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ACCORD AND SATISFACTION.

See JURISDICTION, A. 2;
NAVAL CONTRACTS, 3.

ACTION.

1. A creditor who receives from his debtor a certificate in writing, not negotiable, of the amount of his debt, and sells the certificate to a third person, for value less than its nominal amount, thereby authorizes the purchaser to receive the amount from the debtor, and cannot, after the debtor has paid it to the purchaser, maintain any action against the debtor. *Looney* v. *District of Columbia*, 258.
2. A creditor who receives from his debtor a negotiable instrument of the debtor for the amount of his debt, and sells it for its market value to a third person, cannot sue the debtor on the original debt. *Ib.*
3. In a suit at law to recover possession of real estate the court cannot take note of facts, which, in equity, might afford ground for relieving the plaintiff, by reforming the description in his deed. *Prentice* v. *Stearns*, 435.

See LOCAL LAW.

ACTION ON THE CASE.

1. The confederating together of divers persons with a purpose of preventing the levy of a county tax, levied in obedience to a writ of mandamus, in order to pay a judgment recovered against the county upon its bonds; and the prevention of the sale of property seized under the levy by threats, menaces, and hostile acts, which deterred persons from bidding for the property levied on, and intimidated tax-payers and influenced them not to pay the tax, whereby the judgment creditor was injured to the amount of his judgment, constitute good cause of action in his favor against the parties so conspiring. *Findlay* v. *McAllister*, 104.

ALIEN.

2. In 1870, aliens residents in California, had the same rights as citizens, to hold and enjoy real estate. *Griffith* v. *Godey*, 89.

APPEAL.

See PRACTICE, 4, 5, 7.

ARKANSAS.

See LIMITATIONS, STATUTES OF, 4.

ASSIGNMENT.

See ACTION, 1, 2;
TAX AND TAXATION, 1, 2.

ATTORNEY AND SOLICITOR.

Certain unsecured creditors of a railroad company in Alabama instituted proceedings in equity, in a court of that State, on behalf of themselves and of all other creditors of the same class who should come in and contribute to the expenses of the suit, to establish a lien upon the property of that company in the hands of other railroad corporations which had purchased and had possession of it. The suit was successful, and the court allowed all unsecured creditors to prove their claims before a register. Pending the reference before the register the defendant corporations bought up the claims of complainants, and other unsecured creditors. Thereupon the solicitors of complainants filed their petition in the cause to be allowed reasonable compensation in respect of the demands of unsecured creditors (other than their immediate clients), who filed their claims under the decree, and to have a lien declared therefor on the property reclaimed for the benefit of such creditors. The suit between the solicitors and such defendant corporations was removed to the Circuit Court of the United States: *Held*, (1) Within the principle announced in *Trustees* v. *Greenough*, 105 U. S. 527, the claim was a proper one to be allowed (2) It was, also proper to give the solicitor a lien upon the property brought under the control of the court by the suit and the decree therein, such lien being authorized by the law of Alabama. (3) That under the circumstances of this case the amount allowed by the court below was excessive. *Central Railroad* v. *Pettus*, 116.

BAIL.

A territorial statute which authorizes an appeal by a defendant in a criminal action from a final judgment of conviction; which provides that an appeal shall stay execution upon filing with the clerk a certificate

of a judge that in his opinion there is probable cause for the appeal; and further provides that after conviction a defendant who has appealed may be admitted to bail as of right when the judgment is for the payment of a fine only, and as matter of discretion in other cases; does not confer upon a defendant convicted and sentenced to pay a fine and be imprisoned, the right, after appeal and filing of certificate of probable cause, to be admitted to bail except within the discretion of the court. *Clawson* v. *United States*, 143.

BOND.

See CASES OVERRULED OR QUALIFIED, 1, 2.

CALIFORNIA.

1. The provision in the act admitting California, "that all the navigable waters within the said State shall be common highways and forever free, as well to the inhabitants of said State, as to the citizens of the United States, without any tax, impost, or duty therefor," does not deprive the State of the power possessed by other States, in the absence of legislation by Congress, to obstruct a navigable water within the State, by authorizing the erection of a bridge over it. *Cardwell* v. *American Bridge Co.*, 205.
2. That provision aims to prevent the use of the navigable streams by private parties to the exclusion of the public, and the exaction of tolls for their navigation. *Ib.*

See ALIEN.

CASE.

See ACTION ON THE CASE.

CASES AFFIRMED OR FOLLOWED.

Smelting Co. v. *Kemp*, 104 U. S. 636, was carefully considered, and is again affirmed. *Tucker* v. *Masser*, 203.

Holt v. *Lamb*, 17 Ohio St., followed. *McArthur* v. *Scott*, 340.

CONFISCATION, 1;
CUSTOMS DUTIES, 1;
JURISDICTION, 5;
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PUBLIC LANDS, 3;
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CASES DISTINGUISHED OR EXPLAINED.

Railroad Co. v. *Baldwin*, 103 U. S. 126, distinguished. *Leavenworth Railroad Co.* v. *United States*, 92 U. S. 733, explained. *Winona & St. Peter Railroad* v. *Barney*, 618.

Shields v. *Barrow*, 17 How. 130, distinguished. *Hardin* v. *Boyd*, 756.

See JURISDICTION, A, 7;
MUNICIPAL CORPORATION, 2;
TAX AND TAXATION, 3.

CASES OVERRULED OR QUALIFIED.

1. The ruling in *Texas* v. *White*, 7 Wall. 700, that the legislature of Texas, while the State was owner of the bonds there in suit, could limit their negotiability by an act of legislation, with notice of which all subsequent purchasers were charged, although the bonds on their face were payable to bearer, overruled. *Morgan* v. *United States*, 476.
2. The ruling in that case, that negotiable government securities, redeemable at the pleasure of the government after a specified day, but in which no date is fixed for final payment, cease to be negotiable as overdue after the day when they first become redeemable, limited to cases where the purchaser acquires title with notice of the defect, or under circumstances discrediting the instrument, such as would affect the title of negotiable demand paper purchased after an unreasonable length of time from the date of the issue. *Ib.*

CHARTER PARTY.

See SHIPS AND SHIPPING, 1, 2.

CLAIMS AGAINST THE UNITED STATES.

See CONTRACT, 3, 4;
ESTOPPEL, 3;
EVIDENCE, 1.

COLORADO.

See CONSTITUTIONAL LAW, B, 4;
MINERAL LANDS.

COMMON CARRIER.

A person travelling on a railroad in charge of mails, under the provision of § 4000 Rev. Stat., does not thereby acquire the rights of a passenger, in case he is injured on the railroad through negligence of the company's servants. *Price* v. *Pennsylvania Railroad Co.*, 218.

CONDITION PRECEDENT.

See SHIPS AND SHIPPING, 2, (1).

CONFISCATION.

1. The well established rule in Louisiana that where a mortgage contains the *pact de non alienando*, the mortgagee may enforce his mortgage by

proceedings against the mortgagor alone, notwithstanding the alienation of the property, applies to an alienation by condemnation in proceedings for confiscation, and as against the heirs at law of the person whose property is confiscated. *Shields* v. *Schiff*, 36 La. Ann. 645, approved. *Avegno* v. *Schmidt*, 293.

2. The heirs at law of a person whose life interest in real estate was confiscated under the act of July 17, 1862, take, at his death, by descent, and not from the United States, under the act. *Ib.*

CONFLICT OF LAW.

1. The principle that in actions at law the laws of the State shall be regarded as rules of decision in the courts of the United States, § 721 Rev. Stat., and that the practice, pleadings, and forms and modes of proceedings in such cases shall conform as near as may be to those of the courts of the States in which the courts sit, § 914, is applicable only where there is no rule on the same subject prescribed by act of Congress, and where the State rule is not in conflict with any such law. *Ex parte Fisk*, 713.

2. The statute of New York, which permits a party to a suit to be examined by his adversary as a witness at any time previous to the trial in an action at law, is in conflict with the provision of the Revised Statutes of the United States which enacts that "The mode of proof in the trial of actions at common law shall be by oral testimony and examination of witnesses in open court, except as hereinafter provided." § 861. *Ib.*

3. None of the exceptions afterwards found in §§ 863, 866 and 867 provide for such examination of a party to the suit in advance of the trial as the statute of New York permits. *Ib.*

4. The courts of the United States sitting in New York have no power, therefore, to compel a party to submit to such an examination, and no power to punish him for a refusal to do so. *Ib.*

5. Nor can the United States court enforce such an order made by a State court before the removal of the case into the Circuit Court of the United States. *Ib.*

CONSPIRACY.

See ACTION ON THE CASE.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. The general grant of legislative power in the Constitution of a State does not authorize the legislature, in the exercise either of the right of eminent domain, or of the right of taxation, to take private prop-

erty, without the owner's consent, for any but a public object. *Cole* v. *La Grange*, 1.

2. A statute of a State, authorizing any person to erect and maintain on his own land a water-mill and mill-dam upon and across any stream not navigable, paying to the owners of lands flowed damages assessed in a judicial proceeding, does not deprive them of their property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States. *Head* v. *Amoskeag Manufacturing Co.*, 9.
3. A municipal ordinance prohibiting from washing and ironing in public laundries and wash-houses within defined territorial limits, from ten o'clock at night to six in the morning, is a purely police regulation, within the competency of a municipality possessed of the ordinary powers. *Barbier* v. *Connolly*, 27.
4. The Fourteenth Amendment of the Constitution does not impair the police power of a State. *Ib.*
5. The doctrine that, in the absence of legislation by Congress, a State may authorize a navigable stream within its limits to be obstructed by a bridge or highway, reasserted, and the former cases to that effect referred to. *Cardwell* v. *American Bridge Co.*, 205.
6. An act making water rates a charge upon lands in a municipality prior to the lien of all encumbrances, does no violation, so far as it affects mortgages on such lands made after the passage of the act, to that portion of the Fourteenth Amendment to the Constitution which declares that no State shall deprive any person of property without due process of law. *Provident Institution* v. *Jersey City*, 506.
7. It is not necessary in this case to decide as to the effect of such act upon mortgages existing at the time of its enactment; but even in that case the court is not prepared to say that it would be repugnant to the Constitution. *Ib.*
8. The ruling in *Barbier* v. *Connolly*, *ante*, 27—that a municipal ordinance prohibiting from washing and ironing in public laundries and wash-houses within defined territorial limits, from ten o'clock at night to six in the morning, is a police regulation within the competency of a municipality possessed of ordinary powers—affirmed. *Soon Hing* v. *Crowley*, 703.
9. It is no objection to a municipal ordinance prohibiting one kind of business within certain hours, that it permits other and different kinds of business to be done within those hours. *Ib.*
10. Municipal restrictions imposed upon one class of persons engaged in a particular business, which are not imposed upon others engaged in the same business and under like conditions, impair the equal right which all can claim in the enforcement of the laws. *Ib.*
11. When the general security and welfare require that a particular kind of work should be done at certain times or hours, and an ordinance is made to that effect, a person engaged in performing that sort of

work has no inherent right to pursue his occupation during the prohibited time. *Ib.*

12. A State act which imposes limitations upon the power of a corporation, created under the laws of another State, to make contracts within the State for carrying on commerce between the States, violates that clause of the Constitution which confers upon Congress the exclusive right to regulate that commerce. *Cooper Manufacturing Co.* v. *Ferguson*, 727.

