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The discretion which is reposed in the judge below, as to the security to be taken on appeal, extends not only to the amount of the security but to the number of sureties to be required; and when a bond has been taken below with one surety, where the law provides that two shall be required, this court will not require a new bond to be furnished for that reason only, if the original bond is not invalidated thereby. *Mexican Co.* v. *Reusens*, 49.

ARIZONA.

The County Court in the County of Cochise, created and established by the Legislature of Arizona by the act of March 12, 1885, is an inferior court within the meaning of Rev. Stat. § 1908, which provides that: "The judicial power of Arizona shall be vested in a Supreme Court and such inferior courts as the legislative council may by law prescribe;" and the act of March 12, 1885, is valid. *Ex parte Lothrop*, 113.

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A shareholder in a railroad corporation is a party to proceedings in involuntary bankruptcy against the corporation, and, therefore, cannot collaterally impeach the proceedings. His remedy is to apply to the bankruptcy court, or to seek a review in the Circuit Court. *Graham* v. *Boston, Hartford & Erie Railroad Co.*, 161.

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1. *Bostwick* v. *Brinkerhoff*, 106 U. S. 3, affirmed and applied. *Benjamin* v. *Dubois*, 46.
2. The decision in *Dobson* v. *Hartford Carpet Co.*, 114 U. S. 439, as to the rule of damages in a suit in equity for the infringement of a patent for a design for a carpet, affirmed. *Dobson* v. *Dornan*, 10.
3. *Hobbs* v. *McLean*, 117 U. S. 567, affirmed. *United States* v. *Central Pacific Railroad Co.*, 235.
4. *Jefferson* v. *Driver*, 117 U. S. 272, affirmed and applied. *Cambria Iron Co.* v. *Ashburn*, 54.
5. *Jerome* v. *McCarter*, 21 Wall. 17, applied to this case. *Mexican Co.* v. *Reusens*, 49.
6. *Pirie* v. *Tvedt*, 115 U. S. 41, and *Sloane* v. *Anderson*, 117 U. S. 278, affirmed and applied. *Plymouth Mining Co.* v. *Amador Canal Co.*, 264.
7. *Philadelphia, Wilmington & Baltimore Railroad Co.* v. *Quigley*, 21 How. 202, affirmed. *Salt Lake City* v. *Hollister*, 256.
8. *Provident Savings Society* v. *Ford*, 114 U. S. 635, affirmed. *Oakley* v. *Goodnow*, 43.
9. *Railroad Co.* v. *Mississippi*, 102 U. S. 135, affirmed and applied. *Southern Pacific Railroad Co.* v. *California*, 109.
10. *Starin* v. *New York*, 115 U. S. 248, affirmed and applied. *Southern Pacific Railroad Co.* v. *California*, 109.

11. *Stone* v. *South Carolina*, 117 U. S. 430, affirmed. *Carson* v. *Hyatt*, 279.
12. *Thomas* v. *Railroad Co.*, 101 U. S. 70, reaffirmed. *Pennsylvania Co.* v. *St. L., Alton & T. H. Railroad Co.*, 290.
13. *Farmington* v. *Pillsbury*, 114 U. S. 138, affirmed. *Little* v. *Giles*, 596.

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1. The case distinguished, as to the effect of the pardon, from *Ex parte Garland*, 4 Wall. 333; *Armstrong's Foundry*, 6 Wall. 766; *United States* v. *Padelford*, 9 Wall. 531; *United States* v. *Klein*, 13 Wall. 128, and *Carlisle* v. *United States*, 16 Wall. 147, 151. *Hart* v. *United States*, 62.
2. *United States* v. *Fisher*, 109 U. S. 143; and *United States* v. *Mitchell*, 109 U. S. 146, distinguished. *United States* v. *Langston*, 389.

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CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. Section 1512 of the Code of Georgia, which provides that "any person,

master, or commander of a ship or vessel bearing toward any of the ports or harbors of this State, except coasters in this State, and between the ports of this State and those of South Carolina, and between the ports of this State and those of Florida, who refuses to receive a pilot on board, shall be liable, on his arrival in such port in this State, to pay the first pilot who may have offered his services outside the bar, and exhibited his license as a pilot, if demanded by the master, the full rates of pilotage established by law for such vessel," conflicts with the Constitution of the United States, and is annulled and abrogated by the provision in Rev. Stat. § 4237, that "no regulations or provisions shall be adopted by any State which shall make any discrimination in the rate of pilotage or half-pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any discrimination are annulled and abrogated." *Spraigue* v. *Thompson*, 90.

