INDEX.

ACQUITTAL.

See JUDGMENT, 2.

ACTION.

See APPEAL, 3;
CONSTITUTIONAL LAW, 1;
DECEIT;
EQUITY, 3;
PLEADING, 1;
TRESPASS.

APPEAL.

1. An appeal will not be entertained by this court from a decree entered in a Circuit or other inferior court in exact accordance with the mandate of this court upon a previous appeal. *Mackall* v. *Richards*, 45.
2. In an appeal from the execution of a mandate of this court the appellant cannot object to an order in the original decree which was not objected to on the former appeal. *Ib.*
3. A defence, growing out of matter which happens after a mandate is sent down, can only be availed of by an original proceeding appropriate to the relief sought. *Ib.*
4. Except in cases of appeals allowed in open court during the term at which the decree appealed from was rendered, a citation returnable at the same term with the appeal or writ of error is necessary to perfect the jurisdiction of this court over the appeal or the writ, unless it sufficiently appears that citation has been waived. *Hewitt* v. *Filbert*, 142.
5. When a judgment of the Court of Claims is reversed and the case is remanded for new trial, the findings of fact on the first trial form no part of the record on appeal from the judgment in the second trial, unless embodied by that court in the second findings. *Union Pacific Railroad Co.* v. *United States*, 402.
6. When a claimant in the Court of Claims amends his petition by filing a new one in the place of it, and the case is heard on the amended petition only, and on appeal that court sends up only the amended

petition, this court will not issue a writ of certiorari to bring up the original petition. *Ib.*

See JURISDICTION A., 2; B, 1, 2; D., 1, 3, 4.

APPEARANCE.

See WRIT OF ERROR.

ARMS, THE RIGHT TO BEAR.

See CONSTITUTIONAL LAW, 7.

ARSENAL ISLAND.

Whether the island in the Mississippi River opposite St. Louis, known as Arsenal Island, shall be surveyed and brought into the market is a matter within executive discretion and judgment. *Carrick* v. *Lamar*, 423.

ATTORNEY-AT-LAW.

See CONSTITUTIONAL LAW, 23;
LICENSE TAX, 2, 4.

BANKRUPTCY.

1. Notice given to the holder and owner of an accommodation note, under § 17 of the act of June 22, 1874, of composition proceedings in bankruptcy by or against the payee and indorser for whose accommodation the note was given, is notice to the accommodation maker of the original bankruptcy proceedings, and that the payee may be discharged thereby. *Liebke* v. *Thomas*, 605.
2. A lawful composition with creditors under § 17 of the act of June 22, 1874, and its performance by the party has the effect of a discharge in bankruptcy. *Ib.*

BURDEN OF PROOF.

See EVIDENCE, 6, 7.

CADET ENGINEERS.

See NAVAL OFFICERS, 3, 4, 5.

CALIFORNIA SCHOOL LANDS.

See PUBLIC LAND, 3.

CASES AFFIRMED OR APPROVED.

1. *Moore* v. *Mississippi*, 21 Wall. 636, affirmed and applied. *Otis* v. *Oregon Steamship Co.*, 548.
2. *Pennsylvania Railroad Co.* v. *Locomotive Truck Co.*, 110 U. S. 490, affirmed. *Miller* v. *Foree*, 22.
3. *St. Louis, Iron Mountain and Southern Railway Co.* v. *McGee*, 115 U. S. 469, affirmed and applied. *Doe* v. *Larmore*, 198.
4. *Stewart* v. *Salamon*, 97 U. S. 361, affirmed. *Mackall* v. *Richards*, 45.
5. *Supervisors* v. *Kennicott*, 94 U. S. 498, again affirmed. *Chaffin* v. *Taylor*, 567.
6. *United States* v. *Jordan*, 113 U. S. 418, affirmed. *United States* v. *Price*, 43.

CASES DISTINGUISHED.

The case of *United States* v. *Carll*, 105 U. S. 611, distinguished. *Cannon* v. *United States*, 55.

CASES DOUBTED, DISAPPROVED, OR OVERRULED.

Thorogood v. *Bryan*, 8 C. B. 115, disapproved. *Little* v. *Hackett*, 366.

CERTIFICATE OF DIVISION.

See DIVISION OF OPINION.

CERTIORARI.

See APPEAL, 6.

CHALLENGE.

See JURY, 1, 2.

CIRCUIT COURTS OF THE UNITED STATES.

See JURISDICTION, B.

CITATION.

See APPEAL, 4;
JURISDICTION, A., 2;
WRIT OF ERROR.

CITIZENSHIP.

See EVIDENCE, 5.

CODES.

See STATUTES, A., 5.

COMMISSIONERS.

See FEES.

COMPENSATION.

See CONSTITUTIONAL LAW, 2;
FEES;
NAVAL OFFICERS.

COMPOSITION.

See BANKRUPTCY, 1, 2.

CONFLICT OF LAW.

See MUNICIPAL BOND, 1, 2.

CONSTITUTIONAL LAW.

1. Under art. 4, sec. 1, of the Constitution, and § 905 of the Revised Statutes, a judgment recovered in one State against two joint defendants, one of whom has been duly summoned and the other has not, and which is valid and enforceable by the law of that State against the former alone, will support an action against him in another State. *Hanley* v. *Donoghue*, 1; *Renaud* v. *Abbott*, 277.
2. Where a law attaches a fixed compensation to a public office during the whole term of service of a person legally filling the office and performing the duties thereof, a perfect implied obligation arises to pay for the services at the fixed rate, to be enforced by the remedies which the laws then give; and a change in the State Constitution which takes away then existing powers of taxation so as to deprive the officer of the means of collecting his compensation is within the prohibitory clause in the Constitution forbidding the passage of State laws impairing the obligation of contracts. *Fisk* v. *Jefferson Police Jury*, 131.
3. The prohibition of the Constitution against State laws impairing the obligation of contracts applies to implied as well as to express contracts. *Ib.*
4. A statute of the Territory of Colorado authorized a board of managers to receive a conveyance of a site in Denver for the Capitol of the Territory. A, by warranty deed, conveyed a tract for such site to the board "for the purpose of erecting a capitol and other buildings thereon only." The Territory made no use of the tract before the admission of Colorado as a State. After its admission, A executed and put on record a deed annulling the gift, and took possession of the tract, and was in possession when he brought this suit. The bill set forth these facts, alleged that the board was about to take possession of the tract for the purpose of erecting buildings thereon, and prayed an injunction.

All parties to the suit were citizens of Colorado. *Held*, That if the facts raised any Federal question, they did not show that A was about to be deprived of his property without just compensation. *Brown* v. *Grant*, 207.

5. The doctrine that statutes, constitutional in part only, will be upheld as to what is constitutional, if it can be separated from the unconstitutional provisions, reasserted. *Presser* v. *Illinois*, 252.
6. A State statute providing that all able-bodied male citizens of the State between eighteen and forty-five, except those exempted, shall be subject to military duty, and shall be enrolled and designated as the State militia, and prohibiting all bodies of men other than the regularly organized volunteer militia of the State and the troops of the United States from associating together as military organizations, or drilling or parading with arms in any city of the State without license from the governor, as to these provisions is constitutional and does not infringe the laws of the United States, and is maintained as to them, although the act contains other provisions, separable from the foregoing, which might be held to infringe upon powers vested in the United States by the Constitution, or upon laws enacted by Congress in pursuance thereof. *Ib.*
7. The provision in the Second Amendment to the Constitution, that "the right of the people to keep and bear arms shall not be infringed," is a limitation only on the power of Congress and the national government and not of the States. But in view of the fact that all citizens capable of bearing arms constitute the reserved military force of the national government as well as in view of its general powers, the States cannot prohibit the people from keeping and bearing arms so as to deprive the United States of their rightful resource for maintaining the public security. *Ib.*
8. The provision in the Fourteenth Amendment to the Constitution that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," does not prevent a State from passing such laws to regulate the privileges and immunities of its own citizens as do not abridge their privileges and immunities as citizens of the United States. *Ib.*
9. Unless restrained by their own Constitutions, State legislatures may enact statutes to control and regulate all organizations, drilling, and parading of military bodies and associations, except those which are authorized by the militia laws of the United States. *Ib.*
10. The right of a State to reasonably limit the amount of charges by a railroad company for the transportation of persons and property within its jurisdiction, cannot be granted away by its legislature unless by words of positive grant, or words equivalent in law. *Stone* v. *Farmers' Loan & Trust Co.*, 307.
11. A statute which grants to a railroad company the right "from time to time to fix, regulate and receive, the tolls and charges by them to

be received for transportation," does not deprive the State of its power, within the limits of its general authority, as controlled by the Constitution of the United States, to act upon the reasonableness of the tolls and charges so fixed and regulated. *Ib.*

12. An act of incorporation, which confers upon the directors of a railroad company the power to make by-laws, rules and regulations touching the disposition and management of the company's property and all matters appertaining to its concerns, confers no right which is violated by the creation of a State Railroad Commission, charged with the general duty of preventing the exaction of unreasonable or discriminating rates upon transportation done within the limits of the State, and with the enforcement of reasonable police regulations for the comfort, convenience and safety of travellers and persons doing business with the company within the State. *Ib.*
13. An act of incorporation of a railway company which provides that the president and directors may "adopt and establish such a tariff of charges for the transportation of persons and property as they may think proper," and the same "alter and change at pleasure," does not deprive the State of its power, within the limits of its general authority as controlled by the Constitution of the United States, to act upon the reasonableness of the tolls and charges so adopted and established. *Stone* v. *Illinois Central Railroad Co.*, 347.
14. A State statute providing that a railroad company may receive for transporting, carrying and telegraphing, such tolls and charges as might from time to time be established, fixed and regulated by the directors, and that the act should be construed liberally so as to favor its purposes and objects, *provided*, that nothing in it should be construed as preventing the legislature from regulating the rates of transportation for passengers and freight over the road, and *provided further*, that there should be no discrimination in favor of any road, does not deprive the State of its power, within the limits of its general authority, as controlled by the Constitution of the United States, to act upon the reasonableness of the tolls and charges so established, fixed and regulated. Subsequent legislation by the State fixing a maximum rate for other railroads does not apply to this road by virtue of the proviso as to discrimination. *Stone* v. *New Orleans & Northeastern Railroad Co.*, 352.
15. It is within the constitutional power of Congress, acting as the local legislature of the District of Columbia, to tax different classes of property within the District at different rates. *Gibbons* v. *District of Columbia*, 404.
16. A tax imposed by a statute of a State upon an occupation, which necessarily discriminates against the introduction and sale of the products of another State or against the citizens of another State, is repugnant to the Constitution of the United States. *Walling* v. *Michigan*, 446.