See CALIFORNIA ;
STATUTES, B. 4.

B. OF THE STATES.

1. The Legislature of Missouri has no constitutional power to authorize a city to issue its bonds by way of donation to a private manufacturing corporation. *Cole* v. *La Grange*, 1.
2. In error to a State court, this court cannot pass upon the question of the conformity of a municipal ordinance with the requirements of the Constitution of the State. *Barbier* v. *Connolly*, 27.
3. An act of the Legislature of Iowa entitled "An Act to authorize independent school districts to borrow money and issue bonds therefor, for the purpose of erecting and completing school houses, legalizing bonds heretofore issued, and making school orders draw six per cent. interest in certain cases," is not in violation of the provision in the Constitution of that State, which declares that "every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." *Ackley School District* v. *Hall*, 135.
4. The Constitution of Colorado provided that no foreign corporation should do any business within the State without having one or more known places of business, and an authorized agent or agents in the same upon whom process might be served. The Legislature of the State enacted that foreign corporations, before being authorized to do business in the State, should file a certificate with the Secretary of State, and the recorder of the county in which the principal business was carried on, designating the principal place of business and the agent there on whom process might be served. A corporation of Ohio, without filing a certificate, contracted in Colorado to manufacture machinery at its place of business in Ohio, and to deliver it in Ohio. *Held*, That this act did not constitute a carrying on of business in Colorado, and was not forbidden by its Constitution and law. *Cooper Manufacturing Co.* v. *Ferguson*, 727.

CONSOLIDATION OF RAILROADS.

See CORPORATION, 6, 7.

CONSTRUCTION OF STATUTES.

See STATUTES, B.

CONTEMPT.

1. When there is reasonable ground to doubt as to the wrongfulness of the conduct of a defendant in a suit in equity to prevent the infringement of a patent, the process of contempt should not be resorted to to enforce the plaintiff's rights. *California Paving Co.* v. *Molitor*, 609.
2. Plaintiff obtained a decree in equity against defendant as an infringer of plaintiff's rights under a patent for an improvement in pavements. Defendant continued to lay pavements. Plaintiff proceeded against him for contempt, alleging that he was still using plaintiff's process. Defendant denied the allegation, and answered that he was using a process different from that which had been adjudged to be an infringement. On this question there was a division of opinion in the court below. *Held*, That the process of contempt is not an appropriate remedy. *Ib.*

See CONFLICT OF LAW, 4;
HABEAS CORPUS.

CONTRACT.

1. Under contracts to furnish stone to the United States for a building, and to saw it, and cut and dress it, all as "required," the contractor may recover damages for enforced suspension of, and delays in, the work, by the United States, arising from doubts as to the desirability of completing the building with the stone, and on the site, which involved the examination of the foundation and the stone by several commissions. *United States* v. *Mueller*, 153.
2. A contract to furnish "all of the dimension stone that may be required in the construction" of a building does not include dimension stone used in "the approaches or steps leading up into the building." *Ib.*
3. When a regulation, made by the head of an executive department in pursuance of law, empowers subordinates, of a class named, to contract on behalf of the United States as to a given subject matter; and further directs that "any contract made in pursuance of this regulation must be in writing," a verbal executory contract relating thereto is not binding upon the United States. *Camp* v. *United States*, 648.
4. When an executive regulation directs officers of one class to make a contract on behalf of the United States, it confers no authority to make it upon officers of a different class, although employed about the same government business. *Ib.*

See NAVAL CONTRACTS, 1, 2, 3;
PARTNERSHIP, 1;
SHIPS AND SHIPPING, 1, 2.

CORPORATION.

1. A market-house company, incorporated for twenty years, with power to purchase, hold and convey any real or personal estate necessary to enable it to carry on its business, built a market-house on land owned by it in fee simple, and sold by public auction leases for ninety-nine years renewable forever, of stalls therein at a specified rent. The highest bidder for one of the stalls gave the corporation several promissory notes in part payment for the option of that stall, received such a lease, and took and kept possession of the stall; and afterwards gave it a note for a less sum, in compromise of the original notes, and upon express agreement, that if this note should not be paid at maturity, the corporation might surrender it to the maker, and thereupon the cause of action on those notes should revive. *Held*, That the new note was upon a sufficient legal consideration; and that the corporation, holding and suing upon all the notes, could recover upon this note only. *Northern Liberty Market Co.* v. *Kelly*, 199.

2. A release by a corporation to one of its directors of all claims, equitable or otherwise, arising out of transactions under a contract between the corporation and the director made in excess of its corporate powers, is valid, if made in good faith, and without fraud or concealment. *Pneumatic Gas Co.* v. *Berry*, 322.

3. An act authorizing a railroad company to lease its railroad to another corporation, and requiring the corporation lessee to be liable in the same manner as though the railway belonged to it, imposes a liability as to the leased property upon the company lessee while operating it; but does not discharge the company lessor from its corporate liabilities. *Chicago & Northwestern Railroad Co.* v. *Crane*, 424.

4. The provision in § 12 of the act of the Legislature of New York of February 17, 1848, as amended June 7, 1875, whereby trustees of corporations formed for manufacturing, mining, mechanical, or chemical purposes are made liable for debts of the company on failure to file the reports of capital and of debts required by that section, is penal in its character, and must be construed with strictness as against those sought to be subjected to its liabilities. *Chase* v. *Curtis*, 452.

5. A claim in tort against a corporation formed under that act, as amended, is not a debt of the company for which the trustees may become liable jointly and severally under the provisions of the amended § 12. *Ib.*

6. A consolidation of two railway companies by an agreement which provides that all the property of each company shall be taken and deemed to be transferred to the consolidated company (naming it) "as such new corporation without further act or deed," creates a new corporation, with an existence dating from the time when the consolidation took effect, and is subject to constitutional provisions respect-

ing taxation in force in the State at that time. *St. Louis & Iron Mountain Railway Co.* v. *Berry*, 465.

7. One section in the charter of a railway company authorized it to consolidate with other companies. Another section provided that the "capital stock and dividends of said company shall be forever exempt from taxation; the road, fixtures and appurtenances shall be exempt from taxation until it pays an interest of not less than ten per cent. per annum." *Held*, That a new company, created by the exercise of the power to consolidate, took the property and franchises of the old company subject to the organic law as to taxation at the time of the consolidation. *Ib.*
8. A grant of corporate franchises is necessarily subject to the condition that the privileges and franchises conferred shall not be abused; or employed to defeat the ends for which they were conferred; and that when abused or misemployed, they may be withdrawn by proceedings consistent with law. *Chicago Life Ins. Co.* v. *Needles*, 574.
9. A corporation is subject to such reasonable regulations, as the legislature may from time to time prescribe, as to the general conduct of its affairs, serving only to secure the ends for which it was created, and not materially interfering with the privileges granted to it. *Ib.*
10. The establishment against a corporation, before a judicial tribunal, in which opportunity for defence is afforded, that it is insolvent, or that its condition is such as to render its continuance in business hazardous to the public, or to those who do business with it; or that it has exceeded its corporate powers; or that it has violated the rules, restrictions, or conditions prescribed by law; constitute sufficient reason for the State which created it to reclaim the franchises and privileges granted to it. *Ib.*
11. An adjudication by a competent tribunal, after full opportunity for defence, that a corporation against which the foregoing grounds have been established, shall no longer enjoy its corporate franchises and privileges, does not deprive it of its property without due process of law, or deny to it equal protection of the law. *Ib.*
12. The right of a State to prescribe the terms upon which a foreign corporation shall carry on its business in a State has been settled by this court. *Cooper Manufacturing Co.* v. *Ferguson*, 727.
13. A corporation organized under the laws of one State, does not, by doing a single act of business in another State, with no purpose of doing any other acts there, come within the provisions of a statute of the latter forbidding foreign corporations to carry on business within it, except upon filing certificates showing their place or places of business, their agents, and other matters required by the statute. *Ib.*

COSTS.

See ATTORNEY AND SOLICITOR.

COUNSEL FEES.

See ATTORNEY AND SOLICITOR.

COURT OF PROBATE.

See PROBATE COURT.

COURT AND JURY.

1. The declaration in an action to recover money contained the money counts. The defendant pleaded the general issue, and the statute of limitation. The plaintiff replied a new promise within the statutory time. At the trial before a jury, he offered in evidence a deposition, taken under a commission, to prove the new promise. The defendant objected to the deposition, but did not state any ground of objection. The bill of exceptions set forth, that the court "sustained the objection, and refused to permit the said deposition to be read to the jury, and ruled it out because of its informality." The deposition appearing to be regular in form ; and the evidence contained in it, as to the new promise, being material, and such as ought to have been before the jury ; and the court below having instructed the jury that the plaintiff had not offered sufficient evidence of a new promise to be submitted to the jury, and directed a verdict for the defendant ; and as, if there was such new promise, there was evidence on both sides, for the consideration of the jury, on the other issues, on proper instructions ; and as the bill of exceptions did not purport to set out all the evidence on such other issues, this court reversed the judgment for the defendant, and awarded a new trial. *Spaids* v. *Cooley*, 278.
2. When parties do not waive the right of trial by jury, the court may not substitute itself for a jury, by passing upon the effect of the evidence—finding the facts—and rendering judgment thereon. *Baylis* v. *Travellers' Insurance Company*, 316.
3. At the trial of this case, after close of the testimony, defendant moved to dismiss on the ground of the insufficiency of the evidence to sustain a verdict. This motion being denied, plaintiff asked that the case be submitted to the jury to determine the facts on the evidence. The court refused this and plaintiff excepted. The court then ordered a verdict for plaintiff, subject to its opinion, whether the facts proved were sufficient to render defendant liable to plaintiff on the cause of action stated. Plaintiff moved for judgment on the verdict, and defendant moved for judgment on the pleadings and minutes of the trial. Judgment was rendered for defendant upon an opinion of the court as to the effect of the evidence and as to the law on the facts as deduced from it by the court : *Held*, That the plaintiff was thereby deprived of his constitutional right to a trial by jury, which he had not waived, and to which he was entitled. *Ib.*
4. A grant of land in Texas was made to the grantor of the plaintiff in

error, with the following description : "Beginning the survey at a pecan (nogal) fronting the mouth of the aforesaid creek, which pecan serves as a land-mark for the first corner, and from which 14 varas to the north 59° west there is a hackberry 24 in. dia., and 15 varas to the south 34° west there is an elm 12 in. dia. ; a line was run to the north 22° east 22,960 varas and planted a stake in the prairie for the second corner. Thence another line was run to the south 70° east, at 8,000 varas crossed a branch of the creek called Cow Creek, at 10,600 varas crossed the principal branch of said creek, and at 12,580 varas two small hackberries serve as land-marks for the third corner. Thence another line was run to the south 20° west, and at 3,520 varas crossed the said Cow Creek, and at 26,400 varas to a tree (palo) on the aforesaid margin of the river San Andres, which tree is called in English 'box elder,' from which 7 varas to the south 28° west there is a cottonwood with two trunks and 16 varas to the south 11° east there is an elm 15 in. dia. Thence following up the river by its meanders to the beginning point, and comprising a plane area of eleven leagues of land or 275 millions of square varas." The evidence showed that the lines when run on these courses and distances, did not coincide with ascertained monuments, either called for in the grant, or conceded to mark the track of the survey of the tract made in 1833. Two marked hackberry trees were found in 1854 in the eastern line, but not at the point called for by the description. If the courses and distances were followed, this grant covered most of the claim of defendant in error. If the two hackberry trees found in 1854 were the ones described in the grant, it would not include any of that claim. *Held :*

(1) That a request by defendant below (plaintiff in error), for an instruction "that a call for two small hackberries at the end of the distance on the course called for, having no marks on them to designate them from other trees of the same kind and having no bearing trees to designate or locate them, is not a call for such a natural object as will control the call for course and distance. And the jury are not authorized to consider any evidence in this case about two small hackberries found by S. A. Bigham, and by him pointed out to various other persons, which are found more than a mile from the point where course and distance would place the S. E. corner of the 11-league grant."