2. A vessel owned in Philadelphia and running between Philadelphia and Savannah was licensed as a coastwise steam-vessel. The master held a license as pilot under Title LII. Rev. Stat. The owners employed S (a Savannah pilot, also licensed under the laws of the United States to conduct vessels over Tybee Bar and up the Savannah River), as their regular pilot to conduct the vessel through those waters, with pay from the time of leaving Philadelphia. T, licensed as a pilot under the laws of Georgia, spoke the vessel off Cape Romain, before any other pilot spoke it, and tendered his services to conduct it over the bar and up the river, and they were refused. Subsequently S met the vessel under the general arrangement and piloted it over the bar and up the river. *Held*, That pursuant to the provisions of Rev. Stat. §§ 4401, 4444, the vessel, both when T tendered his services, and when it passed over the bar and up the river, was under the lawful control and direction of a pilot licensed under the laws of the United States, and could not be required to take a pilot licensed under the provisions of the laws of Georgia. *Ib.*

3. When the legislature of a State enacts laws for the government of its courts while exercising their respective jurisdictions, which, if followed, will furnish parties the necessary constitutional protection of life, liberty, and property, it has performed its constitutional duty: and if one of its courts, acting within its jurisdiction, makes an erroneous decision in this respect, the State cannot be deemed guilty of violating the constitutional provision that no State shall deprive a person of life, liberty, or property without due process of law. *Arrowsmith* v. *Harmoning*, 194.

4. In a suit brought to this court from a State court, which involves the constitutionality of ordinances made by a municipal corporation in

this State, this court will, when necessary, put its own independent construction upon the ordinances. *Yick Wo* v. *Hopkins*, 356.

5. A municipal ordinance to regulate the carrying on of public laundries within the limits of the municipality violates the provisions of the Constitution of the United States, if it confers upon the municipal authorities arbitrary power, at their own will, and without regard to discretion in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying, or the propriety of the place selected, for the carrying on of the business. *Ib.*
6. An administration of a municipal ordinance for the carrying on of a lawful business within the corporate limits violates the provisions of the Constitution of the United States, if it makes arbitrary and unjust discriminations, founded on differences of race, between persons otherwise in similar circumstances. *Ib.*
7. The guarantees of protection contained in the Fourteenth Amendment to the Constitution extend to all persons within the territorial jurisdiction of the United States, without regard to differences of race, of color, or nationality. *Ib.*
8. Those subjects of the Emperor of China who have the right to temporarily or permanently reside within the United States, are entitled to enjoy the protection guaranteed by the Constitution and afforded by the laws. *Ib.*
9. The defendant corporations are persons within the intent of the clause in section 1 of the Fourteenth Amendment to the Constitution of the United States, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws. *Santa Clara County* v. *Southern Pacific Railroad*, 394.
10. The system of quarantine laws established by statutes of Louisiana is a rightful exercise of the police power for the protection of health, which is not forbidden by the Constitution of the United States. *Morgan* v. *Louisiana*, 455.
11. While some of the rules of that system may amount to regulations of commerce with foreign nations or among the States, though not so designed, they belong to that class which the States may establish until Congress acts in the matter by covering the same ground or forbidding State laws. *Ib.*
12. Congress, so far from doing either of these things, has, by the act of 1799 (ch. 53, Rev. Stat.) and previous laws, and by the recent act of 1878, 20 Stat. 37, adopted the laws of the States on that subject, and forbidden all interference with their enforcement. *Ib.*
13. The requirement that each vessel passing a quarantine station shall pay a fee fixed by the statute for examination as to her sanitary condition, and the ports from which she came, is a part of all quarantine systems, and is a compensation for services rendered to the vessel, and is not a

tax within the meaning of the Constitution concerning tonnage tax imposed by the States. *Ib.*

14. Nor is it liable to constitutional objection as giving a preference for a port of one State over those of another. That section (nine) of the first article of the Constitution is a restraint upon powers of the general government and not of the States, and can have no application to the quarantine laws of Louisiana. *Ib.*