17. The police power of a State to regulate the sale of intoxicating liquors and preserve the public health and morals does not warrant the enactment of laws infringing positive provisions of the Constitution of the United States. *Ib.*

18. A State statute which imposes a tax upon persons who, not residing or having their principal place of business within the State, engage there in the business of selling or soliciting the sale of intoxicating liquors to be shipped into the State from places without it, but does not impose a similar tax upon persons selling or soliciting the sale of intoxicating liquors manufactured in the State, is a regulation in restraint of commerce repugnant to the Constitution of the United States : and the defect is not cured by a subsequent enactment, imposing a greater tax upon all persons within the State engaged in the business of manufacturing or selling such liquors therein. *Ib.*

19. Goods and chattels within a State are equally taxable whether owned by a citizen of the State, or a citizen of another State, even though the latter be taxed in his own State for the value of the same goods as part of his general personal estate. *Coe* v. *Errol*, 517.

20. Goods, the product of a State, intended for exportation to another State, are liable to taxation as part of the general mass of property of the State of their origin, until actually started in course of transportation to the State of their destination, or delivered to a common carrier for that purpose ; the carrying of them to, and depositing them at, a depot for the purpose of transportation is no part of that transportation. *Ib.*

21. When goods, the product of a State, have begun to be transported from that State to another State, and not till then, they have become the subjects of inter-state commerce, and, as such, are subject to national regulation, and cease to be taxable by the State of their origin. *Ib.*

22. Goods on their way through a State from a place outside thereof to another place outside thereof, are in course of inter-state or foreign transportation, and are subjects of inter-state or foreign commerce, and not taxable by the State through which they are passing, even though detained within that State by low water or other temporary cause. *Ib.*

23. After lawful tender to the proper State officer of the requisite amount of coupons (receivable by the terms of the act of the State of Virginia of March 30, 1871, in payment of taxes, debts, dues, and demands due the State) for a "separate revenue license" by a person otherwise duly authorized and licensed to practise as an attorney-at-law, and after refusal by that officer to receive the same or to issue the "separate revenue license," the person so making the tender may at once enter upon the practice of his profession ; and any law of the State subjecting him to criminal proceedings therefor is in conflict with the Contitution of the United States. *Royall* v. *Virginia*, 572.

24. The 5th section of the act of June 22, 1874, entitled "An Act to amend the customs revenue laws," &c., which section authorizes a court of the United States, in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoices and papers, or else the allegations of the attorney to be taken as confessed : *Held*, To be unconstitutional and void as applied to suits for penalties, or to establish a forfeiture of the party's goods, as being repugnant to the Fourth and Fifth Amendments of the Constitution. *Boyd* v. *United States*, 616.

25. Where proceedings were *in rem* to establish a forfeiture of certain goods alleged to have been fraudulently imported without paying the duties thereon, pursuant to the 12th section of said act : *Held*, That an order of the court made under said 5th section, requiring the claimants of the goods to produce a certain invoice in court for the inspection of the government attorney, and to be offered in evidence by him, was an unconstitutional exercise of authority, and that the inspection of the invoice by the attorney, and its admission in evidence, were erroneous and unconstitutional proceedings. *Ib.*

26. It does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment ; a compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the Amendment. *Ib.*

27. It is equivalent to a compulsory production of papers, to make the non-production of them a confession of the allegations which it is pretended they will prove. *Ib.*

28. A proceeding to forfeit a person's goods for an offence against the laws, though civil in form, and whether *in rem* or *in personam*, is a "criminal case" within the meaning of that part of the Fifth Amendment which declares that no person "shall be compelled, in any criminal case, to be a witness against himself." *Ib.*

29. The seizure or compulsory production of a man's private papers, to be used in evidence against him, is equivalent to compelling him to be a witness against himself, and, in a prosecution for a crime, penalty, or forfeiture, is equally within the prohibition of the Fifth Amendment. *Ib.*

30. Both amendments relate to the personal security of the citizen. They nearly run into and mutually throw light upon each other. When the thing forbidden in the Fifth Amendment, namely, compelling a man to be a witness against himself is the object of a search and seizure of his private papers, it is an "unreasonable search and seizure" within the Fourth Amendment. *Ib.*

31. Search and seizure of a man's private papers, to be used in evidence for the purpose of convicting him of a crime, recovering a penalty, or of forfeiting his property, are totally different from the search and

seizure of stolen goods, dutiable articles on which the duties have not been paid, and the like, which rightfully belong to the custody of the law. *Ib.*

32. Constitutional provisions for the security of person and property should be liberally construed. *Ib.*

See MUNICIPAL CORPORATION;
OFFICER.

CONTEMPT.

When a court, having acquired jurisdiction of a cause and the parties to it, issues an order upon one of the parties to show cause why he shuold not be punished for contempt in disobeying a temporary restraining order of injunction made in the cause, and he conceals himself to evade service of the process, the court may, on proper return of the facts, direct service of the order to show cause to be made on his attorney of record, and after due service thereof, may proceed to hear the order to show cause, and to adjudge the same. *Eureka Lake Co.* v. *Superior Court*, 410.

CONTRACT.

See CONSTITUTIONAL LAW, 1, 2, 3;
COURT AND JURY, 2;
PARTNERSHIP.

CORPORATION.

1. A railroad forming a continuous line in two or more States, and owned and managed by a corporation whose corporate powers are derived from the legislature of each State in which the road is situated, is, as to the domestic traffic in each State, a corporation of that State, subject to State laws not in conflict with the Constitution of the United States. *Stone* v. *Farmers' Loan and Trust Co.*, 307.
2. A corporation of one State leasing and operating a railroad in another State, is, as to the leased road, subject to local legislation to the extent to which the lessor would have been subject had there been no lease. *Stone* v. *Illinois Central Railroad Co.*, 347.

See CONSTITUTIONAL LAW, 12;
LOCAL LAW, 1;
MUNICIPAL CORPORATION.

COUNTER-CLAIM.

See PLEADING, 3.

COURT AND JURY.

1. It is not an error that the court below, after motion to set aside a verdict as excessive, ordered that the motion should be granted unless the plaintiff should at once remit the amount deemed by the court to be in excess, but in that case the motion should be denied and judgment entered for the remainder. *Northern Pacific Railroad Co.* v. *Herbert*, 642.
2. The rules of a Board of Trade were part of the contract sued on, and authorized plaintiff, who was a member of the board, and as a commission merchant, had bought produce for future delivery on account of defendant, to offset and settle such trade by other trades made by plaintiff, and to substitute some other person for the one from whom he purchased the property. Acting under this rule plaintiff released the seller from his contract, and, having many similar transactions in his business, proposed to himself to substitute in the place of the contract with the seller, the agreement of such other contractor as might be available for the purpose at the time of settlement, but designated no particular contractor or contract. *Held*, (1) That it was a question of law for the court whether this was a substitution within the meaning of the rule. (2) That an instruction to the jury upon these facts, that there had been no valid substitution of other contracts for those which were cancelled and plaintiff could not recover was correct. *Higgins* v. *McCrea*, 671.

See PRACTICE, 6.

COURT OF CLAIMS.

See APPEAL, 5, 6;
JURISDICTION, D.

COURTS-MARTIAL.

A naval court-martial, which has returned its proceedings to the Secretary of the Navy, and been adjourned by him until further order, may be reconvened by him to reconsider those proceedings. *Smith* v. *Whitney*, 167.

See WRIT OF PROHIBITION, 3, 4, 5, 6.

COURTS OF A STATE.

See JURISDICTION, A., 1, 4, 12;
MUNICIPAL BOND, 1, 2.

COURTS OF THE UNITED STATES.

See JURISDICTION;
MUNICIPAL BOND.

CUSTOMS DUTIES.

