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ACTION.

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On the authority of *Jerome v. McCarter*, 21 Wall. 17, the court declines to increase the amount of the bond given on appeal in this case, or to require additional securities. *Harwood v. Dieckerhoff*, 200.

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BANK.

1. A depositor in a bank, who sends his pass book to be written up and receives it back with entries of credits and debits and his paid checks as vouchers for the latter, is bound personally or by an authorized agent, and with due diligence to examine the pass book and vouchers, and to report to the bank, without unreasonable delay, any errors which may be discovered in them; and if he fails to do so, and if the bank is thereby misled to its prejudice, he cannot afterwards dispute the correctness of the balance shown by the pass book. *Leather Manufacturers' Bank v. Morgan*, 96.
2. If a depositor in a bank delegates to a clerk the examination of his written up pass book and paid checks returned therewith as vouch-

ers, without proper supervision of the clerk's conduct in the examination, he does not so discharge his duty to the bank as to protect himself from loss, if it turns out that without his knowledge the clerk committed forgery in raising the amounts of some of those checks, and thereby misled the bank to its prejudice, in spite of due care on the part of its officers. *Ib.*

3. In this case it was held that the question whether the depositor exercised in regard to such examination the degree of care required of him in the circumstances disclosed by the evidence, including the relations of the parties, and the established usages of business, and the question whether the endorsement of a particular check was, under the evidence, an endorsement in blank or one for deposit to the credit of the depositor, were for the jury to determine, under proper instructions as to the law. *Ib.*

BANKRUPTCY.

1. A discharge in bankruptcy is no bar to an action on a judgment, recovered against the bankrupt after the discharge in a suit against him founded on a contract, provable in the bankruptcy proceedings, which suit was commenced before the bankruptcy and was pending when the discharge was granted. *Dimock v. Revere Copper Co.*, 559.
2. A discharge in bankruptcy does not release real estate of the bankrupt assigned to him as a homestead under the provisions of Rev. Stat. § 5045 from the lien of a mortgage created by him before the bankruptcy, to secure a debt against him which is not proved nor released under the provisions of Rev. Stat. § 5075. *Long v. Ballard*, 617.

See LOCAL LAW, 2.

CASES AFFIRMED OR APPROVED.

1. *Ackley School District v. Hall*, 113 U. S. 135, affirmed and applied. *New Providence v. Halsey*, 336.
2. *Bernard Township v. Stebbins*, 110 U. S. 341, affirmed and applied. *Ib.*
3. *Bostwick v. Brinkerhoff*, 106 U. S. 4, affirmed. *Johnson v. Keith*, 199.
4. *Coe v. Errol*, 116 U. S. 517, cited and applied. *Turpin v. Burgess*, 504.
5. The true rule for damages in this case is stated in *Cook v. South Park Commissioners*, 61 Ill. 116. *Kerr v. South Park Commissioners*, 379.
6. *Elgin v. Marshall*, 106 U. S. 578, affirmed. *Bruce v. Manchester & Keene Railroad*, 514.
7. *Gibson v. Bruce*, 108 U. S. 561, affirmed and applied. *Akers v. Akers*, 197.
8. *Jerome v. McCarter*, 21 Wall. 17, affirmed and applied to this case. *Harwood v. Dieckerhoff*, 200.
9. *Louisiana v. Jumel*, 107 U. S. 711, affirmed and applied. *Ib.*

10. *Machine Co. v. Murphy*, 97 U. S. 120, affirmed and applied. *Cantrel v. Wallick*, 689.
11. *Marye v. Parsons*, 114 U. S. 325, and *Williams v. Hagood*, 98 U. S. 72, affirmed. *Hagood v. Southern*, 52.
12. *Mason v. Sargent*, 104 U. S. 689, applied. *Sturges v. United States*, 363.
13. *Mulligan v. Smith*, 59 Cal. 206, approved and applied. *Zeigler v. Hopkins*, 683.
14. *Pace v. Burgess*, 92 U. S. 372, reaffirmed. *Turpin v. Burgess*, 504.
15. *Pirie v. Toedt*, 115 U. S. 41, affirmed and applied. *Sloane v. Anderson*, 275.
16. *Stebbins v. Duncan*, 108 U. S. 32, affirmed. *Applegate v. Lexington Mining Co.*, 255.

CASES DISTINGUISHED OR EXPLAINED.

1. *Hough v. Railway Company*, 100 U. S. 213, explained. *District of Columbia v. McElligott*, 621.
2. *Insurance Co. v. Wilkinson*, 13 Wall. 222, and *Insurance Co. v. Mahone*, 21 Wall. 152, distinguished. *New York Life Ins. Co. v. Fletcher*, 519.
3. *Wilson v. Boyce*, 92 U. S. 320, distinguished. *Alabama v. Montague*, 602.
4. *Winona & St. Peter Railroad Co. v. Barney*, 113 U. S. 618, explained. *Barney v. Winona & St. Peter Railroad Co.*, 228.

CHAMPERTY.

See PROMISSORY NOTE, 3.

CHEROKEE INDIANS.

1. By treaties with the Cherokees the United States have recognized them as a distinct political community, so far independent as to justify and require negotiations with them in that character. *The Cherokee Trust Funds*, 288.
2. The Cherokees in North Carolina dissolved their connection with the Cherokee Nation when they refused to accompany the body of it on its removal, and have had no separate political organization since; though fostered and encouraged, they have not been recognized by the United States as a nation, in whole or in part; and as now organized, they are not the successor of any organization recognized by any treaty or law of the United States. *Ib.*
3. The claim of the Cherokees of North Carolina to a share of the commuted annuity fund of \$214,000, and of the fund created by sales of lands west of the Mississippi ceded to the Cherokee Nation, has no substantial foundation; those funds and that property being dedicated by the Constitution of the Cherokees and intended by their treaties with the United States for the benefit of the united nation, and

not in any respect for those who had separated from it and become aliens to their nation. *Ib.*

CIRCUIT COURTS OF THE UNITED STATES.

See JURISDICTION, B.

CITIZEN.

See DOMICIL, 1, 2;

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CLAIMS AGAINST THE UNITED STATES.

See PARTNERSHIP, 2 (1) (2).

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See MONEY, 1, 2.

CONFLICT OF LAW.

See REMOVAL OF CAUSES, 14, 15.

CONSOLIDATION OF CORPORATIONS.

See TAX AND TAXATION, 2, 3.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. Section 6 of the Act of the Legislature of Tennessee, passed March 16, 1877, Laws of 1877, ch. 16, p. 26, which imposes a privilege tax of \$50 *per annum* on every sleeping car or coach used or run over a railroad in Tennessee and not owned by the railroad on which it is run or used, is void so far as it applies to the inter-State transportation of passengers carried over railroads in Tennessee, into or out of or across that State, in sleeping cars owned by a corporation of Kentucky and leased by it for transportation purposes to Tennessee railroad corporations, the latter receiving the transit fare, and the former the compensation for the sleeping accommodations. *Pickard v. Pullman Southern Car Co.* 34.
2. The case of *Pickard v. Pullman Southern Car Co.*, (No. 1 above) confirmed and applied to a privilege tax of \$75 a year, on each sleeping car, imposed by the act of Tennessee of April 7, 1881. Laws of 1881, ch. 149, p. 202. *Tennessee v. Pullman Southern Car Co.*, 51.

3. When a suit is brought in a court of the United States against officers of a State to enforce performance of a contract made by the State, and the controversy is as to the validity and obligation of the contract, and the only remedy sought is the performance of the contract by the State, and the nominal defendants have no personal interest in the subject matter of the suit, but defend only as representing the State, the State is the real party against whom the relief is sought, and the suit is substantially within the prohibition of the XIth Amendment to the Constitution of the United States. *Hagood v. Southern*, 52.
4. The jurisdictional distinction pointed out between cases in which the relief sought is the performance of a plain official duty requiring no exercise of discretion, or where State officers under color of a State authority which is unconstitutional have invaded and violated personal and property rights; and cases like the present, in which the relief sought is affirmative official action by State officers in performing an obligation which attaches to the State in its political capacity. *Ib.*
5. Property of the United States is exempt by the Constitution of the United States from taxation under the authority of a State. *Van Brocklin v. Tennessee*, 151.
6. A crime punishable by imprisonment in a State prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the Fifth Amendment of the Constitution, that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury." *Mackin v. United States*, 348.
7. The exportation stamp required to be affixed to every package of tobacco intended for exportation, before its removal from the factory, again declared constitutional. *Turpin v. Burgess*, 504.
8. An excise laid on tobacco, before its removal from the factory, is not a duty on "exports," or "on articles exported," within the prohibition of the Constitution, even though the tobacco be intended for exportation. *Ib.*

B. OF THE STATES.

1. The requirement of the Constitution of Illinois that "no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title," is satisfied if the law has but one general object, and that object is expressed in the title and the body of the act is germane to the title. *Mahomet v. Quackenbush*, 508.
2. A statute of Illinois which is entitled "An Act to amend the articles of association of the Danville et cet. Railroad Company, and to extend the powers of and confer a charter upon the same," and which, in the body of the act, authorizes incorporated townships along the route to subscribe to its capital stock on an assenting vote of a majority of the legal voters, and further legalizes assents of voters of certain townships given at meetings held previous to the passage of the act, com-

plies with the requirement of the Constitution of that State that "no private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title." *Ib.*

CONTRACT.

1. D, a dealer in ice, finding himself late in the season of 1879 in possession of a large quantity, which threatened to become a total loss, pressed O, another dealer, to buy a part of it. O declined to purchase, but offered to take a cargo and "return the same to you next year from our houses." D accepted O's offer, and delivered the cargo of ice to him that season. Early in July of the season of 1880 D verbally requested O to deliver the ice. On the 7th of July O wrote to D: "It is not just or equitable for you to expect us to give you ice now worth \$5 per ton when we have letters of yours offering the ice that we got at fifty cents per ton. We must therefore decline to ship the ice for you this season, and claim as our right to pay you for the ice in cash at the price you offered it to other parties here, or give you ice when the market reaches that point." D answered by letter, dated July 10th, that he had sold the ice in advance in expectation of its delivery to him, and it did not seem to him right that O should ask for a postponement in the delivery. To this O answered on the 15th of July by letter, in which, after restating facts which made the demand in his opinion inequitable, he said: "We cannot therefore comply with your request to deliver the ice claimed, and respectfully submit that you ought not to ask this of us in view of the facts stated herein and in ours of the 7th." "We will be glad to hear from you in reply, but will be more pleased to have a personal interview, and venture to suggest that you come here for the purpose." No reply was made to this suggestion, either personally or by letter, and this suit was commenced six days later. *Held*, (1) That the contract gave O the option, during the whole shipping season of 1880, of delivering ice to D in return for the cargo received in 1879, he giving D reasonable notice of the time of delivery when fixed, and an opportunity to prepare for receiving and taking it away from O's houses. (2) That O's answers of the 7th and 15th July were not intended by him to be, and were not a final refusal to perform the contract on his part; and that at the time of the commencement of the action there had been no breach of the contract; and therefore, (3) That it was unnecessary to discuss or decide whether an absolute refusal by O, in the middle of the shipping season of 1880, to perform his contract at all would have conferred upon D a right of action for a breach before the expiration of the contract period for performance. *Dingley v. Oler*, 490.
2. When a contract is open to two constructions, the one lawful and the other unlawful, the former must be adopted. *Hobbs v. McLean*, 567.

3. O & H, partners, contracted with the District of Columbia to put down a water main. They notified the agent of the District that they authorized C to perform the work and receive the money, and the agent accepted the arrangement. C performed the work, and receipted from time to time for payments on the contract. On a suit in his own name for extra work: *Held*, That he was bound by the terms of the contract in that respect, and by receipts given in accordance therewith. *Campbell v. District of Columbia*, 615.

See INSURANCE, 3, 4;

PARTNERSHIP, 1, 2;

MUNICIPAL BOND, 1, 2;

RAILROAD, 3, 4.

CORPORATION.

See TAX AND TAXATION, 2, 3.

COSTS.