15. A statute of Illinois enacts that, if any railroad company shall, within that State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it does for a longer distance, it shall be liable to a penalty for unjust discrimination. The defendant in this case made such discrimination in regard to goods transported over the same road or roads from Peoria in Illinois and from Gilman in Illinois to New York; charging more for the same class of goods carried from Gilman than from Peoria, the former being eighty-six miles nearer to New York than the latter, this difference being in the length of the line within the State of Illinois. *Held*, (1.) This court follows the Supreme Court of Illinois in holding that the statute of Illinois must be construed to include a transportation of goods under one contract and by one voyage from the interior of the State of Illinois to New York. (2.) This court holds further that such a transportation is "commerce among the States," even as to that part of the voyage which lies within the State of Illinois, while it is not denied that there may be a transportation of goods which is begun and ended within its limits and disconnected with any carriage outside of the State, which is *not* commerce among the States. (3.) The latter is subject to regulation by the State, and the statute of Illinois is valid as applied to it. But the former is national in its character, and its regulation is confided to Congress exclusively, by that clause of the Constitution which empowers it to regulate commerce among the States. (4.) The cases of *Munn* v. *Illinois*, 94 U. S. 113; *Chicago, Burlington & Quincy Railroad Co.* v. *Iowa*, 94 U. S. 155; and *Peik* v. *Chicago & Northwestern Railway*, 94 U. S. 164, examined in regard to this question, and held, in view of other cases decided near the same time, not to establish a contrary doctrine. (5.) Notwithstanding what is there said, this court holds now, and has never consciously held otherwise, that a statute of a State, intended to regulate or to tax or to impose any other restriction upon the transmission of persons or property or telegraphic message from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to that part of such transmission which may be within the State. (6.) It follows that the statute of Illinois, as construed by the Supreme Court of the State, and as applied to the transaction under consideration, is forbidden by the Constitution of the United States, and the judgment of that

court is reversed. *Wabash, St. Louis & Pacific Railway* v. *Illinois*, 557.

See INDIAN, 3, 4, 5.
REMOVAL OF CAUSES, 2.
STATUTE A, 2.

B. OF THE STATES.

See LOCAL LAW, 2, 3, 6.
MUNICIPAL CORPORATION, 2.
STATUTE, A, 4, 5.

C. GENERALLY.

An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed. *Norton* v. *Shelby County*, 425.

CONTRACT.

1. H offered to the Secretary of the Navy by letter to construct new boilers for certain vessels of the navy. The offer was accepted at the Navy Department, by letter, and he was also thereby informed that the drawings and specifications would be furnished as soon as possible. A few days later he was notified to discontinue all work contracted for by him with the department. On a suit brought in the Court of Claims for damages for non-performance of the contract: *Held*, That the letters did not constitute a contract with the United States under the provisions of Rev. Stat. §§ 3744–3749. *South Boston Iron Co.* v. *United States*, 37.
2. When a contract is open to two constructions, the one lawful and the other unlawful, the former must be adopted. *United States* v. *Central Pacific Railroad Co.*, 235.
3. A railroad company, in aid of whose road Congress grants land upon condition that it shall transport mails at such price as Congress may direct, and that until the price be thus fixed the Postmaster-General shall have power to determine the same, is (in the absence of contracts with the department for special service with unusual facilities or for determined periods) bound to transport mails (until Congress directs the rates) at such reasonable compensation as the Postmaster-General may from time to time prescribe; and the continuance by such company to transport mails after the expiration of the term of a written contract neither implies that it is, after the Postmaster-General has otherwise directed, to be paid the same rates for transportation which it was paid under the written contract, nor that the contract is renewed for any specific term for which contracts of the

Post-office Department may usually be made. *Jacksonville, Pensacola, &c. Railroad* v. *United States*, 626.

See CORPORATION, 2.

CORPORATION.

1. A meeting in one of several States of the stockholders of a corporation chartered by all those States is valid in respect to the property of the corporation in all of them, without the necessity of the repetition of the meeting in any other of those States. *Graham* v. *Boston, Hartford & Erie Railroad Co.*, 161.
2. A corporation is responsible for acts done by its agent, whether *in contractu* or *in delicto*, in the course of its business and of their employment, as an individual is responsible under similar circumstances. *Salt Lake City* v. *Hollister*, 256.
3. The distinction pointed out between actions arising on contracts made by a corporation in excess of its corporate powers, and actions against corporations for injuries caused by tortious acts done by its agents in the course of its business and of their employment, in excess of their powers. *Ib.*

See BANKRUPTCY. MUNICIPAL CORPORATION.
INTERNAL REVENUE, 2. RAILROAD, 2, 5–12.

COSTS.

See INTEREST, 1, 2.
PATENT FOR INVENTION, 6.

COURT AND JURY.

At a trial by jury in a court of the United States the judge may express his opinion upon the facts; the expression of such an opinion, when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to the determination of the jury, cannot be reviewed by writ of error; and the powers of the courts of the United States in this respect are not controlled by State statutes forbidding judges to express any opinion upon the facts. *Vicksburg & Meridian Railroad* v. *Putnam*, 545.

See PRACTICE, 4.

COURT OF CLAIMS.

See JURISDICTION, D.

COURTS OF TERRITORIES.

See ARIZONA.

COURTS OF THE UNITED STATES.