1. Iron ore is subject to the duty of twenty per centum *ad valorem* imposed by Rev. Stat. § 2504 upon "Mineral and bituminous substances in a crude state not otherwise provided for." *Marvell* v. *Merritt*, 11.
2. The proviso in § 7 of the act of March 3, 1865, 13 Stat. 491, 494, "That the duty shall not be assessed upon an amount less than the invoice or entered value," and the like proviso in § 9 of the act of July 28, 1866, 14 Stat. 328, 330, are applicable to the valuation of wools, for the purpose of determining the rate of duty chargeable upon them under the acts of March 2, 1867, 14 Stat. 559, and June 6, 1872, 17 Stat. 230. *Saxonville Mills* v. *Russell*, 13.
3. Under section 7 of the act of March 3, 1883, 22 Stat. 523, the cost or value of paper cartons or boxes, in which hosiery and gloves are packed, in Germany, and transported to the United States, and the cost or value of the packing of the goods in the cartons, and of the cartons in an outer case, are not dutiable items, either by themselves, or as a part of the market value abroad of the goods, unless the cartons are of a material or form designed to evade duties thereon, or are designed for use otherwise than in the bona fide transportation of the goods to the United States. *Oberteuffer* v. *Robertson*, 499.
4. Where the cartons are of the usual kind known to the trade before the act of 1883 was passed, as customarily used for covering and transporting such goods, and are intended to accompany them and remain with them, in the hands of a retail dealer, until the goods are sold to the consumer, they are designed for use in the bona fide transportation of the goods to the United States, within the meaning of the act, and their cost or value is not a dutiable item. *Ib.*
5. Where the importer is not dissatisfied with the appraisement of his goods *per se*, but only with the addition to the entry of items for cartons and packing, his proper remedy is not to apply for a re-appraisement, but to protest and appeal. *Ib.*
6. Under these provisions as to duties on imports, in Schedule E of section 2504 of the Revised Statutes (2d ed., p. 465): "All manufactures of steel, or of which steel shall be a component part, not otherwise provided for: forty-five per centum ad valorem. But all articles of steel partially manufactured, not otherwise provided for, shall pay the same rate of duty as if wholly manufactured." "Locomotive tire, or parts thereof: three cents per pound." "Steel, in any form, not otherwise provided for: thirty per centum ad valorem," (p. 466). Articles known as "steel tire blooms," and which have passed through an important stage in the process of manufacture into steel tires, but are not shown to have been adapted or intended to be made into tires for the driving wheels of locomotives, are dutiable at forty-five per cent. ad valorem. *Tyre and Spring Works Co.* v. *Spalding*, 541.

See JURISDICTION, C;
STATUTES, A, 1.

DEATH OF A PARTY.

See JURISDICTION, A., 4.

DECEIT.

In order to maintain an action for deceit, it is not only necessary to establish the telling of an untruth, knowing it to be such, with intent to induce the person to whom it is told to alter his condition, but also that he did alter his condition in consequence, and suffered damage thereby: and if it appear affirmatively that although he altered his condition after hearing the untruth, he was not induced to do it in consequence thereof, but did it independently, the action fails. *Ming* v. *Woolfolk*, 599.

DEED.

1. The grantor in an absolute deed of an undivided interest in land, in fee simple, sought, by a suit in equity, against the grantee, to have it declared a mortgage. There was no defeasance, either in the deed or in a collateral paper, and the parol evidence that there was a debt, and that the intention was to secure it by a mortgage, was not clear, unequivocal, and convincing, and it was held, that the presumption that the instrument was what it purported to be must prevail. *Coyle* v. *Davis*, 108.
2. The weight of the testimony was, that the transaction was a sale, and that the property was sold for about its sale value, in view of the facts, that there was a poorly built and poorly arranged building on the premises, which was incapable of actual partition, and that the law did not permit a partition by a sale *in invitum*, and that the grantor's interest was a minority interest. *Ib.*

DEFEASANCE.

See DEED.

DEMURRER.

See PLEADING, 1.

DISTRICT COURTS OF THE UNITED STATES.

See JURISDICTION, B, 2; C.

DISTRICT OF COLUMBIA.

A, having done work on the streets of Washington under a contract with the board of public works, received certificates that his accounts were audited and allowed for specified amounts ; on pledge of which he borrowed money of B, giving his note therefor shortly before the abolition of the board by Congress, and the creation of the board of

audit. A requested the treasurer of the board of public works, in writing, not to pay these certificates, but assigned no reason for the request. Afterward C presented them to the board of audit, by whom they were allowed, and C received district bonds for them under the law. Neither B nor C has accounted to A for the certificates, nor returned his note. A sued the District for the amount due on the certificates. *Held*, That he has no cause of action. *Laughlin* v. *District of Columbia*, 485.

See CONSTITUTIONAL LAW, 15;
TAX AND TAXATION, 3;
WRIT OF PROHIBITION, 3.

DIVISION OF OPINION.

Each question certified in a certificate of division of opinion must present a clear and distinct proposition of law to which the court can respond, and not a proposition of mixed law and facts. While such a statement must accompany the certificate as to show that the question of law is applicable to the case, the point on which the judges differed must be a distinct question of law clearly stated. This procedure is meant to meet a case where, two judges sitting, a clear and distinct proposition of law, material to the decision of the case, arises, on which, differing in opinion, they may make such a certificate as will enable this court to decide that question. If in reality more than one such question occurs, they may be embraced in the certificate ; but where it is apparent that the whole case is presented to this court for decision, with all its propositions of fact and of law, the case will not be entertained. *Waterville* v. *Van Slyke*, 699.

EJECTMENT.

See LIMITATION, STATUTES OF, 1.
MINERAL LAND, 11.

EQUITY.

1. A married woman who, on being informed of a contract made by her husband for the sale of an equitable interest in real estate held by her in her own right, repudiates it, and who, for more than two years, refuses to perform it whenever thereto requested, during which time the property depreciates greatly in value, cannot, after the expiration of that time, enforce in equity the specific performance of the contract by the other party. *Holgate* v. *Eaton*, 33.
2. A loaned B a sum of money on a conveyance of a tract of land, the equitable interest in which belonged, as A knew at the time, to B's wife. He further agreed with B to acquire an outstanding tax title of the property, and subsequently complied with that agreement. Simultaneously by a separate instrument, they agreed that A, on pay-

ment of a further sum, might, at his election, acquire the whole title of B and wife, to be conveyed by warranty deed executed by both ; or, if A so elected, B should repay the sum loaned and the amount paid for the tax title, A holding the premises as security until such payments, and then reconveying. B's wife, though often requested, refused to comply with the agreement. After the lapse of more than two years, the property meanwhile having greatly depreciated, B's wife, by next friend, filed a bill in equity against A to compel specific performance. A filed a cross-bill against B and wife in that suit to recover the sum loaned and the sum paid for the tax title. The wife dying, the suit was revived and prosecuted by her administrator ; and her heirs also joined as complainants. *Held*, (1) That the delay in commencing proceedings was inexcusable, especially as a material change took place meanwhile in the subject-matter of the contract. (2) That the estate of the wife was not charged with the payment of the debt. (3) That without further facts not before it this court could not say what effect the outstanding tax title in the hands of A had upon the wife's estate. (4) That the title or interest of B in the land was charged with payment of the sum loaned and of the sum paid for the tax title. (5) That the offers in the cross-bill entitled the heirs to conveyances of B's interest and of the tax title on payment of both sums with interest, if they desired it. (6) That, they declining, A was entitled to a personal decree against B, and the cross-bill could be dismissed as to the heirs, without prejudice to A. *Ib.*

3. Two alternative claims, each belonging to many persons, one of whom has no interest in one claim, and others of whom have no interest in the other claim, cannot be joined in one bill in equity. *Stebbins* v. *St. Anne*, 386.

See LIMITATION, STATUTES OF, 1;
PUBLIC LAND, 1;
TAX AND TAXATION, 2.

EVIDENCE.

1. This court, upon writ of error to the highest court of a State, does not take judicial notice of the law of another State, not proved in that court and made part of the record sent up, unless by the local law that court takes judicial notice of it. *Hanley* v. *Donoghue*, 1.

2. In an action by the vendee of personal property against an officer attaching it as property of the vendor, declarations of the vendor to a third party made after delivery of the property are inadmissible to show fraud or conspiracy to defraud in the sale, unless the alleged collusion is established by independent evidence, and the declarations fairly form part of the *res gestæ*. *Winchester & Partridge M'f'g Co.* v. *Creary*, 161.

3. A person whom a purchaser of personal property from a debtor in fail-

ing circumstances puts into possession of the property after the sale as his agent to manage it, cannot afterwards make declarations respecting the character of the sale, which can be received in evidence against the vendor in proceedings in which the sale is questioned as made in bad faith, with intent on the part of the vendor and vendee to hinder and delay the vendor's creditors. *Ib.*

4. This court, upon writ of error to the highest court of a State, takes judicial notice of the law of another State, where, by the local law that court takes judicial notice of it. *Renaud* v. *Abbott*, 277.
5. When the Jurisdiction of a Circuit Court of the United States over the parties by reason of citizenship appears on the face of the record, and no issue is joined respecting it, evidence not pertinent to the issues made by the pleadings cannot be introduced solely for the purpose of making out a case for dismissal by reason of the absence of the proper citizenship. *Hartog* v. *Memory*, 588.
6. In the trial of an action by the vendee of personal property against an officer seizing it on a writ of attachment issued at the suit of a creditor of the vendor to recover damages for the seizure, declarations of the vendor made after delivery of the property to the vendee, but on the same day and fairly forming part of the *res gestæ*, are admissible to show intent to defraud the vendor's creditors by the sale, if it is also shown by independent evidence that the vendee shared the intent to defraud with the vendor. *Jones* v. *Simpson*, 609.
7. When at the trial of such an action it is proved that the vendor made the sale with fraudulent intent to hinder and delay his creditors, the burden is thrown upon the vendee to prove payment of a sufficient consideration; but this being established, the burden is then upon the creditors attacking the sale to show bad faith in the vendee. *Ib.*

See SECRETARY OF THE INTERIOR.

EXCEPTIONS.

See JUDGMENT, 1.

EXECUTIVE.

See ARSENAL ISLAND;
MANDAMUS;
OFFICER;
SECRETARY OF THE INTERIOR.
STATUTE, A., 2.

FEES.

Under the provisions of Rev. Stat. §§ 847 and 828, a commissioner of a Circuit Court who, by direction of the court, keeps a docket with entries of each warrant issued and subsequent proceedings thereon made on the day of occurrence, is entitled to a fee like that allowed to the clerk of the court for dockets, indexes, &c., although his

docket entries may differ from those made by the clerk. *United States* v. *Wallace*, 398.

FINDINGS OF FACT.

See APPEAL, 5;
JURISDICTION, A., 11;
PRACTICE, 4.

FORFEITURES.

See JURISDICTION, C.

FRAUD.

See EVIDENCE, 2, 3, 6, 7;
SALE.