(2) That the jury should have been told "that if the testimony was not sufficient to identify the two hackberries with those called for in the grant, and could not fix the northeast corner nor the back line by any other marks or monuments, then they should fix it by the courses and distances of the first and second lines of the survey, except that the second line should be extended so as to meet the recognized east line as marked and extended beyond the hackberries." *Ayers* v. *Watson*, 594.

See MUNICIPAL BONDS, 3 (6).

CUSTOMS DUTIES.

1. The act of July 14, 1862, § 9, 12 Stat. 553, imposes, as a duty, "On all delaines . . . and on all goods of similar description, not exceeding in value forty cents per square yard, two cents per square yard:" *Held*, That the similarity required is a similarity in product, in adaptation to uses, and in uses, even though in commerce they may be classed as different articles; affirming *Greenleaf* v. *Goodrich*, 101 U. S. 278. *Schmieder* v. *Barney*, 645.
2. The language of tariff acts is construed as having the same meaning in commerce that it has in the community at large, unless the contrary is shown. *Swan* v. *Arthur*, 103 U. S. 598, to this point affirmed. *Ib.*

See EVIDENCE, 4.

DEED.

1. A deed from an Indian chief to A, in 1856, of a tract described by metes and bounds, and further as "*being the land set off to the Indian Chief 'Buffalo' at the Indian Treaty of September* 30, 1854, *and was afterwards disposed of by said Buffalo to said A, and is now recorded with the government documents*," does not convey the equitable interest of the chief in another tract described by different metes and bounds, granted to the said chief by a subsequent patent in 1858, in conformity with the said treaty, in such manner that an action at law may be maintained by A, or his grantee for recovering possession of the same. *Prentice* v. *Stearns*, 435.
2. The general rule in Texas for construing descriptions in grants of land is: that natural objects control artificial objects; that artificial objects control courses and distances; that course controls distance; and that course and distance control quantity. *Ayres* v. *Watson*, 594.

See COURT AND JURY, 4.

DEPOSITION.

See COURT AND JURY, 1.

DEVISE.

See WILL.

DISTRICT OF COLUMBIA.

See JURISDICTION, E.
PRACTICE, 4, 5.

DIVISION OF OPINION.

1. A certificate of division of opinion under § 652 Rev. Stat., can be

resorted to only when "a question" has occurred on which the judges have differed, and where "the point" of disagreement may be distinctly stated. *California Paving Co.* v. *Molitor*, 609.

2. It cannot be resorted to for the purpose of presenting questions of fact, or mixed questions of fact and law, or a difference of opinion on the general case. *Ib.*

EASEMENT.

See CONSTITUTIONAL LAW, A. 2.

EJECTMENT.

See ACTION, 3.

EMINENT DOMAIN.

See CONSTITUTIONAL LAW, A. 1, 2.

EQUITY.

1. A bill which charges that the collection of an illegal tax would involve the plaintiff in a multiplicity of suits as to the title of lots being laid out and sold, which would prevent their sale, and which would cloud the title to all his real estate, states a case for relief in equity. *Union Pacific Railway Co.* v. *Cheyenne*, 516.
2. A court in equity has no jurisdiction over a suit based upon an equitable title to real estate, unless the nature of the relief asked for is also equitable. *Fussell* v. *Gregg*, 550.

See ACTION, 3.
JURISDICTION, A, 9;
LOCAL LAW.
VIRGINIA MILITARY DISTRICT IN OHIO.
WASTE.

EQUITY PLEADING.

1. No rule can be laid down in reference to amendments of equity pleadings that will govern all cases. They must depend upon the special circumstances of each case, and in passing upon applications to amend the ends of justice must not be sacrificed to mere form or by too rigid an adherence to technical rules of practice. *Hardin* v. *Boyd*, 756.
2. In a suit brought by the heirs and administrator of a vendor of land by title bond the bill alleged that the bond had been obtained by fraud, and also, that the land had not been fully paid for according to the contract of sale. Its prayer was, among other things, that the bond be cancelled; that an account be taken of the rents and profits

which the purchaser had enjoyed, and of the amount paid on his purchase; that the title of the complainants be quieted; and that they have such other relief as equity might require. At the final hearing the complainants were permitted to amend the prayer of the bill so as to ask, in the alternative, for a decree for the balance of the purchase-money and a lien on the land to secure the payment thereof: *Held*, That no error was committed in allowing the amendment. It did not make a new case, but only enabled the court to adapt its relief to that made by the bill and sustained by the proof. The bill, with the prayer thus amended, was in the form in which it might have been originally prepared consistently with the rules of equity practice. *Ib.*

See PARTIES 1, 2;
WILL, 4.

ESTOPPEL.

1. Questions involved in the determination of a suit in equity are not open to re-examination, in any collateral proceeding between the same parties or their privies, if the court rendering the decree had jurisdiction of the subject-matter and of the parties. *Bryan* v. *Kennett*, 179.
2. A decree in equity, by consent of parties, and upon a compromise between them, is a bar to a subsequent suit upon a claim therein set forth as among the matters compromised and settled, although not in fact litigated in the suit in which the decree was rendered. *Nashville, Chattanooga & St. Louis Railway Co.* v. *United States*, 261.
3. A decree in a suit in equity by the United States against a railroad corporation in Tennessee, appearing upon its face to have been by consent of parties, and confirming a compromise of all claims between them before June 1, 1871, including any claim of the corporation against the United States for mail service, is a bar to a suit by the corporation in the Court of Claims for mail service performed before the war of the rebellion, although at the time of the decree payment to it of any claim was prohibited by law, because of its having aided the rebellion. *Ib.*

See MUNICIPAL BONDS, 3, 5.

EVIDENCE.

1. In this case, before reported in 8 C. Cl. 501, 12 Id. 141, 13 Id. 322, and 105 U. S. 671, the Court of Claims, 18 C. Cl. 470, awarded to the claimants $16,250.95, for labor done and materials furnished by them in constructing coffer-dams, and in performing the work necessarily connected therewith, and preliminary to the mason-work for the piers and abutments referred to in the contract. That court proceeded on the view that the claimants had no right to rely on the testimony of experts introduced by them, as to the value of the work, but should

have kept and produced accounts of its cost and expense; but it gave to the claimants the benefit of the testimony of experts introduced by the United States, as to such value, in awarding the above amount: *Held*, That the claimants could not be deprived of reasonable compensation for their work because they did not produce evidence of the character referred to, when it did not appear that such evidence existed, if the evidence they produced was the best evidence accessible to them, and it enabled the court to arrive at a proper conclusion. *Harvey* v. *United States*, 243.

2. In a suit under the provisions of the act of the legislature of New York of February 17, 1848, relating to manufacturing corporations, as amended June 7, 1875, to recover of the trustees of a corporation organized under that act the amount of a judgment against the corporation, the judgment roll is not competent evidence to establish a debt due from the corporation to the plaintiff. *Chase* v. *Curtis*, 452.
3. Holders of Government bonds must be presumed to have knowledge of the laws, by authority of which they were created and put in circulation, and of all lawful acts done by government officers under those laws. *Morgan* v. *United States*, 476.
4. It is competent to inquire of a witness in a suit to recover back duties paid under § 9 of the act of July 14, 1862, whether the words "of similar description" is a commercial term, and if so what is its commercial meaning; but it is not competent to inquire whether the particular goods, alleged to have been improperly subjected to duty, were of similar description to delaines. *Schmieder* v. *Barney*, 654.
5. A memorandum in writing of a transaction twenty months before its date, and which the person who made the memorandum testifies that he has no recollection of, but knows it took place because he had so stated in the memorandum, and because his habit was never to sign a statement unless it was true, cannot be read in aid of his testimony. *Maxwell* v. *Wilkenson*, 656.

See CONFLICT OF LAW, 1, 2, 3;
COURT AND JURY;
MUNICIPAL BOND, 3, (2).

EXCEPTIONS.

See COURT AND JURY;
JURISDICTION, A. 4;
MUNICIPAL BONDS, 3 (6).

EXECUTION.

See ACTION ON THE CASE;
SALE ON EXECUTION.

EXECUTOR AND ADMINISTRATOR.

1. A probate settlement of an adminstrator's account does not conclude as to property fraudulently withheld from it. *Griffith* v. *Godey*, 89.

See JURISDICTION, B, 1.
WILL, 2, 4.

EXECUTORY DEVISE.

See WILL, 2, 3.

FIVE-TWENTY BONDS.

1. The distinction between redeemability and payability commented on in *Texas* v. *White*, 7 Wall. 700, defines the five-twenty bonds in suit in this case. *Morgan* v. *United States*, 476.
2. The obligations of the United States under the five-twenty bonds, consols of 1865, are governed by the law merchant regulating negotiable securities, modified only, if at all, by the laws authorizing their issue. *Ib.*
3. The five-twenty consols of 1865 on their face were "Redeemable at the pleasure of the United States after the 1st day of July, 1870, and payable on the 1st day of July, 1885." In conformity with provisions of law, notice was duly given as to the bonds of this class, in suit in these actions, that in three months after the date of such notice the interest on the bonds would cease: *Held*, That the exercise of the right of redemption made the bonds payable on demand, without interest, after the maturity of the call, until the date for absolute payment. *Ib.*
4. A holder of a called five-twenty consol could without prejudice, except loss of interest, wait without demand, for the whole period, at the expiration of which the bond was unconditionally payable. *Ib.*
5. In stamping upon these bonds the faculty of passing from hand to hand as money, and in conferring upon the Secretary of the Treasury the power to receive them in payment, in the great exchange of bonds by which the annual interest on the public debt was reduced, it was intended to leave with the called bonds the character of unquestioned negotiability, and to protect *bona fide* purchasers for value, in the due course of trade, without actual notice of a defect in the obligation or title. *Ib.*

See EVIDENCE, 3.

FORECLOSURE.

See ATTORNEY AND SOLICITO

HABEAS CORPUS.

Where a person is in custody, under an order of the Circuit Court, for

contempt in refusing to answer under such an order, this court will release him by writ of habeas corpus, on the ground that the order of imprisonment was without the jurisdiction of that court. *Ex parte Fisk*, 713.

INJUNCTION.

See WASTE.

INTEREST.

Under § 1091 of the Revised Statutes, and the ruling in *Tillson* v. *United States*, 100 U. S. 43, interest cannot be allowed on a recovery, against the United States in the Court of Claims, and there is nothing in the special act of August 14, 1876, ch. 279, 19 Stat. 490, conferring jurisdiction on that court in Harvey & Livesy's case which authorizes it. *Harvey* v. *United States*, 243.

See INTERNAL REVENUE.