1. In order to avail to stop costs, an offer to submit to entry of judgment should be made in open court, and the court be asked to act thereon, after due notice to the other party. *New Providence v. Halsey*, 336.
2. Each one of the two principal appellants having succeeded in part on his appeal, no costs were allowed in this court for or against any party, and the expense of printing the record was charged equally on such two appellants. *Union Trust Co. v. Illinois Midland Railway*, 434.

See PARTNERSHIP, 2, (6);

PATENT FOR INVENTION, 6.

TRUST, 2, 3.

COURT AND JURY.

When, after giving a party the benefit of every inference that can fairly be drawn from all the evidence, it is insufficient to authorize a verdict in his favor, it is proper for the court to give the jury a peremptory instruction for the other party. *Marshall v. Hubbard*, 415.

See DOMICIL, 2.

COURT OF CLAIMS.

See UNION PACIFIC RAILWAY COMPANY, 1;

APPENDIX, 697.

CUSTOMS DUTIES.

Under § 2504, Schedule M, of the Revised Statutes, p. 480, 2d ed., "Henry's Calcined Magnesia," imported in glass bottles, is liable to a duty of 50 per cent. *ad valorem*, as being a medicinal preparation,

recommended to the public as a proprietary medicine, and not to a duty of 12 cents per pound, as calcined magnesia, under the same section and schedule, p. 477. *Ferguson v. Arthur*, 482.

DAMAGES.

See CASES AFFIRMED OR APPROVED, 5;
EVIDENCE, 6.

DECEIT.

In order to recover for injuries caused by false representations, through which plaintiff was induced to perform an act and was injured thereby, it is necessary to establish the making of the false representations by defendant; that he knew them to be false and uttered them with intent to deceive plaintiff and to induce him to act upon them; and that plaintiff relied upon them and acted, and suffered injury thereby. *Marshall v. Hubbard*, 415.

DEED.

By an act of the Legislature of Alabama the State loaned its credit to the Alabama & Chattanooga Railroad Company, upon condition that the company should first give to the State "a first mortgage upon the lands granted by the United States to said Railroad Company" and a first mortgage "on the telegraph line and telegraph offices along the line of said road belonging to said company; also on the machine shops and all other property in the State and in Georgia, Tennessee and Mississippi belonging to said company; also on all coal mines now opened or hereafter to be opened and worked, belonging to said company; also upon all iron or other mineral lands, and all iron-manufacturing establishments now in operation and hereafter to be constructed." The company made a mortgage to the State in which the words of description were identical with the language of the statute. In a suit in equity brought to foreclose the mortgage, as covering some town lots in Tennessee not granted by the United States to the company, and not coming within either of the specified classes: *Held*, (1) That the words of description in the mortgage did not cover the lots. (2) That the words "or other property" were intended to cover property of the company in and about the telegraph offices, machine shops, coal mines, iron mines and manufacturing establishments, about which a doubt might otherwise arise whether it was part of those classes of property. *Alabama v. Montague*, 602, 611.

See EVIDENCE, 2, 3, 4.

DEPOSITOR.

See BANK, 1, 2, 3.

DESCRIPTION.

See DEED.

DILIGENCE.

See NEGLIGENCE.

DISTRICT OF COLUMBIA.

Whether the District of Columbia is, in every case, exempt from liability for the negligence of its supervisor of roads, resulting in personal injury to those who labor under his direction on public work, is not decided. *District of Columbia v. McElligott*, 621.

See CONTRACT, 3.
JUDGMENT, 3 ;
NEGLIGENCE.

DOMICIL.

1. A citizen of one State who in good faith gives up his residence there, goes to another State, and takes up a permanent residence therein, loses his former citizenship and acquires citizenship in the new place of domicil. *Chicago & N. W. Railway v. Ohle*, 123.
2. On the facts in this case the court properly left it to the jury, and by proper instructions, to decide whether the defendant in error had acquired a citizenship in Illinois, and if so when that citizenship was acquired. *Ib.*

See EVIDENCE, 1.

EJECTMENT.

See EVIDENCE, 7, 8 ;
JURISDICTION, B, 3 ;

EMINENT DOMAIN.

See EVIDENCE, 6.

EQUITY.

1. A jury being empanelled on the law side of the court below to settle an issue sent from the chancery side, rendered a verdict which was certified by the clerk to the chancery side, and thereupon a decree was entered in conformity with it. At the next succeeding term the court ordered a transcript of the evidence on the trial of the issue, together with the charge of the court, to be filed on the chancery side. *Held*, that this order *nunc pro tunc* was proper in order to prevent

in justice, and was within the power of the court. *Kerr v. South Park Commissioners*, 379.

2. A verdict on an issue from chancery was taken on the law side of the court, and was subsequently set aside there, and a new trial ordered there, which was had with a second verdict on the same issue. This second verdict was certified to the chancery side of the court, and a decree was made there founded upon it, in which the setting aside of the first verdict was recited. *Held*, That this was an approval, adoption, and confirmation of the acts of the law side of the court recited in the decree. *Ib.*

See JUDGMENT, 2.

EQUITY PLEADING.

After hearing of the proofs, a bill in equity may be amended so as to put in issue matters in dispute and in proof, but not sufficiently put in issue by the original bill. *Graffam v. Burgess*, 181.

ESTOPPEL.

A statute of California authorized the opening of a street in San Francisco, to be known as Montgomery Avenue, the cost and expenses to be assessed on certain specified lots in proportion to the benefits accruing therefrom; and provided that when a majority in frontage of the owners of these benefited lots should petition certain officials for the opening, those officials should organize into a board and proceed to open it and to apportion the cost in the manner pointed out by the statute. A petition being presented to the designated officials, they organized, and certified that the petition had been subscribed by the owners of the requisite amount of frontage, and proceeded to lay out the street and apportion the costs and expenses among those benefited in the manner provided by the statute. They reported their action to the county court as required by the statute, and the report was confirmed by the court. A tax was thereupon levied in the ordinary way in 1878-9 to meet the portion of the costs and expenses payable that year by the terms of the statute. H, an owner of a lot thus assessed and levied on, declining to pay, the land was seized and sold for the default to Z, who thereupon brought ejectment to recover possession. *Held*, That on the trial of this action H was not estopped by the acceptance of the petition by the officials and their certificate upon it, or by the judgment of the county court confirming their report, from showing that the petition for the opening was not signed by the owners of the requisite amount of frontage. *Zeigler v. Hopkins*, 683.

See MUNICIPAL BOND, 2, 3;

PARTNERSHIP, 2 (5).

EVIDENCE.

1. An affidavit made by an officer of a railway company on information and belief as to the citizenship of the plaintiff, in a suit in a State court against the company, and filed therein for the purpose of requiring security for costs, is admissible against the company in an issue made in the Circuit Court of the United States after removal of the cause there, on the motion of the plaintiff to have it remanded. *Chicago & Northwestern Railway v. Ohle*, 123.
2. When an ancient deed forms part of the original papers in a suit in a court of record to determine the title to land to which the deed relates, the record of the case is admissible against the persons who are not parties or privies to the suit in order to prove the antiquity of the deed and to account for its custody. *Applegate v. Lexington Mining Co.*, 255.
3. An ancient, uncontradicted, and apparently genuine certificate of a recorder that a deed was recorded in a specified year long gone by, endorsed upon the original deed, is competent and sufficient evidence that the deed was put on record in the year named. *Ib.*
4. When it appears that a deed is at least thirty years old, and that it is found in proper custody, and possession under it or other equivalent corroborative proof of authenticity is shown, the deed may be admitted in evidence. *Ib.*
5. When a court of general jurisdiction, empowered by statute to acquire by constructive notice jurisdiction over rights of non-resident defendants in property within its jurisdiction, takes jurisdiction of a cause involving such rights, after ordering service of notice upon an absent defendant in the manner required by the statute and after the lapse of the requisite time of service, and adjudges the case, it will be presumed that every step necessary to obtain jurisdiction has been taken, unless the statute requires evidence of it to appear on the record. *Ib.*
6. Plaintiff's land was taken for a public park by right of eminent domain. On a trial before a jury to determine its value on the day when the Park Commissioners took possession of it, plaintiff offered to show the prices at which sales had been made of lands immediately adjoining the proposed park, which derived special benefit from its location, which sales were made after the exterior lines of the park had been determined. *Held*, That it was inadmissible. *Kerr v. South Park Commissioners*, 379.
7. In ejectment, after proving a patent of the premises from the State of Virginia to S. Y. in 1787, the plaintiff offered in evidence a duly recorded deed from S. C. Y., his son and sole heir, to J. H., dated in 1819, proved the hand-writing of the magistrate who took the acknowledgment of it and the signature of a witness who had been dead over fifty years, and showed that the patent and deed were found among the papers of J. H. after his death in 1834. *Held*, That the deed was

admissible in evidence as an ancient document without further proof. *Fulkerson v. Holmes*, 389.

8. An ancient deed reciting the death, intestate, of a former owner of lands conveyed by it, and that the grantor in the deed was his only son and heir, in whom title to the lands vested on his death, and conveying the lands to a person under whom the plaintiff in an action of ejectment claimed, is admissible in evidence at the trial of that action after the lapse of over sixty years, in order to prove the pedigree of the son. *Ib.*
9. A territorial court is bound to take judicial notice of the statutes of the Territory in operation affecting a subject brought before it in the regular course of procedure. *Hoyt v. Russell*, 401.
10. On May 8, 1873, the Legislature of Montana enacted that any person who should thereafter discover a mining claim should file in the office of the recorder of the county a statement in some material respects different from the statement previously required by law to be filed in such case, and that the act should take effect on and after its passage. On that date a statute was in force there which provided that "all acts of the legislature declaring that they should take effect from and after their passage shall so take effect only at the seat of government and in other portions of the Territory, allowing fifteen miles from the seat of government for each day." On the 13th of May, 1873, at a place in the Territory in which the act of May 8, 1873, had not come into force, H & G discovered a lode, and located it, and subsequently filed a notice of location complying in all respects with the law as it was before the passage of the act of May 8, 1873, but not complying with the requirements of that act. R, who had made a conflicting location, filed an adverse claim under Rev. Stat. § 2326. On the trial, the court refused to receive proof of the location by H & G, because they did not also prove affirmatively that the act of May 8 had not taken effect at the lode at the time of the location, by reason of its distance from the seat of government. *Held*, That the court should have taken judicial notice of the fact that that statute was not then in force there, and that it was error to exclude the evidence for the want of such proof. *Ib.*
11. In a suit brought by an assignee of a policy of life insurance, obtained on the application of the assured at the instigation of the assignee, to recover of the insurers after the death of the assured, the defendants set up that it was plaintiff's purpose, in procuring the insurance to be obtained, to cheat and defraud defendants, and offered to show that he effected insurances upon the life of the assured in other companies at or about the same time for the like fraudulent purpose. *Held*, That the evidence was admissible. *New York Mutual Life Ins. Co. v. Armstrong*, 591.

See MORTGAGE, 3;

PROMISSORY NOTE, 1.

EXCEPTION.

The record recited the substance and effect of plaintiffs' evidence, a motion for nonsuit by defendant on the ground that there was no case in law for the jury, that the motion was granted and judgment ordered to be entered in favor of defendant, and that the plaintiffs then and there excepted to this ruling of the court. *Held*, That the exceptions applied to the whole facts in the record to which the ruling of law that was excepted to applied. *Kleinschmidt v. McAndrews*, 282.

EXECUTION.

See FRAUD, 3, 4.

EXPRESS COMPANIES.

See RAILROAD, 1, 2.

FLORIDA INTERNAL IMPROVEMENT FUND.

On the facts: *Held*, That the bonds in controversy should be surrendered to the Trustees of the Internal Improvement Fund of the State of Florida, and should be applied by them in accordance with the prayer of their answer. *Littlefield v. Trustees of Internal Improvement Fund of Florida*, 419.

FRANCHISE.

See TAX AND TAXATION, 9.

FRAUD.

