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ACCEPTANCE OF SERVICE.

1. A written acceptance by the Commissioner of Patents at Washington of service of a subpœna issued by the Circuit Court of the United States for the District of Vermont, on a bill in equity filed in that court, "to have the same effect as if duly served on me by a proper officer," has no other effect than the regular service by a proper officer would have had, and waives no objection to jurisdiction, and gives no consent to be sued away from his residence or from the seat of government. *Butterworth* v. *Hill*, 128.
2. A notice by the Commissioner of Patents to counsel that he has accepted service of a subpœna in manner above described, and has received a copy of the bill, and that he shall not appear in defence, notifies him that further proceedings will be taken without consent of the commissioner to the jurisdiction of the court. *Ib.*

ACTION.

See BANKRUPTCY, 2; REMOVAL OF CAUSES, 3; COMMENCEMENT OF ACTION; TAX AND TAXATION, 4.

ADMIRALTY.

1. A collision on the high seas between vessels of different nationalities is *prima facie* a proper subject of inquiry in any court of admiralty which first obtains jurisdiction. *The Belgenland*, 355.
2. In a proceeding in Admiralty against one foreign vessel for collision with another foreign vessel on the high seas, the general maritime law, as understood and administered in the courts of the country in which the litigation is prosecuted, is the law governing the case except: (1) That persons on either ship will not be open to blame for following the sailing regulations and rules of navigation prescribed by their own government for their direction on the high seas; and (2) That if the maritime law, as administered by both nations to which the respective ships belong, be the same in both, in respect to any matter of

liability or obligation, such law, if shown to the court, should be followed, although different from the maritime law of the country of the forum. *Ib.*

See JURISDICTION, B., 5, 6, 7, 8.

APPEAL.

See JURISDICTION, A., 7, 8;
NATIONAL BANK, 2.

APPEAL BOND.

See JURISDICTION, A., 7.

APPOINTMENT.

See ARMY, 2.

ARMY.

1. An officer of volunteers, in the army, dismissed from the service during the recent civil war, by order of the President, could not be restored to his position merely by subsequent revocation of that order. *United States* v. *Corson*, 619.
2. The vacancy so created could only be filled by a new appointment, by and with the advice and consent of the Senate, unless it occurred in the recess of that body, in which case the President could have granted a commission to expire at the end of its next succeeding session. *Ib.*

ATTACHMENT.

See CONFLICT OF LAW, 1, 2.

BANKRUPTCY.

1. The District Court which made an adjudication in bankruptcy having had jurisdiction of the subject matter, and the bankrupt having voluntarily appeared, and the adjudication having been correct in form, it is conclusive of the fact decreed, and cannot be attacked collaterally in a suit brought by the assignee against a person claiming an adverse interest in property of the bankrupt. *Chapman* v. *Brewer*, 158.
2. An assignment in bankruptcy was made after a levy on land under an execution on a judgment obtained in a suit in a State court of Michigan, brought after the proceeding in bankruptcy was commenced: *Held*, That the assignee, being in possession of the land, could maintain a suit in equity, in the Circuit Court of the United States for the Western District of Michigan, to remove the cloud on his title, and that that court could, under the exception in Rev. Stat.

§ 720, restrain by injunction a sale under the levy and a further levy. *Ib.*

3. The rule re-affirmed that the term "fraud" in the clause defining the debts from which a bankrupt is not relieved by a discharge under the bankrupt act, means positive fraud or fraud in fact, involving moral turpitude or intentional wrong, not implied fraud, which may exist without bad faith. *Strang* v. *Bradner*, 555.
4. A claim against a bankrupt for damages on account of fraud or deceit practised by him is not discharged by proceedings in bankruptcy; nor is a debt, created by his fraud, discharged, even where it was proved against his estate, and a dividend thereon received on account. *Ib.*
5. If, in the conduct of partnership business, and with reference thereto, one partner makes false or fraudulent misrepresentations of fact to the injury of innocent persons dealing with him, as representing the firm, and without notice of any limitations upon his general authority as agent for the partnership, his partners cannot escape pecuniary responsibility therefor upon the ground that the misrepresentations were made without their knowledge; especially where the firm appropriates the fruits of the fraudulent conduct of such partner. *Ib.*

See CONFLICT OF LAW; JURISDICTION, A., 4, 9; C.; LIMITATIONS, STATUTE OF; RAILROAD, 4.

BIGAMY.

A bigamist or polygamist, in the sense of the eighth section of the act of March 22, 1882, 22 Stat. 30, is a man who, having contracted a bigamous or polygamous marriage, and become the husband, at one time, of two or more wives, maintains that relation and status at the time when he offers to be registered as a voter; and this without reference to the question whether he was at any time guilty of the offence of bigamy or polygamy, or whether any prosecution for such offence was barred by the lapse of time; neither is it necessary that he should be guilty of polygamy under the first section of the act of March 22, 1882. The eighth section of the act is not intended, and does not operate, as an additional penalty prescribed for the punishment of the offence of polygamy, but merely defines it as a disqualification of a voter. It is not, therefore, objectionable as an *ex post facto* law, and has no retrospective operation. The disfranchisement operates upon the existing state and condition of the person and not upon a past offence. It was accordingly, *Held*,

(1). That, as to the five defendants below, composing the Board of Commissioners under the ninth section of the act of March 22, 1882, the demurrers were rightly sustained, and the judgments are affirmed:

(2). That, in the cases in which Jesse J. Murphy and James M. Barlow respectively were plaintiffs, they do not allege that they were not

polygamists or bigamists at the time they offered to register, although they deny that they were at that time liable to a criminal prosecution for polygamy or bigamy, and deny that they were cohabiting with more than one woman, and not showing themselves to be legally qualified voters, the judgments on the demurrers as to all the defendants is affirmed:

(3). That, in the case in which Ellen C. Clawson. with her husband, is plaintiff, as the declaration does not deny the disqualification of one who is at the time cohabiting with a polygamist or bigamist, the judgment as to all the defendants is affirmed:

(4). That, in the cases in which Mary Ann M. Pratt and Mildred E. Randall, with her husband, are the respective plaintiffs, as all the disqualifications are denied, and it is alleged that the defendants, the registration officers, wilfully and maliciously refused to register them as voters, the judgments as to Hoge and Lindsay in one, and as to Hoge and Harmel Pratt in the other, are reversed, and the causes remanded for further proceedings. *Murphy* v. *Ramsey*, 15.

See INDICTMENT;
UTAH, 5.

BILLS OF CREDIT.

See CONSTITUTIONAL LAW, A., 11 (*d*).

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See JURISDICTION, A., 7.

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See PUBLIC LAND, 5, 6.

CASES AFFIRMED OR APPROVED.

1. *Louisville & Nashville Railroad Co.* v. *Ide. ante*, 52, affirmed. *Putnam* v. *Ingraham*, 57.
2. *Morgan* v. *Louisiana*, 93 U. S. 217, quoted and affirmed. *Chesapeake & Ohio Railway Co.* v. *Miller*, 176.
3. *Lamar* v. *Micou*, 112 U. S. 452, confirmed. *Lamar* v. *Micou*, 218.
4. *Van Wyck* v. *Knevals*, 106 U. S. 360, and *Kansas Pacific Railroad Co.* v. *Dunmeyer*, 113 U. S. 629, affirmed. *Walden* v. *Knevals*, 373.
5. *Factor's Insurance Co.* v. *Murphy*, 111 U. S. 738, cited and applied. *New Orleans, &c., Railroad Co.* v. *Delamore*, 501.
6. *Kihlberg* v. *United States*, 97 U. S. 398, and *Sweeney* v. *United States*, 109 U. S. 618, affirmed and applied. *Martinsburg & Potomac Railroad Co.* v. *March*, 549.
7. *Great Western Insurance Co.* v. *United States*, 112 U. S. 193, affirmed.

Frelinghuysen v. *Key*, 110 U. S. 63, affirmed. *Alling* v. *United States*, 562.

8. The doctrine laid down in *Railroad Co.* v. *Houston*, 95 U. S. 697, cited and applied to the facts of this case. *Schofield* v. *Chicago, Milwaukee & St. Paul Railway*, 615.
9. *Woodruff* v. *Parham*, 8 Wall. 123, affirmed and applied. *Brown* v. *Houston*, 622.

CASES DISTINGUISHED.

1. *Huff* v. *Doyle*, 93 U. S. 558, distinguished. *Aurrecoechea* v. *Bangs*, 381.
2. This case distinguished from *United States* v. *State Bank*, 96 U. S. 33. *State Bank* v. *United States*, 401.
3. *Hand* v. *Savannah & Charleston Railroad Co.*, 13 So. Car. 314, and *Sinking Fund Cases*, 99 U. S. 700, distinguished. *Tennessee Bond Cases*, 663.

CESSION OF STATE JURISDICTION.

See CONSTITUTIONAL LAW, A., 16, 17.
MUNICIPAL LAW.

CHESAPEAKE & OHIO CANAL.

Under the statutes of Maryland of 1834, ch. 241, 1835, ch. 395, 1838, ch. 396, and 1844, ch. 281, and the instruments executed pursuant to those statutes, the tolls and revenues of the Chesapeake and Ohio Canal Company are mortgaged to the State of Maryland, to secure the repayment of money lent by the State to the company, and the payment of dividends and interest on the stock subscribed for by the State ; subject, in the first place, to the appropriation of so much of the tolls and revenues as is necessary to keep the canal in repair, to provide the necessary supply of water, and to pay the salaries of officers and annual expenses ; and, in the second place, to a mortgage to trustees to secure the payment of certain bonds of the company. And, at the suit in equity of the State and of such trustees, even before the State has taken possession under its mortgages, a general creditor of the company, who at the time of contracting his debt had notice of the provisions of the statutes and of the mortgages, will be restrained from levying on money deposited by the company in a bank, and needed to meet such necessary expenses. *Macalester* v. *Maryland*, 598.

CIRCUIT COURTS OF THE UNITED STATES.

See JURISDICTION, B. ;
SUPPLEMENTARY PROCEEDINGS AFTER JUDGMENT.

CITY OF WASHINGTON.

1. The right to use the streets of Washington for any other than the ordinary

use of streets must proceed from Congress. *District of Columbia* v. *Baltimore & Potomac Railroad Co.*, 453.

2. In the absence of express authorization by Act of Congress, the Baltimore & Potomac Railroad Company has no power to lay its railroad track in or across the streets of the City of Washington. *Ib.*
3. The several acts of Congress relating to that company give it no authority to leave Maryland Avenue on its way from Ninth Street to the Long Bridge. *Ib.*
4. The act of incorporation of the Baltimore & Potomac Railroad Company by the State of Maryland confers no power upon it to use the streets of a city, as an incident of its right to run to or from such city. *Ib.*
5. Ch. 18 Rev. Stat. Dist. Columbia, General Incorporation, Class 7, concerning corporations, confers no power upon a railroad company to use the streets of Washington without obtaining the previous assent of Congress. *Ib.*

CLAIMS AGAINST THE UNITED STATES.

Where, by the connivance of a clerk in the office of an assistant treasurer of the United States, a person unlawfully obtains from that office money belonging to the United States, and, to replace it, pays to the clerk money which he obtains by fraud from a bank, the clerk having no knowledge of the means by which the latter money was obtained, the United States are not liable to refund the money to the bank. *State Bank* v. *United States*, 401.

See JURISDICTION, D.

CLOUD UPON TITLE.