FRAUDS, STATUTE OF.

See STATUTE OF FRAUDS.

FUGITIVE FROM JUSTICE.

1. On the application of an alleged fugitive from justice (detained under authority of the executive of the State where he is found in order to be surrendered to the executive of the State in which the crime is alleged to have been committed), to be discharged on a writ of habeas corpus, it is a question of law, whether he is substantially charged with the commission of a crime against the laws of the latter State; but the question whether he is a fugitive from justice is one of fact, the decision of which by the governor of the State in which he is found is sufficient to justify the removal—at least until overthrown by contrary proof. *Roberts* v. *Reilly*, 80.
2. The question whether a corporation is capable in law of ownership of property, the subject of a larceny charged, is not a question which can be raised in proceedings in habeas corpus for the discharge of an alleged fugitive from justice held for surrender to the executive of the State in which the crime is alleged to have been committed. *Ib.*
3. If the governor of the State from which the delivery of a fugitive from justice is demanded does not require a certified copy of the law of the State against which the crime is charged to have been committed, the prisoner cannot take advantage of the omission in proceedings in habeas corpus for his discharge. *Ib.*
4. A person who, having committed, within a State, an act which by its laws constitutes a crime, is, when sought for to be subjected to criminal process to answer therefor, found without that State and within the territory of another State or Territory, is a fugitive from justice within the meaning of that term as used in the Constitution of the United States. *Ib.*

5. It is discretionary with the State upon which demand for surrender of a fugitive from justice is made, to comply with the demand, when the allegations charge acts done by the fugitive in the State surrendering, which amount to a crime there. *Ib.*

FUTURE DELIVERY.

See COURT AND JURY, 2.

HABEAS CORPUS.

See FUGITIVE FROM JUSTICE, 1, 2, 3;
JURISDICTION, B., 1, 2.

HUSBAND AND WIFE.

See EQUITY, 1, 2;
TRUST.

INDIAN RESERVATION.

The Fort Hill Indian reservation in the County of Oneida, in the Territory of Idaho, is not excluded from the limits of the Territory by the act of March 3, 1863, creating it; and the treaty of July 3, 1868, with the eastern band of Shoshonees and the Bannack tribe does not necessarily except it from the jurisdiction of the Territory. *Utah & Northern Railway* v. *Fisher*, 28.

See TAX AND TAXATION, 1.

INDICTMENT.

See POLYGAMY 1, 2.

INFORMATION.

An information *in rem* founded on Rev. Stat. § 3257, is sufficient if it follows the words of the section, and alleges that the person named was engaged in carrying on the business of a distiller and defrauded the United States of the tax on part of the spirits distilled by him; and it is not necessary it should set forth the particular means by which he defrauded the United States of the tax, or specify the particular spirits covered by the tax, or aver that the spirits seized were distilled by him, or were the product of his distillery, or that the distillery apparatus was wrongfully used. *Coffey* v. *United States*, 427.

See JURISDICTION, A., 8, 9, 10;
PLEADING, 2;
VERDICT.

INSURANCE.

1. A violation of any of the prohibitions in a policy of insurance against fire by a tenant, who occupies the insured premises with the permission of the assured, is a violation by the assured himself. *Liverpool and London Insurance Co.* v. *Gunther*, 113.
2. If a policy of insurance forbids the keeping of gasoline or benzine on the insured premises, but authorizes the use of gasoline gas there, the latter authority gives no warrant for keeping gasoline or benzine there for any purpose other than the manufacture of gas. *Ib.*

INTER-STATE COMMERCE.

See CONSTITUTIONAL LAW, 20, 21, 22.

INTERNAL REVENUE.

1. It is no offence against § 12 of the internal revenue act of March 1, 1879, to have in one's possession a cancelled stamp, or a stamp which has been used, or which purports to have been used, upon any cask or package of imported liquors, unless the same was removed from the cask or package by some person intentionally, without being defaced or destroyed at the time of the removal. *United States* v. *Spiegel*, 270.
2. The difference between § 12 of the act of March 1, 1879, 20 Stat. 342, and Rev. Stat. § 3324 shown. *Ib.*

See INFORMATION;
JURISDICTION, A., 8, 9, 10;
LIMITATION, STATUTES OF, 2;
PLEADING, 2;
VERDICT.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 17, 18.

ISSUE.

See JUDGMENT, 1.

JUDGMENT.

1. The answer of the claimant set up a prior judgment, and sentence to pay a fine, on a plea of guilty by him to a criminal information founded on the same violations of law alleged in the information in this suit: *Held*, That no reply to the answer was necessary to raise an issue of fact thereon, and such issue must be regarded as having been found against the claimant, by the general verdict; and that no question in regard to such defence could be raised on a writ of error, in the absence of a demurrer to the answer, and of a bill of exceptions raising specific questions. *Coffey* v. *United States*, 427.
2. The claimant set up, by answer, a prior judgment of acquittal on a

criminal information against him by the United States, in the same Circuit Court, founded on the same sections of the Revised Statutes sued on in this suit, and alleged that such criminal information contained charges of all of the violations of law alleged in the information in this suit. There was a general demurrer to the answer. After the general verdict for the United States, the claimant moved for judgment *non obstante veredicto*. The motion was denied. There was no bill of exceptions. On a writ of error : *Held*, That, although one section counted on in the information declared, as a consequence of the commission of the prohibited act (1) that certain specific property should be forfeited, and (2) that the offender should be fined and imprisoned, yet, as the issue raised as to the existence of the act or fact had been tried in a criminal proceeding against the claimant, instituted by the United States, and a judgment of acquittal rendered in his favor, that judgment was conclusive in his favor in this suit ; and that the judgment of the Circuit Court must be reversed, and the case be remanded, with a direction to enter a judgment for the claimant, dismissing the information, and to take proper proceedings in regard to restoring the property attached. *Coffey* v. *United States*, 436.

See Constitutional Law, 1;
Pleading, 1.

JUDICIAL NOTICE.

See Evidence, 1, 4.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. This court is without jurisdiction over a case brought here on error from a State court, unless it appears in the record that the Federal question was raised in that court before the entry of a final judgment in the case. *Simmerman* v. *Nebraska*, 54.
2. This court has no jurisdiction to issue citation in an appeal docketed here after the term to which the appeal was returnable. *Hewitt* v. *Filbert*, 142.
3. This court has appellate jurisdiction, under the act of March 3, 1885, ch. 355, of a judgment of the Supreme Court for the District of Columbia, dismissing a petition for a writ of prohibition to a court-martial convened to try an officer for an offence punishable by dismissal from the service, and consequent deprivation of a salary which during the term of his office would exceed the sum of $5000. *Smith* v. *Whitney*, 167.
4. Upon a writ of error to a State court, the question whether on the death of a party after judgment another party was properly substi-

tuted in that court, before the suing out of a writ of error, is a question of practice which the State court has exclusive right to determine, and is not reviewable here. *Renaud* v. *Abbott*, 277.

5. The plaintiff in error having failed to show, either from the record, or by affidavits, that the matter in dispute exceeds five thousand dollars, the Court dismisses the writ for want of jurisdiction. *Johnson* v. *Wilkins*, 392.
6. The dismissal of a cause by the Supreme Court of a Territory, because errors had not been assigned according to the rules of practice applicable to the form of action, is a judgment which can only be reviewed by writ of error or appeal, as the case may be. *Ex parte Brown*, 401.
7. When the court may reasonably infer from the record in a case brought here by writ of error from a State court that the Federal question raised here was necessarily involved in the decision there, the court will not dismiss the writ on motion to dismiss for want of jurisdiction, although it may not appear affirmatively on the record that the question was raised there. *Eureka Lake & Canal Co.* v. *Superior Court*, 410.
8. On a writ of error to review a judgment of forfeiture, entered after a trial by a jury and a general verdict for the United States, on an information *in rem*, filed in a Circuit Court of the United States, after a seizure of the *res* on land, for a violation of the internal revenue laws, there was no bill of exceptions, and no exception to the overruling of a motion for judgment *non obstante veredicto*, and of a motion to set aside the verdict and in arrest of judgment: *Held*, That questions arising on demurrers to counts in the information, and as to the jurisdiction of the Circuit Court, could be reviewed. *Coffey* v. *United States*, 427.
9. A judgment of forfeiture, on an information *in rem*, for a violation of the internal revenue laws, filed by the United States, in a Circuit Court of the United States, after a seizure of the *res* on land, was rendered after a general verdict. On a writ of error by the claimant, there being no bill of exceptions: *Held*, That questions as to the sufficiency of the information, and the regularity of the proceedings, not having been formally raised in the Circuit Court, could not be raised in this court. *Coffey* v. *United States*, 436.
10. After a specific denial, by answer, of the allegations of the information, the claimant cannot, in a court of error, on such a record as that above mentioned, be heard to say that he did not know the charge made in the information, and could not defend against it. *Ib.*
11. Where a case is tried by a Circuit Court, without a jury, and that court makes a special finding of facts, but omits to find certain facts which a stipulation between the parties, made after the entry of judgment, states were shown by proof at the trial, this court, on a writ of error, can take notice only of the facts contained in the special finding. *Tyre & Spring Works Co.* v. *Spalding*, 541.

12. If a record shows on its face that a Federal question was not necessarily involved in the decision of a case in a State Court, and does not show affirmatively that one was raised, this court will not go out of the record to the opinion of that court, or elsewhere, to ascertain whether one was in fact decided. *Otis* v. *Oregon Steamship Co.*, 548.
13. Whatever has been decided on one writ of error cannot be re-examined on a subsequent writ of error brought in the same suit. *Chaffin* v. *Taylor*, 567.
14. When a case is brought here from a Circuit Court for review, in which the matter in controversy is less than $5000, it will be dismissed, although accompanied by a certificate of division of opinion by the judges holding the court, unless that certificate presents a case proper for the consideration of this court. *Waterville* v. *Van Slyke*, 699.