1. A judicial sale of real estate will not be set aside for inadequacy of price, unless the inadequacy be so great as to shock the conscience, or unless there be additional circumstances against its fairness. *Graffam v. Burgess*, 180.
2. Great inadequacy of price at a judicial sale of real estate requires only slight circumstances of unfairness in the conduct of the party benefited by the sale, to raise a presumption of fraud. *Ib.*
3. If the inadequacy of price paid for the purchase of real estate at a sale on an execution be so gross as to shock the conscience, or if in addition to gross inadequacy the purchaser has been guilty of unfairness or has taken any undue advantage, or if the owner of the property or the party interested in it has been for any other reason misled or surprised, then the sale will be regarded as fraudulent and void, and the party injured will be permitted to redeem the property sold. *Ib.*
4. Looking at the whole facts in this case the court finds traces of design on the part of plaintiff in error to mislead defendant in error, to lull

her into security, and thus prevent her from redeeming her property sold on execution within the period allowed by the statute of the State; and the court sustains the action of the court below in making a decree allowing redemption of the same after the expiration of that period. *Ib.*

See SALE;
TRUST, 1.

HABEAS CORPUS.

1. When a person is in custody, under process from a State court of original jurisdiction, for an alleged offence against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the Circuit Court of the United States has a discretion whether it will discharge him in advance of his trial in the court in which he is indicted, but this discretion should be subordinated to any special circumstances requiring immediate action. After conviction of the accused in the State court, the Circuit Court has still a discretion whether he shall be put to his writ of error to the highest court of the State, or whether it will proceed by writ of habeas corpus summarily to determine whether he is restrained of his liberty in violation of the Constitution of the United States. *Ex parte Royall*, 241.
2. The petitioner prayed for a writ of habeas corpus on the ground that the State statute under which he was arrested and held in custody was repugnant to the Constitution of the United States: *Held*, That, without deciding whether the court has power under existing legislation, and on habeas corpus, to discharge a prisoner held in custody under process of a State court of original jurisdiction for trial on an indictment charging him with an offence against the laws of that State, such power ought not, for reasons given in *Ex parte Royall*, *ante*, 241, to be exercised in advance of his trial. *Ex parte Royall*, 254.
3. A petition for a writ of habeas corpus alleged that the petitioner had been convicted in a Circuit Court of the State of Michigan of embezzling the funds of a National Bank, and set forth various reasons why the conviction should be held to be in contravention of the Constitution and laws of the United States, but showed no reason why the Supreme Court of the State might not review the judgment, or why it should not be permitted to do so without interference by the courts of the United States. *Held*, That leave to file the petition should be denied. *Ex parte Fonda*, 516.

See JURISDICTION, B, 4.

HENDRICKS, THOMAS A.

See APPENDIX, 707.

HUSBAND AND WIFE.

See INSURANCE, 4.

INFAMOUS CRIME.

See CONSTITUTIONAL LAW, A, 6.

INSOLVENT LAWS.

A State insolvent statute, passed at a time when an act of Congress establishing a uniform system of bankruptcy is in force, is inoperative, so far as in conflict with that act, while the act is in force ; but on its repeal, the State statute becomes operative. *Tua v. Carriere*, 201.

See LOCAL LAW, 2.

INSURANCE.

1. The right, by way of subrogation, of an insurer, upon paying for a total loss of the goods insured, to recover over against third persons, is only that right which the assured has. *Phoenix Ins. Co. v. Erie & Western Transportation Co.* 312.
2. A common carrier may lawfully obtain insurance on the goods carried against loss by the usual perils, though occasioned by the negligence of his own servants. *Ib.*
3. In a bill of lading, which provides that the carrier shall not be liable for loss or damage of the goods by fire, collision, or dangers of navigation, a further provision that the carrier, when liable for the loss, shall have the full benefit of any insurance that may have been effected upon the goods, is valid, as between the carrier and the shipper ; and therefore, in the absence of any misrepresentation or intentional concealment by the shipper in obtaining insurance upon the goods, or of any express stipulation on the subject in the policy, limits the right, by way of subrogation, of the insurer, upon paying to the shipper the amount of a loss by stranding, occasioned by the negligence of the carrier's servants, to recover over against the carrier. *Ib.*
4. A policy of insurance, made to a wife on the life of her husband, contained this clause : "This policy of insurance, after two annual premiums shall have been paid thereon, shall not be forfeited or become void by reason of the non-payment of premiums ; but the party insured shall be entitled to have it continued in force for a period to be determined as follows, to wit : The net value of the policy when the premium becomes due and is not paid shall be ascertained according to the combined experience or actuaries' rate of mortality, with interest at four per cent. per annum. Four fifths of such net value shall be considered as a net single premium of temporary insurance, and the term for which it will insure shall be determined ac-

- ording to the age of the party at the time of the lapse of premium, and the assumption of mortality and interest aforesaid ; or at his option may receive a paid up policy for the full amount of premium paid : Provided, That unless this policy shall be surrendered and such paid up policy shall be applied for within ninety days after such non-payment of premium as aforesaid then this policy shall be void and of no effect." *Held*, that the words "paid up policy," in the proviso, included an insurance for the amount of the original policy for a time computed according to its net value at the time of the failure to pay a premium, as well as an insurance for the term of the original policy for an amount computed according to the premiums paid ; and that the wife was not entitled to have the policy continued or renewed in either form without surrendering it and applying for a new policy within ninety days after the nonpayment of a premium. *Held, also*, that the rights of the parties were not affected by the husband having procured a cancellation of the original policy by fraudulently representing that the wife was dead. *Knapp v. Homeopathic Life Ins. Co.* 411.
5. A person applied in St. Louis to an agent of a New York Insurance Company for insurance on his life. The agent under general instructions, questioned him on subjects material to the risk. He made answers which, if correctly written down, and transmitted to the company, would have probably caused it to decline the risk. The agent, without the knowledge of the applicant, wrote down false answers concealing the truth, which were signed by the applicant without reading, and by the agent transmitted to the company, and the company thereupon assumed the risk. It was conditioned in the policy that the answers were part of it, and that no statement to the agent not thus transmitted should be binding on his principal ; and a copy of the answers with these conditions conspicuously printed upon it, accompanied the policy. *Held* : That the policy was void. *New York Life Ins. Co. v. Fletcher*, 519.
 6. If an applicant for life insurance is required to answer questions relating to material facts in writing, and to subscribe his name thereto as part of the application upon which the policy is issued, it is his duty to read the answers before signing them, and it will be presumed that he did read them. *Ib.*
 7. If a policy for life insurance on which premiums have been paid is void by reason of untrue representations as to material facts in the application, made without design on the part of the applicant, the only recovery which can be had on the policy after the assured's death is for the premiums paid on it. *Ib.*
 8. A policy of life insurance payable to the assured or his assigns at a future day named, or if he should die before that day to his legal representatives within sixty days after notice and proof of his death, is assignable if the assignment is not made to cover a speculative risk ; and an assignment of it passes to the assignee the right to receive the

sum insured in case of the death of the assured before the day named.
N. Y. Mut. Life Ins. Co. v. Armstrong, 591.

9. Proof that the assignee of a policy of life insurance caused the death of the assured by felonious means is sufficient to defeat a recovery on the policy. *Ib.*

See EVIDENCE, 11;
MORTGAGE, 1.

INTERNAL REVENUE.

1. The pleadings in a suit *in rem* brought by the United States, in a Circuit Court of the United States in Kentucky, for the forfeiture of property after its seizure for the violation of the internal revenue laws, are not required by section 914 of the Revised Statutes, to be governed by the statute of Kentucky in regard to pleadings in civil actions; but are to be, as before the enactment of section 914, according to the course of admiralty. *Coffey v. United States*, 233.
2. A testator died July 17, 1870, leaving by his will a legacy to his son payable "within three months after he shall arrive at the age of 21 years." The legatee arrived at the age of 21 on the 21st day of February, 1872. *Held*, That the legacy was not subject to a legacy tax. *Sturges v. United States*, 363.

See CONSTITUTIONAL LAW, A, 7, 8.

JUDGMENT.

1. Final judgments at law cannot, by proceedings taken after the close of the term at which they were entered, be reversed or annulled for errors of fact or law by the court which rendered them; except that clerical mistakes, and such mistakes of fact not put in issue or passed upon as may be corrected by writ of error *coram vobis* (or on motion in place of that writ where such practice prevails) and a mistake in the dismissal of a cause may be corrected after that time: the same rule applies in equity, excepting, further, the right to take jurisdiction of bills for review. *Phillips v. Negley*, 665.
2. The appropriate remedy to set aside or enjoin the execution of judgments at law, wrongfully obtained, is by bill in equity. *Ib.*
3. So far as the rule prevails in Maryland that judgments may, at a term subsequent to that at which they were entered, be amended in essential matters, reversed, or annulled by the court which rendered them, that rule, whether founded on a construction of the Maryland statute of 1787 by the highest court of the State, or on an interpretation of the common law, is not binding on the courts of the United States in the District of Columbia. *Ib.*

JUDICIAL NOTICE.

See EVIDENCE, 9, 10.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. A judgment of reversal in a State court, accompanied by an order remanding the cause for a retrial, is not a final judgment for the purpose of a writ of error to this court. *Johnson v. Keith*, 199.
2. Inadvertent expressions in an opinion of the court, which are not material to the decision of the case, are not decisions of the court within the general rule that what is decided in a case on appeal is not open to reconsideration in the same case on a second appeal on similar facts. *Barney v. Winona & St. Peter Railway*, 228.
3. If the trial below is by the court without a jury, and the findings of facts are general, only such rulings of the court in the progress of the trial can be reviewed as are presented by a bill of exceptions. *Boardman v. Toffey*, 271.
4. The matter in dispute on which the jurisdiction of this court depends, is the matter which is directly in dispute in the particular cause in which the judgment or decree sought to be reviewed has been rendered; and the court is not permitted, for the purpose of determining its sum or value, to estimate its collateral effect in a subsequent suit between the same or other parties. *Bruce v. Manchester & Keene Railroad*, 514.
5. The fact being found that the property in dispute is worth \$5000, this court, on motion to dismiss, disregards affidavits that it is worth less, although, taken by themselves, the affidavits show that it may be worth less than that sum. *Zeigler v. Hopkins*, 683.
See APPENDIX, 697; REMOVAL OF CAUSES, 13.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. A Circuit Court of the United States having, by removal from a State court by reason of citizenship of the parties, properly acquired jurisdiction of an action against a tenant for the possession of land, is not ousted of it by admitting as codefendant, under the provisions of a State statute, his landlord, a citizen of the same State as the plaintiff. *Phelps v. Oaks*, 236.
2. Section 914 of the Revised Statutes, which requires the forms and modes of proceeding in civil causes other than equity and admiralty causes in Circuit and District Courts to conform, as near as may be, to the forms and modes of proceeding existing at the time in like causes in the courts of record in the State within which the Circuit or District Courts are held, does not require the courts of the United States, by adopting the forms and modes of the State courts, to divest themselves of a jurisdiction once lawfully acquired under an act of Congress. *Ib.*
3. In ejection against a tenant in possession of real estate whose landlord is a citizen of another State, the plaintiff has "a real and substantial controversy" with the defendant within the meaning of the act for

removal of causes from State courts, which continues after his landlord is summoned in and becomes a party for the purpose of protecting his own interests. *Ib.*

4. Circuit Courts of the United States have jurisdiction on habeas corpus to discharge from custody a person who is restrained of his liberty in violation of the Constitution of the United States, but who, at the time, is held under State process for trial on an indictment charging him with an offence against the laws of the State. *Ex parte Royall*, 241.
5. In an action at law in a Circuit Court of the United States against a township to recover on bonds issued by the township, the plaintiff is not entitled to recover on bonds transferred to him by citizens of the State in which the town is situated for the mere purpose of being sued in a court of the United States. *New Providence v. Halsey*, 336.

See HABEAS CORPUS;
REMOVAL OF CAUSES.

C. GENERALLY.
See EVIDENCE, 5.

LATENT AMBIGUITY.
See WILL, 1, 3.

LAW AND EQUITY.
See EQUITY, 1, 2.

LEGACY TAX.
See INTERNAL REVENUE, 2.

LIFE INSURANCE.
See INSURANCE, 4, 5, 6, 7, 8, 9.

LOCAL LAW.

1. In Louisiana, on the death of one of several members of a firm, the survivors may surrender their own undivided interests in the assets of the firm for the benefit of the creditors of the firm, but cannot surrender the interest of the deceased partner for that purpose; but, when such surviving members make such a surrender, purporting to include both their own interest therein and the interest of the deceased partner, and it is accepted by the court and acted upon in the manner provided by the law of the State, the action of the court therein is a judicial act, which cannot be attacked collaterally by an attaching creditor of the firm, interested in setting aside the proceedings for the purpose of retaining the lien of his attachment. *Tua v. Carriere*, 201.