See BANKRUPTCY, 2.

COLLISION.

See ADMIRALTY, 1, 2;
JURISDICTION, B., 5, 8.

COMMENCEMENT OF ACTION.

The filing of a complaint in a court of competent jurisdiction is a commencement of proceedings by an adverse claimant to determine the right of possession to mineral lands under Rev. Stat. § 2326. *Richmond Mining Co.* v. *Rose*, 576.

COMMERCE, REGULATION OF.

See CONSTITUTIONAL LAW, A., 1 to 10.

COMMISSIONER OF PATENTS.

The official residence of the Commissioner of Patents is at Washington, in the District of Columbia. *Butterworth* v. *Hill*, 128.

See ACCEPTANCE OF SERVICE.

COMMON CARRIER.

See CONTRIBUTORY NEGLIGENCE;
MUNICIPAL LAW, 1, 2.

CONFLICT OF LAW.

1. Where, under the Bankruptcy Act of March 2, 1867, a proceeding in involuntary bankruptcy was commenced in the District Court of the United States for the Western District of Michigan, before an attachment on land of the debtor, issued by a State Court of Michigan, was levied on the land, the assignment in bankruptcy, though made after the attachment, related back and vested title to the land in the assignee as of the commencement of the proceeding; and, where the attachment was levied within four months before the commencement of the proceeding, it was dissolved by the making of the assignment. *Chapman* v. *Brewer*, 158.
2. The proceeding in this case was held to have been commenced before the attachment was levied. *Ib.*

See ADMIRALTY, 1, 2;
BANKRUPTCY, 1, 2;
CONSTITUTIONAL LAW, A., 16, 17;
FUGITIVE FROM JUSTICE;
GUARDIAN AND WARD;
JURISDICTION, B., 6.

CONSOLIDATION OF CORPORATIONS.

See RAILROAD, 5.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. *Gloucester Ferry Co.* v. *Pennsylvania*, 196.
2. The power to regulate commerce, inter-State and foreign, vested in Congress, is the power to prescribe the rules by which it shall be governed, that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties or other exactions. *Ib.*
3. As to those subjects of commerce which are local or limited in their

nature or sphere of operation, the State may prescribe regulations until Congress assumes control of them. *Ib.*

4. As to such as are national in their character, and require uniformity of regulation, the power of Congress is exclusive ; and until Congress acts, such commerce is entitled to be free from State exactions and burdens. *Ib.*
5. The commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character. *Ib.*
6. The business of receiving and landing of passengers and freight is incident to their transportation, and a tax upon such receiving and landing is a tax upon transportation and upon commerce, inter-State or foreign, involved in such transportation. *Ib.*
7. The only interference by a State with the landing and receiving of passengers or freight arriving by vessels from another State or from a foreign country which is permissible, is confined to measures to prevent confusion among the vessels, and collisions between them, to insure their safety and convenience, and to facilitate the discharge or receipt of their passengers and freight. *Ib.*
8. Inter-State commerce by corporations is entitled to the same protection against State exactions which is given to such commerce when carried on by individuals. *Ib.*
9. The transportation of passengers and freight for hire by a steam ferry across the Delaware River from New Jersey to Philadelphia by a corporation of New Jersey is inter-State commerce, which is not subject to exactions by the State of Pennsylvania. *Ib.*
10. Freedom of transportation between the States, or between the United States and foreign countries, implies exemption from charges other than such as are imposed by way of compensation for the use of the property employed, or for facilities afforded for its use, or as ordinary taxes upon the value of the property. *Ib.*
11. In an action of detinue for personal property, distrained by the defendant for delinquent taxes, in payment of which the plaintiff had duly tendered coupons cut from bonds issued by the State of Virginia under the Funding Act of March 30, 1871 : *Held*,

a. That by the terms of that act, and the issue of bonds and coupons in virtue of the same, a contract was made between every coupon-holder and the State that such coupons should "be receivable at and after maturity for all taxes, debts, dues, and demands due the State ;" the right of the coupon-holder, under which, was to have his coupons received for taxes when offered, and that any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract, and void as against coupon-holders.

b. The faculty of being receivable in payment of taxes was of the essence of the right. It constituted a self-executing remedy in the hands of a tax-payer, and it became thereby the legal duty of every tax collec-

tor to receive such coupons, in payment of taxes, upon an equal footing and with equal effect, as though they were money ; after a tender of such coupons duly made for that purpose, the situation and rights of the tax-payer and coupon-holder were precisely what they would have been if he had made a like tender in money.

c. It is well settled by many decisions of this court that, for the purpose of affecting proceedings to enforce the payment of taxes, a lawful tender of payment is equivalent to actual payment, either being sufficient to deprive the collecting officer of all authority for further action, and making every subsequent step illegal and void.

d. The coupons in question are not "bills of credit," in the sense of the Constitution, which forbids the States to "emit bills of credit ;" because although issued by the State of Virginia on its credit, and made receivable in payment of taxes, and negotiable, so as to pass from hand to hand by delivery merely, they were not intended to circulate as money between individuals, and between government and individuals, for the ordinary purposes of society.

e. An action or suit brought by a tax-payer, who has duly tendered such coupons in payment of his taxes, against the person who, under color of office as tax collector, and acting in the enforcement of a void law, passed by the Legislature of the State, having refused such tender of coupons, proceeds by seizure and sale of the property of the plaintiff, to enforce the collection of such taxes, is an action or suit against him personally as a wrong-doer, and not against the State, within the meaning of the Eleventh Amendment to the Constitution of the United States.

f. Such a defendant, sued as a wrong-doer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defence, but is bound to establish it; and, as the State is a political corporate body, which can act only through agents, and command only by laws, in order to complete his defence he must produce a valid law of the State, which constitutes his commission as its agent, and a warrant for his act.

g. The act of the General Assembly of Virginia of January 26, 1882, "to provide for the more efficient collection of the revenue to support government, maintain the public schools, and to pay interest on the public debt," requiring tax collectors to receive in discharge of the taxes, license taxes, and other dues, gold, silver, United States treasury notes, national bank currency, and nothing else, and thereby forbidding the receipt of coupons issued under the act of March 30, 1871, in payment therefor, although it is a legislative act of the government of Virginia, is not a law of the State of Virginia, because it impairs the obligation of its contract, and is annulled by the Constitution of the United States.

h. The State has passed no such law, for it cannot; and what it cannot do in contemplation of law it has not done. The Constitution of the United States, and its own contract, both irrepealable by any act on its part, are the law of Virginia, and that law made it the duty of the defendant to receive the coupons tendered in payment of taxes, and declared every step to enforce the tax thereafter taken to be without warrant of law, and therefore a wrong. This strips the defendant of his official character, and convicts him of a personal violation of the plaintiff's rights, for which he must personally answer.

i. It is no objection to the remedy in such cases, that the statute, the application of which in the particular case is sought to be prevented, is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right, for the cases are numerous where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of the United States.

k. In cases of detinue the action is purely defensive on the part of the plaintiff. Its object is merely to resist an attempted wrong and to restore the *status in quo* as it was when the right to be vindicated was invaded. It is analogous to the preventive remedy of injunction in equity when that jurisdiction is invoked, of which frequent examples occur in cases to prevent the illegal taxation of national banks by State authorities.

l. The suit authorized by the act of the General Assembly of Virginia of January 26, 1882, against the collector of taxes, refusing to accept a tender of coupons, to recover back the amount paid under protest, is no remedy at all for the breach of the contract, which required him to receive the coupons in payment. The tax-payer and coupon-holder has a right to say he will not pay the amount a second time, and, insisting upon his tender as equivalent to payment, to resist the further exaction, and treat as a wrong-doer the officer who seizes his property to enforce it.

m. Neither can it be considered an adequate remedy, in view of the supposed necessity for summary proceedings in matters of revenue, and the convenience of the State, which requires that the prompt collection of taxes should not be hindered or embarrassed: for the revenue system must yield to the contract which the State has lawfully made, and the obligation of which, by the Constitution, it is forbidden to impair.

n. The right to pay in coupons cannot be treated as a mere right of set-off, which is part of the remedy merely, when given by the general law, and therefore subject to modification or repeal, because the law

which gave it is also a contract, and therefore cannot be changed without mutual consent.

o. The acts of the General Assembly of Virginia of January 26, 1882, and the amendatory act of March 13, 1884, are unconstitutional and void, because they impair the obligation of the contract of the State with the coupon-holder under the act of March 30, 1871; and that being the main object of the two acts, the vice which invalidates them pervades them throughout, and in all their provisions. It is not practicable to separate those parts which repeal and abolish the actions of trespass and trespass on the case, and other particular forms of action, as remedies for the tax-payer, who has tendered his coupons in payment of taxes, from the main object of the acts, which that prohibition was intended to effectuate; and it follows that the whole of these and similar statutes must be declared to be unconstitutional, null and void. It also follows, that these statutes cannot be regarded in the courts of the United States as laws of the State, to be obeyed as rules of decision in trials at common law, under § 721 Rev. Stat., nor as regulating the practice of those courts, under § 914 Rev. Stat.

p. The present case is not covered by the decision in *Antoni* v. *Greenhow*, 107 U. S. 769, the points now involved being expressly reserved in the judgment in that case. *Virginia Coupon Cases. Poindexter* v. *Greenhow*, 270.

12. A State law authorizing a debtor of a municipality to procure the obligations of the municipality and use them as a set-off for his own debt, is not liable to constitutional objection, as divesting creditors of the municipality of vested rights, or as impairing the obligation of contracts. *Amy* v. *Shelby County*, 387.

13. The act of the Legislature of Tennessee of March 23, 1883, authorizing municipal corporations and Taxing Districts to compromise their debts by the issue of new bonds at the rate of fifty per cent. of the principal and past due interest and, providing that the acceptance of the compromise shall work a transfer of the creditor's debt with a right to the municipality or district to enforce it; and the act of the same date providing that such new bonds and their matured coupons shall be received in payment of back taxes at the same rate as the bonds known as the Flippin bonds, did not divest the holders of unpreferred debts of the City of Memphis of any rights conferred upon them by the previous legislation set forth or referred to in *Meriwether* v. *Garrett*, 102 U. S. 472; and violated no provision of the Constitution of the United States in those respects. *Ib.*

14. A person sentenced to imprisonment for an infamous crime, without having been presented or indicted by a grand jury, as required by the Fifth Amendment of the Constitution, is entitled to be discharged on habeas corpus. *Ex parte Wilson*, 417.