See INTEREST, 1.
JURISDICTION, A, B, C, D.

DAMAGES.

In an action for a personal injury, the plaintiff is entitled to recover compensation, so far as it is susceptible of an estimate in money, for the loss and damage caused to him by the defendant's negligence, including not only expenses incurred for medical attendance, and a reasonable sum for his pain and suffering, but also a fair recompense for the loss of what he would otherwise have earned in his trade or profession, and has been deprived of the capacity of earning, by the wrongful act of the defendant. *Vicksburg & Meridian Railroad* v. *Putnam*, 545.

See INTEREST, 2.
PATENT FOR INVENTION, 4, 5.

DEED.

1. If a deed of land is in fee, with a covenant of warranty, and there is no defeasance, either in the conveyance or in a collateral paper, parol evidence, that it was intended to secure a debt and to operate only as a mortgage, must be clear, unequivocal, and convincing, or the presumption that the instrument is what it purports to be must prevail. *Cadman* v. *Peter*, 73.
2. A deed by a father, for the benefit of his illegitimate child, is upon a good and sufficient consideration; and if it contains a remainder to the mother of the child, and the child dies in the lifetime of the father, the conveyance is good as against the legitimate children of the grantor. *Conley* v. *Nailor*, 127.
3. In order to cause a will or deed to be set aside on the ground of fraud and undue influence, it must be established to the satisfaction of the court that the party making it had no free will, but stood *in vinculis*. *Ib.*
4. When a married man, with a wife living, and a family of legitimate children, lives apart from them in illegal intercourse with another woman, by whom he has an illegitimate child, and makes a conveyance of real estate for the benefit of that child with remainder to the mother, and another conveyance to the mother for her own benefit, and the child dies, and it is not shown that the grantor was incapable of making the deeds, either by reason of the weak state of his intellect or by reason of intoxication at the time of execution, or that there was fraud or undue influence, a court of equity will, after the death of the grantor, sustain the conveyances in favor of the mother as against the legitimate children. *Ib.*
5. When a conveyance of land is made to two or more persons, and the

deed is silent as to the interest which each is to take, the presumption will be that the interests are equal. This rule applies to two or more *cestuis que trust*, beneficiaries under a common deed of trust, and prevails in Michigan. *Loring* v. *Palmer*, 321.

See EQUITY, 2.

DE FACTO AND DE JURE.

See OFFICER.

DISTRICT COURTS OF THE UNITED STATES.

See INTEREST, 1.
JURISDICTION, C.

DOMICIL.

See JURISDICTION, A, 2.

DOWER.

See PARTNERSHIP, 3.

EQUITY.

1. A bill *quia timet* to remove a cloud from a legal title cannot ordinarily be brought in the courts of the United States by one not in possession of the real estate in controversy; but when a local statute of the State authorizes a bill in equity in such case, the remedy allowed in State courts may also be enforced in Federal courts; and when a cloud upon the title to real estate prevents the enforcement of a lien at law to secure the payment of money, then the creditor may have his bill to remove the cloud. *United States* v. *Wilson*, 86.
2. In equity, each case to set aside a deed for incapacity of the grantor, or intoxication at the time of execution amounting to incapacity, must be decided on its own merits, without regard to previous decisions, in cases differing in the facts. *Conley* v. *Nailor*, 127.
3. On the voluminous facts in this case, which are referred to at length in the opinion of the court, it was held that the complainant had failed to establish that he was entitled to the relief against the appellants which was prayed for in his bill and was granted by the court below. *Hunt* v. *Oliver*, 211.
4. The United States can maintain a suit in equity in its own name, to vacate the selection and listing of coal lands to the State of California, by the proper authority of the government under the act of March 3, 1853, 10 Stat. 244: and, upon its appearing that the lands so listed were coal lands and were known to be such at the time of the listing and selection by those for whose benefit the listing was made, a decree

should be entered vacating the title of the State and of those claiming under it. *Mullan* v. *United States*, 271.

5. A bill in equity which alleges that complainant, a citizen of Florida, is part owner with other parties named, citizens of Louisiana, of a steam pilot-boat, on which are employed branch pilots duly licensed; that respondents had confederated together to destroy said business and property by publications in newspapers, by instituting suits, by seeking injunctions, and in divers other ways; and that they had agreed together not to do business as branch pilots with any persons other than those included in the "confederation"—and which prays for a perpetual injunction to restrain the defendant from interfering with the rights of the complainant, his pilot-boat and his business—furnishes no ground for the interposition of a court of equity, as complainant has adequate remedies at law for each and all the acts complained of. *Francis* v. *Flinn*, 385.