2. The insolvent laws of Louisiana were in force before and when the uniform Bankrupt Act of 1867 was enacted by Congress, and revived when that act was repealed. *Ib.*
3. The act of the Legislature of Kentucky, of December 19, 1795, "to establish District Courts in this Commonwealth," conferred upon such a court jurisdiction over suits to foreclose mortgages upon real estate situated within its territorial jurisdiction. *Applegate v. Lexington Mining Co.*, 255.
4. An exception to a decision of the court on a motion for a nonsuit, ordering the same on the ground that the plaintiff had made no case for the jury, is an exception within the meaning of § 279 of the Montana Code of Civil Procedure. *Kleinschmidt v. McAndrews*, 282.
5. Possession of land in Montana under claim of title for more than three years prior to August 1, 1877, perfected title as against adverse claimants. *Dunphy v. Sullivan*, 346.

See CONSTITUTIONAL LAW, B, 1, 2;
JUDGMENT, 3;
SALE.

MASTER AND SERVANT.

Whether a supervisor of public roads and a laborer employed under him on the roads are fellow servants, within the meaning of the general rule that the common employer is not responsible to one employé for injuries caused by the negligence of a coemployé in the same branch of service, is not decided. *District of Columbia v. McElligott*, 621.

MONEY.

1. Payment in good faith at its maturity in Virginia in confederate currency of a debt contracted there in 1860 to be paid there in 1862, and the receipt and acceptance of the same by the creditor, discharged the debt. *Glasgow v. Lipse*, 327.
2. In 1860 two brothers, executors of the will of their father, who had resided in Virginia, and had died there, contracted in that State to convey, under a power in the will, real estate of the testator on the payment, among other things, of a bond then executed by the purchaser for the payment of a sum of money in 1862. One of the executors resided in Indiana, and continued to reside there during and after the close of the war. The other executor remained in Virginia, and in 1862 at the request of legatees entitled to share in the distribution of the estate received payment of the bond in confederate money, and his accounts as executor, showing the receipt of that money, were duly settled and allowed by the court in 1864. In a suit commenced by the surviving executor against the executor of the obligor on the bond to recover payment of the bond, *Held*: That the payment to the resident executor in confederate currency was a valid payment. *Ib.*

MORTGAGE.

1. A father owning in fee an equal undivided one-third part of a lot of land, and having a life tenancy in the other equal undivided two-third parts, and his two daughters each owning in fee an equal undivided one-third part, subject to such life tenancy, the three executed a mortgage on the lot, for a loan of \$30,000, in which the mortgagors agreed to keep the building on the lot insured against fire, in its fair insurable value, and assign the policy to the mortgagee, to be held by him "as collateral and additional security," with the right to collect the insurance money and apply it on the mortgage. On a partition of the lot between the father and the daughters, they paid \$10,000 to the mortgagee, on the principal, and he released from the mortgage the part belonging to the father. The father, with the money loaned, had erected a building on the part of the lot allotted to the daughters, and he thereafter collected for his own use the rents, and paid the interest on the mortgage, and the taxes, and the fire insurance premiums. The building, being insured for \$15,000 by a policy in the name of the father, the loss being made payable to the mortgagee, was destroyed by fire. The loss being more than that sum, the mortgagee received a draft for \$15,000 on the insurance company, drawn by its agent, to the order of the mortgagee, and agreed in writing with the father, by an instrument which stated that the mortgagee held the policy as collateral security for the payment of the loan, that the right to apply the \$15,000 on the debt was waived, and that the money should be deposited in a bank to be selected by the father, to his credit and at his risk, to be used in erecting a building on the lot, the money to be paid out on the father's checks, countersigned by the mortgagee, within six months, or the waiver to be of no effect, and the mortgagee to have the right to apply the money on the debt. Thereupon the mortgagee endorsed the draft to the order of the father, he designating as the bank of deposit a bank of which he was president, and taking the draft and collecting it, and depositing the money to his credit in the bank. The mortgagee countersigned no checks against the money, and no building was put up. The daughters had no knowledge of the transaction. In a suit to foreclose the mortgage, the daughters claimed that the \$15,000 should be credited on the mortgage, as against them. *Held*,
 - (1.) Authority in the father, as representing his daughters, to make the agreement as to the \$15,000, could not be implied from the general power he exercised over the property, in managing it, and procuring insurance and paying taxes, the daughters having themselves executed the mortgage;
 - (2.) The insurance was obtained in pursuance of the requirements of the mortgage, and must be presumed to have covered the interests of all the mortgagors, as an entirety;

- (3.) The mortgagee in fact dealt with the \$15,000, not as the father's money, but as representing a further security furnished under the mortgage, and as something which concerned the rights of all the mortgagors, because the agreement with the father recognized the obligation either to credit the money on the mortgage or to see that it went to restore the building;
 - (4.) The provision of the policy, that the loss should be payable to the mortgagee, placed him in the same position as if the policy had been in the name of all the mortgagors and been assigned to the mortgagee, and he was bound to apply the money in accordance with the provisions of the mortgage, for the benefit of all the mortgagors, unless all consented to a different disposition of the money;
 - (5.) In any view, if the agreement with the father was valid, as against the daughters, the mortgagee was bound to see that the money was used to restore the building, or else credit it on the mortgage;
 - (6.) That the transaction amounted to a collection of the \$15,000 by the mortgagee, and as a satisfaction of the mortgage to that extent, as respected the estate of the daughters, leaving the mortgage a lien for \$20,000, as regarded the life estate of the father.
Connecticut Mut. Life Ins. Co. v. Scammon, 634.
2. It is proper to sell the estate in remainder and the life estate separately, and to apply the proceeds of the latter first to satisfy the amount for which it is the sole security, not applying any of such proceeds to pay costs, or taxes, or any part of the debt for which there is other security, till the full payment of the sum for which the life estate is the sole security. *Ib.*
 3. L made and delivered to W his promissory note for \$1300 payable in ninety days, and a deed of a tract of land absolute on its face. It was orally agreed between them that the deed was executed as security for the payment of the note, and that, if the note was not paid at maturity, W was authorized to sell the land. The note not being paid at maturity W, with the knowledge and assent of L, sold and conveyed the land to T and applied the proceeds to the payment of the debt. After the completion of the contract and execution of the deed, but before its delivery to T, a creditor of L who had recovered judgment against him, levied on this tract of land to satisfy the judgment, and caused it to be sold. The purchaser at the sheriff's sale after receiving his deed, filed a bill in equity against the heirs and devisees of T, praying to be admitted to redeem the land on payment of the note. *Held*: (1) That the transaction was in equity a mortgage: (2) That parol evidence was admissible to show when the power of sale in the mortgage became absolute: (3) That W had an absolute power of sale when the conveyance was made to T, the exe-

duction of which carried the land free from the mortgage. *Jackson v. Lawrence*, 679.

See DEED ;

TRUST, 1.

MUNICIPAL BOND.

1. A municipal bond in the ordinary form is a promissory note negotiable by the law merchant within the meaning of that term in the act of March 3, 1875. *New Providence v. Halsey*, 336.
2. The issue of township bonds by commissioners under the act of the legislature of New Jersey of April 9, 1868, "to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," was conclusive as to the amount that could be put out under the statute and estopped the township from setting up against a *bona fide* holder that the issue was in excess of the amount authorized. *Ib.*
3. A statute of Kentucky authorized a county court to subscribe to such an amount as it might determine in the stock of a railroad company, and to levy the taxes necessary to pay for the stock so subscribed, or to issue bonds of the county for the amount, the bonds to be in such sums and payable at such times as the county court might determine; but provided that a proposition to subscribe for stock to an amount to be suggested and fixed by commissioners named in the statute should be first submitted to the voters of the county, and approved by a majority of the votes cast. The county court, upon the suggestion of those commissioners, submitted to the voters a proposition to subscribe for \$250,000 of the stock, and, in obedience to their vote, ordered that the county court subscribe that amount, and that bonds to that amount, for sums and payable at times specified in the order, with the signatures of the presiding judge and the clerk of the county court and the seal of the county, should be sold or disposed of by a committee appointed for the purpose, and a list of them entered upon the records of the county. The presiding judge and clerk issued such bonds for a greater amount, so signed and sealed, and with a certificate on the back of each, signed by the judge only, that it was issued as authorized by the statute and by an order of the county court in pursuance thereof. All the bonds as they were delivered were entered upon the records of the county court, in a register open to public inspection. *Held*, That the county court had power to issue bonds to the amount of \$250,000 only; that the bonds issued in excess of that amount were unlawful and void, even as against a purchaser before maturity, for value, and without notice of the over-issue; that the bonds to that amount, which were first delivered, were the valid ones, and that the county was not estopped to deny the validity of the others, either by the certificate endorsed thereon by the judge,

- and share the profits of the partnership venture in proportion to their contribution to its capital, and two of the partners furnish all the money and do all the work, they are entitled to be repaid their advances out of its assets before payment of the individual creditors of the partner who paid nothing and did nothing to promote the partnership business. *Hobbs v. McLean*, 567.
2. A, having contracted with the United States to furnish supplies of wood and hay to troops in Montana, entered into partnership with B and C for the purpose of executing the contract. A was to furnish half the capital, B and C one-fourth each, and profits and losses were to be divided on that basis: but in fact the capital was furnished by B and C. A delivered the wood according to the contract, but failed to deliver the hay, and payment being refused, he brought suit in his own name in the Court of Claims against the United States to recover the contract price of the wood. In this suit B and C each was a witness on behalf of A, and each testified that he had "no interest direct or indirect in the claim," except as a creditor of A, holding his note. Pending the suit A became bankrupt, and then died. His administratrix was admitted to prosecute the suit, but before entry of final judgment his assignee in bankruptcy was substituted in her place. Final judgment was then rendered in favor of the assignee, and the amount of the judgment was paid to him. B and C as surviving partners then filed a bill in equity against the assignee and the attorneys and counsel, to recover their shares in the partnership property. *Held*: (1) That the interests of B and C in the partnership property were not affected by the fact that the contract under which they claimed was not made and attested by witnesses after the issue of a warrant for payment, as required by Rev. Stat. § 3477. (2) That they were not affected by the provisions of Rev. Stat. § 3737 that a transfer of a contract with the United States shall cause an annulment of the contract so far as the United States are concerned. (3) That the cause of action to recover of the assignee their proportionate shares of the partnership fund in his hands accrued to B and C on the receipt of the money by the assignee. (4) That B and C were not subject in this suit to the disabilities as witnesses imposed by Rev. Stat. § 858 upon parties to suits by or against executors, administrators or guardians. (5) That B and C were not estopped by their declarations in the Court of Claims as to their interest in the claim there in controversy, from setting up the interest in it which they seek to enforce in this suit. (6) That the assignee was entitled to no allowance for compensation for services, expenses and attorney's fees, in recovering the fund in the Court of Claims from the United States. *Id.*

See PROMISSORY NOTE, 2;

REMOVAL OF CAUSES, 17.

PATENT FOR INVENTION.