15. A crime punishable by imprisonment for a term of years at hard labor is an infamous crime, within the provision of the Fifth Amendment

of the Constitution, that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury." *Ib.*

16. When the United States acquire lands within the limits of a State by purchase, with the consent of the Legislature of the State, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, the Constitution confers upon them exclusive jurisdiction of the tract so acquired; but when they acquire such lands in any other way than by purchase with the consent of the Legislature, their exclusive jurisdiction is confined to the erections, buildings and land used for the public purposes of the Federal Government. *Fort Leavenworth Railroad Co.* v. *Howe*, 525.
17. A State may, for such purposes, cede to the United States exclusive jurisdiction over a tract of land within its limits in a manner not provided for in the Constitution of the United States; and may prescribe conditions to the cession, if they are not inconsistent with the effective use of the property for the purposes intended. *Ib.*
18. The statute of New Jersey of March 8, 1871, providing for the drainage of any tract of low or marshy land within the State, upon proceedings instituted by at least five owners of separate lots of land included in the tract, and not objected to by the owners of the greater part of the tract, and for the assessment by commissioners, after notice and hearing, of the expenses upon all the owners, does not deprive them of their property without due process of law, nor deny to them the equal protection of the laws, within the meaning of the Fourteenth Amendment of the Constitution of the United States. *Wurts* v. *Hoagland*, 606.
19. The terms "imports" and "exports" in Art. 1, Sec. 10, Clause 2, of the Constitution, prohibiting States, without the consent of Congress, from levying duties on imports or exports, has reference to goods brought from, or carried to foreign countries alone, and not to goods transported from one State to another. *Brown* v. *Houston*, 622.
20. A general State tax, laid alike upon all property, does not infringe that clause of the Constitution if it happens to fall upon goods which, though not then intended for exportation, are subsequently exported. *Ib.*
21. Article 1, Section 8, clause 3 of the Constitution which confers upon Congress the power to regulate commerce among the several States, leaves to the States in the absence of Congressional legislation, the power to regulate matters of local interest, which affect inter-State commerce only incidentally; but the power of Congress over inter-State commerce is exclusive wherever the matter is national in character, or admits of a uniform system or plan of regulation. *Ib.*
22. So long as Congress passes no law to regulate inter-State commerce of the nature and character which makes its jurisdiction exclusive, its re-

fraining from action indicates its will that that commerce shall be free and untrammelled. *Ib.*

23. Coal mined in Pennsylvania and sent by water to New Orleans to be sold in open market there on account of the owners in Pennsylvania, becomes intermingled, on arrival there, with the general property in the State of Louisiana, and is subject to taxation under general laws of that State, although it may be, after arrival, sold from the vessel on which the transportation was made, and without being landed, and for the purpose of being taken out of the country on a vessel bound to a foreign port. Such taxation does no violation either to Art. 1, Sec. 8, Clause 3; Art. 1, Sec. 10, Clause 2; or Art. 4, Sec. 2, Clause 1 of the Constitution. The proper limits of these rulings pointed out. *Ib.*

See ARMY;
FUGITIVE FROM JUSTICE;
TAX AND TAXATION, 4, 8, 9.

B. OF THE STATES.

1. A provision in a State Constitution that municipal corporations shall not become indebted in any manner nor for any purpose to an amount exceeding five per cent. of the taxable property therein, forbids implied as well as expressed indebtedness, and is as binding on a court of equity as on a court of law. *Litchfield* v. *Ballou*, 190.
2. A Constitutional provision forbidding a municipality from borrowing money, operates equally to prevent moneys loaned to it in violation of this provision and used in the construction of a public work, from becoming a lien upon the works constructed with it. *Ib.*

CONTRACT.

1. A contract was made by A, of Charleston, with D, of Baltimore, for the sale and delivery, at Charleston, of 2,500 tons of kainit, to be shipped from August to October, 1880, at a fixed price, cash on delivery of each cargo. The kainit was to come from R, at Hamburg. D procured G, for a commission paid him by D, to send to R a credit on London for the amount of 2,500 tons of kainit, in five cargoes, under which R obtained the money. G paid drafts, against the credit, to the amount of the cargoes. The declarations and invoices by R, presented before the consul at Hamburg, named G as the consignee at Charleston ; and the bills of lading made the cargoes deliverable at Charleston to G or his assigns. These papers were sent to A, before any of the cargoes arrived, with an invoice for each cargo, in the shape of a bill, made out thus: A bought of G, a cargo of kainit, shipped by such a vessel, such a quantity, such a price; and a power of attorney, under which A's agent, as attorney for G, entered the cargoes at the custom-house at Charleston, in February and

March, 1881, as imported by G, and made oath that G was the owner. A received and accepted the cargoes: *Held*, (1.) G was the owner of the cargoes, and sold and delivered them to A, to be paid for on delivery, free from any claim growing out of the contract of A with D or R, for any breach of that contract, as to the time of shipping the cargoes. (2.) A was liable to G for the price of the cargoes, with interest from their delivery. *Atlantic Phosphate Co.* v. *Grafflin*, 492.

2. A contract for the construction of a railroad provided that the company's engineer should, in all cases, determine questions relating to its execution, including the quantity of the several kinds of work to be done, and the compensation earned by the contractor at the rates specified; that his estimate should be final and conclusive; and that "whenever the contract shall be completely performed on the part of the contractor, and the said engineer shall certify the same in writing under his hand, together with his estimate aforesaid, the said company shall, within thirty days after the receipt of said certificate, pay to the said contractor, in current notes, the sum which according to this contract shall be due:" *Held*, That in the absence of fraud, or such gross mistake as would necessarily imply bad faith, or a failure to exercise an honest judgment, the action of the engineer in the premises was conclusive upon the parties. *Martinsburg & Potomac Railroad Co.* v. *Marsh*, 549.

See PARTNERSHIP, 3;
RAILROAD, 5;
STATUTE OF FRAUDS.

CONTRIBUTORY NEGLIGENCE.

Where a person, in a sleigh, drawn by one horse, on a wagon road, approaching a crossing of a railroad track with which he was familiar, could have seen a coming train, during its progress through a distance of 70 rods from the crossing, if he had looked from a point at any distance within 600 feet from the crossing, and was struck by the train at the crossing and injured, he was guilty of contributory negligence, even though the train was not a regular one, and was running at a high rate of speed, and did not stop at a depot 70 rods from the crossing in the direction from which the train came, and did not blow a whistle or ring a bell between the depot and the crossing. On these facts, it was proper for the trial court to direct a verdict for the defendant. *Schofield* v. *Chicago, Milwaukee & St. Paul Railway*, 615.

CORPORATION.

A statute of West Virginia regulated sales under foreclosure of mortgages by railroad companies, and provided that "such sale and conveyance shall pass to the purchaser at the sale, not only the works and property of the company, as they were at the time of making the deed of

trust or mortgage, but any works which the company may, after that time and before the sale, have constructed;" and that "upon such conveyance to the purchaser, the said company shall *ipso facto* be dissolved;" and further, that "said purchaser shall forthwith be a corporation" and "shall succeed to all such franchises, rights and privileges . . . as would have been had . . . by the first company but for such sale and conveyance;" *Held*, (1) That purchasers thus becoming a corporation derived the corporate existence and powers of the corporation from this act, and were subject to general laws as to corporations then in force; (2) That an immunity from taxation enjoyed by the former corporation was not embraced in the words of description in the act, and did not pass to the new corporation. *Chesapeake & Ohio Railway Co.* v. *Miller*, 176.

See RAILROAD, 2, 3, 4;
REMOVAL OF CAUSES, 3;
TAX AND TAXATION, 2, 7.

COSTS.

1. A defendant in error, on whose motion a writ of error is dismissed for want of jurisdiction, may recover costs in this court which are incident to his motion to dismiss. *Bradstreet Co.* v. *Higgins*, 262.
2. Where the master reported no profits, and nominal damages, in a suit in equity for the infringement of a patent for a design, and, on exception by the plaintiff, the Circuit Court allowed a sum for damages, and this court reversed its decree, the plaintiff was allowed costs in the Circuit Court to and including the interlocutory decree, and the defendant was allowed his costs after such decree. *Dobson* v. *Hartford Carpet Co.*, 439.
3. The respondent in an original petition to this court for a writ of mandamus which is denied, cannot tax as costs his disbursements for printing briefs. *Ex parte Hughes*, 548.

COURT MARTIAL.

See HABEAS CORPUS, 5.

COURTS OF THE UNITED STATES.

See JURISDICTION, A.; B.
SUPPLEMENTARY PROCEEDINGS AFTER JUDGMENT;

CRIMINAL LAW.

See CONSTITUTIONAL LAW, A., 14., 15;
HABEAS CORPUS, 1, 2;
IMPRISONMENT;
INDICTMENT;
INFORMATION;
JUDGMENT, 2.

DAMAGES.

In a suit in equity, for the infringement of a patent for a design for carpets, where no profits were found to have been made by the defendant, the Circuit Court allowed to the plaintiff, as damages, in respect to the yards of infringing carpets made and sold by the defendant, the sum per yard which was the profit of the plaintiff in making and selling the carpets with the patented design, there being no evidence as to the value imparted to the carpet by the design: *Held*, that such award of damages was improper, and that only nominal damages should have been allowed. *Dobson* v. *Hartford Carpet Co.*, 439.

See COSTS, 2.

DEBTOR AND CREDITOR.

See PAYMENT.

DECREE PRO CONFESSO.

See EQUITY, 1, 3, 4, 9, 10;
PATENT FOR INVENTIONS, 13, 14, 16.

DELAWARE RIVER.

See CONSTITUTIONAL LAW, A., 9.

DETINUE.

See CONSTITUTIONAL LAW, A, 11 (*k*).

DISCHARGE IN BANKRUPTCY.

See BANKRUPTCY, 3, 4.

DISMISSAL FROM THE ARMY.

See ARMY.

DISTRICT OF COLUMBIA.

See CITY OF WASHINGTON.

DOMICIL.

Infants having a domicil in one State, who after the death of both their parents take up their residence at the home of their paternal grandmother and next of kin in another State, acquire her docimil. *Lamar* v. *Micou*, 218.

DRAINAGE.

See CONSTITUTIONAL LAW, A., 18.

EJECTMENT.

See RAILROAD, 1.

ELECTIONS.

See BIGAMY;
PLEADING;
UTAH.

EQUITY.

1. Under the rules and practice of this court in equity a decree *pro confesso* is not a decree as of course according to the prayer of the bill, nor as the complainant chooses to make it; but it should be made by the court according to what is proper to be decreed upon the statements of the bill, assumed to be true. *Thomson* v. *Wooster*, 104.
2. The difference between former rules in equity and those now in force pointed out. *Ib.*
3. Whether, after a bill is taken *pro confesso*, the defendant is entitled to an order permitting him to appear before the master is not now decided. *Ib.*
4. After entry of a decree *pro confesso*, and while it stands unrevoked, the defendant cannot set up anything in opposition to it, either below, or in this court on appeal, except what appears on the face of the bill. *Ib.*
5. When a bill in chancery sets forth facts which would support an action at law for money loaned and received, the latter is the appropriate remedy; and the bill fails for want of equitable jurisdiction. *Litchfield* v. *Ballou*, 190.
6. A creditor who has loaned to a municipal corporation (in excess of the amount of indebtedness authorized by the Constitution of the State), money which has been used in part for the construction of public works, is not entitled to a decree in equity for the return of his money, because the municipality has parted with that specific money, and it cannot be identified. *Ib.*
7. A bill in equity, praying for the return to the plaintiff of specified indentical moneys borrowed by a municipal corporation from him in violation of law, will not support a general decree that there is due from the municipality to him a sum named which is equal to the amount borrowed. *Ib.*
8. The United States has the same remedy in a court of equity to set aside or annul a patent for land, on the ground of fraud in procuring its issue, which an individual would have in regard to his own deed procured under similar circumstances. *United States* v. *Minor*, 233.
9. Where a bill founded on a design patent with a claim for a pattern and separate claims for each of its parts, is taken as confessed, it alleging infringement of the "invention," the patent will be held valid for the purposes of the suit. *Dobson* v. *Hartford Carpet Co.*, 439.

10. An objection that a patent for a design is for an aggregation of old ornaments, and embodies no "invention," is concluded, where the bill alleges infringement of the "invention," and is taken as confessed. *Ib.*

11. An answer in Chancery, setting forth material facts which should have been stated in the bill but were omitted, is a waiver of the right to object to the bill for cause of the omission. *Cavender* v. *Cavender*, 464.