See DEED, 3, 4, 5.
EVIDENCE, 1.
MORTGAGE, 3.
RAILROAD, 6, 12.

EQUITY PLEADING.

See LACHES.

ESTOPPEL.

See REMOVAL OF CAUSES, 6.

EVIDENCE.

1. When the complainant in a bill in equity neither demands nor waives an answer under oath, and the respondent answers under oath, the answer is evidence on behalf of the respondent, conclusive if not contradicted. *Conley* v. *Nailor*, 127.
2. When the authority of the Attorney General of the United States to commence proceedings to vacate a patent for public lands does not appear on the face of the bill, it may be shown in this court if the bill is objected to here for want of it. *Mullan* v. *United States*, 271.
3. In an action against a railroad corporation by a passenger, for a personal injury caused by a car being thrown off the track in consequence of a worn-out rail, the admission of evidence that the general condition of that portion of the road which included the place of the accident had long been bad, and that the rails had been in use a great many years, affords the defendant no ground of exception. *Vicksburg & Meridian Railroad* v. *Putnam*, 545.
4. The official reports of the superintendent of a railroad to the board of directors are competent evidence, as against the corporation, of the condition of the road. *Ib.*

5. In an action against a railroad corporation by a passenger, for personal injuries impairing his capacity to earn his livelihood, standard life and annuity tables are competent evidence for the consideration of the jury, but not absolute guides to control their decision. *Ib.*

See MUNICIPAL CORPORATION, 1.

EXCEPTION.

See PRACTICE, 4.

FRAUD.

See BANKRUPTCY.
DEED, 2, 3, 4.
EQUITY, 2.
LACHES.
MORTGAGE, 2.
PARTNERSHIP, 1.

INDIAN.

1. The provisions in Article VII. of the Treaty of June 24, 1862, with the Ottawa Indians of Blanchard's Fork and Roche de Boeuf, 12 Stat. 1237, limiting the power of alienating granted lands, apply to the grants authorized by Article III. of the Treaty to be made to chiefs, councilmen, and head men of the tribe ; and deeds made in violation of that limitation (as it was incorporated by the Land Office into patents for lands allotted to chiefs, councilmen, or head men), are void. *Libby* v. *Clark*, 250.
2. The ninth section of the Indian Appropriation Act of March 3, 1885, 23 Stat. 385, is valid and constitutional in both its branches ; namely, that which gives jurisdiction to the courts of the Territories of the crimes named (murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny), committed by Indians within the Territories, and that which gives jurisdiction in like cases to the courts of the United States for the same crimes committed on an Indian reservation within a State of the Union. *United States* v. *Kagama*, 375.
3. While the Government of the United States has recognized in the Indian tribes heretofore a state of semi-independence and pupilage, it has the right and authority, instead of controlling them by treaties, to govern them by acts of Congress ; they being within the geographical limit of the United States, and being necessarily subject to the laws which Congress may enact for their protection and for the protection of the people with whom they come in contact. *Ib.*
4. The States have no such power over them as long as they maintain their tribal relations. *Ib.*
5. The Indians owe no allegiance to a State within which their reservation may be established, and the State gives them no protection. *Ib.*

See LIMITATION, STATUTES OF.

INFERIOR COURTS.

See ARIZONA.

INSOLVENCY.

See PARTNERSHIP, 1.

INSPECTION.

See SHIPS AND VESSELS.

INSURANCE.

See LIMITED LIABILITY, 1, 2, 5.

INTEREST.

1. The Circuit Court is not bound to allow interest on costs awarded by the District Court, although such costs are included in the decree of the Circuit Court. *The Scotland*, 507.
2. The allowance of interest by way of damages in cases of collision and other cases of pure damage, as well as the allowance of costs, is in the discretion of the court. *Ib.*

See TAX AND TAXATION, 4.

INTERNAL REVENUE.

1. After the act of March 1, 1879, amending the laws relating to internal revenue, took effect, collectors of internal revenue were entitled to compensation as follows: (1) to salaries graded according to the amount of their annual collections, the minimum salary being $2000 and the maximum $4500; (2) in addition to the salary, to a commission of one half of one per cent. on taxes on spirits collected by sales of tax-paid stamps, provided the total net compensation should not be more than $4500; (3) to such further allowance as the Secretary of the Treasury might make, provided the limitation of $4500 as the total net compensation was not exceeded. *United States* v. *Landram*, 81.
2. A municipal corporation engaged in the business of distilling spirits is subject to internal revenue taxation under the laws of the United States, whether its acts in that respect are or are not *ultra vires*. *Salt Lake City* v. *Hollister*, 256.

JUDGMENT.

