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ABANDONED OR CAPTURED PROPERTY.

See LIMITATION, STATUTES OF, 6.

ACCORD AND SATISFACTION.

A State employed two attorneys to collect a claim, and agreed to pay them a certain percentage on any amount recovered by suit. They brought a suit and obtained judgment for the State upon the claim. The State employed another person as agent, to assist in its collection, and made an agreement with him to pay him a percentage which should cover all attorney's fees, already accrued, or to be afterwards incurred ; and afterwards modified this agreement in respect to the amount which he should receive if contingent fees should have to be paid to any other persons under contracts with them. This agreement and its modification were unknown to the two attorneys first employed by the State. The agent, knowing of the agreement of these attorneys with the State, promised them to hold any fund that he might collect until their fees should be paid by the State. He collected a large amount, and paid most of it over to the State, retaining in his hands, after deducting his own compensation, a sum less than was due to them under their contract with the State. They made a final settlement with the State for this sum in discharge of all their demands against the State : *Held*, That they could not afterwards maintain any action against the agent, on his promise to them. —*Merrick* v. *Giddings*, 300.

ACTION.

1. A, a foreign steamship corporation went into liquidation August 15, 1867, and sold and transferred all its ships and other property August 16, 1867, to B, another foreign corporation, formed for the purpose of buying that property and continuing the business, with the right reserved to all stockholders in A to become stockholders in B. The officers in the old company became stockholders in the new company, and the business went on under their direction as officers of the new

company. October 24, 1867, a collision took place in New York harbor between one of the steamships so transferred and some canal boats, resulting in the death of plaintiff's intestate. Plaintiff sued A, in a State court of New York, to recover damages under a statute of that State, for the loss of her husband, and obtained a verdict and recovered judgment. *Held*, That this judgment against the old company could not be enforced in equity against its former property in the hands of the new company, thus transferred before the time when the alleged cause of action arose. *Gray* v. *National Steamship Co.*, 116.

2. After a decree disposing of the issues and in accordance with the prayer of a bill it is not competent for one of the parties, without service of new process or appearance, to institute further proceedings on new issues and for new objects, although connected with the subject matter of the original litigation, by merely giving the new proceedings the title of the original cause. *Smith* v. *Woolfolk*, 143.

See ACCORD AND SATISFACTION;
REMOVAL OF CAUSES;
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ADMINISTRATOR'S SALE OF REALTY.

See LOCAL LAW, 1.

ADMIRALTY.

The Circuit Court, in an appeal from a decree of a District Court in admiralty may in its discretion permit amendments to the libel, enlarging the claims, and including claims rejected below as not specified in the pleadings. *The Charles Morgan*, 69.

See COLLISION;
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ALABAMA.

See EQUITY PLEADING, 1, 2;
LIMITATION, STATUTES OF, 4, 5.

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See LIMITATION, STATUTES OF, 2.

ARMY.

See ARREST.

ARREST.

A police officer of a State, or a private citizen, has no authority as such, without any warrant or military order, to arrest and detain a deserter from the army of the United States. *Kurtz* v. *Moffitt*, 487.

ASSESSMENT.

See CONSTITUTIONAL LAW, 3, 4.

BANKRUPTCY.

1. A suit in which the purchaser from a trustee in bankruptcy of property of the bankrupt estate asserts title against a defendant claiming an adverse interest therein, though brought more than two years after the cause of action accrues to the trustee, is not barred by the limitation of two years prescribed by Rev. Stat., § 5057, if the defendant acquired title by a fraud practised by him on the trustee, and the fraud was concealed by the defendant from the trustee and the purchaser, until within two years before the suit was brought. *Traer* v. *Clews*, 528.
2. There is nothing in the policy or terms of the bankrupt act which forbids the bankrupt from purchasing from the trustee property of the bankrupt estate. *Ib.*
3. A trustee in bankruptcy may sell the unencumbered property of the estate on credit, when he thinks it most for the interest of the creditors. *Ib.*

See JURISDICTION, B, 3.

BILL OF EXCHANGE AND PROMISSORY NOTES.

A bill of exchange, dated March 4, payable in London, 60 days after sight, drawn in Illinois, on a person in Liverpool, and accepted by him "due 21st May," without any date of acceptance, was protested for non-payment on the 21st of May. In a suit against the drawer, on the bill, it was not shown what was the date of acceptance: *Held*, That the bill was prematurely protested, it not appearing that days of grace were allowed. *Bell* v. *First National Bank*, 373.

See EVIDENCE, 5;
PROMISSORY NOTE.

CALIFORNIA.

See EVIDENCE, 1.

CASES AFFIRMED OR APPROVED.

1. *Louisville & Nashville Railroad Co.* v. *Ide*, 114 U. S. 52, where a like decision was made as to actions *ex-contractu*, affirmed and applied. *Pirie* v. *Tvedt*, 41.
2. *The Lucille*, 19 Wall. 73, affirmed and applied. *The Charles Morgan*, 69.
3. *Stewart* v. *Kahn*, 11 Wall. 493, affirmed and applied. *Mayfield* v. *Richards*, 137.
4. *Louisville & Nashville Railroad Co.* v. *Ide*, 114 U. S. 52 ; *Putnam* v. *Ingraham*, 114 U. S. 57 ; and *Pirie* v. *Tvedt*, 115 U. S. 41, affirmed. *Starin* v. *New York*, 248.
5. *Detroit City Railway Co.* v. *Guthard*, 114 U. S. 133, cited and followed. *Jacks* v. *Helena*, 288.
6. *National Bank* v. *Insurance Co.*, 100 U. S. 43, followed. *Waterville* v. *Van Slyke*, 290.
7. *Jones* v. *Van Benthuysen*, 103 U. S. 87, affirmed. *S. C.* 464.
8. *Farmers' Loan & Trust Co.* v. *Waterman*, 106 U. S. 265, approved and applied. *Hassall* v. *Wilcox*, 598.

CASES DISTINGUISHED.

The North Carolina, 15 Pet. 40, distinguished. *The Charles Morgan*, 69.

CASES EXPLAINED.

The principles on which *Railway Co.* v. *Prescott*, 16 Wall. 603, and *Railway Co.* v. *McShane*, 22 Wall. 444, were decided, are re-stated, so far as they are applied to this case. *Northern Pacific Railroad* v. *Traill County*, 600.

CASES QUESTIONED OR OVERRULED.

The authority of *State* v. *Rives*, 5 Ired. 297, is questioned by the Supreme Court of North Carolina in *Gooch* v. *McGee*, 83 N. C. 59. *Buncombe County* v. *Tommey*, 122.

CATTLE GUARDS AND FENCES.

See CONSTITUTIONAL LAW, A, 5.

CESTUI QUE TRUST.

See LIMITATION, STATUTES OF, 3.

CHARTER PARTY.

1. In a charter-party, which describes the ship by name and as "of the burthen of 1100 tons, or thereabouts, registered measurement," and by which the owner agrees to receive on board, and the charterer engages to provide, "a full and complete cargo, say about 11,500 quarters of wheat in bulk," the statement of her registered tonnage is not a warranty or condition precedent; and if her actual carrying capacity is about 11,500 quarters of wheat, the charterer is bound to accept her, although her registered measurement (unknown to both parties at the time of entering into the contract) is 1203 tons. *Watts v. Camors*, 353.
2. The clause in a charter-party, by which the parties mutually bind themselves, the ship and freight, and the merchandise to be laden on board, "in the penal sum of estimated amount of freight," to the performance of all and every of their agreements, is not a stipulation for liquidated damages, but a penalty to secure the payment of the amount of damage that either party may actually suffer from any breach of the contract; and is to be so treated in a court of admiralty of the United States, whatever may be the rule in the courts of the particular State in which the contract is made and the court of admiralty sits. *Ib.*
3. Under a charter-party which allowed fifteen lay days for loading after the ship was ready to receive cargo, the owner tendered her to the charterers, they immediately refused to accept her, and thirty-six days afterwards he obtained another cargo, but negotiations were pending between the parties for half of that time, and the owner sustained substantial damage in a certain amount by the failure of the charterers to comply with their contract. The Circuit Court found these facts, and entered a decree against the charterers for that amount: *Held*, no error in law for which the charterers could have the decree reversed in this court. *Ib.*

CIRCUIT COURTS OF THE UNITED STATES.

See ADMIRALTY;
JURISDICTION, B.

CLAIMS AGAINST THE UNITED STATES.

A person who, by a contract made with him by the quartermaster's department of the army in behalf of the United States, agrees to furnish all the steamboat transportation required by the United States for officers and soldiers between certain places, and to certain Indian posts and agencies, during a certain time, and to "receive from the officers or agents of the quartermaster's department all such military, Indian and government stores, supplies, wagons and stock, as may be offered or turned over to him for transportation in good order and

condition by said officers or agents of the quartermaster's department, and transport the same with dispatch, and deliver them in like good order and condition to the officer or agent of the quartermaster's department designated to receive them," at a certain rate, is not entitled to claim compensation for Indian supplies (never in the charge of the quartermaster's department for transportation) transported between places named in the contract by another person under a contract between him and the Commissioner of Indian Affairs; although during the same time some Indian supplies are delivered by the Commissioner of Indian Affairs to the quartermaster's department, and by that department turned over to the claimant for transportation at the rate specified in his contract. *Hazlett* v. *United States*, 291.

See LIMITATION, STATUTES OF, 6.

COLLISION.

In case of collision on the Mississippi, if the facts show that the injured vessel made the first signal, and that it was responded to by the offending vessel, and that no question was made below as to its being made within the time required by the Rules of the Board of Supervising Inspectors, it will be presumed to have been made at the proper distance, in compliance with the rules. *The Charles Morgan*, 69.

See EVIDENCE, 2.

CONDITION BROKEN.