INTERNAL REVENUE.

Interest on bonds of a railroad corporation earned by the company during the year 1871, but payable by the terms of the coupon January 1, 1872, is not subject to the tax authorized by § 15, act of July 14, 1870, 16 Stat. 260, to be levied and collected for and during the year 1871. *United States* v. *Indianapolis & St. Louis Railroad Co.*, 711.

INTERVENOR.

See JURISDICTION, A. 6.

IOWA.

See CONSTITUTIONAL LAW, B. 3.

JUDGMENT.

When a court has jurisdiction by law of an offence and of the person charged with it, its judgments are, in general, not nullities: an exception to this rule if relied on, must be clearly found to exist. *Ex parte Bigelow*, 328.

See ESTOPPEL, 2, 3;
JURISDICTION, A. 4, 6, 9.

JURISDICTION.

A. OF THE SUPREME COURT.

1. This court can acquire no jurisdiction under a writ of error where the

return to it is made by filing the transcript of the record here after the expiration of the term of this court next succeeding the filing of the writ in the Circuit Court. *Caillot* v. *Deetken*, 215.

2. While payment of the sum recovered below in submission to the judgment is no bar to the right of reversal of the judgment when brought here by writ of error, a compromise and settlement of the demand in suit, whereby a new agreement is substituted in place of the old one, extinguishes the cause of action, and leaves nothing for the exercise of the jurisdiction of this court. *Dakota County* v. *Glidden*, 222.
3. When a jury is waived by stipulation, a general finding of the issues by the court is not open to review. *Santa Anna* v. *Frank*, 339.
4. The declaration contained a special count upon municipal bonds and coupons, and general counts for money had and received, etc. A jury was waived, and the court found generally on all the issues. The bill of exceptions contained all the evidence, but showed no exception to its admission. *Held*, That the general counts were sufficient to support the judgment, and that questions raised as to the subject matter of the special count were therefore immaterial. *Ib.*
5. A writ of error will not be dismissed for want of jurisdiction by reason of failure to return with it an assignment of errors. *Ackley* v. *Hall*, 106 U. S. 428, affirmed. *Gumbel* v. *Pitkin*, 545.
6. When a third party intervenes in a pending suit, to claim property in the custody of the marshal by virtue of a writ of attachment issued therein, a judgment dismissing his intervention is final as to that issue; and one distributing the proceeds of the property to other parties is also final. *Ib.*
7. When a writ of error gives the names of all parties as they are found in the record of the case in the court below, and there is nothing in the record to show that there were other parties, the writ is sufficient, even if the defendants in error are there described by firm-names, as A. B. & Co., etc. This case distinguished from *The Protector*, 11 Wall. 82. *Ib.*
8. When the final judgment of a State court necessarily involves an adjudication of a claim, made therein, that a statute of the State is in derogation of rights secured to a party by the Constitution, this court has jurisdiction of the cause in error, although the State court did not in terms pass upon the point. *Chicago Life Insurance Co.* v. *Needles*, 574.
9. When separate creditors unite in a suit in equity, each claiming his proportionate share of property of the common debtor in respondent's hands, and each recovers a separate decree for his *pro rata* share, the jurisdiction of this court, on appeal, is, as to each creditor's appeal, to be determined by the amount in dispute in his case. *Fourth National Bank* v. *Stout*, 684.

See HABEAS CORPUS;
PRACTICE, 3.

B. Jurisdiction of Circuit Courts.

1. A proceeding in a State court against an administrator, to obtain payment of a debt due by the decedent in his lifetime, is removable into a court of the United States, when the creditor and the administrator are citizens of different States, notwithstanding the State statute may enact that such claims can only be established in a probate court of the State, or by appeal from that court to some other State court. *Hess* v. *Reynolds*, 73.

2. Consistently with the act of March 3, 1875, determining the jurisdiction of the Circuit Courts of the United States, the holder of the bond of a municipal corporation issued under authority of law, for the payment, at all events, to a named person or order, of a fixed sum of money, at a designated time, indorsed in blank, may sue thereon without reference to the citizenship of any prior holder, and unaffected by the circumstance that the municipality may be entitled to make a defence, based upon equities between the original parties. *Ackley School District* v. *Hall*, 135.

3. A bill in equity, filed in the Court of Chancery of the State of New Jersey by citizens of that State, stockholders in a New Jersey railroad corporation, against that corporation, and a Pennsylvania railroad corporation, and several individuals, citizens respectively of New Jersey and Pennsylvania, and directors in one or both corporations, alleged that, without authority of law, and in fraud of the rights of the plaintiffs, and with the concurrence of the individual defendants, the New Jersey corporation, pursuant to votes of a majority of its stockholders, made, and the Pennsylvania corporation took, a lease of the railroad and property of the New Jersey corporation; and prayed that the lease might be set aside, the Pennsylvania corporation ordered to account with the New Jersey corporation for all profits received, the amount found due ordered to be paid to the New Jersey corporation by the Pennsylvania corporation, or, upon its failure to do so, by the individual defendants, and the New Jersey corporation ordered to administer the property in conformity with its charter, and to pay over to the plaintiffs their share of that amount. The defendants answered jointly, denying the illegality of the lease, and removed the case into the Circuit Court of the United States, under the act of March 3, 1875, ch. 137, as involving a controversy between citizens of different States, and a controversy arising under the Constitution and laws of the United States. The Circuit Court, upon the plaintiffs' motion, remanded the case to the State court. *Held*, That the case was rightly remanded. *Central Railroad* v. *Mills*, 249.

See Conflict of Law, 4, 5;
Removal of Causes;
Virginia Military District in Ohio, 1.

C. Jurisdiction of District Courts.

A District Court of the United States in proceedings for confiscating real estate under the act of July 17, 1862, 12 Stat. 589, had no jurisdiction to pass upon the validity of a mortgage upon the estate proceeded against. *Avegno* v. *Schmidt*, 293.

D. Jurisdiction of the Court of Claims.

While it would seem clear that a suit may be maintained in the Court of Claims against the United States to recover for the use of a patented invention by an officer of the government for its benefit, if the right of the patentee is acknowledged; *Semble*, that it may even be maintained when the exclusive right of the patentee is contested. *Hollister* v. *Benedict & Burnham Manufacturing Co.*, 59.

E. Jurisdiction of the Supreme Court of the District of Columbia.

The Supreme Court of the District of Columbia has jurisdiction to determine whether an arraignment of a prisoner under several indictments; an order of the court that the indictments shall be consolidated and tried together; an empanelling of a jury for that purpose; an opening of the case on the part of the prosecution; and a discharge of the jury at that stage in order to try the prisoner before the same jury on the indictments separately, so put the prisoner in jeopardy in regard to the offences named in the consolidated indictments, that he cannot be afterwards tried for any of those offences. *Ex parte Bigelow*, 328.

LAND GRANT.

1. By the act of March 3, 1857, Congress granted to the then Territory of Minnesota in aid of the construction of certain railroads certain alternate sections of land along the lines of the roads, and further provided that "in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States . . . so much land . . . as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid," &c. *Held*, That the indemnity clause in this act covers losses from the grant by reason of sales and the attachment of pre-emption rights previous to the date of the act, as well as by reason of sales and the attachment of pre-emption rights between that date and the final determination of the route of the road. *Winona & St. Peter Railroad* v. *Barney*, 618.

2. The act of March 3, 1865, 13 Stat. 526, enlarged the grant made to Minnesota by the act of March 3, 1857, from six sections per mile to ten sections; and the limits within which the indemnity lands were to be selected to twenty sections, and further provided, that "any lands which may have been granted to the Territory or State of Minnesota for the purpose of aiding in the construction of any railroad, which lands may be located within the limits of this extension of said grant or grants, shall be deducted from the full quantity of the lands hereby granted." Prior to the act of 1865, a grant had been made to a railroad of lands located within the limits covered by said extension grant: *Held*, (1) That the grant by the act of 1857 was a grant of land in place, and not of quantity; (2) that the enlargement of the grant by the act of 1865 did not change its nature as to the six sections originally granted; (3) that as to the remaining four sections the grant is one of quantity, but to be selected along and opposite the completed road; (4) that where the earlier grant to aid in the construction of the Minnesota and Cedar Valley Railroad interferes with the extension grant to the plaintiff in error, the earlier grant takes the land, and the extension must be abandoned. *Ib.*

3. The line of definite location of a railroad, which determines the rights of railroad companies to land under land grant acts of Congress, is definitely fixed, within the meaning of those acts, by filing the map of its location with the Commissioner of the General Land Office at Washington. *Kansas Pacific Railroad Co.* v. *Dunmeyer*, 629.

4. Under the acts granting lands to aid in the construction of a line of railroad from the Missouri River to the Pacific Ocean, the claim of a homestead, or pre-emption entry, made at any time before the filing of that map in the General Land Office, had attached, within the meaning of those statutes, and no land to which such right had attached came within the grant. *Ib.*

5. The subsequent failure of the person making such claim to comply with the acts of Congress concerning residence, cultivation and building on the land, or his actual abandonment of the claim, does not cause it to revert to the railroad company and become a part of the grant. The claim having attached at the time of filing the definite line of the road, it did not pass by the grant, but was, by its express terms, excluded, and the company had no interest, reversionary or otherwise, in it. *Ib.*

6. The act of July 3, 1866, 14 Stat. 79, which authorized the Secretary of the Interior to withdraw certain lands from *sale*, on filing a map of the *general route* of the road with him, did not reserve such lands from entry under the *pre-emptory* and *homestead* laws. *Ib.*

LEASE.

See CORPORATION, 3;
PARTIES, 3.

LEVY OF EXECUTION.

See ACTION ON THE CASE.

LIEN.

See EQUITY PLEADING, 2;
WATER RATE.

LIMITATIONS, (STATUTES OF).

1. The Statute of Limitations for writs of error, § 1008 Rev. Stat., begins to run from the date of the entry and filing of the judgment in the court's proceedings, which constitutes the evidence of the judgment. *Polleys* v. *Black River Improvement Co.*, 81.
2. A State statute of limitations as to real actions begins to run in favor of a claimant under a patent from the United States, on the issue of the patent and its transmission to the grantee. *Bicknell* v. *Comstock*, 149.
3. The lapse of time provided by a statute of limitations as to real actions vests a perfect title in the holder. *Ib.*
4. The statute of Arkansas that "All demands not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting of letters, shall be forever barred"—begins, on the granting of letters of administration, to run against persons under age, out of the State with no guardian appointed within the State, and whose claims are alleged to be founded in frauds which were not discovered until after the expiration of the two years fixed by the act. *Morgan* v. *Hamlet*, 449.
5. Although the debt for unpaid purchase money in this case was barred by limitation under the local law, the lien therefor on the land was not barred; for there was no such open adverse possession, for the period within which actions for the recovery of real estate must be brought as would cut off the right to enforce the equitable lien for purchase money. *Hardin* v. *Boyd*, 756.

LOCAL LAW.

A suit in equity is the proper remedy, in the courts of the United States, to enforce the statutory liability of directors to a creditor of a corporation, (organized under the act of the legislature of South Carolina of December 10, 1869), by reason of the corporation debts being in excess of the capital stock. An action at law will not lie. *Stone* v. *Chisolm*, 302.

See LIMITATIONS (STATUTES OF), 2, 3, 4;
RIPARIAN RIGHTS.