See HUSBAND AND WIFE; PATENT FOR PUBLIC LANDS, 3; TAX AND TAXATION, 4; TRUSTEE, 1, 2.

EQUITY PLEADING.

See EQUITY, 1, 11.

EVIDENCE.

1. Affidavits before a master or the court below as grounds of application to re-open proofs, form no part of the evidence before the court on appeal. *Thomson* v. *Wooster*, 104.

2. The declaration of a cashier of a national bank concerning a disputed payment of money into the bank to take up a note left there for collection may be used by the plaintiff in a suit against the bank to recover the amount received by it from the sale of collateral held as security for the payment of the note; if the declaration was made at the time of the transaction, or in response to timely inquiries by parties interested. *Xenia Bank* v. *Stewart*, 224.

3. A statement by the cashier of a national bank that the bank is not the owner of a security in his manual possession as cashier, is within the line of his duty, and is admissible in evidence against the bank as the act of its authorized agent. *Ib.*

4. A letter signed by a cashier of a national bank on official paper of the bank, respecting the transaction which forms the subject of the controversy, written to a party to the transaction, and while it was going on, is admissible in evidence, in a suit against the bank. *Ib.*

5. On an issue whether a deceased party had furnished money to pay a note, it is not allowable to attempt to show that for more than a year previous he had been hopelessly insolvent, and had experienced great difficulty in procuring means to meet his obligations. *Ib.*

See EQUITY, 4.

EXCEPTION.

A general exception to a charge, which does not direct the attention of the court to the particular portions of it to which objection is made, raises no question for review by this court. *Burton* v. *West Jersey Ferry Co.*, 474.

EXPORTS.

See CONSTITUTIONAL LAW, A., 19.

EX POST FACTO LAW.

See BIGAMY;
TAX AND TAXATION, 1.

FERRY.

See CONSTITUTIONAL LAW, A., 9;
NEGLIGENCE, 2.

FRANCHISE.

See CORPORATION;
RAILROAD, 1, 2, 3, 4;
TAX AND TAXATION, 2.

FRAUD.

See BANKRUPTCY, 3, 4, 5; EQUITY, 8;
CLAIMS AGAINST THE UNITED STATES; PATENT FOR PUBLIC LAND, 1, 3.

FRAUDS, STATUTE OF.

See STATUTE OF FRAUDS.

FUGITIVE FROM JUSTICE.

1. The statute requiring the surrender of a fugitive from justice, found in one of the Territories, to the State in which he stands charged with treason, felony, or other crime, embraces every offence known to the laws of the demanding State, including misdemeanors. *Ex parte Reggel*, 642.
2. Each State has the right to prescribe the forms of pleading and process to be observed in its courts, in both civil and criminal cases, subject only to those provisions of the national Constitution designed for the protection of life, liberty and property in all the States of the Union; consequently, in a case involving the surrender, under the act of Congress, of a fugitive from justice, it may not be objected that the indictment is not framed according to the technical rules of criminal pleading, if it conforms substantially to the laws of the demanding State. *Ib.*
3. Upon the executive of the State or Territory in which the accused is found rests the responsibility of determining whether he is a fugitive

from the justice of the demanding State. But the act of Congress does not direct his surrender, unless it is made to appear that he is, in fact, a fugitive from justice. *Ib.*

4. If the determination of that fact, upon proof before the executive of the State where the alleged fugitive is found, is subject to judicial review upon *habeas corpus*, the accused, being in custody under his warrant—which recites the requisition of the demanding State, accompanied by an authentic indictment, charging him substantially as required by its laws with a specific crime committed within its jurisdiction—should not be discharged, because, in the judgment of the court, the proof showing that he was a fugitive from justice may not be as full as might properly have been required. *Ib.*

GARNISHEE PROCESS.

See SUPPLEMENTARY PROCEEDINGS AFTER JUDGMENT.

GRAND JURY.

See INDICTMENT, 2.

GUARDIAN AND WARD.

A guardian, appointed in a State which is not the domicil of the ward, should not, in accounting in the State of his appointment for his investment of the ward's property, be held, unless in obedience to express statute, to a narrower range of securities than is allowed by the law of the State of the ward's domicil. *Lamar* v. *Micou*, 218.

HABEAS CORPUS.

1. In the record of a general conviction and sentence upon two counts, one of which is good, a misrecital of the verdict as upon the other count only, in stating the inquiry whether the convict had aught to say why sentence should not be pronounced against him, is no ground for discharging him on habeas corpus. *Ex parte Wilson*, 417.
2. In the record of a judgment of a District Court, sentencing a person convicted in one State to imprisonment in a prison in another State, the omission to state that there was no suitable prison in the State in which he was convicted, and that the Attorney-General had designated the prison in the other State as a suitable place of imprisonment, is no ground for discharging the prisoner on habeas corpus. *Ib.*
3. The act of March 3, 1885, Laws 2d Sess. 48th Cong. ch. 353, page 437, restored appellate jurisdiction in *habeas corpus* cases to this court over decisions of Circuit Courts of the United States and decisions of the Supreme Court of the District of Columbia. *Wales* v. *Whitney*, 564.
4. In order to make a case for *habeas corpus* there must be actual confine-

ment, or the present means of enforcing it; mere moral restraint is not sufficient. *Ib.*

5. The appellant, a medical director in the navy, was, under Rev. Stat. §§ 419, 420, 421, 426, 1471, appointed and commissioned chief of the Bureau of Medicine and Surgery in the Navy Department, with the title of Surgeon-General, and served as such the full term fixed by law. After he had vacated that office, a court martial was ordered to try him under charges and specifications for conduct as Chief of the Bureau and Surgeon-General, and the Secretary of the Navy notified him thus: "You are placed under arrest and you will confine yourself to the limits of the City of Washington." An application for a writ of *habeas corpus* having been denied by the Supreme Court of the District of Columbia; on appeal to this court it was *Held*, (1) That no restraint of liberty was shown to justify the use of the writ of *habeas corpus*. (2) That the court would not decide in these proceedings, whether the Surgeon-General of the Navy as Chief of the Bureau of Medicine and Surgery in the Navy, is liable to be tried by court martial for failure to perform his duties as Surgeon-General. *Ib.*

See FUGITIVE FROM JUSTICE, 4;
JURISDICTION, A., 5.

HUSBAND AND WIFE.

Neither the liability for provisions supplied at a dwelling house where a husband and wife and their children are living together, nor a promissory note given by the husband, describing himself as trustee for the wife, in payment for such supplies, can be charged in equity upon the wife's separate estate, without clear proof that she contracted the debt on her own behalf, or intended to bind her separate estate for its payment. *Dodge* v. *Knowles*, 430.

IMPORTS.

See CONSTITUTIONAL LAW, A., 19.

IMPRISONMENT.

A certified copy of the record of a sentence to imprisonment is sufficient to authorize the detention of the prisoner, without any warrant or mittimus. *Ex parte Wilson*, 417.

INDICTMENT.

1. Under § 5 of the act of Congress of March 22, 1882, 22 Stat. 30, which provides, "that in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge, to any person drawn or summoned as a jury-

man or talesman, . . . that he believes it right for a man to have more than one living and undivorced wife at the same time," the proceedings to empanel the grand jury which finds an indictment for one of the offences named, under a statute of the United States, against a person not before held to answer, are a part of the prosecution, and the indictment is good, although persons drawn and summoned as grand jurors were excluded by the court from serving on the grand jury, on being challenged by the United States, for the cause mentioned, the challenges being found true. *Clawson* v. *United States*, 477.

2. The statute applies to grand jurors. *Ib.*
3. Where, under § 4 of the act of Congress of June 23, 1874, 18 Stat. 254, "in relation to courts and judicial officers in the Territory of Utah," in the trial of an indictment, the names in the jury-box of 200 jurors, provided for by that section, are exhausted, when the jury is only partly empanelled, the District Court may issue a venire to the United States marshal for the Territory, to summon jurors from the body of the judicial district, and the jury may be completed from persons thus summoned. *Ib.*

INFAMOUS CRIME.

See CONSTITUTIONAL LAW, A., 14, 15.

INFANT.

See DOMICIL.

INFORMATION.

The provision of Rev. Stat. § 1022, authorizing certain offences to be prosecuted either by indictment or by information, does not preclude the prosecution by information of such other offences as may be so prosecuted consistently with the Constitution and laws of the United States. *Ex parte Wilson*, 417.

See CONSTITUTIONAL LAW, A., 14, 15.

INJUNCTION.

See TAX AND TAXATION, 3.

JUDGMENT.

1. A judgment of a Superior Court remanding a case to an inferior court for entry of judgment, and leaving no judicial discretion to the latter, as to further proceedings, is final. *Mower* v. *Fletcher*, 127.
2. Under the Utah Code of Criminal Procedure of 1878, a judgment upon a verdict of guilty of murder, the record of which states that the court

charged the jury, and does not contain the charge in writing, nor show that with the defendant's consent it was given orally, is erroneous, and must be reversed on appeal. *Hopt* v. *Utah*, 488.

See BANKRUPTCY, 1;
MANDAMUS, 3;
PATENT FOR PUBLIC LAND, 1.

JUDICIAL ACT.

See MANDAMUS, 3.

JUDICIAL NOTICE.

The courts of the United States take judicial notice of the law of any State of the Union, whether depending on statutes or on judicial opinions. *Lamar* v. *Micou*, 218.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. A judgment of the Supreme Court of a State remanding a case to a State court with orders to enter a specified judgment is a final judgment for the purposes of a writ of error to this court. *Mower* v. *Fletcher*, 127.
2. The jurisdiction of this court for the review of a judgment of the highest court of a State depends on the decision by that court of one or more of the questions specified in § 709 Rev. Stat. in the way therein mentioned. *Detroit Railway Co.* v. *Guthard*, 133.
3. If it does not appear affirmatively that the federal question raised here was raised below, and was decided, and that its decision was necessary to the judgment rendered, this court has no jurisdiction in error over the judgment of such State court. *Ib.*
4. A depositor having a balance in bank drew his checks upon the bank in favor of a third party. At the time of the presentment of the checks the depositor had become insolvent, and there was held by the bank a draft indorsed by him but which had not then matured. The bank refused to pay the checks, and afterwards, the depositor having been adjudged a bankrupt and the draft dishonored, credited the amount of the balance on the draft, and proved in bankruptcy for the difference only. The State court decided that the checks constituted an equitable assignment of the amount due by the bank. *Held*, that the case did not present a federal question. *Boatmen's Savings Bank* v. *State Savings Association*, 265.
5. This court cannot discharge on *habeas corpus* a person imprisoned under the sentence of a Circuit or District Court in a criminal case, unless the sentence exceeds the jurisdiction of that court, or there is

no authority to hold the prisoner under the sentence. *Ex parte Wilson*, 417.