See APPEAL, 4; DIVISION OF OPINION; JUDGMENT, 1; PARTIES; PRACTICE, 5.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Appeals in cases of habeas corpus from the final decision of a District Court, or of a judge thereof, may, within the discretion of the court or judge, be sent to the appellate tribunal, at a term of the Circuit Court current at the time when the appeal is taken, under regulations adapted to secure justice. *Roberts* v. *Reilly*, 80.
2. An appeal from the final decision of a District Court or of a judge thereof in a habeas corpus case may be heard by the Circuit Justice at chambers, when it appears that the order therefor is made without objection and for the convenience of parties, and that the parties appear and are heard and no objection is taken at the hearing, and that no hardship or injustice follows. An objection thereto under these circumstances is too late if taken for the first time in this court. *Ib.*
3. A suit cannot properly be dismissed by a Circuit Court of the United States as not substantially involving a controversy within the jurisdiction of the court, unless the facts, when made to appear on the record, create a legal certainty of that conclusion. *Barry* v. *Edmunds*, 550.
4. Where exemplary damages beyond the sum necessary to give a Circuit Court of the United States jurisdiction are claimed in an action for a malicious trespass, the court should not dismiss the case for want of jurisdiction, simply because the record shows that the actual injury caused to the plaintiff by the trespass was less than the jurisdictional amount. *Ib.*
5. When a Circuit Court of the United States is led to suspect, from any cause, that its jurisdiction has been imposed upon, collusively or otherwise, it may protect itself against fraud or imposition by an

inquiry made of its own motion in such manner as it may direct; and by such further action thereafter as justice may require. *Hartog* v. *Memory*, 588.

6. The evidence on which a Circuit Court acts in dismissing a suit for want of jurisdiction must not only be pertinent either to the issue made by the parties, or to the inquiry instituted by the court, but it must also appear of record, if either party desires to invoke the appellate jurisdiction of this court for the review of the order of dismissal. *Ib.*

See EVIDENCE, 5;
REMOVAL OF CAUSES.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

The exclusive jurisdiction conferred upon District Courts of the United States, before the enactment of the Judiciary Act of March 3, 1875, over suits for the recovery of penalties and forfeitures under the customs laws of the United States, is not taken away by the first section of that act. *United States* v. *Mooney*, 104.

D. JURISDICTION OF THE COURT OF CLAIMS.

1. An act of Congress specially referring to the Court of Claims a paymaster's claim for credits and differences in his accounts with the United States, and providing that the evidence of the claimant may be received, and that, if the court shall be satisfied that just and equitable grounds exist for credits claimed by him, it shall make a decree setting forth the amount for which he shall receive credit, confers no equity jurisdiction upon that court, but only the ordinary jurisdiction of the subject as a court of law, subject to be proceeded with as in ordinary suits, and subject to the rules regulating appeals in ordinary judgments. *McClure* v. *United States*, 145.
2. This court will not remand to the Court of Claims a case at law, with directions to return whether certain distinct propositions in requests for findings of facts, presented to that court at the trial of the case, are established and proved by the evidence, if it appears that the object of the request to have it so remanded is to ask this court to determine questions of fact on the evidence. *Ib.*
3. There is nothing in Rev. Stat. § 5261, authorizing certain railroad companies to bring suits against the United States in the Court of Claims to recover the price of freight or transportation, which takes those suits out of the operation of the general rules of this court regulating appeals from the Court of Claims, or which makes it proper for this court to require the Court of Claims to send up with its findings of facts the evidence in regard to them. *Union Pacific Railway Co.* v. *United States*, 154.
4. When the Court of Claims, on being requested by a party in a cause

there pending to find specifically upon several facts which are only incidental facts and amount only to evidence touching the main facts in issue, and the court disregards the requests and finds the facts at issue generally, and judgment is entered, and the party whose request was denied appeals, this court will not remand the case to the Court of Claims, with directions to specifically pass upon each of said requests, or to make a finding of facts on the subject embraced in each of said requests. *Ib.*

5. The jurisdiction of the Court of Claims over cases referred to it by one House of Congress is subject to provisions of general statutes of limitation regulating that jurisdiction. *Ford* v. *United States*, 213.

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

See Writ of Prohibition, 3.

JURY.

1. When the allowance of a challenge to a juror for cause is assigned as error, it should appear that it was not peremptory if peremptory challenges are allowed. *Northern Pacific Railroad Co.* v. *Herbert*, 642.
2. An allowance of a challenge to a juror for cause and the selection of another competent and unbiased juror in his place, works no prejudice to the other party. *Ib.*

LACHES.

See Equity, 1, 2.

LAW AND FACT.

See Fugitive from Justice, 1.

LICENSE TAX.

1. An assessment made by a statute of Virginia a condition precedent to obtaining a license for pursuing a business or profession within the State, is a tax, debt or demand within the meaning of the act of that State of March 30, 1871, making coupons on the bonds of the State receivable for "taxes, debts, dues and demands due the State." *Royall* v. *Virginia*, 572.
2. The "separate revenue license," which persons authorized and licensed to practise as attorneys-at-law in the courts of Virginia are required by the statutes of that State to obtain before practising, is a tax laid for revenue, and not an exaction for purposes of regulation. *Ib.*
3. When a statute of a State imposes license taxes for purposes of revenue upon persons pursuing lawful occupations and professions within the State, and a State officer charged with the duty of issuing licenses

thereunder, acting in obedience to a statute of the State which is in conflict with the Constitution of the United States, refuses to issue such a license to a person who has duly tendered the amount required by law to be paid for it, the person tendering the payment, if otherwise qualified to pursue the occupation, is not required to proceed by mandamus to compel the issue of the license, and to await the result of those proceedings before entering upon the pursuit or occupation. *Ib.*

4. After lawful tender to the proper State officer of the requisite amount of coupons (receivable by the terms of the act of the State of Virginia of March 30, 1871, in payment of taxes, debts, dues and demands due the State), for a "separate revenue license" by a person otherwise duly authorized and licensed to practise as an attorney-at-law, and after refusal by that officer to receive the same, or to issue the "separate revenue license," the person so making the tender may, by mandamus, compel the officer to receive the coupons, and to deliver them to the proper official for identification and verification according to the terms of the act of that State of January 14, 1882. *Sands* v. *Edmunds*, 585.

See CONSTITUTIONAL LAW, 23.

LIMITATION, STATUTES OF.

1. The cause of action in a suit in equity by the holder of an equitable title to real estate, to restrain the owner of the legal title from enforcing a judgment in ejectment against him, and to compel the conveyance of the legal title to the owner of the equitable title, accrues on the entry of final judgment in the suit at law. *Webb* v. *Barnwall*, 193.
2. A suit cannot be maintained against a collector of internal revenue to recover back taxes alleged to have been illegally exacted, when the tax-payer has failed within two years next after the cause of action accrued, to present to the Commissioner of Internal Revenue his claim for the refunding in the manner pointed out by law. *Kings County Savings Ins.* v. *Blair*, 200.

See JURISDICTION, D., 5.

LOCAL LAW.

1. A transfer for valuable consideration of shares in a Massachusetts manufacturing corporation not recorded as required by the statute of Massachusetts of 1870, ch. 224, § 26, is valid against a subsequent attachment by a creditor having knowlege or notice of the transfer. *Bridgewater Iron Co.* v. *Lissberger*, 8.
2. The act of the legislature of Louisiana of 1872 prohibiting, with some exceptions, parish tax levies in excess of one hundred per centum of the State tax for the year was the measure of the taxing power of

parishes in that State in 1874, 1875, and 1876. *Stewart* v. *Jefferson Police Jury*, 135.

3. The authority given by the act of the legislature of Louisiana of 1869 to a judge rendering a judgment against a parish to order a levy of taxes sufficient for its payment, was taken away by the act of 1872, limiting parochial taxation to one hundred per centum of the State tax for the year, for all amounts in excess of the limit fixed by the latter act. *Ib.*
4. This court agrees with the Supreme Court of Mississippi, that a statute creating a commission, and charging it with the duty of supervising railroads, is not in conflict with the Constitution of that State. *Stone* v. *Farmers' Loan & Trust Co.*, 307.
5. The provisions of the statute of Mississippi of March 11, 1884, creating a railroad commission, are not so inconsistent and uncertain as to necessarily render the entire act void on its face. *Ib.*

See PARTIES.

VARIANCE.

MANDAMUS.

In matters which require an executive officer of the United States to exercise judgment or consideration, or which are dependent upon his discretion, no rule will issue for a mandamus to control his action. *Carrick* v. *Lamar*, 423.

MANDATE.

See APPEAL, 1, 2, 3.

MARRIED WOMAN.

See EQUITY 1, 2.
TRUST.

MASTER AND SERVANT.

1. An employer is not liable for injuries to his servant caused by the negligence of a fellow-servant in a common employment; but this exemption does not extend to injuries caused by the carelessness or neglect of another person in the master's service in an employment not common to that in which the person injured is engaged, and upon a subject in regard to which the person injured has a right to look for care and diligence on the part of the other person as the representative of the common master. *Northern Pacific Railroad Co.* v. *Herbert*, 642.
2. A statute which enacts that "an employer is not bound to indemnify his employé for losses suffered by the latter in consequence of the

ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed in the same general business," does not apply to losses suffered by an employé in consequence of the negligence of another person employed by the same employer in another and not in the same general business. *Ib.*

See NEGLIGENCE ;
RAILROAD, 2.

MILITARY ORGANIZATIONS.

See CONSTITUTIONAL LAW, 9.

MILITIA.

See CONSTITUTIONAL LAW, 6, 9.

MINERAL LAND.