See INTEREST, 1, 2.
JURISDICTION, A, 2.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. When the right of removal of a cause from a State court to a Circuit Court of the United States is denied by a State court, this denial raises a Federal question, within the jurisdiction of this court. *Oakley* v. *Goodnow*, 43.
2. A will having been proved in Missouri, a copy thereof and of the probate were admitted to record in the District of Columbia, and letters testamentary granted. In subsequent proceedings respecting the distribution of property found in the District, a question arose as to the domicil of the testator. After hearing testimony, the Supreme Court of the District decided at special term that "his domicil was in the city of Washington," and "this court has original jurisdiction in the matter of his estate," which was on appeal affirmed. *Held*, That this was not a final judgment within the meaning of the acts of Congress giving this court jurisdiction on appeals or writs of error. *Benjamin* v. *Dubois*, 46.
3. In an action in the Circuit Court of the United States, submitted by stipulation of the parties, in accordance with the practice prevailing in the State where the court is held, to the decision of the judge "as referee," the only matter reviewable by this court is error of law in the judgment of the court upon the facts found by the referee. *Paine* v. *Central Vt. Railroad Co.*, 152.
4. This court has jurisdiction in error over a judgment of the Supreme Court of a State, when it necessarily involves the decision of the question, raised in that appellate court for the first time, and not noticed in its opinion, whether a statute of the State conflicts with the Constitution of the United States. *Arrowsmith* v. *Harmoning*, 194.
5. This court has jurisdiction to review a judgment of a State court convicting a person of a criminal offence, when the defendant sets up at the trial specially an immunity from a second trial for the same offence by reason of the Fifth Amendment to the Constitution of the United States. *Bohanan* v. *Nebraska*, 231.
6. This court has no jurisdiction over a case brought from the Supreme Court of a Territory without a writ of error, appeal, or citation, or an appearance by defendant or respondent. *United States* v. *Hailey*, 233.
7. There is no provision of law under which this court can review a judgment of the Supreme Court of a Territory, on a conviction on an indictment for cohabiting with more than one woman, under § 3 of the act of March 22, 1882, 22 Stat. 31. *Snow* v. *United States*, 346.
8. The value of the matter in dispute in this court is determined by the amount of the judgment below, without regard to the amount of the verdict. *N. Y. Elevated Railroad* v. *Fifth Nat. Bank*, 608.
9. Jurisdiction of a cause having once attached in this court cannot be

defeated by plaintiff below waiving or releasing enough of the judgment to bring it within the jurisdictional amount. *Ib.*

See PRACTICE, 6.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. The Circuit Courts of the United States have no power to take jurisdiction of a case by removal from a State court, when a colorable assignment has been made to prevent such removal; but resort can only be had to the State courts for protection against the consequences of such an encroachment on the rights of a defendant. *Oakley* v. *Goodnow*, 43.
2. On the facts stated in the opinion of the court, it is held that the assignment of the cause of action to the plaintiff in error was collusively made for the purpose of creating a case cognizable by the Circuit Court of the United States, and that the controversy is really and substantially between one of the counties of California and citizens of California, and is not properly within the jurisdiction of the Circuit Court. *Cashman* v. *Amador Canal Co.*, 58.

See INTEREST, 1, 2.
LIMITED LIABILITY, 7.
REMOVAL OF CAUSES.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

See LIMITED LIABILITY, 1 (9), 7.

D. JURISDICTION OF THE COURT OF CLAIMS.

Under § 7 of the act of June 25, 1868, ch. 71, 15 Stat. 76, the Secretary of War transmitted a claim against the United States to the Court of Claims. That court found the claimant to be a person who had "sustained the late rebellion," and that the claim accrued before April 13, 1861; and as the payment of such a claim was forbidden by joint resolution No. 46, approved March 2, 1867, 14 Stat. 571, it decided that it had no jurisdiction to proceed to judgment on the reference made, but could only find the facts and dismiss the petition: *Held*, No error. The act of 1868 did not extend to claims covered by the joint resolution. *Hart* v. *United States*, 62.

LACHES.

A bill to set aside the foreclosure of a railroad mortgage, and also proceedings in bankruptcy against a corporation being filed fourteen years after the making of the mortgage, ten years after the commencement of the bankruptcy proceedings, nine years after the entry of the decree of foreclosure, and seven years after the foreclosure became absolute, and

the road was conveyed to a new corporation formed by the holders of bonds secured by the mortgage, a demurrer to the bill for laches was sustained. *Graham* v. *Boston, Hartford & Erie Railroad Co.*, 161.

LIMITATION, STATUTES OF.