6. When the decree below is for a sum which gives this court jurisdiction on appeal, and the appellee makes no appearance here, but expressly declines to do so, after notice to him by order of court, it is too late to offer proof that the amount involved does not give jurisdiction. *Dodge* v. *Knowles*, 430.
7. An appeal bond is essential to the prosecution of a suit in this court, if it is demanded, but not to the taking of the appeal in the court below. *Ib.*
8. When security on appeal is not furnished until after the term at which the appeal is taken, failure to cite the appellee does not deprive this court of jurisdiction. *Ib.*
9. This court has jurisdiction in error over a judgment in a suit in a State court determining the effect to be given to a sale of the property in controversy by order of a District Court in bankruptcy. *New Orleans, etc., Railroad Co.* v. *Delamore*, 501.
10. This court has no appellate jurisdiction over a naval court martial, nor over offences which it has power to try. *Wales* v. *Whitney*, 564.
11. A decision of a State court upon the question of what constitutes the commencement of an action in that court is not a federal question. *Richmond Mining Co.* v. *Rose*, 576.
12. Questions not raised on the trial before the jury, and saved by a bill of exceptions, cannot be considered by this court, on a writ of error. *Canal & Claiborne Street Railroad Co.* v. *Hart*, 654.
13. H, having obtained a money judgment against the City of New Orleans, in the Circuit Court of the United States for the Eastern District of Louisiana, filed in that court a supplemental petition and interrogatories, in accordance with the second paragraph of Article 246 of the Code of Practice of Louisiana, added by the Act of March 30, 1839, against a street railroad corporation as a debtor to the city, praying that it be cited, as garnishee, and answer the interrogatories, and pay the judgment. The corporation was cited to answer, and did so, to the effect that it owed nothing to the city but some taxes. H filed a traverse to the answers, in law and in fact, and it was tried before a jury, which found a verdict for the plaintiff, for a sum of money, on which judgment was rendered. Before it was signed, the corporation moved to expunge it and to arrest it, for specified reasons. The motion was overruled, a bill of exceptions was taken thereto, and judgment was signed. No bill of exceptions was taken in regard to the trial: *Held*, that the motion in arrest had no more effect than a motion for a new trial, and could not be reviewed on a writ of error. *Ib.*

See EXCEPTION.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. The provision of § 739 that no suit shall be brought in a Circuit or

District Court of the United States against an inhabitant of the United States, by original process, in any other district than that of which he is an inhabitant or in which he may be found at the time of serving the writ, applies to suits in equity under § 4915 Rev. Stat. to procure the issue of letters patent for an invention after rejection of the application therefor. *Butterworth* v. *Hill*, 128.

2. When a plaintiff who has no real interest in the subject matter of a suit pending in a Circuit Court of the United States, permits his name to be collusively used for the purpose of giving jurisdiction, the suit should be dismissed under the provision of § 5, Act of March 3, 1875, 18 Stat. 472. *Farmington* v. *Pillsbury*, 138.
3. After a decision by a State court that certain bonds issued by a municipal corporation were void as issued under an unconstitutional act, several bondholders, citizens of the State, cut the coupons from their bonds and transferred them to a citizen of another State, who gave to the agent of the owners of the coupons a note of hand for much less than the face value of the coupons, and an agreement that if he should succeed in collecting the full amount of the coupons, he would pay him fifty per cent. of the amount collected from the corporation. The new holder thereupon brought suit on the coupons in his own name, against the municipal corporation, in the Circuit Court of the United States: *Held*, That this was within the prohibition of § 5, Act of March 3, 1875, 18 Stat. 472, as to parties improperly or collusively made for the purpose of creating a case cognizable by a Circuit Court of the United States. *Ib.*
4. The 16th clause of § 629 Rev. Stat., authorizing suits, without reference to the sum or value in controversy or the citizenship of the parties, to be brought in the Circuit Courts of the United States to redress the deprivation, under color of State law, of any right, privilege, or immunity secured by the Constitution of the United States, in violation of § 1979 Rev. Stat., does not embrace an action of trespass on the case in which the plaintiff seeks a recovery of damages against a tax collector in Virginia, who, having rejected a tender of tax-receivable coupons, issued under the Act of March 30, 1871, seeks to collect the tax for which they were tendered by a seizure and sale of personal property of the plaintiff. *Virginia Coupon Cases*, *Carter* v. *Greenhow*, 317.
5. The Courts of the United States in Admiralty may, in their discretion, take jurisdiction over a collision on the high seas between two foreign vessels. *The Belgenland*, 355.
6. Among the circumstances which may determine a court below in exercising its discretion to take or refuse jurisdiction over foreign vessels, their officers and crew in ports of the United States are: (1) That both vessels are subject to the laws of the same country, and that resort may be had to its courts without difficulty; (2) That the disputes are between seamen and the master, and that, in the absence of a

treaty, the consul of the country does not assent to the jurisdiction (but this assent, in the absence of a treaty, is not necessary when the complaint is for arbitrary dismissal or acts of cruelty); (3) When the jurisdiction is invoked for matters which affect only parties on the vessel, and which have to be determined by the laws of the country to which the vessels belong. *Ib.*

7. When a controversy in Admiralty between foreign vessels in the courts of the United States arises under the common law of nations, the court below should take jurisdiction, unless special grounds are shown why it should not do so. *Ib.*
8. When the court below has taken jurisdiction in case of a collision between two foreign vessels on the high seas, it is incumbent on the party appealing to this court, and questioning the jurisdiction, to show that the court below exercised its discretion to take jurisdiction on wrong principles, or acted so differently from the view held here, that it may justly be held to have exercised it wrongfully. *Ib.*

See REMOVAL OF CAUSES.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

The authority of the proper courts of the United States in bankruptcy to adjudicate a railroad company bankrupt, and to administer its property under the bankrupt act is regarded as settled by the practice and decisions of the Circuit Courts in several circuits. *New Orleans, &c., Railroad Co.* v. *Delamore*, 501.

D. JURISDICTION OF COURT OF CLAIMS.

A claim against the United States for moneys awarded by the mixed commission under the Convention of July 4, 1868, with Mexico, and paid by Mexico to the United States in accordance with the award, is a claim growing out of a treaty, and is excluded from the jurisdiction of the Court of Claims by Rev. Stat. § 1066. *Alling* v. *United States*, 562.

KANSAS.

See MUNICIPAL LAW, 1, 2.
TAX AND TAXATION, 9;

LAND DEPARTMENT DECISIONS.

See MINERAL LAND, 4;
PATENT FOR PUBLIC LAND, 1, 2, 3.
PUBLIC LAND, 1;

LAW AND FACT.

See NEGLIGENCE, 1.

LEGISLATIVE RATIFICATION.

See MUNICIPAL BONDS.

LIEN.

See RAILROAD, 5.

LIMITATIONS, STATUTE OF.

D, a creditor of a bankrupt, holding two securities therefor, after being cited in a proceeding commenced against him by the assignee in bankruptcy, by petition, to obtain the delivery of the two securities, as being unlawfully in his possession, delivered up one of them to the assignee, in July, 1871. In November, 1872, the assignee sued D to recover the other security, and in 1877 it was decided in that suit that D was entitled to hold it. There being a deficiency on the debt, and the assignee having collected the security delivered to him, D, in 1879, sued the assignee to have its proceeds applied on the debt; *Held*, That the right of action accrued to D in July, 1871, and was barred by the two years' limitation prescribed in § 2 of the Bankruptcy Act of March 2, 1867, 14 Stat. 518, and § 5057 Rev. Stat. *Doe* v. *Hyde*, 247.

LOCAL LAW.

See JUDICIAL NOTICE.
SUPPLEMENTARY PROCEEDINGS AFTER JUDGMENT.

LOUISIANA.

See RAILROAD, 3.

MANDAMUS.

1. On a petition for a writ of mandamus to a circuit judge directing him to pay over to the petitioner a sum of money alleged to have been paid into court for the petitioner, and to be absolutely and unconditionally his property, and also alleged to be held in court because the judge refused to sign an order for its payment to petitioner, a rule to show cause was issued; and a return thereto being made, showing that it had not been adjudged that the money belonged to petitioner but that the litigation was still pending; *Held*, That the petitioner was not entitled to the writ. *Ex parte Hughes*, 147.
2. A writ of mandamus may be used to require an inferior court to decide a matter within its jurisdiction, and pending before it for judicial determination, but not to control the decision. *Ex parte Morgan*, 174.
3. The plaintiff in the suit below, believing that the judgment as recorded did not conform to the finding, moved the court to amend it in that particular. The court heard and denied the motion: *Held*, That this was a judicial act which could not be reviewed by mandamus. *Ib.*

MARRIED WOMEN.

See HUSBAND AND WIFE.

MEXICAN MIXED COMMISSION.

The Act of June 18, 1878, 20 Stat. 144, confers upon the Secretary of State exclusive jurisdiction over the distribution of the moneys received from Mexico in payment of the awards made by the Mixed Commission under the Convention of July 14, 1868, with Mexico. *Alling* v. *United States*, 562.

See JURISDICTION, D.

MINERAL LAND.

1. When the statutes of the United States, and local laws of a mining district authorize a location on a vein of only two hundred feet by each locator, a location by mistake for more than two hundred feet is not thereby made entirely void; but is good for two hundred feet, and void only for the excess. *Richmond Mining Co.* v. *Rose*, 576.
2. A claimant making a claim in good faith, as discoverer of a constituent vein in the Ruby Hill deposit before it was known that the deposit was one lode, is entitled to the additional two hundred feet of location given to discoverers. *Ib.*
3. Where defendant in a proceeding under Rev. Stat. § 2326 to determine adverse claims to mineral lands demurs to the complaint, and answers, and goes to trial, it is too late to raise the objection that the complaint was not filed within the time required by the statute. *Ib.*
4. It is not competent for officers of the Land Department, while a proceeding under Rev. Stat. § 2326 is pending in a court of competent jurisdiction, to assume from delay in placing the cause upon the trial calendar, or taking proceedings therein, that the adverse claim has been waived, and to issue a patent for the mineral lands in dispute as if no adverse claim had been made. *Ib.*
5. A title founded on a patent, procured by an independent application, for a different mineral tract, issued pending proceedings under Rev. Stat. § 2326 cannot be set up in those proceedings to affect the result of the litigation in them. *Ib.*

See PARTNERSHIP, 1, 2.

MISNOMER.

It is no cause for dismissal of a writ of error brought by a receiver of a national bank that in one of the papers by clerical error he is given a wrong name. *Pacific Bank* v. *Mixter*, 463.

MITTIMUS.

See IMPRISONMENT.

MORTGAGE.

In a suit to foreclose a mortgage on land in Louisiana, given to secure the payment of negotiable promissory notes to their holder, it was held, on the facts, that the plaintiff was never the owner of the notes, as against the mortgagor, or those holding the land under him by deeds in which they assumed the payment of the notes and mortgage. *Weaver* v. *Field*, 244.

See RAILROAD, 2, 4, 5.

MOTION IN ARREST OF JUDGMENT.

See JURISDICTION, A., 13.

MOTION TO DISMISS.

See COSTS, 1.

MUNICIPAL BONDS.

The Constitution of Mississippi, adopted December 1, 1869, provided as follows (Art. 12, sec. 14): "The Legislature shall not authorize any county, city, or town, to become a stockholder in, or to lend its credit to, any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a special election, or regular election, to be held therein, shall assent thereto." A city in that State subscribed for stock in a railroad corporation, after what was called a "special election" was held, but neither the election nor the subscription was authorized by any act of the Legislature. Afterward, the Legislature passed an act providing "that all subscriptions to the capital stock of the" corporation, "made by any county, city, or town in this State, which were not made in violation of the Constitution of this State, are hereby legalized, ratified, and confirmed." Thereafter the city issued bonds to pay for its subscription. In a suit against the city, by a *bona fide* holder of coupons cut from the bonds, to recover their amount; *Held*, (1) The intention of the Legislature to confirm and ratify the subscription could not be ascertained with certainty from the language of the act; (2) The bonds were void, for want of power to issue them, notwithstanding any recitals on their face, or any acts *in pais*, claimed to operate by way of estoppel. *Hayes* v. *Holly Springs*, 120.