LONGEVITY PAY.

Officers on the Retired List of the Navy are not entitled to longevity pay. *Thornley* v. *United States*, 310; *Brown* v. *United States*, 568.

LOUISIANA.

See CONFISCATION, 1.

MAIL AGENT.

See COMMON CARRIER.

MANDAMUS.

See ACTION ON THE CASE.

MEMORANDUM.

See EVIDENCE, 5.

MICHIGAN.

See PROBATE COURT.

MILL ACTS.

See CONSTITUTIONAL LAW, A. 2.

MINERAL LANDS.

1. A written notice of a claim to fifteen hundred feet on a mineral-bearing lode or vein in Colorado, signed by the discoverer thereof, and posted on a stake at the point of discovery, when made in good faith, and not as a speculative location, is a valid location on seven hundred and fifty feet on the course of the lode or vein in each direction from that point, and gives the right of possession to the discoverer until the other steps necessary for completing the title can be taken according to law. *Erhardt* v. *Boaro*, 527.
2. The forcible eviction of the discoverer and locator of a mineral-bearing lode or vein from the lode or vein before the sinking of the shaft which the statutes of Colorado require as one of the acts to complete title, and the prevention of his re-entry by threats of violence, excuse him, as against the party keeping him out of possession, and so long as he is kept out of it, from complying with the requirements of the act in respect of a shaft. *Ib.*
3. Discovery and appropriation are recognized as sources of title to mining claims; and development by working as the condition of continued ownership, until a patent is obtained. *Ib.*
4. Whenever preliminary work is required to define and prescribe a located mineral claim, the law protects the first discoverer in the possession

of the claim, until sufficient excavations and developments can be made, so as to disclose whether a vein or deposit of such richness exists as to justify work to extract the metal. *Ib.*

5. A mere posting of a notice that the poster has located thereon a mining claim, without discovery or knowledge on his part of the existence of metal there, or in its immediate vicinity, is a speculative proceeding, which initiates no right. *Ib.*

See PUBLIC LAND, 3.

MISSOURI.

See CONSTITUTIONAL LAW, B. 1;
RIPARIAN RIGHTS.

MORTGAGE.

1. A decree confiscating real estate under the confiscation act of July 17, 1862, 12 Stat. 589, has no effect upon the interest of a mortgagee in the confiscated property. *Avegno* v. *Schmidt*, 293.
2. In a suit in equity for redeeming unoccupied and uninclosed city lots from a mortgage, the mortagee in constructive possession is chargeable only with the amounts actually received by him for use and occupation. *Peugh* v. *Davis*, 542.
3. It would be unreasonable to charge him with interest on the loans secured by the mortgage. *Ib.*
4. Respondent defended against complainant's claim to redeem, by setting up that the alleged mortgage was an absolute conveyance. This being decided adversely, *Held*, That, in accounting as mortagee in constructive possession, he was not liable for a temporary speculative rise in the value of the tract, which subsequently declined—both during the time of such possession. *Ib.*

See ATTORNEY AND SOLICITOR;
CONFISCATION, 1;
TRUST, 3;
WATER RATE.

MOTION TO AFFIRM.

Unless there is some color of a right to a dismissal, the court will not entertain a motion made to affirm. *Davies* v. *Corbin*, 687.

MUNICIPAL BOND.

1. A municipal bond, issued under the authority of law, for the payment, at all events, to a named person or order, a fixed sum of money, at a designated time therein limited, being indorsed in blank, is a negotiable security within the law merchant. *Ackley School District* v. *Hall*, 135.

2. Its negotiability is not affected by a provision of the statute under which it was issued, that it should be "payable at the pleasure of the district at any time before due." *Ib.*

3. Bonds issued by Anderson County, in Kansas, under legislative authority, and in payment of its subscription to the stock of a railroad company, after the majority of the voters of the county had, at an election, voted in favor of subscribing for the stock and issuing the bonds, recited, on their face, the wrong statute, but also stated that they were issued "in pursuance to the vote of the electors of Anderson County, September 13, 1869." The statute in force required that at least 30 days' notice of the election should be given, and made it the duty of the Board of County Commissioners to subscribe for the stock and issue the bonds, after such assent of the majority of the voters had been given. In a suit against the board on coupons due on the bonds, brought by a *bona fide* holder of them, it appeared, by record evidence, that the board made an order for the election 33 days before it was to be held, and had canvassed the returns and certified that there was a majority of voters in favor of the proposition, and had made such vote the basis of their action in subscribing for the stock and issuing the bonds to the company; and the court directed the jury to find a verdict for the plaintiff; *Held:* (1.) The statement in the bonds, as to the vote, was equivalent to a statement that the vote was one lawful and regular in form, and such as the law then in force required, as to prior notice; (2.) As respected the plaintiff, evidence by the defendant to show less than 30 days' notice of the election could not avail; (3.) The case was within the decision in *Town of Coloma* v. *Eaves*, 92 U. S. 484. (4.) The rights of the plaintiff were not affected by any dealing by the board with the stock subscribed for; (5.) The issue or use of the bonds not having been enjoined, for two years and a half, between the day of election and the time the company parted with the bonds for value, and the county having, for 10 years, paid the interest annually on the bonds, it was estopped, as against the plaintiff, from defending on the ground of a want of proper notice of the election. (6.) As the bill of exceptions contained all the evidence, and the defendant did not ask to go to the jury on any question of fact, and the questions were wholly questions of law, and a verdict for the defendant would have been set aside, it was proper to direct a verdict for the plaintiff *Anderson County* v. *Beal*, 227.

MUNICIPAL CORPORATION.

1. A provision in a city charter, which confers power on the city council to levy and collect taxes annually on real and personal property, to pay debts and meet the general expenses of the city, not exceeding fifty cents on each hundred dollars, relates only to debts and expenses for ordinary municipal purposes; and not to those debts and expenses

which can be incurred only by special legislative authority. *Quincy* v. *Jackson*, 332.

2. An act authorizing a municipal corporation to incur a debt for the purpose of subscribing to the stock of a railroad company, confers authority to levy taxes for the payment of the debt in excess of limit of taxation authorized by law for ordinary municipal purposes. *United States* v. *Macon County*, 99 U. S. 582, distinguished from this case. *Ib.*

See CONSTITUTIONAL LAW, B. 1.

MUNICIPAL ORDINANCE.

See CONSTITUTIONAL LAW, A. 3, 8, 9, 10, 11, B. 2.

NATIONAL BANKS.

See TAX AND TAXATION, 6, 7, 8, 9.

NAVAL CONTRACTS.

1. A private sale of old material arising from the breaking up of a vessel of war, made by an officer of the Navy Department to a contractor for repairs of a war vessel and machinery, is a violation of the provisions of § 1541 Rev. Stat. *Steele* v. *United States*, 128.
2. The allowance of the estimated value of such material in the settlement of such contractor's accounts is a violation of the provisions of § 3618 Rev. Stat. *Ib.*
3. A settlement of such accounts at the Navy Department and at the Treasury, in which the contractor was debited with the material at the estimated value, does not preclude the United States from showing that the estimates were far below the real value, and from recovering the difference between the amount allowed and the real value. *Ib.*

NAVIGABLE WATERS.

See CALIFORNIA.

NEGOTIABLE SECURITIES.

See ACTION, 2;
CASES OVERRULED OR QUALIFIED, 1, 2;
FIVE-TWENTY BONDS;
MUNICIPAL BONDS, 1, 2;
PROMISSORY NOTE.

NEW YORK.

See CONFLICT OF LAW, 2;
PLEADING, 1, 2.

NON-NEGOTIABLE PAPER.

See ACTION, 1.

NULLUM TEMPUS OCCURRIT REGI.

Delay in forcing a claim arising out of an illegal sale of property of the United States, at a value far below its real worth, cannot be set up as a bar to the recovery of its value. *Steele* v. *United States*, 128.

OFFICERS OF THE NAVY.

See LONGEVITY PAY.
RETIRED OFFICERS.

OHIO.

See WILL, 3, 4.

PACT DE NON ALIENANDO.

See CONFISCATION, 1.

PARTIES.

1. All persons interested in a suit in equity, and whose rights will be directly affected by the decree, must be made parties to the suit, unless they are too numerous, or some of them are out of the jurisdiction, or not in being; and in every case there must be such parties before the court as to insure a fair trial of the issue in behalf of all. *McArthur* v. *Scott*, 340.
2. A trustee having large powers over the trust estate, and important duties to perform with respect to it, is a necessary party to a suit by a stranger to defeat the trust. *Ib.*
3. The D. & M. Railroad Company, an Iowa Corporation, received from a township in Iowa, in consideration of its agreement to construct and maintain a railroad to a city in the township, the proceeds of a special tax and a conveyance of a large amount of swamp lands. It constructed the railroad, and, after operating it for a time, leased it to the C. & N. Railway Company, an Illinois corporation. The latter company changed the line and made it avoid the city, constructing a branch to the latter. A tax-payer and resident in the township, on behalf of himself and all other resident voters, tax-payers and property holders, commenced suit in a State court of Iowa against both companies, praying for a peremptory writ of mandamus to compel the reconstruction and operation of the old line. To this the defendants filed a joint demurrer, and a joint answer, setting out further matter in defence. On motion of the Illinois company the suit was removed to the Circuit Court of the United States, as a controversy wholly between it and citizens of Iowa, in which the Iowa company had no interest. Act of March 3, 1875, § 2, 18 Stat. 471. *Held*, That the Iowa corporation was a necessary party for the determination of the controversy,

and the removal was improperly made. *Chicago & N. W. Railway Co.* v. *Crane*, 424.

See JURISDICTION, A. 7;
TAX AND TAXATION, 2;
WILL, 4.

PARTNERSHIP.

1. An agreement by the members of a firm to admit a person into their business, on condition that the company shall become incorporated, and that he shall pay into the firm for its use, a stated sum of money which is to be put into the corporation, it being understood that no change shall be made in the name or character of the firm until the corporation shall be formed; and the subsequent payment of the agreed sum, do not make such person a member of the firm, or give him an interest in the partnership property, in advance of the creation of the corporation. *Drennen* v. *London Assurance Co.*, 51.
2. F contracted with a county to construct a public building, and gave bond with K as surety for the performance of the contract. F abandoned the contract. After procuring some modifications in it at request of H, K assigned the contract to P and H as partners with equal interests. P and H agreed with W to construct the building. H then left the vicinity and engaged in other work elsewhere. W constructed the building. K received the compensation under the original contract, paid W in full for the work done by him, and divided the profits with P, claiming to be partner. *Held*, That H could recover one-half of the profits from P and from K. *Pearce* v. *Ham*, 585.

PATENT FOR INVENTIONS.

1. Novelty and increased utility in an improvement upon previous devices do not necessarily make it an invention. *Hollister* v. *Benedict & Burnham Manufacturing Co.*, 59.
2. A device which displays only the expected skill of the maker's calling, and involves only the exercise of ordinary faculties of reasoning upon materials supplied by special knowledge and facility of manipulation resulting from habitual intelligent practice, is in no sense a creative work of inventive faculty, such as the Constitution and the patent laws aim to encourage and reward. *Ib.*
3. The third claim in the specification and claims of the patent issued to Edward A. Locke, August 3, 1869, for an improvement in revenue stamps, although new and useful, is not such an improvement upon the devices previously in use, as to entitle it to be regarded as an invention. *Ib.*
4. A patent for a combination of separate parts does not cover each part when taken separately. *Rowell* v. *Lindsay*, 97.