1. The feature of varying eccentricity in the rollers is an essential part of

- the invention protected by letters patent No. 98,622 granted to James Sargent, January 4, 1870, for an improvement in permutation locks. *Yale Lock Co. v. Sargent*, 373.
2. Claim 1 of reissued letters patent No. 4696, granted to James Sargent, January 2, 1872, for an "improvement in locks," on an application filed September 25, 1871, the original patent, No. 57,574, having been granted to him August 28, 1866, namely, "1. In a combination lock for safe or vault doors, a bolt, *I*, which turns on a pivot or bearing, when said bolt, *I*, is used in a lock having no ordinary sliding lock-bolt, and in connection with the separate bolt work of the door, and so arranged as to receive the pressure of the said bolt-work without transmitting it to the wheels or other equivalent works of the lock," is not invalid, as being an unlawful expansion of claim 1 of the original patent, namely, "1. The rotating tumbler *I*, when separated and isolated in action from the permutation wheels, and so arranged that any inward pressure upon the bolt will be exerted upon the bearing of said tumbler, and have no action nor effect upon the said permutation wheels, substantially as and for the purpose herein specified." The invention covered by claim 1 of the reissue defined, and certain prior structures held not to have anticipated it. The defendant's lock held to be an infringement of that claim. *Yale Lock Co. v. Sargent*, 536.
 3. The plaintiff granted no licenses under his patent, but sold locks made by himself containing the invention. The defendant sold infringing locks at less prices than the plaintiff, and compelled the plaintiff to lower his prices. As the turning bolt was an essential feature in each of the two locks, and the plaintiff could not sell his patented device unless in a lock, and thus made a profit on the entire lock, and was deprived of that profit by such enforced reduction of prices: *Held*, That the infringement caused the entire loss of the plaintiff, after allowing a proper sum for any other patented device contained in the defendant's lock and for any other causes which gave to the defendant an advantage in selling his lock. *Ib.*
 4. Such loss on the locks sold by the plaintiff, by the reduction of price, was allowed to the plaintiff as damages, in a suit in equity for infringement, although the defendant made no profit. *Ib.*
 5. The plaintiff, as legal owner of the patent, was entitled to recover the damages, although he had a partner in making and selling the locks. *Ib.*
 6. As the bill alleged infringement of the reissue generally, and the answer set up that the reissue was not for the same invention as the original patent, and one of the claims of the reissue not disclaimed before this suit was brought was invalid, as an unlawful expansion of the original patent, although the claim on which a recovery was allowed was good, this court, the patent, having expired, but there having been no unreasonable delay in filing a disclaimer to the invalid

- claim, reversed so much of the decree below as awarded costs to the plaintiff, and affirmed it in all other respects, each party to bear his own costs in this court and one half of the expense of printing the record. *Ib.*
7. The scope of letters patent must be limited to the invention covered by the claim ; the claim may be illustrated, but it cannot be enlarged by language used in other parts of the specification. *Yale Lock Co. v. Greenleaf*, 554.
 8. The change made by George Rosner, in the devices used in previous combinations for the purposes described in his application for a patent, September 18, 1860, were such as would occur to an unskilled mechanic, and were not inventions within the meaning of the patent laws. *Ib.*
 9. The first claim in the patent 30,092, September 18, 1860, Reissue 4488, July 25, 1871, granted to George Rosner, was anticipated by the application and specification of D. H. Rickards, filed March 13, 1852, and by locks manufactured by Evans & Watson in 1853. *Ib.*
 10. If a patent includes a prior valid patent, neither patentee can use the other's invention without consent ; but a stranger cannot set up the first as a defence in a suit for infringing the second. *Cantrell v. Wallick*, 689.
 11. Two machines are identical when in substance they perform the same thing in the same way to obtain the same result ; and different when their functions or mode of performing them or results are substantially different. *Ib.*
 12. Defendant in a suit for infringing a patent who sets up prior use and want of novelty as a defence has the burden of proof to establish the facts set up beyond all reasonable doubt. *Ib.*

PRACTICE.

The parties having filed a stipulation concerning the method of adjusting the accounts under the decree of the court the decree is modified in accordance therewith. *Express Cases*, 601.

See APPEAL ;	EQUITY, 1, 2 ;
COSTS, 1, 2 ;	EQUITY PLEADING ;
COURT AND JURY ;	JURISDICTION, A, 2, 3.

PRESUMPTION.

See EVIDENCE, 5.

PRINCIPAL AND AGENT.

See MORTGAGE 1, (1).

PROMISSORY NOTE.

1. In a suit at law, by the payee of a promissory note or his representatives, against the maker, evidence is inadmissible to show that the

- note was not intended to be a promissory note, but was given as a memorandum not to be enforced against the maker. *Burnes v. Scott*, 582.
2. A defence in an action at law by the payee of a promissory note, or his representatives, that there was a failure of consideration in that the note was based upon certain partnership transactions between the parties which are still unsettled, and the amount due from the one to the other therefore unknown, is an equitable defence which cannot be set up in that action. *Ib.*
 3. The making of a champertous, and therefore under the law of the State void and illegal, contract for the prosecution of a suit to collect a promissory note, cannot be set up in bar of a recovery on the note. *Ib.*

See MUNICIPAL BOND, 1.

PUBLIC LAND.

1. In the construction of land grant acts in aid of railroads, "granted lands" are those falling within the limits specially designated, the title to which attaches as of the date of the act of Congress, when the lands are located by an approved and accepted survey of the line of the road filed in the Land Department; but "indemnity lands" are lands selected in lieu of parcels lost by previous disposition or reservation for other purposes, the title to which accrues only from the time of their selection. *Barney v. Winona & St. Peter Railway*, 228.
2. The provision in § 3 of the act of March 3, 1865, that any lands granted to Minnesota by the act of March 3, 1857, which might be located within the limits of the extension made by said act of 1865 to the original grant made by said act of 1857, should be deducted from the full quantity of lands granted by the act of 1865, applies to "granted lands" of the prior grant falling within the six-mile limit, and not to possible indemnity lands which might be subsequently acquired. *Ib.*
3. The title of the railroad companies within the ten-mile limit to lands granted by Congress to Iowa by the act of May 12, 1864, 13 Stat. 72, relates back to the date of the grant, and where two roads cross each other they take such granted lands in equal moieties; but the title to indemnity or lieu lands outside that limit is acquired by priority of selection, approved by the Secretary of the Interior. *Sioux City & St. Paul Railroad v. Chicago, Milwaukee & St. Paul Railway*, 406.

RAILROAD.

1. Railroad companies are not required by usage, or by the common law, to transport the traffic of independent express companies over their

lines in the manner in which such traffic is usually carried and handled.
Express Cases, 1.

2. Railroad companies are not obliged either by the common law or by usage to do more as express carriers than to provide the public at large with reasonable express accommodation ; and they need not in the absence of a statute furnish to all independent express companies equal facilities for doing an express business upon their passenger trains. *Ib.*
3. The Kentucky and Great Eastern Railway Construction Company, which had a contract with the Kentucky and Great Eastern Railway Company, made May 22, 1873, to construct for it a railway in Kentucky, from Newport to Catlettsburg, and did work between Maysville and Catlettsburg, completing about seven miles of road, and purchasing and putting down the iron rails and other materials, acquired no lien on the road or on any part of its line, completed or not completed. *Wright v. Kentucky & Great Eastern Railway Co.*, 72.
4. The Kentucky and Great Eastern Railway Company having previously, under a contract made by it January 15, 1873, with the owners of the Maysville and Big Sandy Railroad, for a conditional sale of that Railroad, taken possession of it, and the Construction Company having notice of that contract, when the construction contract was made, and the vendors having declared that contract to be void, according to its terms, and resumed possession of the railroad, with the consent of the vendee, the Construction Company acquired no rights in regard to so much of the line, completed or not completed, between Maysville and Catlettsburg, as was part of the line of the Maysville and Big Sandy Railroad, which were not subject to the rights of the vendors of that road. *Ib.*
5. A mortgage having been made by the Kentucky and Great Eastern Railway Company on February 15, 1872, to a trustee, to secure bonds, on the line from Newport to Catlettsburg, the trustee acquired under it no greater rights at any time than the Railway Company had, and, no bonds having been issued before the conditional sale of the Maysville and Big Sandy Railroad was made, on January 15, 1873, the trustee had, as against the vendors of that road, only such rights as the mortgagor had. *Ib.*
6. The service rendered by a railway company in transporting local passengers from one point on its line to another is not identical with the service rendered in transporting a through passenger over the same rails. *Union Pacific Railway Co. v. United States*, 355.
7. Three railroad companies in Illinois, with roads, one from Peoria to Decatur, one from Paris to Decatur, and one from Paris to the Indiana line, in the direction of Terre Haute, Indiana, each, before September, 1874, issued bonds secured by a mortgage on its road. In September, 1874, each of the other two companies conveyed its road to the Peoria and Decatur Company, the latter assuming "all

the bonded and floating indebtedness" of the other companies. In November, 1874, it changed its name to that of the Illinois Midland Company, and in January, 1875, issued bonds secured by a mortgage covering all its property, original and purchased, with the view of exchanging them, dollar for dollar, for the bonds of the sectional roads. In September, 1875, the owner of a majority of the stock of the companies, with judgment creditors of the Paris and Decatur Company, brought a suit in equity in a State court in Illinois against the Illinois Midland Company, to have a receiver of all its property appointed, and an account taken of all the claims and liens of its stockholders and creditors, and of those of the sectional companies, and to have them paid and adjusted according to equity. Such a receiver was immediately appointed, with power to run the road. In December, 1876, the Union Trust Company, trustee in the mortgages on the Paris and Decatur road, the Paris and Terre Haute road, and the Illinois Midland road, filed a bill in the proper Circuit Court of the United States in Illinois to foreclose those three mortgages; and in September, 1877, it was made a defendant in the State court suit, on its own petition, alleging a default by October 1, 1875, in the payment of interest on the bonds embraced in all three of the mortgages. In February, 1878, it filed two bills in the same Federal court, each for the foreclosure of one of the two sectional road mortgages held by it. In April, 1878, it removed into that court the State court suit. In August, 1881, holders of Paris and Decatur bonds filed a bill in the same Federal court to foreclose the Paris and Decatur mortgage. By an order made in June, 1882, that court consolidated all the suits. Successive receivers, each displacing the prior one, were appointed by the State court in August, 1876, and by the Federal court in December, 1878, and April, 1882. In June, 1882, a special commissioner was appointed to report as to the certificates of indebtedness issued by the receivers. He made his report in April, 1883, and, on exceptions to it, an interlocutory decree was made in June, 1884, making specific adjudications as to various receiver's certificates and other receiver's debts, and directing the commissioner to report as to other matters. He did so in January, 1885, and exceptions were filed to the report. A final decree in June, 1885, disposed of the litigated questions, and provided for a sale of the mortgaged property and the distribution of the proceeds. Holders of Paris and Decatur bonds appealed because the decree gave to sixteen receiver's certificates priority over those bonds. When the first order was made under which six of the certificates were issued, neither any of the Paris and Decatur bondholders, nor their trustee, were parties to the suit, but before any other order was made under which any of the certificates were issued, the trustee was made a party, and the Paris and Decatur interest had been in default for ten months when such first order was made: *Held*,

(1.) Certificates issued for necessary repairs must be allowed priority;

- (2.) It is no objection to this rule, that the suit in which the first receiver was appointed was not brought by the bondholders, or their trustee;
- (3.) The bill in that suit was sufficient to enable a court of equity to administer the property and marshal the debts;
- (4.) It was sufficient, if the bondholders and their trustee were, after they were made parties, heard as to the merits of such first order, and the application of the money for which the certificates were issued;
- (5.) The certificates issued to pay tax liens are to have priority;
- (6.) Persons having no connection with the case or the parties, who take directly from the receiver receiver's certificates issued to pay for necessary repairs, are not bound to see to the application of the proceeds;
- (7.) The holders of interest-bearing receiver's certificates, taken within the limit of discount allowed by the court in the order authorizing the certificates to be issued, are entitled to the face of the certificates and the interest;
- (8.) Receiver's certificates issued to replace earnings diverted from paying for operating expenses and ordinary repairs, to pay for replacing worn-out parts of the road, while large debts had been incurred for the operating expenses and ordinary repairs, are to be allowed priority;
- (9.) It was not necessary to have the express consent of the bondholders, to create a lien prior to the bonds on the *corpus* of the property, on the facts of this case, and in view of the neglect of their trustee to interpose all the while the road was openly in the charge of the receiver, and being run, with the interest on the bonds in arrears;
- (10.) Items for wages due employés of receivers; debts due from them to other railroad companies, and for supplies and damages; wages due employés of the road within six months immediately preceding the appointment of the first receiver; and debts incurred for the ordinary expenses of the receivers in operating the road may be allowed priority out of the *corpus* of the property, if there is no income fund, after scrutiny and opportunity for those opposing to be heard;
- (11.) The terms of the first order appointing the receiver did not impair or exclude the authority of the court to give priority to the claims above mentioned;
- (12.) It is proper to apportion among the three sectional roads, in proportion to their lengths, the items so allowed priority of lien, which include the terminal expenses and track rentals of the three sectional roads, although such expenses and rentals were different for each of them;
- (13.) The objection that there was no authority to buy the Paris and

Decatur road cannot prevail, because the non-action of the bondholders and their trustee, in allowing the court and the receivers to go on contracting debts in respect to the line operated as a unit, under circumstances where no separation can be made as to the matters questioned, and where important rights have accrued on the faith of the unity of the interests, amounts to such acquiescence as should operate as an estoppel. *Union Trust Co. v. Illinois Midland Railway*, 434.