MUNICIPAL CORPORATION.

See CONSTITUTIONAL LAW, A., 13; B., 1, 2; EQUITY, 6, 7; JURISDICTION, B., 3; RAILROAD, 2, 3; SET-OFF;

MUNICIPAL LAW.

1. The general principle that when political jurisdiction and legislative

power over a territory are transferred from one sovereign to another, the municipal laws of the territory continue in force until abrogated by the new sovereign, is applicable—as to territory owned by the United States, the exclusive jurisdiction of which is ceded to them by a State in a manner not provided for by the Constitution—to so much thereof as is not used by the United States for its forts, buildings and other needful public purposes. *Chicago & Pacific Railway Co.* v. *McGlinn*, 542.

2. The State of Kansas ceded to the United States exclusive jurisdiction over the Fort Leavenworth Military Reservation within that State, then and previously the property of the United States. At the time of the cession a State law was in force in Kansas requiring railroad companies whose road was not enclosed by a lawful fence, to pay to the owners of all animals killed or wounded by the engines or cars of the companies the full value of the animals killed and the full damage to those wounded, whether the killing or wounding was caused by negligence or not. *Held*, That this act remained in force in the reservation after the cession. *Ib.*

NATIONAL BANK.

1. It is within the scope of the general authority of the cashier of a national bank to receive offers for the purchase of securities held by the bank, and to state whether or not the bank owns securities which a customer wishes to buy. *Xenia Bank* v. *Stewart*, 224.
2. § 1001 Rev. Stat. exempts insolvent national banks or the receivers thereof bringing causes to this court by writ of error or on appeal by direction of the Comptroller of the Currency, from the obligation to give security. *Pacific Bank* v. *Mixter*, 463.

See EVIDENCE, 2, 3, 4, 5.

NEGLIGENCE.

1. When facts found by the court below furnish conclusive proof of negligence, negligence may be regarded as among the conclusions of law to be legally inferred from those facts. *The Belgenland*, 355.
2. The failure of a steam ferry company, engaged in transporting passengers for hire across a river, to provide seats enough for all, is not negligence, entailing liability for injury by accident, unless it appears that a less number of seats was provided than was customary and sufficient for those who ordinarily preferred to be seated while crossing. *Burton* v. *West Jersey Ferry Co.*, 474.

See CONTRIBUTORY NEGLIGENCE;
MUNICIPAL LAW, 2.

PARTIES.

1. In a suit to compel a corporation to transfer to the plaintiff stock standing on its books in the name of a third person, the corporation and the third person are both necessary parties. *St. Louis & San Francisco Railway Co.* v. *Wilson*, 60.

See JURISDICTION, B., 2, 3.

PARTNERSHIP.

1. There is no relation of trust or confidence between mining partners, which is violated by the sale and assignment by one partner of his share in the company assets and business to one or more of his associates without the knowledge of the other associates. *Bissell* v. *Foss*, 252.

2. The record in this case discloses no equitable reason why the defendants in error, who purchased the interest of third parties in a mine in which all were jointly interested with the plaintiff in error, should be held bound to share with the plaintiff in error the interest so purchased. *Ib.*

3. A, B, & C, being partners in business, and all believing the firm to be solvent, C withdraws. A & B pay C a fixed sum as his capital and continue the business. They borrow money of a bank on the notes and responsibility of the new firm, part of which is used to pay to C his capital, and then fail, owing the money so borrowed. It turns out that the old firm was insolvent at the time of the dissolution, and C contributes towards the discharge of its liabilities an amount in excess of the amount of capital so drawn out by him. In a suit in equity by the bank to charge the old firm with the money loaned to the new firm: *Held,* That this could not be done as the transaction was entirely between the bank and the new firm. *Penn Bank* v. *Furness*, 376.

See BANKRUPTCY, 5;
STATUTE OF FRAUDS.

PATENT FOR INVENTION.

1. The third claim of reissued letters patent No. 978, granted to William S. Carr, June 12, 1860, for "improvements in water-closets," (the original patent having been granted to him August 5, 1856, and, as reissued, extended, July 23, 1870, for seven years from August 5, 1870,) namely, "In a valve for water-closets, a cup-leather for controlling the motion of said valve in closing gradually, substantially as specified, said cup-leather moving freely in one direction, and closing against the containing cylinder in the other direction, and the leakage of water in said cylinder allowing the movement of said cup-leather, as set forth," construed, and the operation of the device explained. *Thompson* v. *Boisselier*, 1.

2. The state of the art, as to prior devices, and the construction and operation of the defendant's device, set forth. *Ib.*

3. In view of the state of the art : *Held*, That, for the purpose of securing the free passage of water in one direction, and preventing its escape in the other direction otherwise than gradually, the defendants had used nothing which they did not have a right to use, and had not appropriated any patentable invention which Carr had a right to cover, as against the defendants' structure, by the third claim of his reissue ; that all that Carr did, if anything, was to add his form of orifice to the valve and cup-leather of an existing pump-plunger; that the third claim of the Carr reissue involves, as an element in it, the means of leakage set forth ; and that the only point of invention, if it could be dignified by that name, was the special means of leakage shown by Carr, but which the defendants did not use. *Ib.*

4. To be patentable, a thing must not only be new and useful, but must amount to an invention or discovery. Recent decisions of this court on the subject of what constitutes a patentable invention cited and applied. Under them, claim three of the Carr reissue must, in view of the state of the art, either be held not to involve a patentable invention, or, if it does, not to have been infringed. *Ib.*

5. The first claim of letters patent No. 21,734, granted to Frederick H. Bartholomew, October 12, 1858, for an "improved water-closet," and extended, October 2, 1872, for seven years from October 12, 1872, namely, "The use of a drip-box or leak-chamber, arranged above the closet, and below and around the supply-cock, substantially as described," must, in view of the state of the art, be limited to a drip-box arranged above or on top of the closet, and is not infringed by a structure in which the drip-box is cast on the side of the trunk, near the top, but below it, and not on top of it. *Ib.*

6. In letters patent No. 186,369, granted to James Sargent, January 16, 1877, for improvements in time-locks, the combination-lock forming a member of the combinations claimed by the two claims of the patent, is one which has a bolt or bearing that turns on an axis or revolves, as distinguished from a sliding-bolt, and those claims are not infringed by a structure in which the combination-lock has not a turning or revolving bolt. *Sargent* v. *Hall Safe & Lock Co.*, 63.

7. Claim 2 of the patent requires that the tumblers of the combination-lock and its spindle shall be free to rotate while the bolt-work is held in its locked position, by the bolt or bearing of the combination-lock. *Ib.*

8. In patents for combinations of mechanism, limitations and provisos imposed by the inventor, especially such as were introduced into an application after it had been persistently rejected, must be strictly construed against the inventor, and in favor of the public, and looked upon as in the nature of disclaimers. *Ib.*

9. Patent No. 140,536, granted July 1, 1873, to Frank L. Pope for an improvement in electric signalling apparatus for railroads, was for a

combination of several previously known parts or elements, to be used together in effecting the desired result of signalling, among which parts so used, and essential to the combination, was an insulated section or insulated sections of the track of the railroad on which the device might be used. *Electric Signal Co.* v. *Hall Signal Co.*, 87.

10. In practical operation the device protected by that patent required independent devices to equalize the resistance in the different circuits. *Ib.*
11. The device patented to Thomas S. Hall and George H. Snow, by patent 165,170, granted July 13, 1875, for an improvement in operating electric signals, dispensed with the use of insulated sections of the track ; and used instead thereof the earth for the return current to complete the circuit ; and arranged its conductors with reference to the batteries and magnets so as to equalize the resistance in the circuits when the signals were operated by a single battery. *Ib.*
12. The device patented to Hall and Snow differs from that patented to Pope in the elements which form the combination, in the functions performed by them, in the arrangement of the parts, and in the principle of the combination ; and the rights protected in the latter are not infringed by the use of the former. *Ib.*
13. In a suit in equity to restrain the infringement of a patent and for an account, the defendant cannot question the validity of the patent after a decree *pro confesso* establishing its validity. *Thomson* v. *Wooster*, 104.
14. A delay in applying for the reissue of a patent which appears on the face of the proceedings, and which, unexplained, might be regarded as unreasonable, cannot be set up against the patent by a defendant after a decree *pro confesso* has been taken in a suit in equity which is founded on and sets up the patent and seeks to restrain him from infringing in. *Ib.*
15. It is irregular to introduce, pending an appeal, an original patent not introduced below. *Ib.*
16. In proceedings before a master, after the bill in a suit to restrain infringement of a patent has been taken *pro confesso*, it is not proper to inquire into the cost of producing a result by other processes or machines; the proper inquiry relates to the profits enjoyed by defendants by reason of using the patented invention. *Ib.*
17. None of the separate elements of the devices described in the patent granted September 16, 1873, to John A. O'Haire and W. A. Jones as assignees of John A. O'Haire for an improvement in operating car-doors, were new; nor was the combination new; nor was there any patentable invention in the contrivance described in the patent. *Stephenson* v. *Brooklyn Railway Co.*, 149.
18. The device described in the patent granted March 30, 1875, to appellant for an improvement in signalling devices for street cars required no ingenuity, and cannot be called an invention. *Ib.*

19. The combination described and claimed in the patent granted September 7, 1875, to appellant for an improvement in street cars is a mere aggregation of separate devices, each performing the function for which it is adapted when used separately, and the whole contributing no new result as the product of the joint use; and it is not a patentable invention. *Ib.*

20. The joinder of claims for a patent, and separate claims for each of its parts in one patent for a design does not *per se* invalidate the patent, or any claim, at the objection of a defendant. *Dobson* v. *Hartford Carpet Co.*, 439.

21. A claim of "the design for a carpet, substantially as shown," refers to the description and the drawing and is valid. *Ib.*

22. The invention claimed in reissued patent No. 6,954, granted February 29, 1876, to Joseph Olmstead, assignor by mesne assignments to appellants, was substantially anticipated by the invention described in letters patent in Great Britain granted to the Earl of Dundonald July 22, 1852; and also by letters patent granted there to Felix M. Baudouin, April 3, 1857. *Western Electric Co.* v. *Ansonia Co.*, 447.

23. A claim in a patent for a process does not cover a condition in the material used in the process which is not referred to and described in the specification and claim, within the requirements of Rev. Stat. § 4888. *Ib.*

24. Reissued patent No. 6,954 for a process in insulating telegraph wires being void, it follows that reissued patent No. 6,955 for the product of the process is also void. *Ib.*

25. The use in succession of two distinct pairs of dies, of well-known kinds, not combined in one machine, nor co-operating to one result, but each pair doing by itself its own work, is not a patentable invention. *Beecher Manufacturing Co.* v. *Atwater Manufacturing Co.*, 523.

See ACCEPTANCE OF SERVICE; COMMISSIONER OF PATENTS; DAMAGES; EQUITY, 1, 2, 3, 4, 9, 10.

PATENT FOR PUBLIC LAND.

1. The doctrine of the conclusiveness of judgments and decrees of courts, as between those who are parties to the litigation, is not applicable to the United States, in regard to the proceedings before the land officers in granting patents for the public land. *United States* v. *Minor*, 233.