See PUBLIC LAND, 9.

CONDITION PRECEDENT.

See CONTRACT, 3.

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See CONSTITUTIONAL LAW, A, 6;
CONTRACT, 7;
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CONFLICT OF LAW.

See CHARTER PARTY, 2;
JURISDICTION, B, 3.

CONSOLIDATION OF CORPORATIONS.

See CONTRACT, 8;
CORPORATION, 1, 2.

CONSTITUTIONAL LAW.

A. Of the United States.

1. When it appears in a suit that some title, right, privilege, or immunity on which recovery depends will be defeated by one construction of the Constitution or laws of the United States or sustained by the opposite construction, the case is one arising under the Constitution or laws of the United States, within the meaning of that term as used in the act of March 3, 1875, 18 Stat. 470. *Starin* v. *New York*, 248.

2. The questions whether the city of New York has the exclusive right to establish ferries between Manhattan Island and the north shore of Staten Island on the Kill von Kull; and, whether in a given case this right has been interfered with by the setting up of a ferry without license, are not questions arising under the Constitution or laws of the United States. *Ib.*

3. A State statute for raising public revenue by the assessment and collection of taxes, which gives notice of the proposed assessment to an owner of property to be affected, by requiring him at a time named to present a statement of his property, with his estimate of its value, to a designated official charged with the duty of receiving the statement; which fixes time and place for public sessions of other officials, at which this statement and estimate are to be considered, where the official valuation is to be made, and when and where the party interested has the right to be present and to be heard; and which affords him opportunity, in a suit at law for the collection of the tax, to judicially contest the validity of the proceeding, does not necessarily deprive him of his property without "due process of law," within the meaning of the Fourteenth Amendment to the Constitution of the United States. *Kentucky Railroad Tax Cases*, 321.

4. A State law for the valuation of property and the assessment of taxes thereon, which provides for the classification of property subject to its provisions into different classes; which makes for one class one set of provisions as to modes and methods of ascertaining the value, and as to right of appeal, and different provisions for another class as to those subjects; but which provides for the impartial application of the same means and methods to all constituents of each class, so that the law shall operate equally and uniformly on all persons in similar circumstances, denies to no person affected by it "equal protection of the laws," within the meaning of the Fourteenth Amendment to the Constitution of the United States. *Ib.*

5. A statute of a State requiring every railroad corporation in the State to erect and maintain fences and cattle guards on the sides of its road, and, if it does not, making it liable in double the amount of damages occasioned thereby and done by its agents, cars, or engines, to cattle or other animals on its road, does not deprive a railroad corporation, against which such double damages are recovered, of its

property without due process of law, or deny it the equal protection of the laws in violation of the Fourteenth Article of Amendment of the Constitution of the United States. *Missouri Pacific Railway Co.* v. *Humes*, 512.

6. A statute of Virginia, of February, 1867, after declaring that, in an action or suit or other proceeding for the enforcement of any contract, express or implied, made between the 1st day of January, 1862, and the 10th of April, 1865, it shall be lawful for either party to show, by parol or other relevant testimony, what was the understanding and agreement of the parties, either express or implied, in respect to the kind of currency in which the same was to be performed, or with reference to which, as a standard of value, it was made, provides "that when the cause of action grows out of a sale or renting or hiring of property, whether real or personal, if the court, or, when it is a jury case, the jury, think that, under all the circumstances, the fair value of the property sold, or the fair rent or hire of it would be the most just measure of recovery in the action, either of these principles may be adopted as the measure of the recovery instead of the express terms of the contract:" *Held,* That the statute in this provision sanctions the impairment of contracts, which is not, under the Federal Constitution, within the competency of the legislature of the State. Accordingly, in a suit to enforce a lien for unpaid purchase money of real estate sold during the war, for which a note was given payable in dollars, but shown to have been made with reference to Confederate notes, a decision that the plaintiff was entitled to recover the value of the land at the time of the sale, instead of the value of Confederate notes at that time, was erroneous. *Effinger* v. *Kenney*, 566.
7. The repeal of a statute of limitation of actions on personal debts does not, as applied to a debtor the right of action against whom is already barred, deprive him of his property in violation of the Fourteenth Amendment of the Constitution of the United States. *Campbell* v. *Holt*, 620.
8. A legislative grant of an exclusive right to supply gas to a municipality and its inhabitants through pipes and mains laid in the public streets, and upon condition of the performance of the service by the grantee, is a grant of a franchise vested in the State, for the performance of a public service, and, after performance by the grantee, is a contract protected by the Constitution of the United States against State legislation to impair it. *New Orleans Gas Co.* v. *Louisiana Light Co.*, 650; *Louisville Gas Co.* v. *Citizens' Gas Co.*, 683.
9. The same rule applies to an exclusive franchise to supply water in a like manner. *New Orleans Water Works* v. *Rivers*, 674.
10. The exclusive franchise to supply water to the inhabitants of a municipality by means of pipes and mains laid through the public streets is violated by a grant to an individual in the municipality to supply his premises with water by means of a pipe or pipes so laid. *Ib.*

11. In granting the exclusive franchise to supply gas to a municipality and its inhabitants, a State legislature does not part with the police power and duty of protecting the public morals, and the public safety, as one or the other may be affected by the exercise of the franchise of the grantor. *New Orleans Gas Co.* v. *Louisiana Light Co.*, 650; *Louisville Gas Co.* v. *Citizens' Gas Co.* 683.

12. The prohibition in the Constitution of the United States against the passage of laws impairing the obligation of contracts applies to the Constitution of each State. *New Orleans Gas Co.* v. *Louisiana Light Co.*, 650.

See LIMITATION, STATUTES OF, 1.

B. STATE CONSTITUTIONS.

A legislative grant of an exclusive right to supply gas to a municipality and its inhabitants, by means of pipes and mains laid through the public streets, and upon condition of the performance of the service by the grantee, is no infringement of that clause in the bill of rights of Kentucky, which declares "That all free men, when they form a social compact are equal, and that no man or set of men are entitled to exclusive separate public emoluments or privileges from the community but in consideration of public services. *Louisville Gas Co.* v. *Citizens' Gas Co.*, 683.

See CONSTITUTIONAL LAW, A, 12.

CONTRACT.

1. A, by letter dated January 31, acknowledged to B, vice-president of C, a corporation, that he had bought of him as representative of C, one thousand tons of old rails for delivery before August 1, and also two to six hundred tons for delivery between August 1 and October 1. B, by letter of same date, signed in the corporate name, B, vice-president, accepted the order, and agreed to deliver the rails. On the 17th February B wrote A, enclosing a corporate ratification of the sale which stated the ton as "per ton of 2,000 pounds." A replied February 28 that he understood at the time of the sale, and still understood the sale to be "absolute, final, unconditional," needing no ratification, and that the number of pounds in each ton under the contract "was not 2,000, but 2,240." C made no answer before June 14, when it notified A that it had 1000 tons of old rails ready for delivery, and that without waiving its rights under the contract, to avoid dispute it made the tender, "at gross weight of 2,240 lbs. to the ton." A replied that he did "not recognize the existence of any such contract of sale," and declined to designate a place for delivery. The court below found that B had authority to make the contract, and that each party at the time of its making understood

the word "ton" to mean a ton of 2240 pounds. On these facts, *Held* (1), That there was a legal contract between the parties; (2) That C was not estopped from setting it up against A; (3) That the contract was not repudiated and terminated by C in such manner as to discharge A from further obligation; (4) That A was bound to accept from C, between August 1 and October 1, any amount of rails between the limits of two hundred tons and six hundred tons. *Wheeler* v. *New Brunswick & Canada Railroad Co.*, 29.

2. A syndicate, of which A and B were members, was formed to purchase a mine, and it was agreed before the purchase, as a condition of A's subscription, that he should "control the management of the mine." After the purchase a board of directors was organized, of which A and B were members. At a meeting of the board, of which A had notice, resolutions were passed at the instigation of B prohibiting the treasurer from paying checks not signed by the president and vice-president, and countersigned by the secretary; directing that all orders for supplies and materials from San Francisco should be made through the head officer there; authorizing the vice-president in the absence of the president, to sign certificates of stock and other papers requiring the president's signature; and authorizing the superintendent of the mine, in the absence from the mine of the president, to draw on the company at San Francisco for indebtedness accruing at the mine: *Held*, That these resolutions were not inconsistent with the control of the mine by A. *Grant* v. *Parker*, 51.
3. In a mercantile contract, a statement descriptive of the subject matter, or of some material incident, such as the time or place of shipment, is ordinarily to be regarded as a warranty, or condition precedent, upon the failure or non-performance of which the party aggrieved may repudiate the whole contract. *Norrington* v. *Wright*, 188; *Filley* v. *Pope*, 213.
4. Under a contract made in Philadelphia for the sale of "5000 tons iron rails, for shipment from a European port or ports, at the rate of about 1000 tons per month, beginning February, 1880, but whole contract to be shipped before August 1, 1880, at $45 per ton of 2240 lbs. custom-house weight, ex ship Philadelphia; settlement cash on presentation of bills accompanied by custom-house certificate of weight; sellers not to be compelled to replace any parcel lost after shipment;" the sellers are bound to ship 1000 tons in each month from February to June inclusive, except that slight and unimportant deficiencies may be made up in July; and if only 400 tons are shipped in February, and 885 tons in March, and the buyer accepts and pays for the February shipment on its arrival in March, at the stipulated price and above its market value, and in ignorance that no more has been shipped in February, and is first informed of that fact after the arrival of the March shipments and before accepting or paying for either of them, he may rescind the contract by reason of the failure

to ship about 1000 tons in each of the months of February and March. *Norrington* v. *Wright*, 188.