8. As to 994 Paris and Decatur bonds, surrendered and exchanged absolutely for Illinois Midland bonds, and marked "cancelled," they cannot be reinstated and put on a footing with bonds not exchanged, because the contracts under which they were exchanged were complied with, and the transaction was completed, no surrender of any of the bonds having been made dependent on the surrender of any other bonds, or of the whole. *Ib.*
9. There being five several properties to be sold, it is proper to put up for sale each of the five separately, and then all five in gross, and, if the highest bid for the five in gross exceeds the aggregate of the highest separate bids, to strike off and sell the whole as an entirety to the person making the bid, and divide the proceeds into five parts, in proportion to the separate bids, and make distribution accordingly. *Ib.*
10. Certain debts due by the receivership to other railroads for rent of track, materials, and stores supplied, labor performed, and traffic balances, the debts having been purchased by other parties, are to be allowed priority.
11. Debts for large sums of money borrowed by the receiver without previous authority from the court, are not to be allowed priority, although the moneys were applied to pay expenses of the receivership, repairs, supplies, and pay-rolls, and to replace moneys which had been so applied; because there never could be any difficulty in obtaining an order of the court, if one were proper, to borrow money to a specified total amount, for specific purposes. *Ib.*
12. Rents due for use of rolling stock, and money due for extraordinary depreciation of rolling stock, and certain other items, were not allowed priority in this case. *Ib.*
13. No priority or preference among the debts and claims, whether receiver's certificates or other debts, given precedence over the mortgage bonds, was allowed, (except as to debts for taxes, and receiver's certificates issued to borrow money to pay taxes, or to discharge tax liens,) although, in the orders under which some certificates so given precedence were issued it was declared that each certificate should be a lien on the property in respect of which it should be issued, superior to all mortgage bonds and receiver's debts, except receiver's debts theretofore declared, by order of court, to be special liens on such property. *Ib.*

See CONSTITUTIONAL LAW, A, 1, 2; PUBLIC LAND, 1, 2, 3;
DEED; TAX AND TAXATION, 2, 3, 4, 5, 6.

REBELLION.

See MONEY, 1, 2.

RECEIVER.

See RAILROAD, 7, 10, 11, 13.

REMAINDER.

See MORTGAGE, 1, 2.

REMOVAL OF CAUSES.

1. A suit cannot be removed from a State court under the act of March 3, 1875, unless the requisite citizenship for removal existed when the suit was begun, as well as when the application for removal was made. *Akers v. Akers*, 197.
2. A removal of a cause from a State court on the ground of local prejudice can only be had where all the parties to the suit on one side are citizens of different States from those on the other. *Jefferson v. Driver*, 272.
3. The provision as to the removal of a separable controversy under the second subdivision of Rev. Stat. § 639 has no application to removals under the third subdivision ; and the similar provision in the act of March 3, 1875, applies only to removals under that act. *Ib.*
4. A purchaser *pendente lite* of real estate who becomes party to the suit is subject to the disabilities of the parties at the time he comes in, in respect of removing the cause from a State court to a Circuit Court of the United States. *Ib.*
5. The filing of separate answers by several defendants, sued jointly in a State court, on an alleged joint cause of action in tort, in which each avers that he acted separately on his own account and not jointly, in the acts complained of, does not divide the suit into separate controversies so as to make it removable into the Circuit Court of the United States. *Sloane v. Anderson*, 275.
6. A creditor's bill to subject encumbered property to the payment of his judgment, by sale and distribution of the proceeds among lien-holders according to priority, creates no separate controversy, within the meaning of the removal acts, as to the separate lien-holders parties respondent, although their respective defences may be separate. *Fidelity Ins. Co. v. Huntington*, 280.
7. A bill for the assignment of dower brought in a State court alleged that A, one of the defendants, in purchasing the property, acted as agent and trustee of B, and took and held title to the joint use and benefit of himself and B. The complainant and B were citizens of the same State ; A was a citizen of a different State. The answers took no

- notice of these allegations. *Held*, That the petition of A to remove the cause to the Circuit Court of the United States should be denied, as B was a necessary party to the suit. *Rand v. Walker*, 340.
8. The right to take steps for the removal of a cause to a Circuit Court of the United States on the ground of a separable controversy is confined to the parties actually interested in such controversy. *Ib.*
 9. After removal of a bill in equity from a State court to a Circuit Court of the United States on motion of one of the respondents, the complainant filed a cross-bill alleging that a judgment obtained in the Circuit Court in a suit in which she was not a party after the removal had been obtained collusively, and did not conclude her: *Held*, That this presented no reason why the cause, having been improperly removed should not be remanded. *Ib.*
 10. After trial of a cause in a State court, reversal of the judgment by the State Appellate Court, and remand of the same to the trial court for retrial, it is too late to remove it to the Circuit Court of the United States on the ground of a separable controversy. *Core v. Vinal*, 347.
 11. A separable controversy under the acts regulating removals from State courts to Circuit Courts cannot arise when defendants are sued jointly in trespass on the case and plead jointly the general issue. *Ib.*
 12. The right to remove a suit from a State court to a Circuit Court of the United States, being once lost by reason of non-user "before or at the term at which said cause could be first tried and before the trial thereof," is not revived by a subsequent amendment of the pleadings which creates new and different issues. *Phoenix Life Ins. Co. v. Walrath*, 365.
 13. Distinct decrees against distinct parties, on distinct causes of action, or on a single cause of action in which there are distinct liabilities, cannot be joined to give this court jurisdiction on appeal. *Ex parte Phoenix Life Ins. Co.* 367.
 14. A State court is not bound to surrender its jurisdiction of a suit on petition for removal, until a case has been made which on its face shows that the petitioner has a right to the transfer; and if it decides against the removal and proceeds with the cause, its ruling is reviewable here after final judgment. *Stone v. South Carolina*, 430.
 15. All issues of fact made upon a petition for removal must be tried in the Circuit Court. *Ib.*
 16. A suit between a State on the one side and citizens on the other, cannot be removed on the ground of citizenship. *Ib.*
 17. A suit against partners to recover money received, for which they are jointly liable, cannot be removed on the ground of a separable controversy on the petition of one of the partners. *Ib.*
 18. A proceeding under the acts of the Legislature of Virginia for the identification and verification of coupons tendered in payment of taxes, debts, or demands due the State is not a suit of a civil nature arising under the Constitution or laws of the United States, within the mean-

ing of the act of March 3, 1875, regulating removals of causes.
Stewart v. Virginia, 612.

RESIDENCE.

See DOMICIL.

RULES.

See APPENDIX, 708.

SALE.

A bill of sale of personal property was made at nine o'clock in the evening. The property was twenty-three miles distant. Possession was delivered at four o'clock in the morning of the next day, and the vendee remained in possession until the property was seized in the afternoon of that day, on attachment at the suit of a creditor of the vendor: *Held*, That this was an immediate delivery of possession, with continued change of possession, under a statute of Montana making sales of personal property, "unless accompanied by immediate delivery and followed by actual and continued change of possession," "conclusive evidence of fraud as against creditors." *Kleinschmidt v. McAndrews*, 282.

SALE ON EXECUTION.

See FRAUD, 1, 2, 3, 4.

SLEEPING CARS.

See CONSTITUTIONAL LAW, A, 1, 2.

STATUTE.

A. CONSTRUCTION OF STATUTES.

See CONSTITUTIONAL LAW, B, 1, 2; JURISDICTION, B, 2;
INSOLVENT LAWS; PUBLIC LAND, 1;
INTERNAL REVENUE, 1; TAX AND TAXATION, 2, 3, 4, 5.

B. STATUTES OF THE UNITED STATES.

See BANKRUPTCY, 2; PARTNERSHIP, 2, (1), (2), (4);
CUSTOMS DUTIES; PUBLIC LAND, 2, 3;
EVIDENCE, 10; REMOVAL OF CAUSES, 1, 3;
INTERNAL REVENUE, 1; UNION PACIFIC RAILWAY COM-
JURISDICTION, B, 2; PANY, 1, 2.

C. STATUTES OF STATES AND TERRITORIES.

<i>Alabama.</i>	<i>See</i> DEED.
<i>Illinois.</i>	<i>See</i> CONSTITUTIONAL LAW, B, 2.
<i>Kentucky.</i>	<i>See</i> LOCAL LAW, 3.
<i>Louisiana.</i>	<i>See</i> INSOLVENT LAWS; LOCAL LAW, 2.
<i>Montana.</i>	<i>See</i> EVIDENCE, 10; LOCAL LAW, 4; SALE.
<i>New Jersey.</i>	<i>See</i> MUNICIPAL BOND, 2.
<i>Tennessee.</i>	<i>See</i> CONSTITUTIONAL LAW, A, 1, 2.
<i>Virginia.</i>	<i>See</i> REMOVAL OF CAUSES, 18.

STATUTE OF FRAUDS.

See SALE.

SUBROGATION.

See INSURANCE, 1.

SUPREME COURT.

See JURISDICTION, A.

TAX AND TAXATION.

1. State scrip which declares on its face that it is receivable "in payment of all taxes and dues to the State" gives the holder no right to maintain a suit to compel its receipt for taxes, unless he owes the taxes for which it is receivable. *Hagood v. Southern*, 52.
2. A State statute incorporating a railroad company, which provides that the capital stock of the company shall be forever exempt from taxation and that the road with all its fixtures and appurtenances shall be exempt from taxation for the period of twenty years and no longer, exempts the road, its fixtures and appurtenances from taxation only for the term named in the act; but forever exempts shares in the capital stock of the company in the hands of the various holders from taxation in the State. *Tennessee v. Whitworth*, 129.
3. When two railroad corporations, whose shares are by a State statute exempt from taxation in the State, consolidate themselves into a new company under a State law which makes no provision to the contrary, and issue shares in the new company in exchange for shares in the old company, the right of exemption from taxation in the State passes into the new shares, and into each of them. *Ib.*
4. The right to have shares in its capital stock exempt from taxation within the State is conferred upon a railroad corporation by State statutes granting to it "all the rights, powers and privileges" or

- “all the powers and privileges” conferred upon another corporation named in the act, if the latter corporation possesses by law such right of exemption : and there is nothing in the provision of Art. XI. Sec. 7 of the Tennessee Constitution of 1834 to change this general rule when applied to a statute of that State. *Tennessee v. Whitworth*, 139.
5. A State statute enacted that a railroad company should “for its government be entitled to all the powers and privileges, and be subject to all the restrictions and liabilities imposed” upon another railroad company: *Held*, That the words “for its government” implied for its regulation and control. *Ib.*
 6. When two railroad corporations whose shares are by a State statute exempt from taxation within the State and a third company, created under the laws of another State and whose road is in the latter State, consolidate into a new company under a law of the first State which makes no provision to the contrary, and issues shares in the new company in exchange for shares in the old company, the right of exemption from taxation in the first State passes into the new shares and into each of them. *Ib.*
 7. Land in a State which, pursuant to acts of Congress for the laying and collecting of direct taxes, is sold, struck off and purchased by the United States for the amount of the tax thereon, and is afterwards sold by the United States for a larger sum, or redeemed by the former owner, is exempt from taxation by the State, while so owned by the United States; and, for non-payment of taxes assessed by the State during that time, cannot be sold afterwards. *Van Brocklin v. Tennessee*, 151.
 8. The proof in this case fails to show that the lands in controversy had become forfeited to the State of Virginia, for non-listing for taxation or for non-payment of taxes, at the time when the patents were issued under which the defendants claim title. *Fulkerson v. Holmes*, 389.
 9. An exemption from taxation granted by the government to an individual is a franchise, which can be lost by acquiescence under the imposition of taxes for a period long enough to raise a conclusive presumption of a surrender of the privilege; and such acquiescence for a period of sixty years (and, indeed, for a much shorter period) raises such a presumption. *Given v. Wright*, 648.