2. Though it has been said very truly in some cases that the officers of the Land Department exercise functions in their nature judicial, this has reference to cases in which individuals have, as between each other, contested the right to a patent before those officers, whose decision as to the facts before them is held to be conclusive between those parties. *Ib.*

3. But fraud or imposition on those officers, or a radical mistake by them of the law governing the disposition of the public lands, has always

been held to be subject to remedy in a court of equity; and where there has been no contest, and the claimant produces without opposition his *ex parte* proofs of performance of the necessary conditions, it is especially needful that equity should give the government a remedy if those proofs are founded in fraud and perjury. *Ib.*

See EQUITY, 8.

PAYMENT.

A creditor of a person having possession of property of the debtor, cannot without judicial process, and against the debtor's will, sell the property and apply its proceeds to the payment of his debt. *Xenia Bank* v. *Stewart*, 224.

See CONSTITUTIONAL LAW, A., 11 (*n*).

PLEADING.

The plaintiffs in these actions, seeking to recover damages for being unlawfully deprived of their right to be registered as voters, must allege in their declarations, as matter of fact, that they were legally qualified voters, or that allegation being omitted, must allege all the facts necessary to show, as matter of law, that they were qualified voters; and to this end it is necessary that they should negative all the disqualifications pronounced by the law. *Murphy* v. *Ramsey*, 15.

POLYGAMY.

See BIGAMY;
UTAH, 5.

PRACTICE.

See JUDGMENT, 2; JURISDICTION, A., 6, 7, 8; MISNOMER; SUPPLEMENTARY PROCEEDINGS AFTER JUDGMENT.

PRE-EMPTION LAWS.

See PUBLIC LAND, 2, 3, 6.

PUBLIC LAND.

1. To charge the holder of the legal title to land under a patent of the United States, as a trustee of another, it must appear that, by the law properly administered in the Land Department, the title should have been awarded to the latter: it is not sufficient to show that there was error in adjudging the title to the patentee. *Bohall* v. *Dilla*, 47.
2. Pre-emption laws require a residence both continuous and personal

upon the tract, of the person who seeks to take advantage of them. *Ib.*

3. The settler may be excused for temporary absences from the tract, caused by sickness, well-founded apprehensiveness of violence and other like enumerated causes. *Ib.*
4. The lands granted by Congress to the State of Kansas for the benefit of the St. Joseph & Denver City Railroad Company by the Act of July 23, 1866, were not open to sale or settlement after the line or route of the road was "definitely fixed," which was done when the map of the route adopted by the company was filed with the Secretary of the Interior, and accepted by him. *Walden* v. *Knevals*, 373.
5. Lands covered by a claim under Mexican or Spanish grants, but not found within the limits of the final survey of the grant when made, are within the excepting clause of the act of July 23, 1866, 14 Stat. 218, and are restored to the public domain by the survey. *Aurrecoechea* v. *Bangs*, 381.
6. A pre-emptor of land thus restored to the public domain, who takes the necessary steps in the land office to assert and perfect his title as such, before a claimant under a selection of the same lands by the State of California makes his claim, and who obtains a patent therefor, has a legal title thereto, which is not subject to be dispossessed by any equities in the latter claimant. *Ib.*

See CONSTITUTIONAL LAW, A., 16, 17; MINERAL LAND; EQUITY, 8; PATENT FOR PUBLIC LAND, 1, 2, 3.

RAILROAD.

1. Various owners of lands in Alabama granted to a railroad corporation of that State, "and its assigns," in 1860, a right of way through the lands, to make and run a railroad, the corporation having a franchise to do so and to take tolls; and it obtained a like right, as to other land, by statutory proceeding. It graded a part of the line. V, a judgment creditor of the corporation, in 1867, levied an execution on the right of way, and it was sold to V, and the sheriff deeded it to him, and he took possession of the road-bed. In 1870, he contracted with another railroad corporation to complete the grading of the line of road for so much per mile, and, on being paid, to transfer to it all his title to the franchise, right of way and property of the old corporation. He completed the work, and was not paid in full, but gave possession of the road, in 1871, to the corporation, and its franchises and road and property passed, in 1880, to another corporation, the defendant, against whom V brought an action of ejectment, to recover the road-bed: *Held*, (1) The right of way could not be sold on execution, or otherwise, to a purchaser who did not own the franchise; (2) There was nothing in the contract to estop the defendant from disputing the right of V to recover in ejectment, on the

strength of his title; (3) V. could not recover. *East Alabama Railway Co.* v. *Doe*, 340.

2. A grant by a municipal corporation to a railway company of a right of way through certain streets of the municipality, with the right to construct its railroad thereon and occupy them in its use, is a franchise which may be mortgaged and pass to the purchaser at a sale under foreclosure of the mortgage. *New Orleans, &c., Railroad Co.* v. *Delamore*, 501.
3. There is nothing in the laws of Louisiana which forbids such transfer of a franchise to use and occupy the streets of a municipality by a railroad corporation. *Ib.*
4. All franchises of a railroad company which can be parted with by mortgage, pass to the assignee of the company in bankruptcy, and may be sold and transferred to a purchaser at a bankruptcy sale. *Ib.*
5. Four railroad corporations whose roads formed a connecting line in Ohio, Indiana and Illinois, were consolidated, according to the statutes of those States, under an agreement in which the capital on the basis of which each entered into the consolidation was described as composed of the amount of its stock and of its mortgage bonds and other bonds, and it was agreed that all those bonds should, "as to the principal and interest thereof, as the same shall respectively fall due, be protected by the consolidated company, according to the true effect and meaning of the bonds." Two years afterwards, the consolidated company, to secure its own bonds payable at a later date than the old ones, executed a mortgage of all its property to trustees, which recited that it had been deemed for the interest of the corporation as well as for the interest of all the various classes of existing bonds (which were specifically described) that the whole of them should be consolidated into one mortgage debt upon equitable principles; and provided that a sufficient amount of the new bonds should be retained "to retire, in such manner and upon such terms as the directors may from time to time prescribe," an equal amount of the old bonds. Six years later, the consolidated company made another mortgage to secure other bonds, for non-payment of which it was afterwards foreclosed by sale of the whole property. *Held*, That the property was not subject to any lien in favor of bonds of one of the old companies, issued after the passage of the statutes authorizing the consolidation, unsecured by any mortgage or lien before the consolidation, and the holders of which had not exchanged or offered to exchange them for bonds of the consolidated company before the proceedings for foreclosure. *Wabash, St. Louis & Pacific Railroad Co.* v. *Ham*, 587.

See MUNICIPAL LAW, 1, 2.

REMOVAL OF CAUSES.

1. The filing of separate answers tendering separate issues for trial, by several defendants sued jointly in a State court, on a joint cause of

action, does not divide the suit into separate controversies so as to make it removable into the Circuit Court of the United States under the last clause of § 2, Act of March 3, 1875. *Louisville & Nashville Railroad Co.* v. *Ide*, 52.

2. Separate issues, under separate defences, to an action pending in a State court, do not necessarily make separable controversies, which may be removed to the Circuit Court of the United States. *St. Louis & San Francisco Railway Co.* v. *Wilson*, 60.
3. In a suit against a corporation in a court of the State from which its charter is derived, to recover on a judgment recovered against it in a Circuit Court of the United States in a district within the limits of another State, a petition by the defendant for the removal of the cause into the Circuit Court of the United States, which alleges that the defendant was not an inhabitant of the latter State, and was not personally served with process by itself or its officers, but does not allege that there was no service of process on an agent of the corporation in the district in which the judgment was recovered, and that there was no appearance of the defendant in the suit, is not sufficient to raise a defence of want of jurisdiction, under Rev. Stat. § 739. *Provident Savings Society* v. *Ford*, 635.
4. An allegation by a defendant in a suit in a State court of New York, that an assignment of the cause of action in the suit by a citizen of another State to a citizen of New York was colorable, and was made for the purpose of preventing a removal of the cause to a court of the United States, presents a defence of the action in the court of that State, but furnishes no ground for removal of the cause to a court of the United States. *Ib.*
5. The fact that a judgment was recovered in a court of the United States does not, in a suit upon that judgment, raise a question under the laws of the United States within the meaning of the Act of March 3, 1875. *Ib.*
6. A suit was commenced in a State court, November 4th, as No. 4,414. A petition by the plaintiff, to remove it into the Circuit Court of the United States, was filed the next day, entitled in the suit as No. 4,414, signed by his attorneys, not sworn to, referring to the suit as commenced, and asking for a removal under subdivision 3 of § 639 of the Revised Statutes, and stating facts showing a right to a removal not only under that subdivision, but also under § 2 of the Act of March 3, 1875, 18 Stat. 470, and accompanied by an affidavit, made by the plaintiff eleven days before, stating that "he is the plaintiff" in the suit, as No. 4,414, and giving its title, and the name of the court, and alleging "that he has reason to believe, and does believe, that, from prejudice and local influence, he will not be able to obtain justice in said State court." The State court ordered the cause to be removed, and the Circuit Court refused, on motion of the defendant, to remand it: *Held* (1) The affidavit was sufficient for a removal

under subdivision 3 of § 639; (2) The petition made out a case for removal under the Act of 1875; (3) The absence of an oath to the petition was, at most, only an informality, which the defendant waived by not taking the objection on the motion to remand. *Canal & Claiborne Streets Railroad Co.* v. *Hart*, 654.

RETROACTIVE LAWS.

See TAX AND TAXATION, 6.

RIGHT OF WAY.

See RAILROAD, 1, 2, 3, 4.

SALE.

See CONTRACT.

SALE ON EXECUTION.

See RAILROAD, 1.

SECURITY.

See NATIONAL BANK, 2.

SERVICE OF PROCESS.

See ACCEPTANCE OF SERVICE.

SET-OFF.

When a person owing taxes to a municipal corporation becomes the owner of obligations of the municipality which are by law receivable in payment of its taxes, the extinguishment of the tax and the debt is clearly within the doctrine of set-off of mutual obligations. *Amy* v. *Shelby County*, 387.

STATE REMEDIES IN FEDERAL COURTS.

See SUPPLEMENTARY PROCEEDINGS AFTER JUDGMENT.

STATUTES.

A. STATUTES CITED IN OPINIONS.

See Ante, *p.* xxiii.

B. CONSTRUCTION OF STATUTES.

See MUNICIPAL BONDS.

C. Statutes of the United States.

See Bankruptcy, 2;
Bigamy;
City of Washington, 3, 5;
Commencement of Action;
Conflict of Law;
Constitutional Law, 11 (*o*);
Fugitive from Justice;
Habeas Corpus, 3, 5;
Indictment;
Information;
Jurisdiction, A., 2; B., 1, 2, 3, 4; D.;
Limitations, Statute of;
Mexican Mixed Commission;
Mineral Land, 3, 4, 5;
National Bank, 2;
Patent for Invention, 23;
Public Land, 4, 5;
Removal of Causes, 1, 3, 5, 6;
Supplementary Proceedings after Judgment;
Tax and Taxation, 9;
Utah, 1, 2, 3, 4, 5.