5. Under a contract for the sale of "500 tons No. 1 Shott's (Scotch) pig iron, at $26 per ton cash in bond at New Orleans ; shipment from Glasgow as soon as possible ; delivery and sale subject to ocean risks ;" shipment from Glasgow is a material part of the contract, and the buyer may refuse to accept such iron shipped as soon as possible from Leith, and arriving at New Orleans earlier than it would have arrived by the first ship that could have been obtained from Glasgow. *Filley* v. *Pope*, 213.
6. Where goods of a specified quality, not in existence or ascertained, are sold, and the seller undertakes to ship them to a distant buyer, and, when they are made or ascertained, delivers them to a carrier for the buyer, the latter, on their arrival, has the right, if they are not of the quality required by the contract, to reject them and rescind the sale, and, if he has paid for them, to recover back the price in a suit against the seller. *Pope* v. *Allis*, 363.
7. Contracts made in the insurgent States, during the late civil war, between residents of those States, with reference to Confederate notes as a standard of value, and not designed to aid the insurrectionary government, may be enforced in the National courts ; and the value of the contracts is to be determined by the value of the Confederate notes in lawful money of the United States at the time when and place where such contracts were made. *Effinger* v. *Kenney*, 566.
8. An agreement made by one of two companies before the consolidation with another company to be carried out over its entire line of railway, and on all roads which it then controlled or might thereafter control by ownership, lease, or otherwise, does not affect roads not so owned, leased or acquired at the time of the consolidation, but acquired by the new company subsequently to it. *Pullman Car Co.* v. *Missouri Pacific Co.*, 587.
9. An agreement by a railway company to haul cars over all roads which it controls or may control by ownership, lease or otherwise, does not oblige it to haul cars over the connecting road of another company in whose stock it acquires, subsequently to the agreement, a controlling interest, if the other company maintains its corporate organization, and its directors retain the control of its road. *Ib.*

See ACCORD AND SATISFACTION ; CHARTER PARTY, 1, 2, 3 ; CONSTITUTIONAL LAW, 6 ; EVIDENCE, 6 ; GUARANTY ; PROMISSORY NOTE.

CORPORATION.

1. The consolidation of two or more railroad companies in Missouri, under authority derived from Rev. Stat. Missouri 1879, § 789, works a dissolution of the old corporations and the creation of a new corporation

to take their place, subject to the then existing obligations of the old companies. *Pullman Car Co.* v. *Missouri Pacific Co.*, 587.

2. A gas company incorporated in 1835 with the exclusive privilege of making and selling gas in New Orleans up to April 1, 1875, and another gas company incorporated in 1870, with a like privilege on and after that day may, just before that day, consolidate under the statute of Louisiana of December 12, 1874, which provides that "any two business or manufacturing companies now existing whose objects and business are in general of the same nature, may amalgamate, unite, and consolidate. *New Orleans Gas Co.* v. *Louisiana Light Co.*, 650.

See ACTION, 1; CONTRACT, 8, 9; REMOVAL OF CAUSES, 1, 2, 7; SALE; TEXAS & PACIFIC RAILWAY COMPANY; UNION PACIFIC RAILWAY COMPANY.

COURT AND JURY.

The bill of exceptions in this case contained all the evidence and the charge to the jury. There was no exception to the charge. The court refused to direct a verdict for the plaintiff, it being asked for on the ground of a variance between the proof and the answer; and there was a verdict for the defendant: *Held*, That there was no such variance, and that the question of the existence of the defence set up was fairly put to the jury, on conflicting evidence. *Lancaster* v. *Collins*, 222.

COURT OF CLAIMS.

See LIMITATION, STATUTES OF, 6.

COURTS OF THE UNITED STATES.

See ADMIRALTY; CHARTER PARTY, 2; JURISDICTION; LIMITATION, STATUTES OF, 6; REMOVAL OF CAUSES.

CUSTOM AND USAGE.

See EVIDENCE, 5.

CUSTOMS DUTIES.

1. Under § 8 of the act of June 30, 1864, ch. 171, 13 Stat. 210, imposing a duty of 60 per cent. on "silk laces," and a duty of 50 per cent. on "all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for," an article of silk and cotton, bought and sold as "spotted or dotted net," but which was a lace, in which silk was the component material of chief value, was a "silk lace," and subject to a duty of 60 per cent. *Drew* v. *Grinnell*, 477.

2. In this case, on the facts found, under Schedule N of section 2502 of Title XXXIII, of the Revised Statutes, as enacted by section 6 of the act of March 3, 1883, ch. 121, 22 Stat. 489, imposing a duty of 20 per cent. ad valorem on "garden seeds, except seed of the sugar beet" and under "The Free List" in section 2503 of the same Title, as enacted by said act of 1883, embracing "seeds of all kinds, except medicinal seeds not specially enumerated or provided for in this act," certain beet and cabbage seeds were held to be "garden seeds" and subject to 20 per cent. duty, and certain mangel-wurzel and turnip seeds were held not to be "garden seeds," and to be exempt from duty. *Ferry* v. *Livingston*, 542.

3. Bone-black, imported for use in decolorizing sugar, in the process of manufacturing it, made by subjecting bones, after they were steamed and cleaned, to destructive distillation by heat, in close vessels until everything but the inorganic matter was expelled, and then crushing the residuum, and assorting the pieces into proper sizes, was liable to a duty of 25 per cent. ad valorem, as "black of bone," under Schedule M, section 2504, of the Revised Statutes, p. 473, 2d Ed., and was not exempt from duty, as bones "burned" or "calcined," under "The Free List," in section 2505, p. 483, 2d Ed., nor subject to a duty of 35 per cent., as "manufactures of bones," under Schedule M of section 2504, p. 474, 2d Ed. *Harrison* v. *Merritt*, 577.

4. Where an action is brought, under section 3011 of the Revised Statutes, as amended by section 1 of the act of February 27, 1877, ch. 69, 19 Stat. 247, to recover back an excess of duties paid under protest, the plaintiff must, under section 2931 of the Revised Statutes, as a condition precedent to his recovery, show not only due protest and appeal to the Secretary of the Treasury, but also that the action was brought within the time required by the statute. *Arnson* v. *Murphy*, 579.

5. It is not necessary, under section 2931, that the decision of the Secretary on the appeal should, in order to be operative, be communicated to the party appealing. *Ib.*

See FOREIGN COINS.

DAMAGES.

The legislature of a State may fix the amount of damages beyond compensation to be awarded to a party injured by the gross negligence of a railroad company to provide suitable fences and guards of its road, or prescribe the limit within which the jury, in assessing such damages, may exercise their discretion. The additional damages are by way of punishment to the company for its negligence; and it is not a valid objection that the sufferer instead of the State receives them. *Missouri Pacific Railway Co.* v. *Humes*, 512.

See CHARTER PARTY, 2, 3.
CONSTITUTIONAL LAW, A, 6.

DECREE.

See JUDGMENT.

DEED OF TRUST.

See DISTRICT OF COLUMBIA; ESTOPPEL; PROMISSORY NOTE; SURETY.

DEPOSITION DE BENE ESSE.

On the facts appearing in the averments in the motion and in the affidavits, the court declines to order a commission to take testimony *de bene esse*, there being nothing to indicate that the testimony could not be taken under the provisions of Rev. Stat. § 866. *Richter* v. *Union Trust Co.*, 55.

DESERTER.

See ARREST.

DISTRICT OF COLUMBIA.

1. Under a deed of trust, covering land in the District of Columbia, made by a debtor to two grantees, their heirs and assigns, to secure the payment of a promissory note, by which deed the grantees were empowered, on default, to sell the land at public auction, "on such terms and conditions, and at such time and place, and after such previous public advertisement," as they, "their assigns or heirs," should deem advantageous and proper, and to convey the same in fee-simple to the purchaser, a sale was had by public auction, under a notice of sale, signed by both of the trustees, and duly published in a newspaper, but at the sale only one of the trustees was present. The proceedings at the sale were fair, both of the trustees united in a deed to the purchaser, and no ground appeared for setting the sale aside: *Held*, That the absence from the sale of one of the trustees was not a sufficient reason, of itself, for setting aside the sale, as against the former owner of the land. *Smith* v. *Black*, 308.
2. The creditor, in this case, was the purchaser at the sale, and it was held that there was nothing shown which disqualified him from becoming such purchaser. *Ib.*
3. Alleged inadequacy of price considered, and the sale upheld, as against that allegation. *Ib.*
4. The purchaser, at the time he took the deed from the trustees, settled with one of the trustees, on the basis of a purchase for cash, although the terms of sale provided for a credit, and, as holder of the note secured, credited on it the amount of the net proceeds of sale, leaving a sum still due on the note: *Held*, That no right of the former owner of the land was violated by this course. *Ib.*

DOUBLE DAMAGES.

See DAMAGES.

EJECTMENT.

See EVIDENCE, 1;
LOCAL LAW, 4.

EQUITY.

1. Unless transactions set forth in a bill in equity constitute a fraud or breach of trust for which the court can give relief, charges that the acts set forth are fraudulent are not sufficient grounds of equity jurisdiction. *Van Weel* v. *Winston*, 228.
2. A bill in equity by a holder of railway mortgage bonds against the president of the company which alleges that the defendant received money from the sale of the mortgage bonds, but does not aver that the creditor has obtained judgment against the company upon his bonds, and that execution issued on the judgment has been returned *nulla bona*, shows nothing entitling the plaintiff to relief in equity as a creditor of the company. *Ib.*
3. The inadequacy of the remedy at law, which sometimes justifies the interference of a court of equity, does not consist merely in its failure to produce the money, a misfortune often attendant upon all remedies, but that in its nature or character it is not fitted or adapted to the end in view; for, in this sense, the remedy at law is adequate, as much so, at least, as any remedy which chancery can give. *Thompson* v. *Allen County*, 550.
4. When a remedy is sought in equity by reason of alleged mistake or fraud, the mistake or fraud must be clearly established before the remedy can be given. *Baltzer* v. *Raleigh & Augusta Railroad Co.*, 634.