See CONSTITUTIONAL LAW, A, 1, 5;

ESTOPPEL.

TRUST.

1. A creditor, who, by the terms of a trust deed executed in good faith by the debtor to secure payment of the debt, has the power to order the land to be sold either by public auction or private sale, and to direct the trustee to convey to the purchaser, and the amount of whose debt is thrice the value of the land, may accept the land in satisfaction of the debt, and cause it to be conveyed by the trustee to

- the debtor's children, as a gift to them from the creditor, without affording to other creditors of the debtor any just cause of complaint. *Van Riswick v. Spalding*, 370.
2. When many persons have a common interest in a trust fund and one, for the benefit of all, at his own cost and expense, brings suit for its preservation or administration, a court of equity will order that the plaintiff be reimbursed his outlay from the property of the trust, or by proportional contribution from those who accept the benefit of his efforts. *Hobbs v. McLean*, 567.
 3. When one brings adversary proceedings to take trust property from the possession of those entitled to it, in order that he may distribute it to those entitled adversely, and fails in his purpose, he cannot demand reimbursement of his expenses from the trust fund, or contribution from those whose property he has sought to misappropriate. *Ib.*

UNITED STATES.

See CONSTITUTIONAL LAW, A, 5;
TAX AND TAXATION, 7.

UNION PACIFIC RAILWAY COMPANY.

1. Section 6 of the act of July 1, 1862, in aid of the construction of the railroads to the Pacific, required them to transport mails, troops, supplies, etc., for the government "at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same service." The Union Pacific Railway Company filed its petition in the Court of Claims, setting forth the performance of such services for the government and its charges for the same, and averring that the several amounts were according to rates fixed by it both as respects the government and the public, which were fair and reasonable, and not exceeding the amounts paid by private parties for the same kind of service. The government denied the reasonableness of the rates, and averred that less amounts allowed by it were fair and reasonable. The Court of Claims, after hearing proof found "that the amounts allowed and retained by the Treasury Department for transportation of mails as aforesaid, are a fair and reasonable compensation for the service and not in excess of the rates paid by private parties for the same service." *Held*, That this was a proper form of finding. *Union Pacific Railway Co. v. United States*, 355.
2. The provisions of § 6 of the act of July 1, 1862, respecting transportation done by the Union Pacific Railway Company for the United States, govern such transportation over its bridge between Council Bluffs and Omaha. *Ib.*

USAGE.

See RAILROAD, 1, 2.

VIRGINIA COUPONS.

See REMOVAL OF CAUSES, 18.

WILL.

1. A latent ambiguity in a will, which may be removed by extrinsic evidence, may arise: (1), Either when it names a person as the object of a gift, or a thing as the subject of it, and there are two persons or things that answer such name or description; or (2), when the will contains a misdescription of the object or subject, as where there is no such person or thing in existence; or, if in existence, the person is not the one intended, or the thing does not belong to the testator. *Patch v. White*, 210.
2. When a careful study of the testator's language, applied to the circumstances by which he was surrounded, discloses an inadvertency or mistake in a description of persons or things in a will, which can be corrected without adding to the testator's language, and thus making a different will from that left by him, the correction should be made. *Ib.*
3. A made a will, in which, after saying "and touching [my] worldly estate" "I give, devise and dispose of the same in the following manner," he devised certain specific lots with the buildings thereon, respectively, to each of his near relations, and, amongst others, to his brother H a lot described as "lot numbered 6 in square 403, together with the improvements thereon erected." He then devised to his infant son as follows: "the balance of my real estate, believed to be and to consist in lots numbered six, eight and nine, &c.," describing a number of lots, but not describing lot No. 3 in square 406, hereafter mentioned: *Held*, (1) That the testator intended to dispose of all his real estate, and thought he had done so; (2) That in the devise to H he believed he was giving him one of his own lots; (3) That evidence might properly be received to show that the testator did not, and never did, own lot No. 6 in square 403, which had no improvements thereon; but did own lot No. 3 in square 406, which had a house thereon, occupied by his tenants; and that this raised a latent ambiguity; and that this evidence, taken in connection with the context of the will, was sufficient to show that there was an error in the description, and that the lot really devised was lot No. 3 in square 406. *Ib.*

WITNESS.

See PARTNERSHIP, 2, (4).

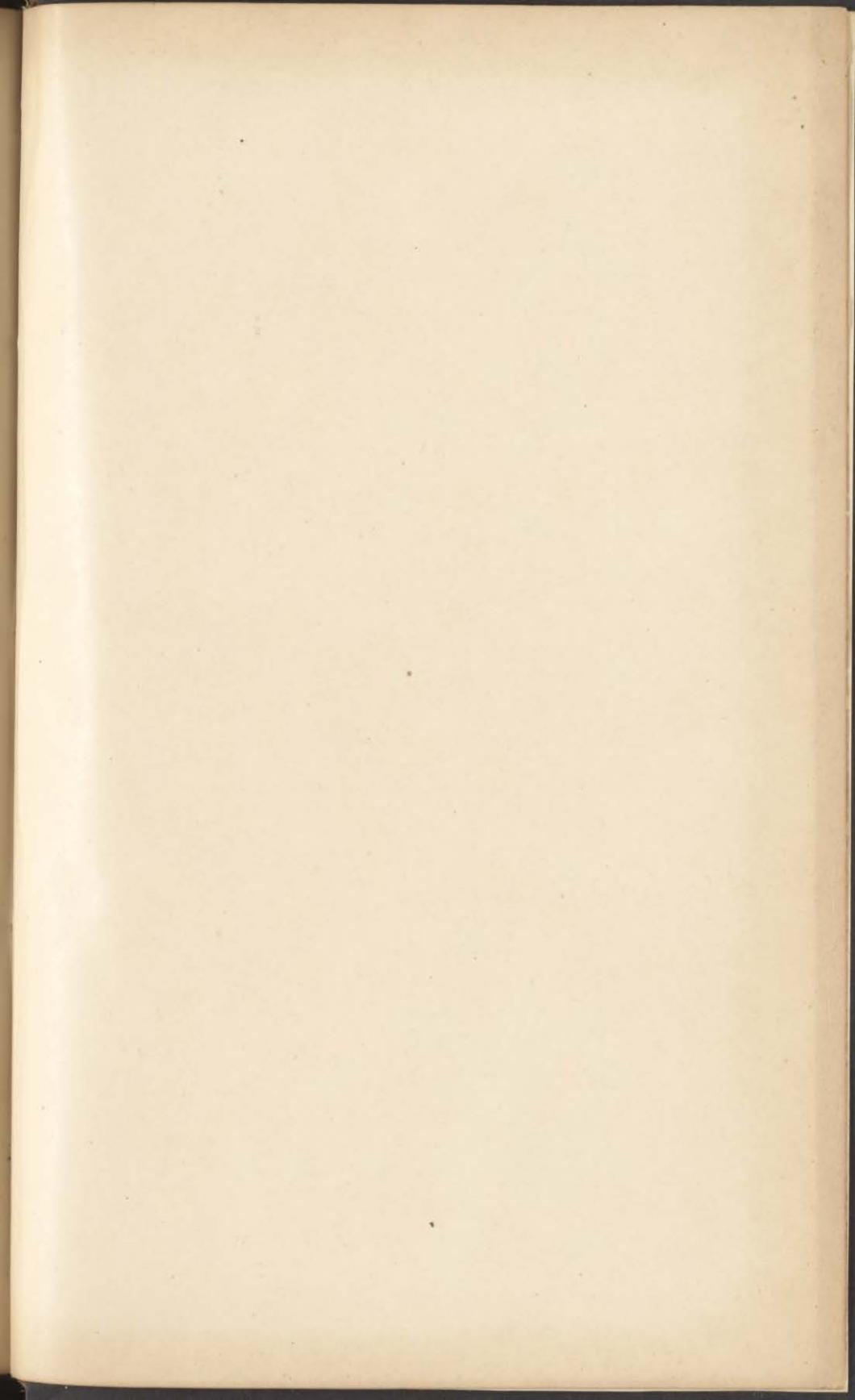
The first part of the book is devoted to a general survey of the history of the world, from the beginning of time to the present day. It is written in a simple and straightforward manner, and is intended to give the reader a general idea of the events that have shaped the world as we know it.

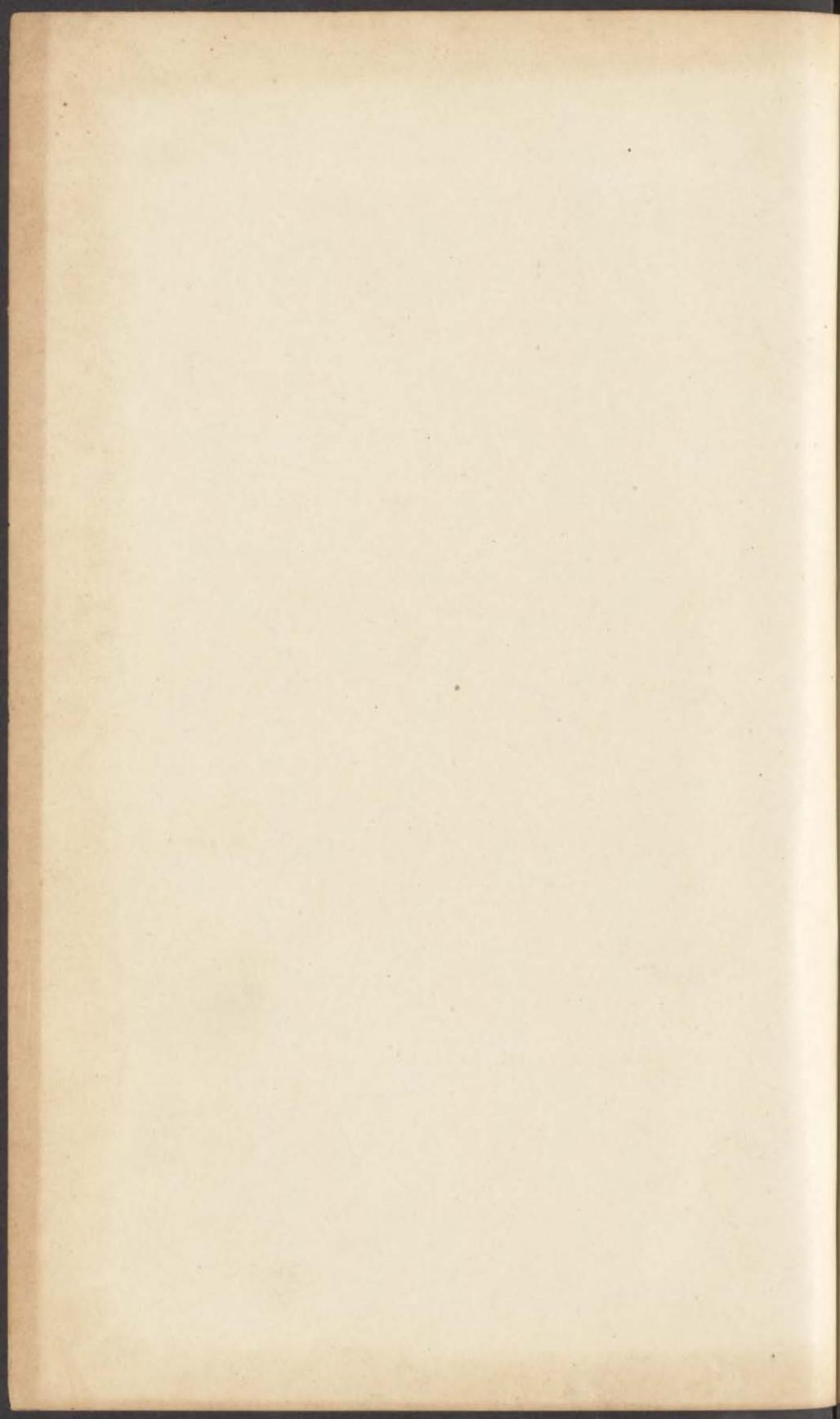
The second part of the book is devoted to a detailed account of the life of the author, from his childhood to his death. It is written in a more personal and intimate style, and is intended to give the reader a deeper understanding of the man who wrote the first part of the book. The author's life is a story of struggle and achievement, and it is a testament to his courage and determination.