1. The act of Congress, § 2322 Revised Statutes, gives to the owner of a mineral vein or lode, not only all that is covered by the surface lines of his established claim as those lines are extended vertically, but it gives him the right to possess and enjoy that lode or vein by following it when it passes outside of those vertical lines laterally. *Iron Silver Mining Co.* v. *Cheesman*, 529.
2. But this right is dependent, outside of the lateral limits of the claim, upon its being the same vein as that within those limits. For the exercise of this right it must appear that the vein outside is identical with and a continuation of the one inside those lines. *Ib.*
3. The acts of Congress use the words vein, lode, or ledge as embracing a more or less continuous body of mineral, lying within a well-defined boundary of other rock, in the mass within which it is found, or, it may be said, to be a body of mineral, or a mineral body of rock within defined boundaries in this general mass. *Ib.*
4. A vein is by no means always a straight line, or of uniform dip or thickness, or richness of mineral matter, throughout its course. The cleft or fissure in which a vein is found may be narrowed or widened in its course, and even closed for a few feet and then found further on, and the mineral deposit may be diminished or totally suspended for a short distance, but, if found again in the same course with the same mineral within that distance, its identity may be presumed. *Ib.*
5. But if the mineral disappears, or the fissure with its walls of the same rock disappears, so that its identity can no longer be traced, the right to pursue it outside of the perpendicular lines of claimants' survey is gone. *Ib.*
6. Whether any deposit of mineral matter, about which a contest arises before a court or jury, has been shown to belong to one of these veins

within a prior location, is a question to be decided by the application of these principles to all the evidence in the case. *Ib.*

7. In procuring a patent for a placer mine claim under § 2333 of the Revised Statutes, where the claimant is also in possession of a lode or vein included within the boundaries of his placer claim, the patent shall cover both, if he makes this known, and pays $5 per acre for twenty-five feet on each side of his vein, and $2.50 per acre for the remainder of his placer claim. *Reynolds* v. *Iron Silver Mining Co.*, 687.
8. Where no such vein or lode is known to exist the patent for a placer claim shall carry all such veins or lodes within its boundaries which may be afterwards found to exist under its surface. *Ib.*
9. But where a vein or lode is *known to exist* under the surface included in such patent, and is not in claimant's possession, and not mentioned in the claim on which the patent issues, the title to such vein or lode remains in the United States, unless previously conveyed to some one else, and does not pass to the patentee, who thereby acquires no interest in such vein or lode. *Ib.*
10. The title remaining in the United States in the veins thus known to exist and not claimed or referred to in the patent, the patentee and his grantee have no right to dispossess any one in the peaceable possession of such vein, whether the latter have any title or not. *Ib.*
11. In such case the rule which applies to actions of ejectment, and to all actions to recover possession of real estate applies, namely, that the plaintiff can only recover on the strength of his own title, and not on the weakness of defendant's title. *Ib.*

MISSISSIPPI.

See LOCAL LAW, 4, 5.

MORTGAGE.

See DEED;
PARTIES.

MOTION TO ADVANCE.

Cases in which the execution of a State revenue law has been enjoined or stayed will be advanced only on motion of the State or of the party claiming under the law, and on proof that the operations of the State government will be embarrassed by the delay. *Central Railroad Co.* v. *Bourbon County*, 538.

MOTION TO DISMISS.

See JURISDICTION, A., 7;
PRACTICE, 1;
WRIT OF ERROR.

MOTION TO SET ASIDE VERDICT.

See COURT AND JURY, 1.

MUNICIPAL BOND.

1. When, at the time of creating and issuing a negotiable evidence of indebtedness of a municipal corporation in a State, the highest court of a State has construed the law under which it purports to be issued, rights accruing under that construction will not be affected merely by subsequent decisions of the same court, varying or departing from it. *Anderson* v. *Santa Anna*, 356.
2. When negotiable evidences of indebtedness of a municipal corporation in a State are created and issued under laws which have not, at the time of issue, been construed by the highest court of the State, its subsequent construction of them is not conclusive on Federal courts, although they will lean to an agreement of view with the State court. *Ib.*

MUNICIPAL CORPORATION.

When a municipal corporation with fixed boundaries is dissolved by law, and a new corporation is created by the legislature for the same general purposes, but with new boundaries, embracing less territory but containing substantially the same population, the great mass of the taxable property, and the corporate property of the old corporation which passes without consideration and for the same uses, the debts of the old corporation fall upon the new corporation as its legal successor; and powers of taxation to pay them, which it had at the time of their creation and which entered into the contracts, also survive and pass into the new corporation. *Mobile* v. *Watson*, 289.

NAVAL OFFICERS.

1. Under the provisions of the act of July 16, 1862, 12 Stat. 586, ch. 183, § 16, an officer of the navy of a class subject by law or regulation to examination before promotion to a higher grade, was not entitled to be examined until his term for promotion had arrived, or was near at hand. *Hunt* v. *United States*, 394.
2. If a naval officer was delayed in promotion for want of examination, and the examination was delayed by reason of absence on duty when entitled to promotion, the act of July 16, 1862, gave him the right to have the increased pay of the new grade begin when the examination should have taken place. *Ib.*
3. Cadet-engineers who had finished their four years' course at the Naval Academy, had passed their final academic examinations, and had received their diplomas before the passage of the act of August 5, 1882, 22 Stat. 284, became graduates, and were not made naval cadets by that act. *United States* v. *Redgrave*, 474.

4. The provision in the act of August 5, 1882, 22 Stat. 284, for the discharge of surplus naval cadet graduates was prospective only, and did not apply to the classes of 1881 and 1882. *Ib.*

5. A naval cadet-engineer, not found deficient at examination; not dismissed for misconduct under the provisions of Rev. Stat. § 1525 or upon and in pursuance of a sentence of a court-martial, but honorably discharged by the Secretary of the Navy against his will, remains in the service notwithstanding the discharge, and is entitled to recover in the Court of Claims the pay attached to the position. *United States* v. *Perkins*, 483.

NAVIGABLE RIVERS.

The bridge built by the Joliet and Chicago Railroad Company and maintained by the Chicago and Alton Railroad Company over Healey Slough, does not cross it at a point where it is a navigable highway for the public. *Healey* v. *Joliet & Chicago Railroad Co.*, 191.

NAVY.

See NAVAL OFFICERS.

NEGLIGENCE.

A person who hires a public hack and gives the driver directions as to the place to which he wishes to be conveyed, but exercises no other control over the conduct of the driver, is not responsible for his acts or negligence, or prevented from recovering against a railroad company for injuries suffered from a collision of its train with the hack, caused by the negligence of both the managers of the train and of the driver. *Little* v. *Hackett*, 366.

NEGOTIABLE PAPER.

See DISTRICT OF COLUMBIA.

NOTICE.

See DISTRICT OF COLUMBIA.

OFFICER.

When Congress by law, vests the appointment of inferior officers in the heads of departments, it may limit and restrict the power of removal as it deems best for the public interests. *United States* v. *Perkins*, 483.

PARTIES.

In a suit in Connecticut for a strict foreclosure of a mortgage of real estate brought against a grantee of the mortgage, if the mortgagee seeks to

charge the mortgagor with any insufficiency in the appraised value of the land to pay the mortgaged debt, the latter is a necessary party to the suit so as to prevent a removal of it to a Federal Court by his grantee, if he and the mortgagee are citizens of the same State. *Coney* v. *Winchell*, 227.

See EQUITY, 3;
JURISDICTION, A., 4.

PARTITION.

See DEED, 2.

PARTNERSHIP.

An agreement by A with B that on the payment of a sum of money B shall participate in the profits of A's business, gives B no interest, as between themselves, in A's stock in trade when it appears that it was their intention that he should have no such interest. *London Assurance Co.* v. *Drennen*, 461.

PATENT FOR INVENTION.

1. The application of an old process or machine to a similar or analogous subject, with no change in the manner of applying it, and no result substantially distinct in its nature, will not sustain a patent, even if the new form of result has not before been contemplated. *Miller* v. *Foree*, 22.
2. The patent issued to appellant, September 15, 1874, for an improved fastening in gloves is not infringed by the appellees' mode of applying springs to an apparatus for the same purpose. *Field* v. *De Comeau*, 187.
3. Claim 2 of reissued letters patent No. 8589, granted to Charles F. Davis and William Allen, February 18, 1879, for an "improvement in grain drills" (the original patent, No. 74,515, having been granted to said Davis as inventor February 18, 1868), namely: "The shoes or hoes of a seed planter, attached to the main frame, substantially as described, in combination with a lever, or its equivalent, whereby they can be shifted at the pleasure of the operator, from a straight to a zigzag line, or *vice versa*," makes the lever, or its equivalent, an essential element of the combination; and the claim is not infringed, where the lever is dispensed with and the human hand is substituted, although in the patent the hand is applied to work the lever. *Brown* v. *Davis*, 237.
4. In view of a prior invention, claims 1 and 3 of the reissue, which were not made in the original patent, were held to be limited to the special

shifting apparatus of the patent, because, if extended to cover shifting arrangements not substantially using a rotating crank-shaft, they became claims which could not lawfully have been granted in the original patent, and, as claims in a reissue, were invalid, because the application for the reissue was made nearly eleven years after the original patent was granted, and after machines effecting the shifting by other means than a rotating crank-shaft had gone into use subsequently to the date of the original, and no sufficient excuse was given for the laches and delay. *Ib.*

5. It appeared as a fact, that new matter was introduced into the specification of the reissue for the purpose of reaching machines which the claims of the original patent would not reach, and of laying a foundation for claims 1 and 3 of the reissue. *Ib.*
6. Claims 4, 5 and 6 of the reissue were held not to be infringed, because the shifting mechanism of the patent, with its rotating crank-shaft, was an element in each claim, in view of a prior invention, and was not used by the defendant. *Ib.*
7. When an applicant for a patent is compelled by the rejection of his application at the patent office, to narrow his claim by the introduction of a new element, he cannot, after the issue of the patent, broaden his claim by dropping the element which he was compelled to include in order to secure the patent. *Shepard* v. *Carrigan*, 593.
8. The patent granted to Helen M. MacDonald, September 29, 1874, for an improvement in dress protectors, must be construed to include a fluted or plaited band or border as one of the essential elements of the invention, and is not infringed by the manufacture or sale of skirt protectors which have neither plaited nor fluted bands or borders. *Ib.*
9. A hose-reel, mounted upon a wheeled carriage, supporting a fountain standard, and provided with a foot or brace to sustain it in an upright position, and with a nozzle-holder, being in common use; a patent for a combination of these elements with "a reel of large diameter to allow the water to flow through the hose when partially wound thereon" is void for want of invention. *Preston* v. *Manard*, 661.