5. A patent for a combination is not infringed by use of one of the parts which, united with others, makes the combination, unless other mechanical equivalents, known to be such when the patent was granted, are substituted for the omitted parts. *Ib.*

6. Seeding machines manufactured according to the specifications in patent No. 152,706, for a new and useful improvement in seeding machines, granted to John H. Thomas and Joseph W. Thomas, June 30, 1874, do not infringe the reissued letters patent, No. 2,909, granted to John S. Rowell and Ira Rowell, for a new and useful improvement in cultivators. *Ib.*

7. Letters patent No. 58,294, granted to George W. Richardson, September 25, 1866, for an improvement in steam safety-valves, are valid. *Consolidated Valve Co.* v. *Crosby Steam Gauge & Valve Co.*, 157.

8. Under the claim of that patent, namely, "A safety-valve, with the circular or annular flange or lip *c c*, constructed in the manner, or substantially in the manner, shown, so as to operate as and for the purpose herein described," the patentee is entitled to cover a valve in which are combined an initial area, an additional area, a huddling chamber beneath the additional area, and a strictured orifice leading from the huddling chamber to the open air, the orifice being proportioned to the strength of the spring, as directed. *Ib.*

9. Richardson was the first person who made a safety-valve which, while it automatically relieved the pressure of steam in the boiler, did not, in effecting that result, reduce the pressure to such an extent as to make the use of the relieving apparatus practically impossible, because of the expenditure of time and fuel necessary to bring up the steam again to the proper working standard. *Ib.*

10. His valve was the first which had the strictured orifice to retard the escape of the steam, and enable the valve to open with increasing power against the spring, and close suddenly, with small loss of pressure in the boiler. *Ib.*

11. The direction given in the patent, that the flange or lip is to be separated from the valve-seat by about one sixty-fourth of an inch for an ordinary spring, with less space for a strong spring, and more space for a weak spring, to regulate the escape of steam, as required, is a sufficient description, as matter of law, and it is not shown to be insufficient, as a matter of fact. *Ib.*

12. Letters patent No. 85,963, granted to said Richardson, January 19, 1869, for an improvement in safety-valves for steam boilers or generators, are valid. *Ib.*

13. Under the claim of that patent, namely, "The combination of the surface beyond the seat of the safety-valve, with the means herein described for regulating or adjusting the area of the passage for the escape of steam, substantially as and for the purpose described," the patentee is entitled to cover the combination with the surface of the huddling chamber, and the strictured orifice, of a screw-ring to be

moved up or down to obstruct such orifice more or less in the manner described. *Ib.*

14. The patents of Richardson are infringed by a valve which produces the same effects in operation, by the means described in Richardson's claims, although the valve proper is an annulus, and the extended surface is a disc inside of the annulus, the Richardson valve proper being a disc, and the extended surface an annulus surrounding the disc ; and although the valve proper has two ground joints, and only the steam which passes through one of them goes through the stricture, while, in the Richardson valve, all the steam which passes into the air goes through the stricture ; and although the huddling chamber is at the centre instead of the circumference, and is in the seat of the valve, under the head, instead of in the head, and the stricture is at the circumference of the seat of the valve, instead of being at the circumference of the head. *Ib.*
15. The fact that the prior patented valves were not used, and the speedy and extensive adoption of Richardson's valve, support the conclusion as to the novelty of the latter. *Ib.*
16. Suits in equity having been begun, in 1879, for the infringement of the two patents, and the Circuit Court having dismissed the bills, this court in reversing the decrees, after the first patent had expired, but not the second, awarded accounts of profits and damages as to both patents, and a perpetual injunction as to the second patent. *Ib.*
17. The doctrine that the use of one of the elements of a combination does not infringe a patent for a combination reasserted. *Voss* v. *Fisher*, 213.
18. Patent No. 89,646, granted May 4, 1869, to C. J. Fisher, for an improved neck-pad for horses was not infringed by the device used by the appellant for the same purpose. *Ib.*
19. Reissued letters patent No. 8,169, granted to Washington Wilson, as inventor, April 9, 1878, on an application therefor filed March 11, 1878, for an "improvement in collars" (the original patent, No. 197,807, having been granted to him December 4, 1877), are invalid as to claims 1 and 4. *Coon* v. *Wilson*, 268.
20. The original patent described and claimed only a collar with short or sectional bands, that is, a band along the lower edge of the collar, made in parts or sections, and having a graduated curve. The reissued patent and claims 1 and 4 thereof were so framed as to cover a continuous band, with a graduated curve, but not in sections. The defendants' collars were brought into the market after the original patent was issued, and before the reissue was applied for, and the reissue was obtained to cover those collars; and, although it was applied for only a little over three months after the date of the original patent, there was no inadvertence or mistake, so far as the short or sectional bands were concerned, and it was sought merely to enlarge the claim. Claim 2 of the reissue was substantially the same as the

single claim of the original patent, and claim 3 had, as an element, short bands. As the defendants' collars had a continuous band, with a graduated curve, and not short or sectional bands, and did not infringe the claim of the original patent or claims 2 and 3 of the reissue, and claims 1 and 4 thereof were invalid, the bill was dismissed. *Ib.*

21. The second claim in the reissued patent of September 18, 1877, to Thomas H. Bailey, for an improvement in relief valves for water cylinders, is for a combination of an automatic valve with a pin-hole and pin to effect the desired object; and, as automatic valves had been previously used for that purpose in other combinations, it is not infringed by a combination of such a valve with a screw, sleeve or cap to effect the same objects. *Blake* v. *San Francisco*, 679.
22. The adaptation of an automatic valve, a device known and in use before the plaintiff's patent, to a steam fire engine, is not such invention as will sustain a patent. *Pennsylvania Railroad Co.* v. *Locomotive Truck Co.*, 110 U. S. 490, affirmed and applied. *Ib.*
23. Where the public has acquired the right to use a machine or device for a particular purpose, it has the right to use it for all like purposes to which it can be applied, unless a new and different result is obtained by a new application of it. *Ib.*

See CONTEMPT, 1, 2;
JURISDICTION, D, 1.

PATENT FOR PUBLIC LAND.

See LIMITATIONS, STATUTES OF, 2, 3 ·
PUBLIC LANDS, 1, 3.

PERSONAL PROPERTY.

See SALE ON EXECUTION.

PLEADING.

1. In an action of *indebitatus assumpsit*, to recover money alleged to have been illegally exacted, a declaration, which avers the fact of indebtedness, and a promise in consideration thereof, is sufficient on general demurrer, unless it appears that the alleged indebtedness was impossible in law. *Liverpool, N. Y. & Phil. Steamship Co.* v. *Commissioners of Emigration*, 33.
2. To such a declaration, treated as a complaint according to the New York Code, an answer was filed, setting up, as a defence, an act of Congress to legalize the collection of head moneys already paid, approved June 19, 1878. The Circuit Court refused to hear evidence in support of the plaintiff's case, and gave judgment, on the pleadings, in favor of the defendant. *Held*, That this was error, because it

did not appear from the record that the money sued for was within the description of the act of Congress. *Ib.*

See JURISDICTION, A. 4.

PRACTICE.

1. The court declines to decide a question arising in a case which no longer exists, in regard to rights which it cannot enforce. *Cheong Ah Moy* v. *United States*, 216.
2. Evidence of facts outside of the record, affecting the proceeding of the court in a case on error or appeal, will be received and considered, when deemed necessary by the court, for the purpose of determining its action. *Dakota County* v. *Glidden*, 222.
3. In the absence of a bill of exceptions, setting forth evidence, no error can be assigned in respect to facts found by the court when the parties waive a trial by jury. *Prentice* v. *Stearns*, 435.
4. Where there is an appeal from the Supreme Court of the District of Columbia to this court, the citation may be signed by any justice of that court. *Richards* v. *Mackall*, 539.
5. An appeal from the Supreme Court of the District of Columbia to this court may be allowed by that court sitting in special term. *Ib.*
6. The time fixed by the decree in the court below for payment by appellant to appellee of a sum named in the decree, in order to secure a reconveyance of the property in litigation having expired pending the appeal, and without payment, and the appellants having given an appeal bond which superseded the decree, in affirming the judgment the court modifies the decree, so as to extend the time of payment. *Flagg* v. *Walker*, 659.
7. The docketing by the defendant in error of a cause in advance of the return day of the writ of error, does not prevent the plaintiff in error from doing what is necessary while the writ is in life, to give it full effect. *Davies* v. *Corbin*, 687.

See COURT AND JURY, 1, 2, 3; DIVISION OF OPINION, 1, 2; JURISDICTION, A, 1, 3, 4, 5, 7; MOTION TO AFFIRM. MUNICIPAL BOND, 3, (6).

PRESUMPTION.

See EVIDENCE, 3.

PRIZE.

1. A torpedo steam launch, attached to a division of a naval squadron, though not proved to have had any books, is a ship, within the meaning of the prize act of June 30, 1864, ch. 174, § 10, rules 4 and 5; and her commander is entitled to one tenth of prize money awarded to her, and cannot elect to take instead a share proportioned to his

rate of pay ; but her other officers and men are entitled to share in proportion to their rates of pay. *United States* v. *Steever*, 747.

2. The distribution of prize money among the subordinate officers and crew of a ship "in proportion to their respective rates of pay in the service," under the prize act of June 30, 1864, ch. 174, § 10, rule 5, is to be made according to their pay at the time of the capture, and not according to the pay of grades to which they have since been promoted as of that time. *Ib.*

3. Under the act of August 8, 1882, ch. 480, referring the claims of the captors of the ram Albemarle to the Court of Claims, each captor is entitled to recover such a sum as, together with the sum formerly paid him by the Secretary of the Navy under the prize decrees in the case of the Albemarle, will equal his lawful share of the prize money in that case. *Ib.*

PROBATE COURT.

1. The report of commissioners to whom a claim has been referred by a probate court under the statutes of Michigan, is not a final hearing within the meaning of clause 3, § 689 Rev. Stat. *Hess* v. *Reynolds*, 73.

1. A court of probate has inherent power, without specific statute authority, to grant administration limited to the defence of a particular suit. *McArthur* v. *Scott*, 340.

See EXECUTOR AND ADMINISTRATOR;
JURISDICTION, B. 1;
WILL, 4.

PROMISSORY NOTE.

1. Ordinary negotiable paper payable on demand, is not due without demand until after the lapse of a reasonable time in which to make demand. *Morgan* v. *United States*, 476.

2. What is reasonable time in which to demand payment of negotiable paper payable on demand, depends upon the circumstances of the case and the situation of the parties. *Ib.*

See CORPORATIONS, 1.

PUBLIC LANDS.

1. The mutilation (without the consent and against the protest of the grantee) of a patent for public land, by the Commissioner of the Land Office, after its execution and transmission to the grantee, and the like mutilation of the record thereof, do not affect the validity of the patent. *Bicknell* v. *Comstock*, 149.

2. Congress intended by the act of February 14, 1874, 18 Stat. 16, entitled "An Act to confirm certain titles in the State of Missouri," to recognize the claim of Austin arising from the Spanish concession, survey,

and grant recited in its preamble, and to assure those who were in possession, by contract or by operation of law, and therefore, assignees of Austin, that they would not be disturbed by any assertion of claim upon the part of the United States. *Bryan* v. *Kennett*, 179.