The statute of limitations of a State does not run against the right of action of the United States upon negotiable bonds and coupons of a railroad corporation, purchased by the United States before maturity, as an investment of money received from the sale of lands ceded by an Indian tribe, and held in trust for the tribe, under a treaty. *United States* v. *Nashville, Chattanooga & St. Louis Railway*, 120.

See PARTNERSHIP, 2, 3.

LIMITED LIABILITY.

1. In a case of collision occasioned by the negligence of the officers or hands of one of the vessels, without any neglect, privity, or knowledge of her owner, and where said vessel took fire and sank, with loss of cargo, and never completed her voyage nor earned any freight, but was afterwards raised and repaired, and was then libelled and seized on behalf of the owners of her cargo, and claimed and bonded at her then value by her owner, who filed an answer and a petition for limited liability; and where it further appeared that the owner received certain moneys for insurance of the ship against loss by fire: *Held*,
   1. That the owner was entitled to a limitation of liability to the value of his interest in the ship and freight under the act of 1851. §§ 4282–4287 Rev. Stat.
   2. That the point of time at which the amount or value of the owner's interest in ship and freight is to be taken for fixing his liability is the termination of the voyage on which the loss or damage occurs.
   3. That if the ship is lost at sea, or the voyage be otherwise broken up before arriving at her port of destination, the voyage is then terminated for the purpose of fixing the owner's liability.
   4. That in the present case the voyage was terminated when the ship had sunk, and that her value at that time was the limit of the owner's liability; and that the subsequent raising of the wreck and repair of the ship, giving her an increased value, had nothing to do with the liability of the owner.
   5. That no freight except what is earned is to be estimated in fixing the amount of the owner's liability.
   6. That insurance is no part of the owner's interest in the ship or freight within the meaning of the law, and does not enter into the amount for which the owner is held liable.

7. That the limitation of liability is applicable to proceedings *in rem* against the ship as well as to proceedings *in personam* against the owner; the limitation extends to the owner's property as well as to his person.

8. That the right to proceed for a limitation of liability is not lost or waived by a surrender of the ship to underwriters.

9. In this case, although an application for limitation of liability had been originally overruled by the District Court, and an interlocutory decree had been rendered in favor of the libellants for their entire damage, with a reference for proofs and a report by the master; yet the court, after the decision of this court in *Norwich Co.* v. *Wright*, 13 Wall. 104, relating to the same collision, and the promulgation of the additional rules adopted by this court, received a new petition and ordered a new appraisement to ascertain the value of the ship whilst lying sunk; and made a decree limiting the liability of the owner to the value at that time: *Held*, That the District Court had jurisdiction to receive such new petition and to take such proceedings. *The City of Norwich*, 468.

2. The decision in the previous case of *The City of Norwich* repeated, on the question relating to the time when the value of ship and freight is to be taken for fixing the liability of the owner, and on the question of insurance. *The Scotland*, 507.

3. Where a collision occurred by which the offending ship and her cargo were sunk at sea, but strippings from the ship were rescued before she went down, from which the owners afterwards realized several thousand dollars: *Held*, That in awarding damages against the owners, limited to the amount of their interest in the ship, the court is not bound to allow interest on the proceeds of the wreck or strippings; but may, in its discretion, allow interest or not. *Ib.*

4. The decision in *The City of Norwich*, in relation to the time when the value of the owner's interest in the ship is to be taken for fixing the amount of his liability, applied to a case where the offending ship did not sink in consequence of the collision, but was afterwards sunk and wrecked in the same voyage by the negligent navigation of those in charge of her; this sinking being held to be the termination of the voyage. *The Great Western*, 520.

5. The decision in the same case as to insurance repeated. *Ib.*

6. Limited liability may be claimed, 1st, merely by way of defence to an action; or, 2d, by surrendering the ship or paying her value into court. The latter method is only necessary when the ship-owner desires to bring all the creditors claiming damage into concourse for distribution. *Ib.*

7. A District Court of the United States, in admiralty, has no jurisdiction of a petition by the owner of a steam-vessel for the trial of the question of his liability for damage caused to buildings on land by fire alleged to have been negligently communicated to them by the vessel,

through sparks proceeding from her smoke-stack, and for the limitation of such liability, if existing, under §§ 4283 and 4284 Rev. Stat. *Ex parte Phenix Ins. Co.*, 610.

LOCAL LAW.