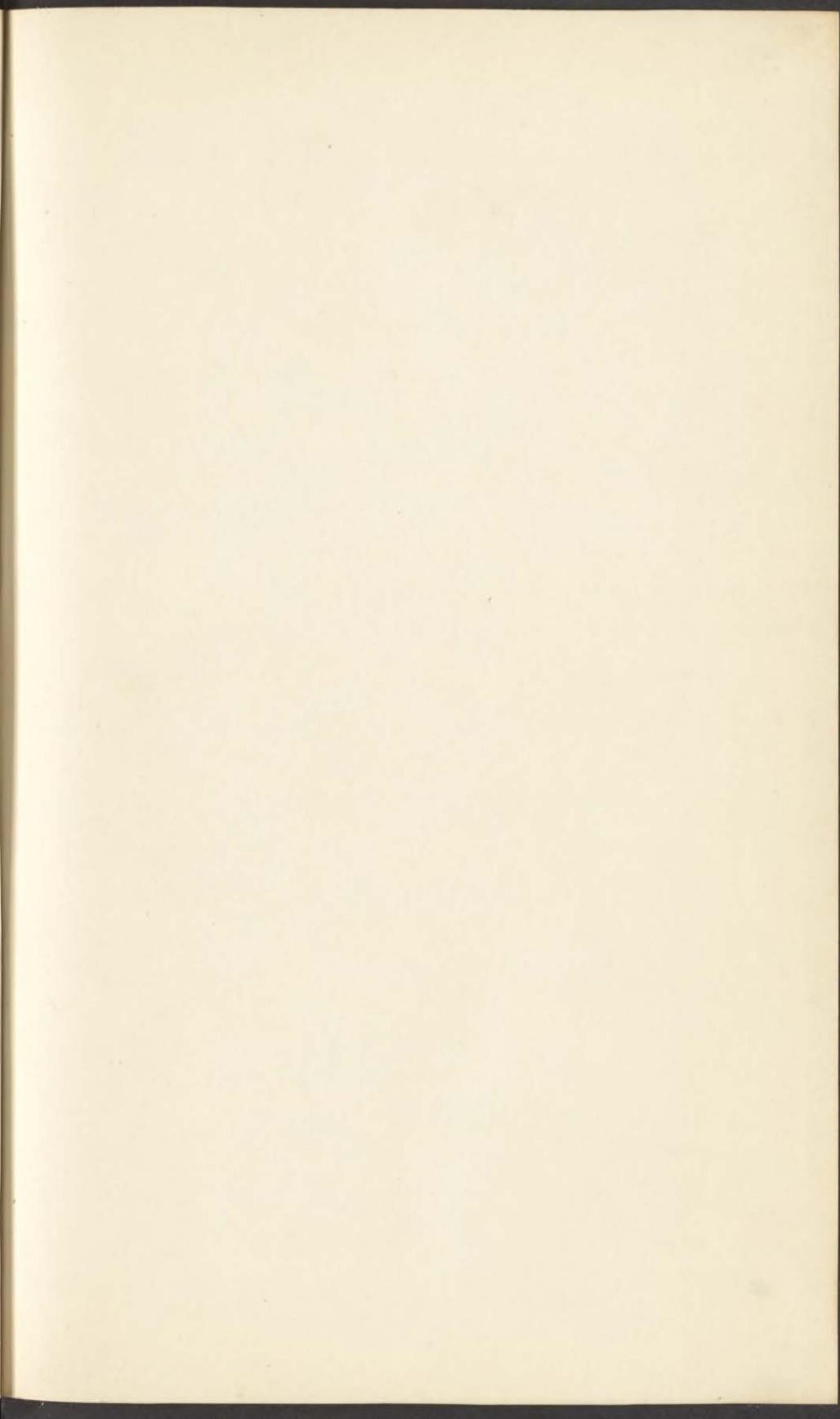
The third part of the book is devoted to a critical analysis of the author's work, and to a discussion of its significance for the world. It is written in a more scholarly and analytical style, and is intended to give the reader a more complete understanding of the author's contribution to the world. The author's work is a masterpiece of literature, and it is a source of inspiration and guidance for all who read it.

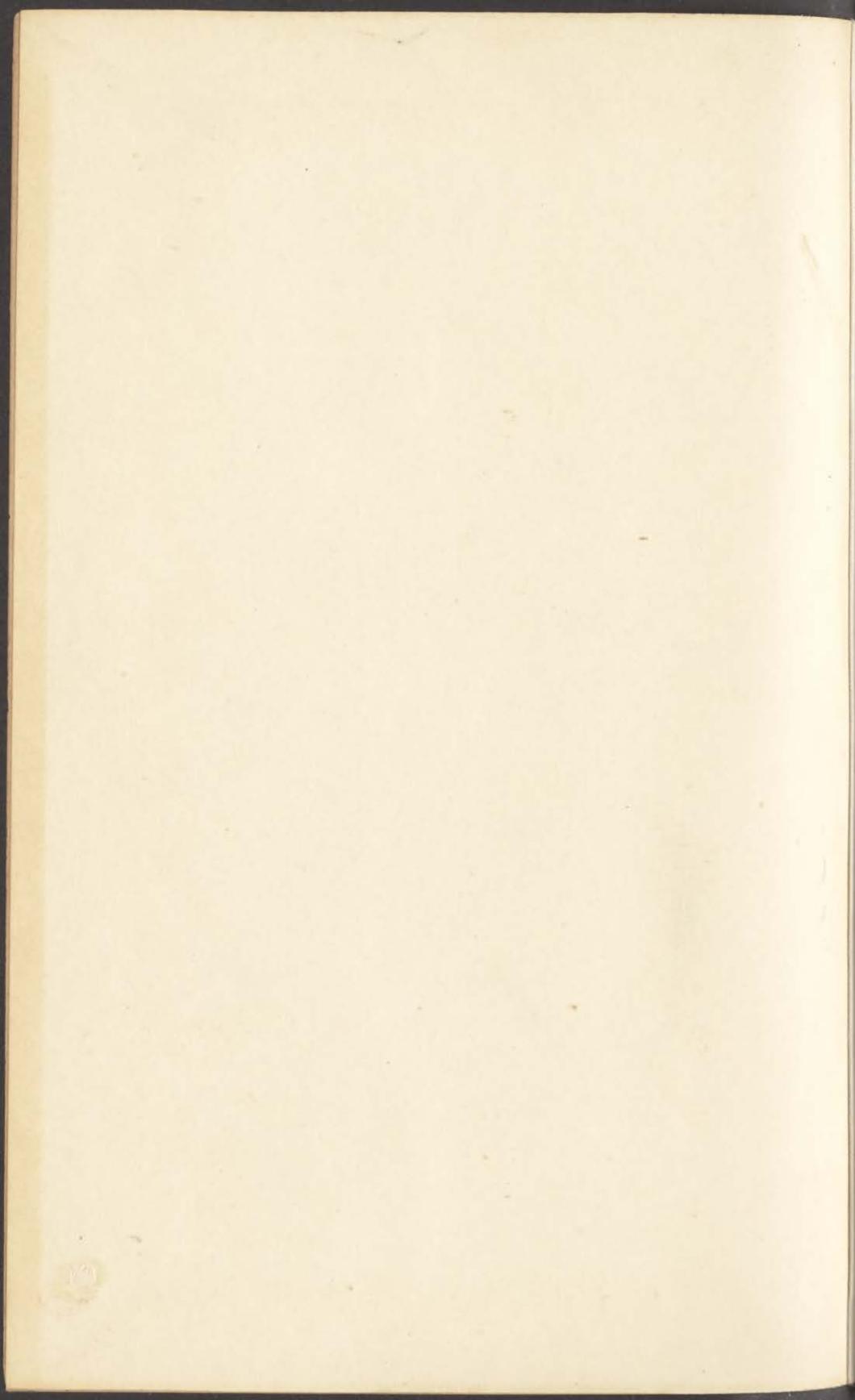
The fourth part of the book is devoted to a list of references and a bibliography. It is intended to provide the reader with a more complete understanding of the sources used in the book, and to provide a starting point for further research.

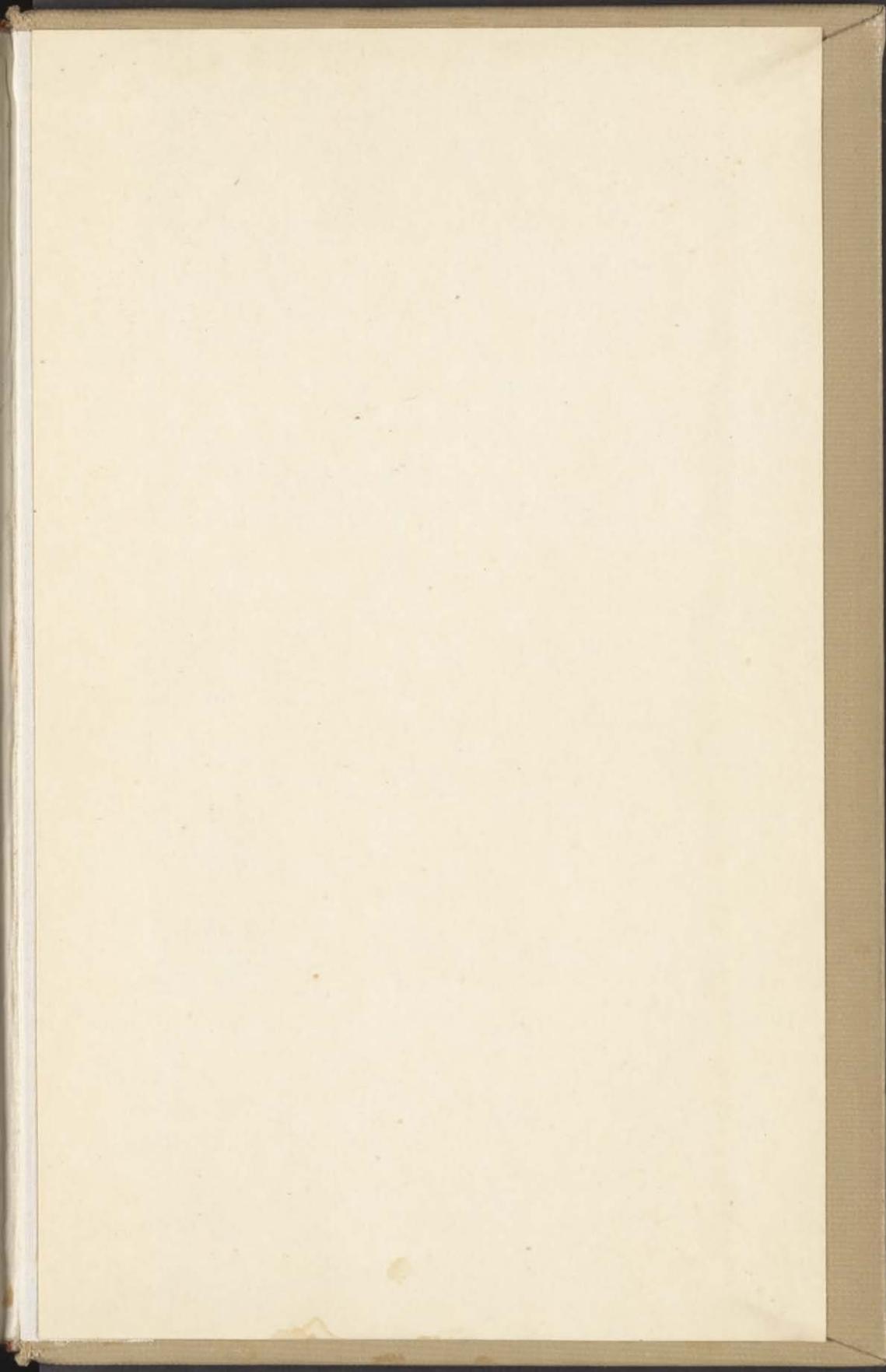
The fifth part of the book is devoted to a list of names and a glossary. It is intended to provide the reader with a more complete understanding of the names and terms used in the book, and to provide a starting point for further research.











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