3. A patent for a placer mining claim, composed of distinct mining locations, some of which were made after 1870, and together embracing over one hundred and sixty acres, is valid. *Smelting Co.* v. *Kemp*, 104 U. S. 636, was carefully considered, and is again affirmed. *Tucker* v. *Masser*, 203.

See LAND GRANT; STATUTES, B. 2;
MINERAL LANDS; VIRGINIA MILITARY DISTRICT, 2, 3, 4, 5.

RAILROAD.

See ATTORNEY AND SOLICITOR; LAND GRANT;
COMMON CARRIER; PARTIES, 3;
CORPORATION, 3, 6, 7; TAX AND TAXATION, 4, 5.
INTERNAL REVENUE;

REAL ESTATE.

See ALIEN;
SALE ON EXECUTION;
TRUST.

REGULATIONS.

See CONTRACT, 3, 4.

RELEASE.

See CORPORATION, 2.

REMOVAL OF CAUSES.

1. The act of March 3, 1875, to determine the jurisdiction of the Circuit Courts and regulate the removal of causes from State courts, does not repeal or supersede all other statutes on those subjects, but only such as are in conflict with this latter statute. The third clause of section 689 of the Revised Statutes is not, therefore, abrogated or repealed. *Hess* v. *Reynolds*, 73.
2. An application for removal under that clause is in time, if made before the trial or final hearing of the cause in the State court. *Ib.*
3. The removal in all cases is into the Circuit Court of the District, which embraces territorially the State court in which the suit is pending at the time of the removal, without regard to the place where it originated. *Ib.*
4. Within the meaning of § 3, act of March 3, 1875, 18 Stat. 471, regu-

lating removal of causes from State courts, a suit in equity may be "first tried" at the term of the State court, at which, by the rules of that court the respondent is required to answer, and the complainant may be ordered to file replication. *Pullman Palace Car Co.* v. *Speck*, 84.

5. The ruling in *Hyde* v. *Ruble*, 104 U. S. 407, that clause 2, § 639 Rev. Stat. as to removal of causes, was suspended and repealed by the act of March 3, 1875, 18 Stat. 470, reaffirmed. *Ayres* v. *Watson*, 594.
6. § 2 of the act of March 3, 1875, defining the cases in which causes may be removed from State courts to Circuit Courts of the United States, being fundamental and based on the grant of judicial power, its conditions are indispensable—cannot be waived—and must be shown by the record. *Ib.*
7. § 3 of that act not being jurisdictional, but a mere rule of limitation, its requirements may be waived. *Ib.*
8. The party at whose instance a cause is removed from a State court is estopped from objecting that the removal was not made within the time required by § 3 of the act of March 3, 1875, 18 Stat. 470. *Ib.*
9. It is again decided that the words "term at which said cause could be first tried and before the trial thereof," act of March 3, 1875, ch. 137, § 3, 18 Stat. 471, mean the first term at which the cause is in law triable: *i. e.* in which it would stand for trial, if the parties had taken the usual steps as to pleadings and other preparations. *Babbitt* v. *Clark*, 103 U. S. 606, and *Pullman Palace Car Co.* v. *Speck*, *ante*, 87, re-affirmed. *Gregory* v. *Hartley*, 742.
10. It is again decided that there cannot be a removal of a cause under that act after hearing on demurrer to a complaint on the ground that it does not state facts sufficient to constitute a cause of action. *Alley* v. *Nott*, 111 U. S. 472, and *Scharf* v. *Levy*, 112 U. S. 711, affirmed. *Ib.*

See JURISDICTION, B. 1, 3;
PARTIES, 3;
PROBATE COURT, 1.

RETIRED OFFICERS.

1. The provisions of the act of Aug. 3, 1861, ch. 42, § 23, 12 Stat. 291, relating to the retirement of officers of the navy, having been uniformly held, by the officers charged with their execution, to be applicable to warrant officers, are now held to be so applicable. *Brown* v. *United States*, 568.
2. The act of July 15, 1870, 16 Stat. 321, did not abolish the furlough pay list; and an order after the passage of that act retiring a naval officer on furlough pay was made in pursuance of law. *Ib.*
3. The administrator of a retired naval officer cannot, in order to recover from the United States an increase in the compensation of his intestate, take advantage of an alleged defect in the proceedings by

which he was retired, and which he acquiesced in without objection during his lifetime. *Ib.*

4. § 1588 Rev. Stat. does not apply to officers retired on furlough pay. *Ib.*
5. Officers of the navy on the retired list are not entitled to longevity pay. *Ib.*

RIPARIAN RIGHTS.

1. The act of March 6, 1820, 3 Stat. 545, admitting Missouri into the Union, left the rights of riparian owners on the Mississippi River to be settled according to the principles of State law. *St. Louis* v. *Meyers*, 566.
2. The act of June 12, 1866, § 9, 14 Stat. 63, relinquishing to the city of St. Louis the rights of the United States in wharves and thoroughfares, did not authorize the city to impair the rights of other riparian proprietors by extending streets into the river. *Ib.*

SALE ON EXECUTION.

In 1874, B conveyed to H, for a term of fifty years, all the mineral coal upon and under a described tract of land, in Knox County, Indiana, with the exclusive right to enter on the land to dig for the coal, and remove it, and to occupy with constructions and buildings, as might be necessary and useful for the full development and enjoyment of the advantages of the coal, H to have the right to remove all buildings or fixtures placed on the land, when the agreement should expire, and to pay a fixed royalty for the coal mined. Under a judgment against H, the sheriff of Knox County sold, on execution, to the judgment creditor, at the court-house door, in that county, in the manner prescribed by statute for the sale of real estate, the interest of H in the term of years, and certain buildings and articles belonging to him, which were a part of the structures and machinery for operating a coal mine on the land, and which were firmly attached to the land. In a suit in equity brought by the purchaser against another judgment creditor and the sheriff, to enjoin interference with the property so purchased: *Held*, That, under the Revised Statutes of Indiana, of 1852, 2 Rev. Stat., part 2, chap. 1, Act of June 18, 1852, vol. 2 of Davis' edition of 1876, art. 24, sec. 526, p. 232, and art. 22, secs. 463, 466 and 467 (as amended February 2, 1855), pp. 215, 217, the sale of the property as real estate was valid. *Hyatt* v. *Vincennes Bank*, 408.

SHIPS AND SHIPPING.

1. A stipulation in the charter-party of a steamer, that she is "now sailed, or about to sail, from Benizaf, with cargo, for Philadelphia," is a stipulation that she has her cargo on board and is ready to sail. *Davison* v. *Von Lingen*, 40.

2. A charter-party with the above stipulation was made on the 1st of August, in Philadelphia. The steamer was at Benizaf, in Morocco, only three-elevenths loaded, and did not sail for Philadelphia till August 7th, and left Gibraltar, August 9th. Before signing the charter-party, the charterers asked to have in it a guaranty that the steamer would reach Philadelphia in time to load a cargo for Europe in August, but this was refused. They declined to have inserted the words "sailed from, or loading at Benizaf." On learning when the steamer left Gibraltar, they proceeded to look for another vessel. The unloading of the steamer at Philadelphia was completed September 7th, but the charterers repudiated the contract: *Held*, (1) The stipulation was a warranty or a condition precedent, and not a mere representation; (2) time and the situation of the vessel were material and essential parts of the contract; (3) the charterers had a right to repudiate the contract, and to recover from the owners of the steamer the increased cost of employing another vessel. *Ib.*

SOLICITOR.

See ATTORNEY AND SOLICITOR.

SOUTH CAROLINA.

See LOCAL LAW.

SPANISH LAND GRANTS.

See PUBLIC LANDS, 2;
TREATY CEDING LOUISIANA.

STATUTES.

A. STATUTES CITED IN OPINIONS.
See Ante, p. xxiii.

B. CONSTRUCTION OF STATUTES.

1. In case of ambiguity in a statute, contemporaneous and uniform executive construction is regarded as decisive. *Brown* v. *United States*, 568.
2. If acts granting public lands to a State to aid in constructing railroads contain words of description to which it would be difficult to give full effect if they were used in an instrument of private conveyance, the court in construing the acts will look to the condition of the country when they were passed, as well as to the purpose declared on their face, and will read all parts of them together. *Winona & St. Peter Railroad Co.* v. *Barney*, 618.
3. This court cannot inquire into the motives of legislators in enacting

laws, except as they may be disclosed on the face of the acts, or be inferable from their operation, considered with reference to the condition of the country and existing legislation. *Soon Hing* v. *Crowley*, 703.

4. An act, in execution of a constitutional power, passed by the first legislature after the adoption of the Constitution, is a contemporary interpretation of the latter, entitled to much weight. *Cooper Manufacturing Co.* v. *Ferguson*, 727.

See CUSTOMS DUTIES, 2; LAND GRANT; MUNICIPAL CORPORATIONS, 1; TAX AND TAXATION, 5.

C. STATUTES OF THE UNITED STATES.

Under the act of Congress of July 29, 1882, 22 Stat. 723, ch. 359, providing for the refunding to the persons therein named of the amount of taxes assessed upon and collected from them contrary to the provisions of the regulations therein mentioned, "that is to say, to" each of such persons the sum set opposite his name, each of them is entitled to be paid the whole of that sum, and no discretion is vested in the Secretary of the Treasury, or in any court, to determine whether the sum specified was or was not the amount of a tax assessed contrary to the provisions of such regulations. *United States* v. *Jordan*, 418.

See COMMON CARRIER; CONFLICT OF LAW, 1, 2, 3; CONTRACT, 3, 4; CUSTOMS DUTIES, 1; INTEREST; LAND GRANT, 1, 2, 3, 4, 6; LIMITATIONS, STATUES OF, 1; NAVAL CONTRACTS, 1, 2; PRIZE, 1, 2, 3; PUBLIC LANDS, 2; REMOVAL OF CAUSES; RETIRED OFFICERS; RIPARIAN RIGHTS; TAX AND TAXATION, 6, 7, 8, 9; VIRGINIA MILITARY DISTRICT, 1, 2, 3, 4, 5.

D. STATUTES OF STATES AND TERRITORIES.

Arkansas: *See* LIMITATIONS, STATUTES OF, 4;
Iowa: CONSTITUTIONAL LAW, B. 3;
Michigan: PROBATE COURT;
New York: CONFLICT OF LAW, 1, 2, 3; CORPORATION, 4, 5; PLEADING, 1, 2;
Ohio: WILL, 3;
Pennsylvania: TAX AND TAXATION, 6;
South Carolina: LOCAL LAW;
Utah: BAIL;
Wyoming: TAX AND TAXATION, 4.

SUPERSEDEAS.

See PRACTICE, 6, 7.

TAX AND TAXATION.