See ACTION, 1;
EQUITY PLEADING, 1, 2;
JUDGMENT;
LOCAL LAW, 10;
PUBLIC LAND, 7;
RAILROAD;
TAX AND TAXATION, 1, 2, 3;
TRUST.

EQUITY PLEADING.

1. The State of Alabama loaned its credit to a railroad company by indorsing its bonds. The act authorizing this to be done provided that if fraudulent indorsements of bonds should be obtained, or if the bonds should be sold for less than ninety cents on the dollar, then the railroad should be sold and those stockholders who could not prove either ignorance of the fraud or opposition to it, should be individually liable for the payment of the bonds fraudulently indorsed, and for all other losses that might fall upon the State by reason of any other frauds committed by the company. The State brought suit at

law in this court against certain persons alleged in the declaration to be "the majority and controlling incorporators, officers, directors, and stockholders as well as the actual managers and controllers" of the company. The declaration alleged that the defendants had (1) made fraudulent representations by reason of which the indorsement of an over-issue of bonds had been obtained; (2) made fraudulent misrepresentations by reason of which indorsements were obtained before the several sections of the road were fully finished, completed, and equipped; and (3) that they had made unlawful and improper use of some of the bonds, or their proceeds, after they got into the hands of the company. On demurrer: *Held*, That the liability of the officers and stockholders to the State was statutory only, and that the facts stated in the declaration were not such as to bring the defendants within the liability clause in the statute: (1) because the suit was not brought to recover the payment of bonds the indorsement of which had been fraudulently obtained; and (2) because the declaration did not show that the losses sued for were the immediate consequences of the frauds alleged. *Alabama* v. *Burr*, 413.

2. The legislature of Alabama, by a further act, authorized a further loan of its credit to the same company, with provision that the bonds should not be sold under ninety cents on the dollar, and "that the directors or other officers and incorporators and stockholders" of the company who should violate the provisions of this act, or of the former act above referred to should "be held personally liable to the State for any loss incurred thereby." The declaration alleged that seven hundred and seventy-one of the bonds authorized by the later act were sold at less than ninety cents on the dollar, but it did not state in what respect the State was injured by such sales, nor did it state that the other injuries complained of in the bill and above referred to resulted from acts done after the passage of the last-named act. On demurrer: *Held*, That the allegations were insufficient to charge the defendants under the last-named act. *Ib.*

See PATENT FOR INVENTION, 9.

ERROR.

No judgment should be reversed in a court of error when it is clear that the error could not have prejudiced, and did not prejudice, the rights of the party against whom the ruling was made. *Lancaster* v. *Collins*, 222.

ESTOPPEL.

Where a deed of trust, executed to secure the note of the grantor, provided that in default of payment the trustee should sell the property on these terms: "The amount of indebtedness secured by said deed of trust unpaid, with expenses of sale, in cash, and the balance at

twelve and eighteen months," and the proceeds of the sale made by the trustee were less than the amount due on the note, the holder was not estopped to deny that his note was satisfied by the payment to him of such proceeds. *Shepherd* v. *May*, 505.

See CONTRACT, 1 (2);
LOCAL LAW, 5, 8, 9.

EVIDENCE.

1. In an action of ejectment for lands in California, where the plaintiff traces title to the lands from a patent of the United States issued to a settler under the preëmption laws, oral evidence is inadmissible on the part of the defendant to show that the lands were not open to settlement under those laws, but were swamp and overflowed lands, which passed to the State under the act of September 28, 1850. *Ehrhardt* v. *Hogaboom*, 67.
2. The finding of the board of local inspectors, and the documents connected therewith are not admissible in a collision suit in admiralty for the purpose of showing that the offending vessel was in her proper position in the river, and had proper watches and lights set at the time of the collision. *The Charles Morgan*, 69.
3. When depositions of witnesses in another suit are offered for the purpose of impeaching and contradicting their evidence, and are admitted, and exception taken thereto, and the bill of exceptions shows that "in the cross-examination of each of said witnesses the attention of the witness was called to the evidence given by him in [the other case] and the said witnesses were specifically examined as to the correctness of said evidence," and that "at the offering, no objection was made that the evidence offered was not the evidence of said witnesses respectively, or that the same had been imperfectly taken and reported," but the cross-examination is not incorporated into the bill of exceptions; it will be presumed that ample foundation was laid for the introduction of the evidence. *Ib.*
4. Although the general rule is that when contradictory declarations of a witness made at another time in writing are to be used for purposes of impeachment, questions as to the contents of the instrument without its production are ordinarily inadmissible: yet the law only requires that the memory of the witness shall be so refreshed as to enable him to explain if he desires to do so, and it is for the court to determine whether this has been done, before the impeaching evidence is admitted. *Ib.*
5. On an issue whether demand of payment of a draft had been waived by the payees in order that they might communicate with the drawer, evidence of the custom and usage of the bank holding it, if offered in support of evidence (not objected to) of the cashier of the bank of his conviction and belief (founded on such custom and usage) that

the draft had been so presented, comes within the rule which allows usage and the course of business to be shown for the purpose of raising a *prima facie* presumption of fact, in aid of collateral testimony: and, taken together, they are sufficient to be presented to the jury. *Knickerbocker Life Ins. Co.* v. *Pendleton*, 339.

6. Where the complaint alleged a contract for delivery of iron at one place, and the answer a contract for delivery at a different place, evidence offered by the plaintiff which tended to support the averment of the answer was properly admitted under § 2666 of the Rev. Stat. of Wisconsin, the defendants having failed at the trial to prove that they were misled by the variance between the complaint and the proof. *Pope* v. *Allis*, 363.
7. Averments made under oath, in a pleading in an action at law, are competent evidence in another suit against the party making them; and the fact that the averments are made on information and belief goes only to their weight and not to their admissibility as evidence. *Ib.*
8. In a suit in equity to restrain alleged infringements of a patent, where no notice has been given under Rev. Stat. § 4920, and no prior use or knowledge of the invention is specifically set up in the answer as a defence, evidence of the state of the art at the date when the application for it was filed, may be received for the purpose of defining the limits of the grant in the original patent, and the scope of the invention described in its specification. *Eachus* v. *Broomall*, 429.

See DEPOSITION DE BENE ESSE;
RAILROAD.

EXECUTION.

See EQUITY, 2.
LOCAL LAW, 6, 7.

EXECUTIVE.

It is the duty of the Land Department, of which the Secretary of the Interior is the head, to determine whether land patented to a settler is of the class subject to settlement under the preëmption laws, and his judgment as to this fact is not open to contestation, in an action at law, by a mere intruder without title. *Ehrhardt* v, *Hogaboom*, 67.

See PATENT FOR PUBLIC LAND;
PUBLIC LAND, 1.

FERRIES.

See CONSTITUTIONAL LAW, A, 2.

FINES.

See LEGISLATIVE DISCRETION.

FOREIGN COINS.

The value of foreign coins, as ascertained by the estimate of the Director of the Mint, and proclaimed by the Secretary of the Treasury is conclusive upon Custom House officers and importers. *Hadden* v. *Merritt*, 25.

FRANCHISE.

See CONSTITUTIONAL LAW, A, 8, 9, 10, 11;
STATUTES, A., 1.

FRAUD.

See EQUITY, 4;
EQUITY PLEADING, 1, 2.

FRAUDULENT CONVEYANCE.

In the absence of fraud a transfer by a debtor in Mississippi of all his property to one of his creditors in satisfaction of the debt is valid; nor is it invalidated if, before it was made, the same property had been transferred by the debtor to a trustee to secure the same debt in like good faith, by an instrument which was void under the statutes of Mississippi, by reason of its form and contents, and if the said trustee joins in the transfer to the debtor. *Stewart* v. *Durham*, 61.

See ACTION, 1.

GAS.

See CONSTITUTIONAL LAW, A, 8, 10; B, 1.

GUARANTY.

An agreement in writing between a manufacturing corporation and its agent for a certain district, by which it agreed to sell him its goods at certain prices, and he agreed to sell the goods and pay it those prices, was signed by the agent. A guaranty of his future performance of his agreement was signed by another person on the same day, and delivered by the guarantor to the agent. The agreement and guaranty were delivered by the agent to an attorney of the corporation, who two days afterwards wrote under the guaranty his certificate of the sufficiency of the guarantor, and forwarded the agreement and guaranty to the corporation, which thereupon signed the agreement, but gave no notice to the guarantor of its signature of the agree-

ment or acceptance of the guaranty. *Held*, That the contract of guaranty was not complete, and the guarantor was not liable for the price of goods sold by the corporation to the agent and not paid for by him. *Davis Sewing Machine Co.* v. *Richards*, 524.

ILLINOIS.

See LOCAL LAW, 8, 9, 10.

INJUNCTION.

1. It is settled in this court that injunctions ordered by final decree in equity in the courts below are not vacated by appeal. *Leonard* v. *Ozark Land Co.*, 465.
2. The judge in the court below who heard the case is empowered by Equity Rule 93, when allowing an appeal from a final decree granting or dissolving an injunction, to suspend or modify the injunction pending appeal, and upon such terms as may be considered proper. *Ib.*

JUDGMENT.

In a suit in equity brought by creditors of a deceased person against his administrator, for the settlement of his estate, a decree was made ordering a sale of his estate and the distribution of the proceeds. This was done, and the receiver reported his doings to the court. The report was confirmed, and the receiver was ordered to retain a small balance remaining as his compensation : *Held*, That this was a final decree settling the rights of the parties and disposing of the whole cause of action, and that one of the complainants could not re-open it for the purpose of obtaining relief in that suit against a co-complainant. *Smith* v. *Woolfolk*, 143.

