOCAL LAW, 3, 4; WAIVER OF JURY.

PRE-EMPTION.

See PUBLIC LAND, 5.

PRESUMPTION.

See PUBLIC LAND, 1.

PRINCIPAL AND AGENT.

A bank in Pittsburgh sent to a bank in New York, for collection, eleven unaccepted drafts, dated at various times through a period of over three months, and payable four months after date. They were drawn on "Walter M. Conger, Sec'y Newark Tea Tray Co., Newark, N. J." and were sent to the New York bank as drafts on the Tea Tray Com-

pany. The New York bank sent them for collection to a bank in Newark, and, in its letters of transmission, recognized them as drafts on the company. The Newark bank took acceptances from Conger individually, on his refusal to accept as secretary, but no notice of that fact was given to the Pittsburgh bank, until after the first one of the drafts had matured. At that time the drawers and an indorser had become insolvent, the drawers having been in good credit when the Pittsburgh bank discounted the drafts: *Held*, That the New York bank was liable to the Pittsburgh bank for such damages as it had sustained by the negligence of the Newark bank. *Exchange Bank* v. *Third National Bank*, 276.

See COURT AND JURY, 1.

PROMISSORY NOTE.

The addition of the signature of a surety to a promissory note, without the consent of the maker, does not discharge him. *Mersman* v. *Werges*, 139.

See JURISDICTION, B, 1; LIFE INSURANCE, 1, 2, 3; MORTGAGE, 2; PRINCIPAL AND AGENT.

PROTEST.

See CUSTOMS DUTIES, 2.

PUBLIC LAND.

1. The presumption of the regularity of all proceedings prior to the issue of a patent for public lands, which is made against collateral attacks by third parties, does not exist in proceedings where the United States assail the patent for fraud in their officers in its issue, and seek its cancellation. *Moffat* v. *United States*, 24.
2. The United States do not guarantee the integrity of their officers, nor the validity of the acts of such, and are not bound by their misconduct or fraud. *Ib.*
3. A land patent issued to a fictitious person conveys no title which can be transferred to a person subsequently purchasing in good faith from a supposed owner. *Ib.*
4. The procuring of the issue of a patent at the land office by means of false documents which purport to show official proceedings and acts by subordinate officers which are fictitious, is a fraud upon the jurisdiction of the Land Office, and not a mere presentation of doubtful and disputed testimony. *United States* v. *Throckmorton*, 98 U. S. 61, and *Vance* v. *Burbank*, 101 U. S. 514, distinguished. *Ib.*
5. The exercise of a pre-emption right under the act of September 4,

1841, 5 Stat. 453, by an entry of one-quarter of a quarter section of land, was an abandonment of the right to enter under that act for the remaining three-quarters of that quarter section. *Nix* v. *Allen*, 129.

6. A person who, on the 8th March, 1870, had a title by patent to a quarter of a quarter section of land and lived in a house erected upon it, and cultivated the remaining three-quarters of the quarter section without title, did not reside upon the three-quarters so cultivated, within the meaning of ch. 289, Acts of Arkansas, 1871, which gave persons then residing upon lands belonging to or claimed by the Cairo and Fulton Railroad Company, or its branches, the right to purchase them not to exceed 160 acres. *Ib.*
7. The right of review of the official acts of the Commissioner of the Land Office conferred upon the Secretary of the Interior by general laws extends to acts of the Commissioner under the act of March 5, 1872, 17 Stat. 37, directing him to receive and examine selections of swamp lands in Iowa, and allow or disallow the same. *Buena Vista County* v. *Iowa Falls Railroad*, 165.
8. Under the act of March 3, 1863, 12 Stat. 772, granting lands to Kansas to aid in the construction of railroads, no title could be acquired in any specific tracts as indemnity lands until actual selection; and no selection could be made of lands appropriated by Congress to other purposes prior to the date of the selection. *Kansas Pacific Railroad Co.* v. *Atchison & Topeka Railroad Co.*, 414.
9. When an act of Congress, confirming a claim to land, contains a proviso that the confirmation shall not include lands occupied by the United States for military purposes, it is incumbent upon one claiming the land by patent from the United States, later than the act, to show that the land claimed was occupied for military purposes. *Whitney* v. *Morrow*, 693.
10. A direct legislative grant of public lands is the highest muniment of title, and is not strengthened by a subsequent patent of the same land. *Ib.*
11. In grants of lands to aid in building railroads, the title to the lands within the primary limits within which all the odd or even sections are granted, relates, after the road is located according to law, to the date of the grant, and in cases where these limits, as between different roads, conflict or encroach on each other, priority of date of the act of Congress, and not priority of location of the line of road, gives priority of title. *St. Paul & Sioux City Railroad* v. *Winona & St. Peter Railroad*, 720.
12. When the acts of Congress in such cases are of the same date, or grants are made for different roads by the same statute, priority of location gives no priority of right; but where the limits of the primary grants, which are settled by the location, conflict, as by crossing or lapping, the parties building the roads under those grants take the sections, within the conflicting limits of primary location, in equal