1. The assignment by a railroad company of a tax voted by a township to aid in the construction of its railroad, conveys the rights of the company (if at all), subject to all the equities between the company and the tax-payers. *Sully* v. *Drennan*, 287.
2. In a suit by a tax-payer to invalidate such a tax, by reason of failure on the part of the company to comply with conditions precedent to its collection, the railroad company and the assignee are necessary parties with an interest opposed to that of the tax-payer ; the trustees of the township and the county treasurer are also necessary parties with an interest different from that of the tax-payer. *Ib.*
3. *Harter* v. *Kernochan*, 103 U. S. 562, distinguished from this case. *Ib.*
4. The act of the legislature of Wyoming, passed December 13, 1879, which required the State auditor to furnish to the Territorial Board of Equalization a list for assessment and taxation of the road bed, superstructure, and other enumerated property of every railroad and telegraph company in the Territory, when any portion of the property of such company was situated in more than one county ; and which required the board to value and assess the property of the corporation for each mile of its road or line, and to certify to the county clerks of the counties in which the property was situated the assessment per mile, specifying the number of miles and amount in each of the counties ; and which required the county commissioners to decide and adjust the number of miles and amounts within each precinct, township, or school district within their respective counties, and cause such amounts to be entered on the lists of taxable property returned by the assessors ; withdrew the duty of assessing fractional parts of such railroad, and the property of such companies, from all local assessors in the Territory, including its incorporated cities. *Union Pacific Railway Co.* v. *Cheyenne*, 516.
5. A statute which provides a general scheme for assessing and taxing the property of railroad and telegraph companies as a whole, and for distributing it ratably among the different counties, and their several precincts, townships and districts, according to the number of miles of line in each, repeals, as to such property, a power conferred upon the authorities of a city to make provisions for the assessment of the taxes which they were authorized by other provisions of the city charter to assess and collect. *Ib.*
6. The laws of Pennsylvania exempted from local taxation, for county purposes, railroad securities; shares of stock held by stockholders in corporations which were liable to pay certain taxes to the State; mortgages; judgments; recognizances; moneys due on contracts for

sale of real estate; and loans by corporations, which were taxable for State purposes, when the State tax should be paid. The pleadings in this case admitted, in detail, large amounts of exempted property under these heads in the State: *Held*, That, under these circumstances, this constituted a discrimination in favor of other moneyed capital against capital invested in shares in national banks, which was inconsistent with the provision in § 5219 Rev. Stat., that the taxation by State authority of national bank shares shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. *Boyer* v. *Boyer*, 689.

7. The previous decisions of this court respecting State and local taxation of shares in national banks considered and reviewed. *Ib.*

8. The former decisions of this court do not sustain the proposition that national bank shares may be subjected, under the authority of the State, to local taxation where a very material part, relatively, of other moneyed capital in the hands of individual citizens within the same jurisdiction or taxing district is exempted from such taxation. *Ib.*

9. While exact uniformity or equality of taxation cannot be expected under any system, capital invested in national bank shares was intended by Congress to be placed upon the same footing of substantial equality in respect of taxation by State authority as the State establishes for other moneyed capital in the hands of individual citizens, however invested, whether in State bank shares or otherwise. *Ib.*

See ACTION ON THE CASE;
CONSTITUTIONAL LAW, A. 1;
CORPORATION, 7, 8;
EQUITY, 1;
INTERNAL REVENUE;
MUNICIPAL CORPORATIONS, 1, 2;
WATER RATE.

TREASURY SETTLEMENTS.

See NAVAL CONTRACTS, 3.

TREATY CEDING LOUISIANA.

1. The term "property," in the treaty by which the United States acquired Louisiana, comprehends every species of title, inchoate or complete, legal or equitable, and embraces rights which lie in contract executory as well as executed. *Bryan* v. *Kennett*, 179.

2. The incomplete title acquired from the Spanish government, prior to the treaty of St. Ildefonso between Spain and France, to lands in the territory now embraced within the State of Missouri, was such a property interest as could be transferred by mortgage or reached by judicial process. *Ib.*

See PUBLIC LANDS, 2.

TRUST.

1. A trustee receiving money from the sale of real estate is bound to ac-

count for it, without regard to the quality of title conveyed by him. *Griffith* v. *Godey*, 89.

2. The facts of this case disclose a case of deception and fraud, practised upon a person of weak intellect, and a conspiracy to part with his property for a consideration so grossly inadequate, as to warrant the intervention of a court of equity. *Ib.*

3. A, being embarrassed, conveyed by deed absolute several parcels of land in Illinois to B, among which were a tract known as "the pasture," encumbered by a mortgage to C; other tracts occupied by shops and tenements; and "the homestead," also encumbered with a mortgage. B agreed verbally to advance to A and wife $1,500 a year for four years; to dispose of the property conveyed to him; to apply the proceeds to the payment of A's debts; and to divide equally between himself and them what might remain at the end of four years. Subsequently B made and delivered, and they received and accepted, a written agreement substantially to that effect, and further providing that B's liability to C should not exceed the amount realized from sale of "the pasture;" that the deed to B was absolute for all purposes; and that B was to have the free and unobstructed control and ownership of the property. B remained for some time in possession; paid sundry debts due from A; made advances in cash for A's use and for taxes and repairs; and advanced money for and took an assignment to himself of the mortgage on "the homestead." A then resumed possession, and subsequently thereto the mortgage on "the pasture" was foreclosed and the property sold. *Held*, (1) That the relation of B to A and his wife was not that of mortgagee, but that of trustee, under the original deed and subsequent agreements; (2) That B was not bound to advance out of his own means, money to pay the mortgage debt on the pasture tract; (3) That A was under no personal liability to B for advances made by him; (4) That the mortgage debt on "the homestead" was one of the debts which B had undertaken to pay out of the proceeds of the property, and that he was entitled to be reimbursed for advances for its purchase not merely out of the mortgaged premises, but out of the proceeds of all the property conveyed to him by A. *Flagg* v. *Walker*, 659.

VESTED REMAINDER.

See WILL, 2, 3.

VIRGINIA MILITARY DISTRICT IN OHIO.

1. A court of the United States sitting in equity, cannot control the principal surveyor of the Virginia military district in the discharge of his official duties; or take charge of the records of his office; or declare their effect to be other than what appears on their face. *Fussell v. Gregg*, 550.

2. The plain meaning of the act of March 23, 1804, 2 Stat. 274, to ascertain the boundaries of the Virginia Military District in Ohio, is, that a failure within five years to make return to the Secretary of War of the survey of any tract located within the territory, made previous to the expiration of the five years, should discharge the land from any claim founded on such location and survey and extinguish all rights acquired thereby. *Ib.*
3. The series of acts relating to this district, beginning with the act of March 23, 1804, and ending with the act of July 7, 1838, 5 Stat. 262, as revived and continued in force by later acts, are to be construed together, and as if the third section of the act of March 23, 1804, had been repeated in every act of the series. *Ib.*
4. The act of March 3, 1855, 10 Stat. 701, allowing persons who had made entries before January 1, 1852, two years time to return their surveys, did not apply to those who had made both entries and surveys before the latter date. *Ib.*
5. The land office referred to in § 2 of the act of May 27, 1880, 21 Stat. 142, relating to the Virginia Military District in Ohio is the General Land Office. *Ib.*

WARRANTY.

See SHIPS AND SHIPPING, 2 (1).

WASTE.

Where irremediable mischief, going to the destruction of the substance of the estate, is being done by the person in possession, to an estate in litigation at law, an injunction will be issued to prevent it. *Erhardt* v. *Boaro*, 537.

WATER RATE.

An act which makes water rents a charge upon lands in a municipality, with a lien prior to all encumbrances, in the same manner as taxes and assessments, gives them priority over mortgages on such lands made after the passage of the act, whether the water was introduced on the lot mortgaged before or after the giving of the mortgage. *Provident Institution* v. *Jersey City*, 506.

WILL.

1. Words in a will, directing land to be conveyed to or divided among remaindermen at the expiration of a particular estate, are to be presumed, unless clearly controlled by other provisions, to relate to the beginning of enjoyment by remaindermen, and not to the vesting of the title in them. *McArthur* v. *Scott*, 340.
2. A testator devised lands and personal property to his executors and

their successors, and their heirs, in trust; and directed that the income, until his youngest grandchild, who might live to be twenty-one years of age, should arrive at that age, should be divided equally among the testator's children, or the issue of any child dying, and among the grandchildren also as they successively came of age; that "after the decease of all my children, and when and as soon as the youngest grandchild shall arrive at the age of twenty-one years," the lands should be "inherited and equally divided between my grandchildren *per capita*," in fee, and that "in like manner" the personal property should "at the same time be equally divided among my said grandchildren, share and share alike, *per capita*;" and that if any grandchild should have died before the final division, leaving children, they should take and receive *per stirpes* the share which their parent would have been entitled to have and receive if then living; and provided that any assignment, mortgage or pledge by any grandchild of his share should be void, and the executors, in the final division and distribution, should convey and pay to the persons entitled under the will. *Held*, That the executors took the legal title in fee, to hold until the final division; and that the trusts were imposed upon them as executors. *Held*, *also*, That all the grandchildren took equitable vested remainders, opening to let in those born after the testator's death, and subject to be divested only as to any grandchild who died before the expiration of the particular estate, leaving issue, by an executory devise over to such issue. *Ib.*

3. Under the statute of Ohio of December 17, 1811, providing that no estate in lands "shall be given or granted by deed or will to any person or persons, but such as are in being, or to the immediate issue or descendants of such as are in being at the time of making such deed or will," a devise of a vested remainder to grandchildren of the testator, with an executory devise over of the share of any grandchild, who shall have died, leaving children, before the coming of age of the youngest grandchild, to the children of such deceased grandchild, is valid, so far, at least, as concerns the grandchildren, though born after the testator's death. *Ib.*

4. A citizen of Ohio devised lands in that State to his three executors in fee, in trust to pay the income to his children and grandchildren until the youngest grandchild who should live to be twenty-one years of age should arrive at that age, and then to convey the remainder to his grandchildren in equal shares; and provided that if any executor should die, resign, or refuse to act, a new executor to act with the others, should be appointed by the court of probate. The will was admitted to probate, upon the testimony of the attending witnesses, under the statute of Ohio of February 18, 1831, and three executors were appointed and acted as such. Two of them afterwards resigned, and their resignations were accepted by the court of probate. A bill in equity to set aside the will and annul the probate was then filed, under

that statute, by one of the children against the other children and all the grandchildren then in being, alleging that they were the only persons specified or interested in the will, and were the only heirs and personal representatives of the deceased; those grandchildren being infants, one of the children was appointed guardian *ad litem* of each; the third executor,. who was one of the children made defendants in their own right and who was not made a party as executor or trustee, and did not answer as such, resigned, and the resignation was accepted by the court of probate, pending that suit, and no other executor, trustee, or administrator with the will annexed was made a party; it was found by a jury that the instrument admitted to probate was not the testator's will, and a decree was entered setting aside the will and annulling the probate. Partition was afterwards decreed among the heirs, and they conveyed portions of the lands set off to them to purchasers for value and without actual notice of any adverse title. *Held*, That the decree annulling the probate was absolutely void as against grandchildren afterwards born, and that they were entitled to recover their shares under the will against the heirs and purchasers, and might, if the parties were citizens of different States, bring their suit in the Circuit Court of the United States. *Ib.*

WITNESS.

See EVIDENCE 5.

WRIT OF ERROR.

In error to a State court, the writ may be directed to an inferior court if the Supreme Court of the State, without retaining a copy, remits the whole record to that court with direction to enter a final judgment in the case. *Polleys* v. *Black River Improvement Co.*, 81.

See JURISDICTION, A. 5, 7;
LIMITATIONS, STATUTES of, 1.

WYOMING.

See TAX AND TAXATION, 4, 5.