See EXECUTIVE.
LOCAL LAW, 8.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. This court cannot review the weight of the evidence, and can look into it only to see whether there was error in not directing a verdict for the plaintiff, on the question of variance, or because there was no evidence to sustain the verdict. *Lancaster* v. *Collins*, 222.
2. Where suit is brought against heirs to enforce their liability for the payment of a note on which their ancestor was bound, and they plead neither counter-claim nor set-off, and ask no affirmative relief, and separate judgments are rendered against each for his proportionate share, this court has jurisdiction in error only over those judgments which exceed $5000. *Henderson* v. *Wadsworth*, 264.

3. When it distinctly appears on the face of an opinion of a State court, which by a law of the State forms part of the record, that the decision of the case below was properly put upon a ground that did not involve a Federal question, although such question was raised there, this court has no jurisdiction in error over the judgment. *Jacks* v. *Helena*, 288.
4. Whether a contract within the insurgent States was executed with reference to Confederate notes is a question of fact which cannot be considered in error to a State court. *Kenney* v. *Effinger*, 577.
5. When separate judgments, for separate creditors, on separate claims, are rendered in one decree in equity, and a general appeal is taken, the appeal will, on motion, be dismissed for want of jurisdiction as to all who do not recover more than $5000, and will be retained as to those who recover in excess of $5000. *Hassall* v. *Wilcox*, 598.
6. Plaintiff's declaration contained two counts, for the same cause of action, each seeking the recovery of $1200 from defendant. Defendant pleaded to the declaration, and plaintiffs demurred to the pleas. A few days later plaintiffs amended their declaration by leave of court so as to demand $10,000, and on the same day the demurrer was overruled. Parties then filed a stipulation that in making up the record to this court the clerk of the Circuit Court should only transmit the amended declaration and pleas thereto; and judgment was then entered for defendant on the demurrer; *Held*, That it was apparent on the face of the record that the actual value of the matter in dispute was not sufficient to give this court jurisdiction. *Bowman* v. *Chicago & N. W. Railway Co.*, 611.
7. The right of a railroad corporation as a common carrier to carry goods for hire is not a right, privilege, or immunity secured by the Constitution of the United States, within the meaning of Rev. Stat. § 699, conferring upon this court jurisdiction, without regard to the sum or value in dispute, for the review of any final judgment at law or final decree in equity of any Circuit Court, or of any District Court acting as a Circuit Court, brought on account of the deprivation of any right, privilege, or immunity secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States. *Ib.*

B. Jurisdiction of Circuit Courts of the United States.

1. When a creditor's bill in equity is properly removed from a State court to a Circuit Court of the United States on the ground that the controversy is wholly between citizens of the United States, the jurisdiction of the latter court is not ousted by admitting in the Circuit Court as co-plaintiffs other creditors who are citizens of the same State as the defendants. *Stewart* v. *Durham*, 61.
2. On appeal by defendants from a decree of a Circuit Court on a creditor's bill, in which the judgments are several, for the payment of

amounts adjudged to creditors severally, this court has jurisdiction only over such as appeal from a decree for payment to a creditor of a sum exceeding the sum or value of $5000. As to all others the appeal must be dismissed. *Ib.*

3. Where a sale of the lands of a bankrupt estate has been made and confirmed by order of the bankruptcy court, and the lands have been conveyed by the assignee, the Circuit Court of the United States is without jurisdiction at the suit of the purchaser to enjoin a sale of the same lands about to be made upon the order of a State court. *Sargent* v. *Helton*, 348.

See ADMIRALTY;
REMOVAL OF CAUSES.

KANSAS.

See UNION PACIFIC RAILWAY COMPANY.

LACHES.

See PATENT FOR INVENTION, 9.

LAND DEPARTMENT.

See EXECUTIVE.

LEGISLATIVE DISCRETION.

The mode in which fines and penalties shall be enforced, whether at the suit of a private party, or at a suit of the public, and what disposition shall be made of the amounts collected, are matters of legislative discretion. *Missouri Pacific Railway Co.* v. *Humes*, 512.

LETTERS PATENT.

See PATENT FOR INVENTION;
PATENT FOR PUBLIC LAND.

LIBEL.

See ADMIRALTY.

LIMITATION, STATUTES OF.

1. The act of June 11, 1864, 13 Stat. 123, "That whenever, during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person, who, by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings, cannot be served with process, . . . the time during which such person shall so be beyond the reach of legal process shall not be deemed or taken as any part of the time

limited by law for the commencement of such action," applies to cases in the courts of the States as well as to cases in the courts of the United States; and, as thus construed, is constitutional. *Mayfield* v. *Richards*, 137.

2. To bar a suit for the foreclosure of a mortgage in Arkansas, there must not only be an adverse possession for such length of time as would bar an action in ejectment, but an open and notorious denial of the mortgagee's title: otherwise the possession of the mortgagor is the possession of the mortgagee. *Smith* v. *Woolfolk*, 143.
3. Although it is true that when the relation of trustee and *cestui que trust* exists, and is admitted by the trustee, lapse of time is no bar to relief in equity against the trustee in favor of the *cestui que trust*, yet when the trustee repudiates the trust in unequivocal words, and claims to hold the trust property as his own, and such repudiation and claim are brought to the notice of the beneficiary in such manner that he is called upon to assert his equitable rights, the statute of limitation begins to run from the time when they thus come to his knowledge. *Phillippi* v. *Phillippe*, 151.
4. In Alabama, even in the absence of a statute of limitation, if twenty years are allowed to elapse from the time when proceedings could have been instituted for the settlement of a trust, without the commencement of such proceedings, and there has been no recognition, within that period, of the trust as continuing and undischarged, a presumption of settlement would arise, operating as a continuing bar. *Ib.*
5. When the lapse of twenty years raises in Alabama the presumption of payment and satisfaction of an equitable claim, the provision of § 2, Ordinance 5, of the Constitutional Convention, adopted September 27, 1865, that "in computing the time necessary to create the bar of the statutes of limitation and non-claim, the time elapsing between the 11th of January, 1861, and the passage of this ordinance shall not be estimated" does not affect the presumption unless within that period there has been some recognition of the liability which it is sought to enforce. *Ib.*
6. Under § 3 of the act of July 27, 1868, ch. 276, 15 Stat. 243, now embodied in § 1059 of the Revised Statutes, in an action of trover brought against a former Secretary of the Treasury of the United States, in a court other than the Court of Claims, to recover a sum of money as the value of certain cotton alleged to have been the private property of the plaintiff, the defendant pleaded that the cotton had, in an insurrectionary State, been taken, received, and collected, as captured or abandoned property, into the hands of a special agent appointed by the defendant while such Secretary, to receive and collect captured or abandoned property in that State under § 1 of the act of March 12, 1863, ch. 120, 12 Stat. 820; that the provisions of that act were carried out in regard to the cotton, as being captured or abandoned cotton; that all the acts done by the defendant respect-

ing the cotton were done by him through such agent, in the administration of, and in virtue and under color of, the act of 1863; and that, by force of § 3 of the act of 1863 and of § 3 of the act of 1868, the action was barred, and was exclusively within the jurisdiction of the Court of Claims. It appeared that the cotton had been taken, so far as the defendant was concerned, as being captured or abandoned property, under a claim made by him in good faith to that effect, in the administration of, and under color of, the act of 1863. *Held*, That, without reference to the question whether the cotton was in fact abandoned or captured property within the act of 1863, the fact that it was taken as being such, under such claim, made in good faith, was a bar to the action, under the act of 1868 and § 1059 of the the Revised Statutes. *Lamar* v. *McCulloch*, 163.

See BANKRUPTCY, 1;
CONSTITUTIONAL LAW, A, 7;
LOCAL LAW, 1, 3.

LIQUIDATED DAMAGES.

See CHARTER PARTY, 2.

LOCAL LAW.

1. The Mississippi Code of 1871, § 2173, by which any action to recover property because of the invalidity of an administrator's sale by order of a probate court must be brought within one year, "if such sale shall have been made in good faith and the purchase money paid," does not apply to an action brought by the heir to recover land bid off by a creditor at such a sale for the payment of his debt, and conveyed to him by the administrator, and not otherwise paid for than by giving the administrator a receipt for the amount of the bid. *Clay* v. *Field*, 260.
2. Under the Mississippi Code of 1880, §§ 2506, 2512, a tenant in common who has been ousted by his co-tenant may maintain ejectment against him and recover rents and profits in the same action. *Ib.*
3. Under the Civil Code of Louisiana, a widow, even where she has accepted the succession of her husband without benefit of inventory, is not liable *in solido* with the surviving partners for the payment of a note made by the firm of which her husband was a member; and payments made on the note by the surviving partners cannot be given in evidence to show interruption of prescription running in her favor. *Henderson* v. *Wadsworth*, 264.
4. A single verdict and judgment in ejectment in Pennsylvania, not being conclusive under the laws of that State, is not conclusive in the courts of the United States, although entitled to peculiar respect, when the questions decided arise upon the local law of the State. *Gibson* v. *Lyon*, 439.