undivided moieties, without regard to priority of location of the line of the road, or priority of construction. *Ib.*

13. A different rule prevails in case of lands to be selected in lieu of those within the limits of primary location, which have been sold or pre-empted before the location is made, where the limits of selection interfere or overlap. *Ib.*

14. In such cases neither priority of grant, nor priority of location, nor priority of construction, give priority of right; but this is determined by priority of selection, where the selection is made according to law. *Ib.*

See CONSTITUTIONAL LAW, 3, 4;
ESTOPPEL, 1;
JURISDICTION, A, 6.

QUO WARRANTO.

Information in the nature of *quo warranto* is a civil proceeding in Kansas, *Ames* v. *Kansas*, 111 U. S. 449, affirmed. *Foster* v. *Kansas*, 201.

QUIET TITLE.

See JURISDICTION, B, 2.

RAILROAD.

1. A railroad corporation is responsible to its train servants and employés for injuries received by them in consequence of neglect of duty by a train conductor in charge of the train, with the right to command its movements, and control the persons employed upon it. *Chicago & Milwaukee Railway Co.* v. *Ross*, 377.

2. A conductor of a railroad train, who has the right to command the movements of the train and to control the persons employed upon it, represents the company while performing those duties, and does not bear the relation of fellow-servant to the engineer and other employés of the corporation on the train. *Ib.*

See COMMON CARRIER, 1, 2;
CORPORATION, 1, 2, 5;
MORTGAGE, 1;
PUBLIC LAND, 8, 11, 12, 13, 14.

REBELLION.

See GUARDIAN AND WARD, 1, 5, 6.

RECORD.

See PRACTICE, 8, 9.

REISSUE.

See PATENT, 8 to 14, 21.

REMOVAL OF CAUSES.

1. In a proceeding commenced in a State court to foreclose a mortgage, which prays judgment that the mortgage debtors be adjudged to pay the amount found due on the debt, and in default thereof that the property be sold, a mortgage debtor who has parted with his interest in the property subject to the debt (which the purchaser agreed to assume and pay), is a necessary party to the suit ; and if he is a citizen of the same State with the mortgagees, or one of them, the suit cannot be removed to the Circuit Court of the United States under the provision of the first clause of § 2, act of March 3, 1875, 18 Stat. 470. *Ayers* v. *Wiswall*, 187.
2. The filing of separate answers by several defendants in a suit for the foreclosure of a mortgage, which raise separate issues in defending against the one cause of action, does not create separate controversies within the meaning of the second clause in § 2, act of March 3, 1875, 18 Stat. 470. *Ib.*

See JURISDICTION, A, 5, B, 4, 5.

REMOVAL FROM OFFICE.

See CONSTITUTIONAL LAW, 8.

RULES.

See PRACTICE, 4.

RULES FOR PREVENTING COLLISION AT SEA.

See COLLISION.

SALE.

See TRUST.

SET-OFF.

See INTERNAL REVENUE, 2.

SHIPS AND SHIPPING.

See COLLISION.

STATUTES.

A. CONSTRUCTION OF STATUTES.

1. That construction of a statute should be adopted which, without doing

violence to the fair meaning of the words used, brings it into harmony with the Constitution. *Grenada County* v. *Brogden*, 261.

2. The rule re-affirmed that repeals of statutes by implication are not favored, and are never admitted where the former can stand with the new act. *Chew Heong* v. *United States*, 536.
3. Courts uniformly refuse to give to statutes a retrospective operation, whereby rights previously vested are injuriously affected, unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the legislature. *Ib.*

See CORPORATION, 3; LOCAL LAW, 1; MUNICIPAL CORPORATION, 1; PUBLIC LAND, 12.