PENALTY.

See JURISDICTION, C.

PENSION.

The pension which widows are entitled to receive under the provision of Rev. Stat. § 4702, is the pension for total disability which is granted to those entitled to receive it by Rev. Stat. § 4695. *Burnett* v. *United States*, 158.

PLEADING.

1. In an action brought in one State upon a judgment recovered against the defendant jointly with another person in another State, an averment that the judgment, by the law of the State in which it was rendered, is valid and enforceable against this defendent and void against the other person is an allegation of fact, which is admitted by demurrer. *Hanley* v. *Donoghue*, 1.

2. Rule 22 of the Rules in Admiralty prescribes regulations for the form of informations and libels of information on seizures for the breach of the laws of the United States, on land or water; and the general rules of pleading in regard to Admiralty suits *in rem* apply to a suit *in rem* for a forfeiture, founded on a violation of the internal revenue laws brought by the United States, after a seizure of the *res* on land. *Coffey* v. *United States*, 427.

3. In Ohio the validity in law of a counter-claim by defendant depends upon the allegations respecting it, without regard to allegations and admissions of the pleadings on the other side in regard to plaintiff's cause of action; and if defendant avers that the counter-claim is founded upon a transaction which the law forbids and makes a crime, it cannot be maintained, even if plaintiff, in setting forth his cause of action founded on the same thing, avers the transaction to be legal. *Higgins* v. *McCrea*, 671.

See INFORMATION; VARIANCE;
JUDGMENT, 1; VERDICT.

POLICE POWER.

See CONSTITUTIONAL LAW, 9, 10, 11, 12, 13, 14, 17, 18.

POLYGAMY.

1. The offence of cohabiting with more than one woman, created by § 3 of the act of Congress of March 22, 1882, ch. 47, 22 Stat. 31, in regard to polygamy in the Territory of Utah, is committed by a man who lives in the same house with two women, and eats at their respective tables one-third of his time, or thereabouts, and holds them out to the world, by his language or conduct, or both, as his wives, and it is not necessary to the commission of the offence that he and the two women, or either of them, should occupy the same bed or sleep in the same room, or that he should have sexual intercourse with either of them. *Cannon* v. *United States*, 55.

2. An indictment under that section charged a male person with having unlawfully cohabited with more than one woman, continuously, for a specified time, naming two women, but did not allege that he was a male person, nor that he cohabited with the women as wives, or as persons held out as wives. The statute provides that "if any male person . . . hereafter cohabits with more than one woman, he

shall be deemed guilty of a misdemeanor." The defendant pleaded not guilty: *Held*, (1) Under the Criminal Procedure Act of Utah, of February 22, 1878, Laws of 1878, p. 91, objections taken to the indictment after a jury was sworn, that it did not contain the allegations before mentioned, were properly overruled. (2) The word "cohabit," in the statute, means, "to live together as husband and wife," and its use in the indictment includes every element of the offence created, as above defined; and the allegation of cohabiting with the two women as wives, is not an extrinsic fact, but is covered by the allegation of cohabiting with them. *Ib.*

PRACTICE.

1. The court hears a motion by counsel for plaintiff in error, specially appointed for the purpose, to dismiss the writ of error, which motion is opposed by counsel of record for plaintiff in error. The court dismisses the writ on the ground that there is no longer an existing cause of action. *San Mateo* v. *Southern Pacific Railroad Co.*, 138.
2. The court receives affidavits from plaintiffs in error, and counter affidavits from defendants in error, to determine the value of tracts of land sued for in ejectment (neither pleadings nor evidence in the record showing it), and dismisses the case. *Wells* v. *Wilkins*, 393.
3. Cases advanced under Section 3 of Rule 32 are to be submitted on printed briefs and arguments after service of notice and brief or argument. *Fletcher* v. *Hamlet*, 408.
4. The Appellate Court of a Territory, having before it findings of the court below, and new matter submitted by stipulation, makes no findings and sends up the case without the new matter: *Held*, That it must be determined here on those findings. *O'Reilly* v. *Campbell*, 418.
5. After argument of the cause is heard, the court of its own motion gives counsel an opportunity to file printed arguments on a plea to the jurisdiction which was overruled in the Circuit Court, and was not argued here. *Pennsylvania Railroad Co.* v. *St. Louis, Alton and Terre Haute Railroad Co.*, 472.
6. When the court instructs the jury in a manner sufficiently clear and sound as to the rules applicable to the case, it is not bound to give other instructions asked for by counsel on the same subject, whether they are correct or not. *Iron Silver Mining Co.* v. *Cheesman*, 529.

See APPEAL;
EQUITY;
JUDGMENT;
JURISDICTION, A., 4, 5, 6, 11, 12; D., 2, 4;
MOTION TO ADVANCE;
POLYGAMY, 2;
PUBLIC POLICY.

PRINCIPAL AND AGENT.

See USURY, 1.

PROHIBITION, WRIT OF.

See WRIT OF PROHIBITION.

PROMISSORY NOTE.

See BANKRUPTCY, 1.

PUBLIC HACK.

See NEGLIGENCE.

PUBLIC LAND.

1. One seeking in equity to have the holder of a patent of public land declared a trustee for his benefit on the ground that the patent was improperly issued, must clearly establish that there was a mistake or fraud in the issue of the patent, which affected the decision of the Land Office, and but for which he would be entitled to the patent. *Lee* v. *Johnson*, 48.
2. The act of April 10, 1869, 16 Stat. 45, "to renew certain grants of land to the State of Alabama," which were granted by the act of June 3, 1856, 11 Stat. 17, is not to be construed as a new and original grant, but as an extension of the time named in the original act for the completion of the railroads referred to in it. *Doe* v. *Larmore*, 198.
3. If the proper officers of the United States approve a selection of school lands in disputed territory in California, outside the limits of an unsettled survey by the United States of a private claim, and issue proper certificate lists, and a purchaser under the title thus acquired by the State enters into possession, improves, and holds the land, no one, by forcibly or surreptitiously getting into possession can make a preëmption settlement which will defeat his title. *Mower* v. *Fletcher*, 380.

See ARSENAL ISLAND;
MINERAL LAND;
SECRETARY OF THE INTERIOR.

PUBLIC OFFICE.

See CONSTITUTIONAL LAW, 2.

PUBLIC POLICY.

When it clearly appears in a proceeding that a claim set up is against public policy, and that in no event could it be sustained, the tribunal should dismiss it, whether the allegations of the parties have or have not raised the question. *Lee* v. *Johnson*, 48.

RAILROAD.

1. The Southwestern Railroad Company of Georgia as to those parts of its

road which extend from Americus to Albany from Albany to Arlington and from Cuthbert to Eufaula, is subject to the general laws of the State for the taxation of railroads, without regard to the exemption in its original charter. *Southwestern Railroad Co.* v. *Wright*, 231.

2. If no one is appointed by a railway company to look after the condition of its cars, and see that the machinery and appliances used to move and to stop them are kept in repair and in good working order, it is liable for the injuries caused thereby. If one is appointed by it charged with that duty, and injuries result from his negligence in its performance, the company is liable. He is, so far as that duty is concerned, the representative of the company. *Northern Pacific Railway Co.* v. *Herbert*, 642.

See CONSTITUTIONAL LAW, 10, 11, 12, 13, 14; MASTER AND SERVANT;
CORPORATION, 1, 2; NEGLIGENCE;
LOCAL LAW, 4, 5; TAX AND TAXATION, 5.

REMOVAL FROM OFFICE.

See OFFICER.

REMOVAL OF CAUSES.

When one of several defendants in a suit on a joint cause of action in a State Court loses his right to remove the action into a Circuit Court of the United States by failing to make the application in time, the right is lost as to all. *Fletcher* v. *Hamlet*, 408.

See PARTIES.

RULES.

See PLEADING, 2;
PRACTICE, 3.

SALE.

A sale of personal property made by the vendor with intent to defraud his creditors, but for valuable consideration paid to him by the vendee, followed by actual and continued change of possession, is valid against the vendor's creditors, unless it also appears that the vendee acted in bad faith. This rule prevails in Kansas. *Jones* v. *Simpson*, 609.

See EVIDENCE, 2, 3, 6, 7.

SEARCH.

See CONSTITUTIONAL LAW, 24 to 32.

SECRETARY OF THE INTERIOR.

In the absence of fraud, the findings of the Secretary of the Interior are conclusive upon questions of fact as to land claims submitted to him for his decision. *Lee* v. *Johnson*, 48.

SECRETARY OF THE NAVY.

See COURTS-MARTIAL;
WRIT OF PROHIBITION.

SECRETARY OF THE TREASURY.

See STATUTES, A., 2.

SEIZURE.

See CONSTITUTIONAL LAW, 24 to 32.

SERVICE.

See CONTEMPT;
WRIT OF ERROR.

SPECIFIC PERFORMANCE.

See EQUITY, 1, 2.

SPIRITUOUS LIQUORS.