5. The sanction of the court to a conveyance under proceedings and judgment for foreclosure of a mortgage in the Orphans' Court of Philadelphia, being a judicial act, such a deed, describing the estate as conveyed subject to an outstanding mortgage, estops the grantee from denying the validity of the mortgage. *Ib.*
6. If a mortgage in Pennsylvania covers two or more tracts of land, and a sheriff under judgment for foreclosure, and execution, sells one tract for more than enough to pay the mortgage debt, and then proceeds to sell the other tracts, and all the sales are duly completed, and the deeds to the purchasers duly executed and delivered, without objection on the part of the owners, it is too late to object to the regularity of the proceedings. *Ib.*
7. In Pennsylvania, the fact that a judgment for foreclosure of a mortgage was erroneous and could have been reversed upon a writ of error, does not destroy a sheriff's sale, made under the judgment, while the same stands in full force and unreversed. *Ib.*
8. In Illinois a judgment by default in a proceeding in a county court under the statutes of that State for the collection of taxes on real estate, by sale of the property, is not conclusive upon the taxpayer, and may be impeached collaterally. *Gage* v. *Pumpelly*, 454.
9. Under the laws of that State, as construed by its courts, if any portion of a tax assessed upon real estate and levied and collected by sale of the property is illegal, the sale and the tax deed are void, and may be set aside by bill in equity. *Ib.*
10. In a proceeding in equity in a court of the United States to set aside a tax sale in Illinois as illegal, the complainant should offer to reimburse to the purchaser all taxes paid by him, both those for which the property might have been legally sold, and those paid after the sale. *Ib.*
11. The Pennsylvania act of May 15, 1871, No. 249, sec. 6, which provides as follows: "In all actions of replevin, now pending or hereafter brought, to recover timber, lumber, coal, or other property severed from realty, the plaintiff shall be entitled to recover, notwithstanding the fact that the title to the land from which said property was severed may be in dispute: *Provided*, said plaintiff shows title in himself at the time of the severance," has no operation as between tenants in common. *Bohlen* v. *Arthurs*, 482.

See DISTRICT OF COLUMBIA;
MECHANICS' LIEN.

LOUISIANA.

See LOCAL LAW, 3.

MANDAMUS.

See MUNICIPAL CORPORATION;
TAX AND TAXATION, 2.

MECHANICS' LIEN.

1. The statutes of North Carolina of March 28, 1870, and March 1, 1873, the first, giving a lien to mechanics and laborers in certain cases, and the other, regulating sales under mortgages given by corporations, do not give to those performing labor and furnishing materials in the construction of railroads, a lien upon the property and franchises of the corporation owning and operating such roads. *Buncombe County* v. *Tommey*, 122.
2. Ordinary lien laws giving to mechanics and laborers a lien on buildings, including the lot upon which they stand, or a lien upon a lot or farm or other property for work done thereon, or for materials furnished in the construction or repair of buildings, should not be interpreted as giving a lien upon the roadway, bridges, or other property of a railroad company, that may be essential in the operation and maintenance of its road for the public purposes for which it was established. *Ib.*
3. The proviso of the third section of the act of 1873, Battle's Revisal, ch. 26, § 48, has reference to the debts and contracts of private corporations formed under the act of February 12, 1872, Pub. Laws N. C., 1871–2, ch. 199, and not those of railroad corporations, organized for public use, under the act of February 8, 1872. *Ib.*

MINERAL LAND.

1. In proceedings under Rev. Stat. §§ 2325, 2326, to determine adverse claims to locations of mineral lands, it is incumbent upon the plaintiff to show a location which entitles him to possession against the United States as well as against the other claimant; and, therefore, when plaintiff at the trial admitted that that part of his claim wherein his discovery shaft was situated had been patented to a third person, the court rightly instructed the jury that he was not entitled to recover any part of the premises, and to find for defendant. *Gwillim* v. *Donnellan*, 45.
2. No title from the United States to land known at the time of sale to be valuable for its minerals of gold, silver, cinnabar, or copper can be obtained under the preëmption or homestead laws, or the town-site laws, or in any other way than as prescribed by the laws specially authorizing the sale of such lands except in the States of Michigan, Wisconsin, Minnesota, Missouri, and Kansas. *Deffeback* v. *Hawke*, 392.
3. A certificate of purchase of mineral land, upon an entry of the same by a claimant at the local land office, if no adverse claim is filed with the register and receiver, and the entry is not cancelled or disaffirmed by the officers of the Land Department at Washington, passes the right of the goverment to him, and, as against the acquisition of title by any other party, is equivalent to a patent. The land thereby ceases

to be the subject of sale by the government, which thereafter holds the legal title in trust for the holder of the certificate. *Ib.*

See PATENT FOR PUBLIC LAND;
PUBLIC LAND, 4, 5, 6, 7, 8, 10.

MINES AND MINING.

See CONTRACT, 2.

MISSISSIPPI.

See FRAUDULENT CONVEYANCE;
LOCAL LAW, 1, 2.

MONEY.

See FOREIGN COINS.

MORTGAGE.

The assignee of a mortgage in Pennsylvania obtained judgment for foreclosure against the mortgagor, and, by injunction issued in a proceeding in equity at the suit of the assignee of the equity of redemption, was restrained from sale under the judgment. It was ordered in the equity suit that the injunction stand until the holder of the mortgage transfer the bond and mortgage and assign the suit on receiving full payment of debt, interest and costs. Subsequently the injunction was dissolved and the mortgagee was authorized to proceed upon the mortgage unless the defendant in the foreclosure suit should pay the same before a day named in the order, which time was extended by a subsequent order to another day named. No payment or tender of payment was made by any one until after the expiration of the last named day. *Held*, That after the last named day the mortgagee was not bound to transfer the debt and suit, but was at liberty to proceed at law on the mortgage and judgment. *Gibson* v. *Lyon*, 439.

See LIMITATION, STATUTES OF, 2;
TRUST.

MUNICIPAL CORPORATION.

Judgment was recovered in the Circuit Court against a county in Iowa, on which execution was issued, which was returned unsatisfied. By statute of Iowa the county was authorized to levy and collect a tax of six mills on the dollar of the assessed value of taxable property, for ordinary county revenue. The judgment creditor commenced proceedings in the same court for a mandamus commanding the county officers to set apart funds to pay the debt, or to levy and collect sufficient tax for the purpose. By the pleadings it was admitted that the whole amount of the tax for a current year was necessary for the ordi-

nary current expenses of the county. On an application by a judgment creditor of the county to compel the levy of an amount sufficient to pay the judgment which was recovered in the Circuit Court of the United States: *Held*, That on the facts pleaded and admitted no case was made justifying a writ of mandamus. *Clay County* v. *McAleer*, 616.

MUNICIPAL BONDS.

The *bona fide* holder, for value, of a bond of a municipal corporation, apparently one of a series, issued under authority of an act of the legislature of the State, but actually issued in excess of the number of bonds authorized by that act, and for purposes not contemplated in it, but as security to him for the personal debt of a fiscal officer of the county, is not protected in his holding, and cannot cast upon the county the consequence of his own mistake. *Merchants' Exchange Bank* v. *Bergen County*, 384.

See TAX AND TAXATION, 1, 2, 3.

NEBRASKA.

See UNION PACIFIC RAILWAY COMPANY.

NEW YORK.

See CONSTITUTIONAL LAW, A, 2.

NORTH CAROLINA.

See MECHANICS' LIEN.

NORTHERN PACIFIC RAILROAD

See PUBLIC LAND, 11, 12, 13.

PARTNERSHIP.

See LOCAL LAW, 3.

PATENT FOR INVENTION.

1. Letters patent No. 66,130, granted to James B. Clark, June 25, 1867, for an "improvement in the manufacture of blanks for carriage thill shackles," are not infringed by the manufacture of blanks for shackles in accordance with letters patent No. 106,225, granted to Willis B. Smith, August 9, 1870. *Clark* v. *Beecher Manufacturing Co.*, 79.
2. The features of the Clark patent are, that, by dies the arms of the blank are bent into an oblique direction, and the body into a curved form, so that the parts where the arms join the body are rounded on the outside as well as the inside; and that when, subsequently, the

curved body is straightened, there will be in it sufficient metal to form sharp outside corners, by being pushed out into them. *Ib.*

3. The arms of the Smith blank are not bent in an oblique direction, its body is not curved, the parts where the arms join the body are not rounded, either on the inside or on the outside, and, in afterwards straightening the back, surplus metal is not pushed toward or into the corners, to form them, but the existing corners, already formed, are forced further apart, by driving surplus metal into the back, between the corners. *Ib.*
4. In view of the state of the art, and the terms of the Clark patent, it must be confined, at least, to a shape which, for practical use, in subsequent manipulation, has a disposition of metal which causes a sharp corner to be formed in substantially the same way as by the use of his blank. *Ib.*
5. In view of the state of the art existing at the date of the patent granted to John F. Woollensak for an improvement in transom lifters by original patent No. 136,801, dated March 11, 1873, and by re-issued patent No. 9307, dated July 20, 1880, and the claims of that patent, it must be limited to a combination, with a transom, its lifting arm and operating-rod, of a guide for the upper end of the operating-rod prolonged beyond the junction with the lifting arm, so as to prevent the operating-rod from being bent or displaced by the weight of the transom; and it is not infringed by the device secured to Frank A. Reiher by patent No. 226,353, dated April 6, 1880. *Woollensak* v. *Reiher*, 87.
6. The question whether delay in applying for a re-issue of a patent has been reasonable or unreasonable is a question of law for the determination of the court. *Woollensak* v. *Reiher*, 96.
7. The action of the Patent Office, in granting a re-issue, and deciding that from special circumstances shown, it appeared that the applicant had not been guilty of laches in applying for it is not sufficient to explain a delay in the application which otherwise appears unreasonable, and to constitute laches. *Ib.*
8. When a re-issue expands the claims of the original patent and it appears that there was a delay of two years, or more, in applying for it, the delay invalidates the re-issue, unless accounted for and shown to be reasonable. *Ib.*
9. A bill in equity which sets forth the issue of a patent, and a re-issue with expanded claims after a lapse of two or more years, with no sufficient explanation of the cause of the delay, presents a question of laches which may be availed of as a defence, upon general demurrer for want of equity. *Ib.*
10. The invention patented to James Eachus, August 26, 1873, by letters patent No. 142,154, as construed by the court is for a machine, and is not the invention described in re-issued letters patent No. 6315 to him, dated March 2, 1875, for a process. The application for the latter having been made with the intent of thus enlarging the claim,

it falls within the condemnation declared in *Powder Co.* v. *Powder Works*, 98 U. S. 126. *Eachus* v. *Broomall*, 429.