B. STATUTES OF THE UNITED STATES.

See CHINESE LABORERS; CLAIMS AGAINST THE UNITED STATES, 1, 2; COLLISION, 2; CONSTITUTIONAL LAW, 2, 3, 9; EVIDENCE, 2; HABEAS CORPUS, 2; INTERNAL REVENUE; JURISDICTION, A, 10, B, 1, 4; LONGEVITY PAY; NATIONAL BANK, 1; OFFICERS OF ARMY AND NAVY; PATENT, 5, 18; PUBLIC LAND, 5, 7, 8; REMOVAL OF CAUSES, 1, 2; USURY, 1, 2; WAIVER OF JURY.

C. STATUTES OF THE STATES AND TERRITORIES.

1. The act of February 7, 1867, of the Legislature of Mississippi (Laws of 1867, 332), and the act of August 19, 1868, of the Legislature of Louisiana (Acts of La. 1868, No. 28, p. 32), and the act of Congress of March 2, 1868 (15 Stat. 38), relating to the construction and maintaining of bridges over navigable waters on the route of a railroad between Mobile and New Orleans, when taken together so far as the last two may be considered in this case, do not release the plaintiff in error from the obligation imposed upon it by the said act of the Legislature of Mississippi to maintain a drawbridge with a space of sixty feet for the passage of vessels, across the main channel of Pearl River, constituting the dividing line between Mississippi and Louisiana. *N. O. & Mobile Railway* v. *Mississippi*, 12.
2. Under the statutes of Kansas referred to in the opinion in this case it was the duty of the county commissioners to make the proper levy of a tax for payment of bonds of a township in the county issued in payment of a subscription to railroad stock. The assent and concurrence of the trustee of the township was not necessary. *Labette County Commissioners* v. *Moulton*, 217.
3. An act of the legislature of New Jersey construed,—to the effect that it authorized certain township officers to execute bonds for the town-

ship to raise money for bounties to volunteers. *Middleton* v. *Mullica*, 433.

Alabama: *See* GUARDIAN AND WARD, 3.
Arkansas: *See* PUBLIC LANDS, 6.
Georgia: *See* GUARDIAN AND WARD, 3.
Kansas: *See* LIMITATION, 1, 2, 3; QUO WARRANTO.
Louisiana: *See* EVIDENCE, 4.
Missouri: *See* CORPORATION, 2.
New York: *See* EVIDENCE, 1.
Pennsylvania: *See* LOCAL LAW, 2.

SUBROGATION.

H & M being owners in common of a tract of land covered by a mortgage to D, from whom they purchased, agreed to partition, H taking tract 1, M taking tract 2, and tract 3 being subdivided between them. M agreed to assume the mortgage to D, and that H should take his portion free from the encumbrance. M sold his interest to Y, who borrowed from R through his agents to make the purchase, mortgaged his interest in tract 2 to secure the money borrowed, and agreed to apply the money borrowed to obtain a release of tract 2 from the mortgage. Instead of doing it he obtained with it a release of tract 3. Subsequently with money obtained from sale of lots in tract 3, and with other money advanced by them, R's agents acquired the notes secured by his mortgage : *Held*, That under all circumstances of this case, this was to be regarded as a payment of the mortgage notes, and that R as against H was not entitled to be subrogated in the place of D, with the right to enforce the mortgage against tract 2. *Richardson* v. *Traver*, 423.

SUPERSEDEAS.

1. A writ of error operates as a supersedeas only from the time of the lodging of the writ in the office of the clerk where the record to be examined remains. *Foster* v. *Kansas*, 201.
2. The Circuit Courts of the United States, taking jurisdiction of a proceeding to enforce a remedy given by a State statute, can act only in accordance with the statute creating the remedy, and are possessed only of the powers conferred by it on the State courts : and this court will modify a supersedeas granted by a Circuit Court of the United States in such a proceeding, in order to make it conform to the powers conferred upon State courts in that respect. *East Tennessee Railroad Co.* v. *Southern Telegraph Co.*, 306.

See CONTEMPT; PRACTICE, 10.

SURETY.