D. Statutes of the States and Territories.

Generally: *See* Judicial Notice;
Kansas: Municipal Law, 2;
Tax and Taxation, 9;
Louisiana: Jurisdiction, A., 13;
Railroad, 3.
Supplementary Proceedings after Judgment;
Maryland: Chesapeake & Ohio Canal;
City of Washington, 4;
Mississippi: Municipal Bonds;
New Jersey: Constitutional Law, A., 18;
Ohio: Tax and Taxation, 5, 6, 7;
Tennessee: Constitutional Law, A., 13;
Tennessee;
Utah: Judgment, 2;
Virginia: Constitutional Law, 11;
Suit against a State;
Tax and Taxation, 4;
West Virginia: Corporation;
Tax and Taxation, 1.

E. Foreign Statutes.

England: *See* Statute of Frauds.

STATUTE OF FRAUDS.

C bought an undivided one-third interest in a stage company, intending that S should have one-half of the one-third, and, before the purchase, informed S of such intention. At the time there was an unsettled account between C and S, in respect of services rendered by

S to C, and of certain business in which they were both interested. After the purchase, C agreed verbally with S, that S should have the one-sixth at the price C had paid for it, any amount due by C to S to be applied towards payment for the one-sixth, the ownership of it by S to commence at once. Afterwards, the four owners of the property, of whom S and C were two, executed a paper, under seal, in which the interests of the four were defined, S and C being stated to be the owners of one-third ; and all, including C, thereafter recognized S as owning one-sixth, subject, as between S and C, to the liability of S to reimburse C what he had paid for such one-sixth ; *Held*, (1) The contract was executed, and S was put in possession, and the statute of frauds, 29 Car. 2, ch. 3, § 17, did not apply. (2) S was entitled to have credit, on his purchase of the one-sixth, for what C owed him on the account aforesaid ; and C was entitled to recover from S the residue of what he had paid for the one-sixth. *Huntley* v. *Huntley*, 394.

STATUTE OF LIMITATIONS.

See LIMITATIONS, STATUTE OF.

STEAM FERRY.

See NEGLIGENCE, 2.

SUIT AGAINST A STATE.

Although the right to have coupons received in payment of taxes is founded on a contract with the State, and that right is protected by the Constitution of the United States, Art. 1, Sec. 10, forbidding the State to pass any laws impairing the obligation of the contract, the only mode of redress in case of any disturbance or dispossession of property, or for other legal rights based on such violation of the contract, is to have a judicial determination, in a suit between individuals, of the invalidity of the law, under color of which the wrong has been committed. No direct action for the denial or the right secured by the contract will lie. *Virginia Coupon Cases*, *Carter* v. *Greenhow*, 317

See CONSTITUTIONAL LAW, 11 (*e*).

SUPPLEMENTARY PROCEEDINGS AFTER JUDGMENT.

1. Garnishee proceedings authorized by laws of Louisiana in force when § 916 of the Revised Statutes (formerly § 6 of the Act of June 1, 1872, chap. 255, 17 Stat. 197) was enacted, are warranted by that section of the Revised Statutes. *Canal & Claiborne Streets Railroad Co.* v. *Hart*, 654.
2. The remedies supplementary to judgment, adopted by § 916 Rev.

Stat., were those then provided by the laws of Louisiana in regard to judgments in suits of a like nature or class, and not the provisions of the Act of the Legislature of Louisiana, passed March 17, 1870, Sess. Laws of 1870, Extra Session, Act No. 5, p. 10, in regard to judgments against the City of New Orleans. *Ib.*

SUPREME COURT.

See JURISDICTION, A.

SURGEON GENERAL OF THE NAVY.

See HABEAS CORPUS, 5.

SWAMP LANDS.

See CONSTITUTIONAL LAW, A., 18.

TAX AND TAXATION.

1. The provision in the act of the Legislature of West Virginia incorporating the Covington & Ohio Railroad Company that "no taxation upon the property of the said company shall be imposed by the State until the profits of said company shall amount to ten per cent. on the capital" was personal to that company and did not inhere in the property so as to pass by a transfer of it. *Chesapeake & Ohio Railway Co.* v. *Miller*, 176.
2. Immunity from taxation conferred on a corporation by legislation is not a franchise. *Ib.*
3. The remedy by injunction to prevent the collection of taxes by distraint upon the rolling-stock, machinery, cars and engines, and other property of railroad corporations, after a tender of payment in tax-receivable coupons, is sanctioned by repeated decisions of this court, and has become common and unquestioned practice, in similar cases, where exemptions have been claimed in virtue of the Constitution of the United States ; the ground of the jurisdiction being that there is no adequate remedy at law. *Virginia Coupon Cases. Allen* v. *Baltimore & Ohio Railroad Co.*, 311.
4. The contract right of a coupon-holder under the Virginia Act of March 30, 1871, whereby his coupons are receivable in payment of taxes, can be exercised only by a tax-payer ; and a bill in equity, for an injunction to restrain tax collectors from refusing to receive them, when tendered in payment of taxes, will not lie in behalf of a coupon-holder who does not allege himself to be also a tax-payer. Such a bill calls for a decree declaring merely an abstract right, and does not show any breach of the contract, or other ground of relief. *Ib. Marye* v. *Parsons*, 325.
5. A statute of Ohio authorized county auditors to issue compulsory process to bring before them persons who, they had reason to believe,

were making false returns of their property for purposes of taxation, and to examine them under oath, and required them to notify every person before making entry on the tax list that he might have an opportunity to show that his statement or return was correct. A taxpayer was summoned before the auditor to give information of property not returned for taxation, and appeared, and while in attendance was informed by the auditor of his purpose to increase the amount of property returned by him for taxation : *Held*, That this was a substantial compliance with the provision requiring the auditor to notify the tax-payer before making entry of the increase. *Sturges* v. *Carter*, 511.

6. The act of the Legislature of Ohio of May 11, 1878, authorizing auditors to extend inquiries into returns of property for taxation, over a period of four years next before that in which the inquiry is made, is no violation of that provision in the Constitution of that State which declares that "the General Assembly shall have no power to pass retroactive laws." Mr. Justice Story's definition of a retrospective law in *Society for Propagating the Gospel* v. *Wheeler*, 2 Gall. 139, has been adopted by the Supreme Court of the State of Ohio, and is quoted and adopted by this court. *Ib.*
7. The provision § 59 Act of April 5, 1859, of Ohio, that "no person shall be required to list for taxation any certificate of the capital stock of any company, the capital stock of which is taxed in the name of the company," does not apply to shares in a foreign corporation which pays taxes in Ohio only on the portion of its property which is situated there.
8. When a State, in ceding to the United States exclusive jurisdiction over a tract within its limits, reserves to itself the right to tax private property therein, and the United States do not dissent, their acceptance of the grant, with the reservation, will be presumed. *Fort Leavenworth Railroad Co.* v. *Lowe*, 525.
9. In the act admitting Kansas as a State, there was no reservation of Federal jurisdiction over the Fort Leavenworth Military Reservation. The State of Kansas subsequently ceded to the United States exclusive jurisdiction over the same, "saving further to said State the right to tax railroad, bridge, or other corporations, their franchises and property on said reservation." *Held*, that the property and franchises of a railroad company within the reservation was liable to pay taxes in the State of Kansas, imposed according to its laws. *Ib.*

See CONSTITUTIONAL LAW, A., 6, 8, 11 (*b*, *c*, *l*, *m*, *n*); CORPORATION; SET-OFF; SUIT AGAINST A STATE.

TENDER.

See CONSTITUTIONAL LAW, 11 (*b*, *c*).

TENNESSEE.

1. The Legislature of the State of Tennessee, on the 11th of February, 1852, enacted a law "to establish a system of internal improvements," in which it was provided that the State should issue to certain railroad companies therein named its negotiable coupon bonds, and that when the respective roads should be completed, the State should be invested with a lien upon each road and its superstructure and equipment, "for the payment of all of said bonds issued to the company, as provided in this act, and for the interest accruing on said bonds:" *Held*, In view of other provisions in the act, and of the practical construction put upon it, that the lien thereby created, was created to secure payment to the State of the amount of indebtedness it thus undertook to incur, and not payment to the holders of the State bonds thus agreed to be issued; and that the State could accept payment in other mode or modes than those pointed out by the act or acts creating the lien, and could cause the property to be released from it, either by legislation, or by foreclosure under the statute, while the bonds issued to the company for the construction of the road released or foreclosed were still outstanding and unpaid. *Tennessee Bond Cases*, 663.
2. The relation of principal debtor and creditor at no time existed under the acts of the Legislature of Tennessee referred to in the opinion of the court, between the railroad companies and the holders of the State bonds issued under the act; nor did the State at any time under those acts hold the relation of surety toward such holders; the State was at the outset and remained the sole debtor bound on the bond. *Ib.*

See CONSTITUTIONAL LAW, A., 13.

TRANSFER OF SOVEREIGNTY.

See MUNICIPAL LAW, 1, 2.

TRANSPORTATION.

See CONSTITUTIONAL LAW, A., 1, 5, 6, 9, 10.

TRUSTEE.

1. When the acts or omissions of a trustee shows a want of reasonable fidelity to his trust, a court of equity will remove him. *Cavender* v. *Cavender*, 464.
2. A neglect by a trustee to invest moneys in his hands is a breach of trust, and is a ground for removal by a court of equity.

UNITED STATES.

See CLAIMS AGAINST THE UNITED STATES;
EQUITY, 1;
PATENT FOR PUBLIC LAND, 1, 2, 3.

UTAH.

1. The Board of Commissioners appointed for the Territory of Utah in pursuance of § 9 of the act of Congress approved March 22, 1882, entitled "An Act to amend § 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," 22 Stat. 30, have no power over the registration of voters or the conduct of elections. Their authority is limited to the appointment of registration and election officers, to the canvass of the returns made by such officers of election, and to the issue of certificates of election to the persons appearing by such canvass to be elected. *Murphy* v. *Ramsey*, 15.
2. The registration and election officers thus appointed are required, until other provisions be made by the Legislative Assembly of the Territory, to perform their duties under the existing laws of the United States, including the Act of March 22, 1882, and of the Territory, so far as not inconsistent therewith. *Ib.*
3. As the Board of Commissioners had no lawful power to prescribe conditions of registration or of voting, any rules of that character promulgated by them to govern the registration and election officers were null and void; and as such rules could not be pleaded by the registration officers as lawful commands in justification of refusals to register persons claiming the right to be registered as voters, their illegality is no ground of liability against the Board of Commissioners. *Ib.*
4. The registration officers were bound to register only such persons as, being qualified under the laws previously in force, and offering to take the oath as to such qualifications prescribed by the territorial act of 1878, were also not disqualified by § 8 of the Act of Congress of March 22, 1882. *Ib.*
5. That section provides, as to males, that no polygamist, bigamist, or any person cohabiting with more than one woman; and, as to females, that no woman cohabiting with any polygamist, bigamist, or man cohabiting with more than one woman, shall be entitled to vote, and consequently, no such person is entitled to be registered as a voter; and the registration officer must either require such disqualifications to be negatived by a modification of the oath, the form of which is given in the territorial act, or otherwise satisfy himself by due inquiry that such disqualifications do not exist; but which course he is bound to adopt it is not necessary in these cases to decide. *Ib.*

See BIGAMY;
JUDGMENT, 2.

VERDICT.

See HABEAS CORPUS.

VIRGINIA.

See CONSTITUTIONAL LAW, 11; JURISDICTION, B., 4; SUIT AGAINST A STATE; TAX AND TAXATION, 3, 4.

VOLUNTEERS.

See ARMY.

WASHINGTON.

See CITY OF WASHINGTON.

WRIT OF ERROR.

See MISNOMER;
NATIONAL BANK, 2.