See EVIDENCE, 8 ;
EXECUTIVE.

PATENT FOR PUBLIC LAND.

The officers of the Land Department have no authority to insert in a patent any other terms than those of conveyance, with recitals showing a compliance with the law, and the conditions which it prescribed. The patent of a placer mining claim carries with it the title to the surface included within the lines of the mining location, as well as to the land beneath the surface. *Deffeback* v. *Hawke*, 392.

See EVIDENCE, 1.

PENALTIES.

See CHARTER PARTY, 2 ;
LEGISLATIVE DISCRETION.

PENNSYLVANIA.

See LOCAL LAW, 4, 5, 6, 7, 11 ;
REPLEVIN, 1.

POLICE OFFICER.

See ARREST.

POLICE POWER.

See CONSTITUTIONAL LAW, A, 11.

PRACTICE.

1. The question as to which party shall make the closing argument to the jury is one of practice, and is not the subject of a bill of exceptions or of a writ of error. *Lancaster* v. *Collins*, 222.
2. The plaintiff below obtained a decree in equity for damages and an injunction against three defendants who appealed. After docketing the appeal one appellant died. The survivors suggested his death, and an order was issued under Rule 15, § 1, for notice to his representatives. This was duly published. The representatives not appearing, the surviving appellants moved that the action abate as to the deceased, and proceed at the suit of the survivors : *Held*, That the suit proceed at the suit of the survivors. *Moses* v. *Wooster*, 285.
3. In order to get a decision on a motion to dismiss made before printing, the motion papers must present the case in a way which will enable

the court to act understandingly without reference to the transcript on file. *Waterville* v. *Van Slyke*, 290.

See ACTION, 2 ;
ADMIRALTY ;
COURT AND JURY ;
DEPOSITION DE BENE ESSE ;
ERROR ;
JURISDICTION A, 6 ;
WRIT OF ERROR.

PREËMPTION.

See EVIDENCE, 1 ;
EXECUTIVE;
MINERAL LAND, 2.

PRESUMPTION.

See COLLISION ;
EVIDENCE, 3, 5.

PRINCIPAL AND AGENT.

See ACCORD AND SATISFACTION ;
RAILROAD, 1 (1).

PROMISSORY NOTE.

A conveyance of real estate subject to a deed of trust executed by the vendor to secure the payment of a note, does not, without words importing that the vendee assumes the payment of the note, subject the latter to any liability to pay it. *Shepherd* v. *May*, 505.

PUBLIC LAND.

1. In adjusting Congressional grants of land to a State, the only questions for consideration by the officers of the United States are, whether the State possessed the right to claim the land under the grant, and whether the land was subject to selection by its agents. Those officers have no jurisdiction to review transactions between the State and its purchasers, nor between the State and its locating agents, and determine whether such purchasers or locating agents complied with the provisions of its laws relating to the sale of the lands. *Frasher* v. *O'Connor*, 102.
2. Surveys under the eighth section of the act of July 23, 1866, "to quiet land-titles in California," became operative by approval of the United States Surveyor-General for the State, and his filing plats in the local land office of the township. Upon such approval of a survey and filing of the township plats, lands thereby excluded from a confirmed private land claim became subject to State selections and other modes of disposal of public lands. Previous approval of the

survey by the Commissioner of the General Land Office was not necessary. *Ib.*

3. Lists of Lands certified to the State by the Commissioner of the General Land Office, and the Secretary of the Interior, convey as complete a title as patents; and lands embraced therein are not thereafter open to settlement and preëmption. *Ib.*
4. There can be no color of title in an occupant of land, who does not hold under an instrument or proceeding or law purporting to transfer the title or to give the right of possession. Nor can good faith be affirmed of a party in holding adversely, where he knows that he has no title, and that under the law, which he is presumed to know, he can acquire none. So held where, in an action of ejectment for known mineral land by the holder of a patent of the United States, the occupant set up a claim to improvements made thereon under a statute of Dakota, which provided that "in an action for the recovery of real property, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title, adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a counter-claim by such defendant," he not having taken any proceedings to acquire the title under the laws of Congress authorizing the sale of such lands, or to acquire the right of possession under the local customs or rules of miners of the district. *Deffeback* v. *Hawke*, 392.
5. It would seem that there may be an entry of a town site, even though within its limits mineral lands are found, the entry and the patent being inoperative as to all lands known at the time to be valuable for their minerals, or discovered to be such before their occupation and improvement for residences or business under the town site title. *Ib.*
6. Mere occupancy of the public lands and making improvements thereon give no vested right therein as against the United States or any purchaser from them. *Sparks* v. *Pierce*, 408.
7. To entitle a party to relief in equity against a patent of the government he must show a better right to the land than the patentee, such in law as should have been respected by the officers of the Land Department, and being respected would have given him the patent. It is not sufficient to show that the patentee ought not to have received the patent. *Ib.*
8. A person who makes improvements upon public land, knowing that he has no title, and that the land is open to exploration and sale for its minerals, and makes no effort to secure the title to it as such, under the laws of Congress, or a right of possession under the local customs and rules of miners, has no claim to compensation for his improvements as an adverse holder in good faith, when such sale is made to another and the title is passed to him by a patent of the United States. *Ib.*
9. In order that an act of Congress should work a reversion to the United

States for condition broken of lands granted by them to a State to aid in internal improvements, the legislation must directly, positively, and with freedom from all doubt or ambiguity, manifest the intention of Congress to reassert title and resume possession. *St. Louis & Iron Mountain Railway* v. *McGee*, 469.

10. No such intention is manifested in the act of July 28, 1866, 14 Stat. 338, so far as it affects the lands granted to the States of Arkansas and Missouri by the act of February 9, 1853, 10 Stat. 155, except as to mineral lands. *Ib.*

11. The provisions in the act of July 17, 1870, 17 Stat. 291 (on page 305), that the lands granted to the Northern Pacific Railroad Company by the act of July 2, 1864, 13 Stat. 365, shall not be conveyed to the company or any party entitled thereto, until "there shall first be paid into the treasury of the United States the cost of surveying, selecting, and conveying the same by the company or party in interest," exempts these lands from State or Territorial taxation until such payment is made into the treasury. *Northern Pacific Railroad Co.* v. *Traill County*, 600.

12. The Northern Pacific Railroad Company has acquired no equitable interest in the lands so granted to it, by reason of completing its road and thus earning the granted lands, which is subject to State or Territorial taxation before such payment is made into the treasury of the United States. *Ib.*

13. When an act granting public lands to aid in the construction of a railroad provides that patents shall issue from time to time, as sections of the road are completed, but reserves to Congress the right at any time "to add to, alter, amend, or repeal this act," "having due regard for the rights of the company," Congress may, without violating the Constitution of the United States, by subsequent act passed before any of the road is constructed, or any of the land earned, require the cost of surveying, selecting, and conveying the land to be paid into the treasury of the United States before the conveyance of the granted lands to any party entitled thereto. *Ib.*

See EVIDENCE, 1 ;
MINERAL LAND ;
PATENT FOR PUBLIC LAND.

RAILROAD.

1. A, as president of a railway company, and acting in its behalf, signed and caused to be issued a circular inviting subscriptions to mortgage bonds of the company issued for the purpose of constructing "a branch from the main line to Atchison, Kansas, a distance of about fifty miles." The mortgage made to secure these bonds described the road as "the branch railroad of said party of the first part as the same now is or may be hereafter surveyed and being constructed, and

leading from the Missouri River . . . at a point opposite . . . Atchison . . . by the most practicable route, not exceeding fifty miles in length, to a junction with the main line." The bonds were further secured by a second mortgage on the main line. The branch road, as located and constructed, was only twenty-nine miles in length. The first mortgage on the main line was subsequently foreclosed, whereupon B, a holder of a branch mortgage bond, commenced proceedings to foreclose that mortgage, which resulted in a foreclosure and sale of the branch to C, also one of the bondholders. B then filled his bill in equity against A personally, on behalf of himself and other holders of the branch mortgage bonds, among whom was C. The bill set forth the above facts ; and the relief sought for was redress against an alleged fraud in the representation that the proposed branch would be "about fifty miles in length." On demurrer, *Held :*

1. That the representations in the circular were representations of the company, and were in no respect the personal representations of A.
2. That the complainants had no right to rely on the statement concerning the length of the line as materially affecting their security.
3. That it was the duty of persons purchasing the bonds to look to the mortgage for the description of the property mortgaged to secure them.
4. That the description in the mortgage contemplated that if the best interests of the company should require a line shorter than fifty miles, the company should have the right to adopt it.
5. That the bill showed no right in the complainants to use the names of the company or stockholders to obtain redress for a tort committed on them, and no equities in these respects against A.
6. That the bill showed no privity between A and the bondholders as to his use of money which they had loaned to the company. *Van Weel* v. *Winston*, 228.

See CONSTITUTIONAL LAW, A, 3, 4, 5 ; CONTRACT, 8, 9 ; CORPORATION, 1 ; DAMAGES ; EQUITY, 2 ; EQUITY PLEADING, 1 ; JURISDICTION, A, 7 ; PUBLIC LAND, 9, 10, 11, 12, 13 ; TRUST.

REBELLION.

See CONSTITUTIONAL LAW, A, 6 ; CONTRACT, 7 ; JURISDICTION, A, 4 ; LIMITATION, STATUTES OF, 1, 6.

RE-ISSUE.

See PATENT FOR INVENTION, 6, 7, 8, 9, 10.

REMOVAL OF CAUSES.