A bond by a principal and a surety was conditioned that the principal should pay to V all indebtedness existing or to exist from the principal to V under existing or future contracts between him and V, and waived notice of non-payment on all notes executed, indorsed or guaranteed by the principal to V. In a suit on the bond, against the obligors, to recover the amount of notes executed by the principal to V, and other notes indorsed and guaranteed by him to V : *Held*, That it was not necessary to allege or show any notice to the surety of a default by the principal in paying V. *Murphy* v. *Victor Sewing Machine Co.*, 688.

See CONTRACT, 2.

SWAMP LANDS.

See ESTOPPEL, 1;
PUBLIC LAND, 7.

TAX.

See CONSTITUTIONAL LAW, 9, 10, 11, 12; JURISDICTION, A, 1, 2;
CORPORATION, 3; MANDAMUS, 3.

TREATY.

1. A treaty is primarily a compact between independent nations, and depends for the enforcement of its provisions on the honor and the interest of the governments which are parties to it. If these fail, its infraction becomes the subject of international reclamation and negotiation, which may lead to war to enforce them. With this, judicial courts have nothing to do. *Head Money Cases*, 580.
2. But a treaty may also confer private rights on citizens or subjects of the contracting powers which are of a nature to be enforced in a court of justice, and which furnish, in cases otherwise cognizable in such courts, rules of decision. The Constitution the United States makes the treaty, while in force, a part of the supreme law of the land in all courts where such rights are to be tried. *Ib.*
3 But in this respect, so far as the provisions of a treaty can become the subject of judicial cognizance in the courts of the country, they are subject to such acts as Congress may pass for their enforcement, modification, or repeal. *Ib.*

See JURISDICTION, C, 1.

TRIAL.

See COURT AND JURY;
PRACTICE, 1, 2, 3, 5, 6.

TRUST.

Under a deed of trust to secure M, covering land in the District of Columbia, owned by B and W, as tenants in common, the land was sold to B, in 1873. The amount secured by the deed was $5,000 of principal and $2,429.02 interest, expenses and taxes. The sale was for enough to pay all this and leave a sum due to W for her share of the surplus. The terms of sale were not carried out, but M advanced to B $3,200 more (out of which the $2,429.02 was paid), and took a deed of trust for $8,200, which was recorded as a first lien. A deed of trust to secure the amount going to W was recorded as a second lien, but was never accepted by W. Litigation afterwards ensued, to which M and B and W were parties, and in which a sale of the land was ordered and made in 1880, and M bought it, for a sum not sufficient to pay the $7,429.02, with interest, and the subsequent taxes on the land. W claimed priority out of the purchase money for her share of the surplus on the sale of 1873, and M claimed the right to set off against the purchase money enough of her claim for the $7,429.02, and interest, and the subsequent taxes, to absorb it: *Held*, That the parties had abandoned the sale of 1873, and that the sale of 1880 must be regarded as a sale to enforce the original deed of trust to secure M, and that W had no right to any of the proceeds of the sale of 1880. *Mellen* v. *Wallach*, 41.

TRUSTEE.

See JURISDICTION, B, 5.

USURY.

1. The provision in § 715 Rev. Stat. District of Columbia, that a lender contracting to receive an illegal rate of interest, shall forfeit all such interest, and shall be entitled to recover only the principal sum, applies only to cases in which the illegal interest has been contracted for, but has not been paid. *Carter* v. *Carusi*, 478.
2. The remedy given by § 716 Rev. Stat. District of Columbia to recover back unlawful interest actually paid is exclusive. *Ib.*

VERDICT.

1. A general verdict, upon an information in several counts for a single forfeiture under the internal revenue laws, is valid if one count is good. *Snyder* v. *United States*, 216.
2. A verdict which speaks of "evaluating," instead of "valuing," is not therefore insufficient to support a judgment. *Ib.*
3. A general verdict upon distinct issues raised by several pleas cannot be sustained if there was error as to the admission of evidence, or in the charge of the court, as to any one of the issues. *Maryland* v. *Baldwin*, 490.

VESSEL.

See COLLISION.

WAIVER OF JURY.

The filing of a stipulation in writing, waiving a jury, under section 649 of the Revised Statutes, is not sufficiently shown by a statement in the record, or in the bill of exceptions, that "the isssue joined by consent is tried by the court, a jury being waived," or that "the case came on for trial, by agreement of parties, by the court, without the intervention of a jury." *Bond* v. *Dustin*, 604.

WILL.

See DEVISE, 1, 2.

WRIT OF ERROR.

See HABEAS CORPUS, 2;
PRACTICE, 7.