See CONSTITUTIONAL LAW, 17, 18.

STATE COURTS.

See JURISDICTION, A., 1, 4, 12;
MUNICIPAL BOND, 1, 2.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. In construing a tariff revenue system, consisting of numerous acts enacted at different times, each alteration is to be regarded in connection with the system, and existing legislative rules of general application are not to be disturbed beyond the clear intention of Congress. *Saxonville Mills* v. *Russell*, 13.
2. When an act of Congress directs the Secretary of the Treasury to pay a specified sum to a person named, for a specific purpose, no discretion is vested in the Secretary, or in any court to inquire whether the person named is entitled to receive that sum for that object. *United States* v. *Price*, 43.
3. It is again decided that the surrender of the power to tax, when claimed, must be shown by clear and unambiguous language, admitting of no reasonable construction consistent with the reservation of the power. *Southwestern Railroad Co.* v. *Wright*, 231.

4. A State statute must be interpreted, if possible, so as to make it consistent with paramount law. *Presser* v. *Illinois*, 252.

5. A statute which provides that "there is no common law in any case where the law is declared by the codes" does not take from the court the duty of referring to the common law in order to determine the meaning of a term used in the codes, when they fail to define it. *Herbert* v. *Northern Pacific Railroad Co.*, 642.

See CONSTITUTIONAL LAW, 5, 10, 11, 12, 13, 14, 15, 32;
JURISDICTION A., 3; D., 1, 3, 5; PUBLIC LAND, 2;
MUNICIPAL BOND, 1, 2; TAX AND TAXATION, 5, 6.

B. STATUTES OF THE UNITED STATES.

See BANKRUPTCY, 1, 2;
CONSTITUTIONAL LAW, 1, 24, 25;
CUSTOMS DUTIES;
FEES;
INDIAN RESERVATION;
INFORMATION;
INTERNAL REVENUE, 1, 2;
JURISDICTION A., 3; C.; D., 1, 3;
MINERAL LAND, 1;
NAVAL OFFICERS;
PENSION;
POLYGAMY, 1, 2;
PUBLIC LAND, 2;
TAX AND TAXATION, 3.

C. STATUTES OF STATES AND TERRITORIES.

Colorado: *See* CONSTITUTIONAL LAW, 4;
Illinois: *See* CONSTITUTIONAL LAW, 6, 7, 8;
Louisiana: *See* LOCAL LAW, 2, 3;
Massachusetts: *See* LOCAL LAW, 1;
Michigan: *See* CONSTITUTIONAL LAW, 16, 17, 18;
Mississippi: *See* CONSTITUTIONAL LAW, 10, 11, 12, 13, 14; LOCAL LAW; 4, 5;
New Hampshire: *See* CONSTITUTIONAL LAW, 19, 20, 21, 22;
Utah: *See* POLYGAMY, 2;
Virginia: *See* CONSTITUTIONAL LAW, 23; LICENSE TAX.

STATUTE OF FRAUDS.

An agreement, on the part of A to acquire title in his own name to a tract of land upon the best terms possible, and when acquired to convey to B an undivided part thereof, and on the part of B to pay to A his proportionate part of the purchase money and expenses incurred in obtaining title, is a contract for the sale of lands within the Statute of Frauds; and the contract being verbal and not in writing as required by the Statute, A, after performing his part of the agreement, cannot recover from B his share of the price and expenses in an action at law founded upon and seeking to enforce the contract; nor in equity, under a statute which prescribes the same forms at law and in equity, when the pleadings show no allegation to lay a foundation for equitable relief. *Dunphy* v. *Ryan*, 491.

STATUTES OF LIMITATION.

See LIMITATION, STATUTES OF.

SUBSTITUTION.

See JURISDICTION, A., 4.

TARIFF.

See STATUTES, A., 1.

TAX AND TAXATION.

1. The lands and railroad of the Utah and Northern Railway Company situated within the limits of the Fort Hill Indian Reservation are subject to Territorial taxation, which may be enforced within the exterior boundaries of the reservation by process of the proper courts. *Utah & Northern Railway* v. *Fisher*, 28.
2. A bill in equity to set aside and restrain the collection of a personal tax, or a tax levied upon personal property by a municipal corporation, cannot be maintained on the sole ground of the illegality of the tax by reason of the non-residence within the limits of the municipality of the person against whom the tax is levied. *Milwaukee* v. *Koeffler*, 219.
3. If a church building is taken down, and a new church, with a sufficient space around it for air and light, is built on other land within the same enclosure, in order to enable a revenue to be derived from the sale or lease of the land on which the old church stood, and it is unnecessary for the enjoyment of the new church that this land should remain vacant, this land is not exempt from taxation for the support of the government of the District of Columbia under § 8 of the acts of March 3, 1875, ch. 162 ; July 12, 1876, ch. 180 ; and March 3, 1877, ch. 117. *Gibbons* v. *District of Columbia*, 404.
4. Logs cut at a place in New Hampshire were hauled down to the town of Errol, on the Androscoggin River, in that State, to be transported from thence upon the river to Lewiston, Maine ; and waited at Errol for a convenient opportunity for such transportation : *Held*, That they were still part of the general mass of property of the State, liable to taxation, if taxed in the usual way in which such property is taxed in the State. *Coe* v. *Errol*, 517.
5. A provision in a charter granted by a State to a railroad company, by which "the capital stock of said company shall be exempt from taxation, and its road, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances, shall be exempt from taxation for ten years after the completion of said road, within the limits of this State," does not exempt the road, fixtures, and appurtenances

from taxation before such completion of the road. *Vicksburg, Shreveport & Pacific Railroad* v. *Dennis*, 665.

6. The omission of taxing officers to assess certain property cannot control the duty imposed by law upon their successors, or the power of the legislature to tax the property, or the legal construction of a statute under which its exemption from taxation is claimed. *Ib.*

See CONSTITUTIONAL LAW, 6, 18, 19, 20, 21, 22, 23;
LICENSE TAX; RAILROAD;
MUNICIPAL CORPORATION; STATUTES, A., 3.

TRANSIT, GOODS IN.

See CONSTITUTIONAL LAW, 21, 22, 23.

TRESPASS.

It is settled in this court that in an action for a trespass accompanied with malice, the plaintiff may recover exemplary damages in excess of the amount of his injuries, if the *ad damnum* is properly laid. *Barry* v. *Edmunds*, 550.

TRUST.

When the husband of a married woman obtains a decree of foreclosure of a mortgage held by him as her trustee, and at the sale purchases the property and takes a deed in his own name, she retains an equitable interest therein, as against a purchaser from the husband with actual notice. *Holgate* v. *Eaton*, 33.

USURY.

1. When an agent, who is authorized by his principal to lend money for lawful interest, exacts for his own benefit more than the lawful rate, without authority from or knowledge of his principal, the loan is not thereby rendered usurious. *Call* v. *Palmer*, 98.
2. Where the promissor in a usurious contract makes it the consideration of a new contract with a third person, not a party to the original contract, or to the usury paid or reserved upon it, and the new contract is not a contrivance to evade the statutes against usury, the latter is not illegal or usurious. *Ib.*

VARIANCE.

As the practice in New York allows a variance between proof and pleadings to be cured by amending the latter, where the opposite party is not misled, if, in the trial of an action in that State on a policy of insurance, evidence is offered, without objection, establishing or tending to establish a defence under the policy which has not been properly

pleaded, and, on defendant's request for instructions, founded on that evidence, no objection is made that the defence is not within the issues, it is competent for the defendant to rely upon the defence after the opportunity for amending the pleadings has passed. *Liverpool & London Insurance Co.* v. *Gunther*, 113.

VENDOR AND VENDEE.

See EVIDENCE, 2, 3, 6, 7;
SALE.

VERDICT.

A general verdict on several counts in an information *in rem* for violation of the internal revenue laws, which proceeds only for the forfeiture of specific property, will be upheld if one count is good. *Coffey* v. *United States*, 427; *Same* v. *Same*, 436.

VIRGINIA COUPONS.

See CONSTITUTIONAL LAW, 24;
LICENSE TAX.

WRIT OF ERROR.

A service of citation of a writ of error to a court of a State, made upon the defendant in error in another State by the marshal of the latter State, is an irregularity which can only be taken advantage of by motion to dismiss made promptly, on an appearance limited to that special purpose. *Rendud* v. *Abbott*, 277.

See JUDGMENT, 1;
JURISDICTION, A., 13.

WRIT OF PROHIBITION.

1. Where an inferior court has clearly no jurisdiction of a suit, and the defendant therein has objected to its jurisdiction at the outset, and has no other remedy, he is entitled as matter of right to a writ of prohibition from a court having authority to grant it; and a refusal to grant it, where all the proceedings appear of record, may be reviewed on error. *Smith* v. *Whitney*, 167.
2. *It seems*, that a writ of prohibition should issue from the law side of a court having both common law and equity powers. *Ib.*
3. Whether the Supreme Court of the District of Columbia has power to issue a writ of prohibition to a court-martial—*quære*. *Ib.*
4. A writ of prohibition does not lie to the Secretary of the Navy convening a naval court-martial. *Ib.*

5. A writ of prohibition does not lie to a court-martial to correct mistakes in the decision of questions of law or fact within its jurisdiction. *Ib.*

6. A writ of prohibition will not be issued to prohibit a naval court-martial from trying a naval officer, being paymaster general and chief of a bureau in the Department of the Navy, upon a charge of "scandalous conduct tending to the destruction of good morals," with specifications alleging that as such chief of bureau he made contracts and payments in disregard of the interests of the government, and to promote the interests of contractors, in violation of law, and to the great scandal and disgrace of the service and injury of the United States; and upon an additional charge of "culpable inefficiency in the performance of duty," with specifications setting forth acts similar to those specified under the first charge. *Ib.*

See JURISDICTION, A., 3.