1. Corporations of the United States, created by and organized under acts of Congress, are entitled, under the act of March 3, 1875, 18 Stat. 470, to remove into the Circuit Courts of the United States suits brought against them in State courts on the ground that such suits are suits "arising under the laws of the United States." *Pacific Railroad Removal Cases*, 1.

2. The Union Pacific Railway Company and the Texas and Pacific Railway Company are entitled, under the act of March 3, 1875, to have all suits brought against them in State courts removed to Circuit Courts of the United States, on the ground that they are suits arising under the laws of the United States. *Ib.*

3. An objection that a petition for removal was not verified by oath, or that there was delay in filing it, may be waived by delay in taking the objection. *Ib.*

4. In Missouri, a proceeding before a mayor of a city and a jury to take land for widening a street, and to ascertain the value of the land taken, and to assess the cost thereof on the property benefited, is not, while pending there, a suit at law within the meaning of the act of March 3, 1875, authorizing the removal of causes, but it becomes such a suit at law when transferred to the Circuit Court of the State on appeal. *Ib.*

5. In proceedings under the act of the Legislature of Missouri, passed in 1875, for widening the streets of Kansas City, the Union Pacific Railway Company had a controversy distinct and separate from like controversies of other owners of land affected by the proceedings; and the fact that the removal of the controversy of the Railway Company to the Circuit Court of the United States may have an indirect effect upon the proceedings in the State courts as to the other owners, furnishes no good reason for depriving the company of its right to remove its suit. *Ib.*

6. 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 in tort, does not divide the suit into separate controversies so as to make it removable into the Circuit Courts, under the second clause of § 2, act of March 3, 1875. *Pirie* v. *Tvedt*, 41.

7. A suit in equity brought by C, a citizen of one State, against a corporation of the same State, and T, a citizen of another State, and W, to obtain a decree that C owns shares of the stock of the corporation, standing in the name of W, but sold by him to T, and that the corporation cancel on its books the shares standing in the name of W, and issue to C certificates therefor, cannot be removed by T into the Circuit Court of the United States, under § 2 of the act of March 3, 1875, 18 Stat. 470, because the corporation is an indispensable party to the suit, and is a citizen of the same State with C. *Crump* v. *Thurber*, 56.

8. A separate defence by one defendant, in a joint suit against him and others upon a joint or a joint and several cause of action, does not create a separate controversy, so as to entitle that defendant, if the necessary citizenship exists as to him, to a removal of the cause under the second clause of § 2, act of March 3, 1875. *Starin* v. *New York*, 248.

9. A writ of habeas corpus is not removable from a State court into a Circuit Court of the United States under the act of March 3, 1875, ch. 137, § 2. *Kurtz* v. *Moffitt*, 487.

See CONSTITUTIONAL LAW, A, 1, 2 ; JURISDICTION, B, 1, 2.

REPLEVIN.

1. A tenant in common cannot maintain replevin against a co-tenant, because they have each and equally a right of possession; and that rule is recognized in Pennsylvania. *Bohlen* v. *Arthurs*, 482.

2. Where under an agreement for the purchase of an undivided interest in land, to be conveyed to the purchaser on his paying for it, he acquires no right to cut timber on the land without the consent of the owners of the remaining interest, who are tenants in common with him of the land, if he cuts such timber, and removes it, and it is taken possession of by such owners of the remaining interest, he has no such right of possession in it as will sustain an action of replevin by him against them. *Ib.*

See LOCAL LAW, 11.

REPRESENTATIONS.

See RAILROADS, 1 (2).

RULES.

See INJUNCTION, 2;
PRACTICE, 2.

SALE.

When an incorporated company has been dissolved, and its affairs are in the course of liquidation, a sale and transfer by a stockholder of all his claims and demands on account of his stock is not void because the vendee may be compelled to bring suit to enforce his right to such claims and demands. *Traer* v. *Clews*, 528.

See DISTRICT OF COLUMBIA, 1.

SALE ON EXECUTION.

See LOCAL LAW, 6, 7.

SECRETARY OF THE INTERIOR.

See EXECUTIVE.

SHIPS & SHIPPING.

See CHARTER PARTY, 2.

STATUTE OF LIMITATIONS.

See LIMITATION, STATUTES OF.

STATUTES.

A. CONSTRUCTION OF STATUTES.

In 1856 the legislature of Kentucky enacted that "all charters and grants of and to corporations, or amendments thereof shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein expressed." By an act passed in 1869, amending the charter of a gas company which was subject to that provision in the act of 1856, it was enacted: "That said gas company shall have the exclusive privilege of erecting and establishing gas works in the city of Louisville during the continuance of this charter, and of vending coal gas lights, and supplying the city and citizens with gas by means of public works." *Held*, That the latter act contains a clear expression of the legislative intent that the company shall continue to enjoy the franchises then possessed by it for the term named in that act, without being subject to have its charter in that respect amended or repealed at the will of the legislature. *Louisville Gas Co.* v. *Citizens' Gas Co.*, 683.

See DAMAGES;
PUBLIC LAND, 9.

B. STATUTES OF THE UNITED STATES.

See BANKRUPTCY, 1;
CONSTITUTIONAL LAW, A, 1;
CUSTOMS DUTIES;
DEPOSITION DE BENE ESSE;
EVIDENCE, 1, 8;
JURISDICTION, A, 7;
LIMITATION, STATUTES OF, 1, 6;
MINERAL LAND, 1;
PUBLIC LAND, 2, 10, 11;
REMOVAL OF CAUSES, 1, 2, 6, 7, 8, 9;
TEXAS AND PACIFIC RAILWAY COMPANY;
UNION PACIFIC RAILWAY COMPANY;
WRIT OF ERROR.

C. STATUTES OF STATES AND TERRITORIES.

Alabama: *See* EQUITY PLEADING, 1, 2;
LIMITATION, STATUTES OF, 4, 5.

Arkansas: *See* LIMITATION, STATUTES OF, 2.

Dakota: *See* PUBLIC LAND, 4.
Illinois: *See* LOCAL LAW, 8, 9, 10.
Iowa: *See* MUNICIPAL CORPORATION.
Kentucky: *See* CONSTITUTIONAL LAW, A, 3, 4, 8, 9, 10, 11; B; STATUTES, A.
Louisiana: *See* CORPORATION, 2; LOCAL LAW, 3.
Mississippi: *See* LOCAL LAW, 1, 2.
Missouri: *See* CORPORATION, 1. REMOVAL OF CAUSES, 4, 5.
North Carolina: *See* MECHANICS' LIEN.
Pennsylvania: *See* LOCAL LAW, 11.
Virginia: *See* CONSTITUTIONAL LAW, A, 6.
Wisconsin: *See* EVIDENCE, 6.

SURETY.

An express promise made to the vendor by the vendee of real estate conveyed to him subject to a deed of trust executed to secure a debt, that he will pay the debt, does not, without the assent of the creditor, make the vendee the principal debtor, and the vendor the surety. *Shepherd* v. *May*, 505.

SWAMP LANDS.

See EVIDENCE, 1.

TAX AND TAXATION.

1. The proposition that the levy and collection of taxes, though they are to be raised for the satisfaction of judgments against counties or towns, is not within the jurisdiction of a court of equity, reviewed and reaffirmed. *Thompson* v. *Allen County*, 550.
2. The fact that the remedy at law by mandamus for levying and collecting taxes has proved ineffectual, and that no officers can be found to perform the duty of levying and collecting them, is no sufficient ground of equity jurisdiction. *Ib.*
3. The principle is the same where the proper officers of the county or town have levied the tax and no one can be found to accept the office of collector of taxes. This gives no jurisdiction to a court of equity to fill that office or to appoint a receiver to perform its functions. *Ib.*

See CONSTITUTIONAL LAW, A, 3, 4; LOCAL LAW, 8, 9, 10; MUNICIPAL CORPORATION.

TAX SALE.

See LOCAL LAW, 8, 9, 10.

TENANTS IN COMMON.

See LOCAL LAW, 11 ;
REPLEVIN, 1, 2.

TEXAS AND PACIFIC RAILWAY COMPANY.

The Texas and Pacific Railway Company is a corporation deriving its corporate powers from acts of Congress. *Pacific Railroad Removal Cases*, 1.

TRUST.

The president of a railway company holds no fiduciary relation to mortgage bondholders of the company which requires him as their trustee or agent to see to the proper application of the funds received by the company from the sale of the mortgage bonds, or to account to the bondholders for any surplus from the proceeds of their bonds after constructing the works for which they were issued ; his relations and duties in these respects are to the company and its stockholders, not to creditors of the company. *Van Weel* v. *Winston*, 228.

TRUSTEE.

See DISTRICT OF COLUMBIA, 1, 2, 4 ;
LIMITATION, STATUTES OF, 3.

UNION PACIFIC RAILWAY COMPANY.

The Union Pacific Railway Company is, as to its road, property and franchises in Kansas, a corporation *de facto* created and organized under acts of Congress ; and as to the same in Nebraska, it is strictly and purely a corporation deriving all its corporate and other powers from acts of Congress. *Pacific Railroad Removal Cases*, 1.

VARIANCE.

See COURT AND JURY ; EVIDENCE, 6.

WARRANTY.

See CONTRACT, 3.

WRIT OF ERROR.

After final judgment in this case at the last term reversing the judgment below (see 112 U. S. 696), the court discovered that the writ of error

was sued out and citation directed and served against P. H. Pendleton, only one of the plaintiffs below ; that the preliminary appeal bond was made to him alone ; but that the supersedeas bond was executed to all the plaintiffs below, and that all subsequent proceedings were entitled in the name of P. H. Pendleton & als. After notice to plaintiff in error to show cause, the court allowed the writ of error to be amended, set aside the judgment, ordered a new citation to be issued to all the plaintiffs below, and directed a re-argument. *Knickerbocker Life Ins. Co.* v. *Pendleton*, 339.