1. The act of the legislature of Missouri of May 10, 1871, amending the act of March 23, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," was not repealed by the failure of the legislature to incorporate it into the Revision of 1879. *Cape Girardeau County* v. *Hill*, 68.
2. The provision in the Louisiana Constitution of 1879, that the general assembly of the State should enact appropriate legislation to liquidate the indebtedness of the city of New Orleans and apply its assets to the satisfaction thereof, contemplated that provision should be made for the payment of the entire debt, whether bonded or floating, and was in harmony with the previously settled law of the State. *New Orleans* v. *Hart*, 136.
3. The holders of the floating debt of the city of New Orleans, existing at the time of the passage of the act of the legislature of Louisiana of April 10, 1880, known as No. 133 of that year, who have established the validity of their claims by judicial proceedings, are protected by the provisions of the Constitution of Louisiana adopted in 1879 from being excluded from sharing in the proceeds of the property and fund, which, by that act, were in terms appropriated to purchase and retire the bonds of the city. *Ib.*
4. The legislation of the State of Louisiana respecting the indebtedness of the city of New Orleans reviewed. *Ib.*
5. In Louisiana a gratuitous donee of land bought by the donor on credit at a sheriff's sale on execution, and still subject to the judgment and liable to an execution either on that judgment or on the bond given for the purchase-money, who is liable for the charges on the land but is not in possession, is not entitled to the delay and formalities of the hypothecary action. *Evans* v. *Pike*, 241.
6. Under the constitution and laws of California, relating to taxation, fences erected upon the line between the roadway of a railroad and the land of coterminous proprietors are not part of "the roadway," to be included by the State Board in its valuation of the property of the corporation, but are "improvements" assessable by the local authorities of the proper county. *Santa Clara County* v. *Southern Pacific Railroad*, 394.
7. Following the decision of the highest court of the State of Tennessee in *Pope* v. *Phifer*, 3 Heiskell, 691, and other cases, this court holds that the Board of Commissioners of Shelby County, organized under the act of March 9, 1867, had no lawful existence; that it was an unauthorized and illegal body; that its members were usurpers of the

functions and powers of the justices of peace of the county; that their action in holding a county court was void; and that their acts in subscribing to the stock of the Mississippi Railroad Company and issuing bonds in payment therefor were void. *Norton* v. *Shelby County*, 425.

See ARIZONA.
CONSTITUTIONAL LAW, A, 1, 2, 10–14.
COURT AND JURY.
DEED, 5.
EQUITY, 1.
MORTGAGE, 3.
PROMISSORY NOTE, 2.
TRUST, 1, 2.

MANDAMUS.

See TAX AND TAXATION, 1.

MINERAL LAND.

1. Under sections 2320, 2322, and 2324 of the Revised Statutes, the surface side lines of a mining location on a mineral vein, lode, or ledge, extended downward vertically, determine the extent of the claim, except when, in its descent, the vein passes outside of such surface side lines, and then the outside portions of the vein must lie between vertical planes drawn downward through the end lines of the surface location and continued in their own direction; and the parallelism of such end lines is essential to the existence of any right in the locator to follow the vein outside of vertical planes drawn through the side lines. *Iron Silver Mining Co.* v. *Elgin Mining Co.*, 196.
2. Coal lands are mineral lands within the meaning of that term as used in the statutes regulating the disposition of the public domain. *Mullan* v. *United States*, 271.
3. As coal lands were excepted from the grants to California of sections 16 and 36, in § 6 of the act of March 3, 1853, 10 Stat. 244, 246, the State could not under the provisions contained in § 7 of that act, *Ib.* 247, select coal lands in lieu of such sections 16 and 36 as might be occupied before survey, or reserved for public uses, or taken by private claims. *Ib.*

MORTGAGE.

1. The invalidity of some of the bonds secured by the mortgage of a railroad cannot affect the validity of the mortgage or the validity of proceedings for its foreclosure. *Graham* v. *Boston, Hartford & Erie Railroad Co.*, 161.
2. The mortgage of a railroad having been duly foreclosed under proceedings in a suit to which the corporation was a party, and the suit being still pending, a shareholder in the corporation cannot, by a bill in equity in another court, attack the foreclosure proceedings for fraud in conducting them. His remedy is by an application in the foreclosure suit. *Ib.*

3. In Louisiana, as in the States where the common law prevails, a person having an interest in mortgaged premises sold under a foreclosure, who was not made a party to the proceedings, cannot obtain a judgment dispossessing the purchaser without redeeming or offering to redeem the property by paying the mortgage debt; and the proper remedy in such case (if any) for such person, suing in the courts of the United States in that district, is a bill in equity to redeem the property, and not an action at law. *Evans* v. *Pike*, 241.

See DEED, 1.
LACHES.
RAILROAD, 3.

MOTION TO DISMISS.

See PRACTICE, 2.

MOTION TO REINSTATE.

The court does not find, in the affidavits submitted with the motion to reinstate, proof that the value of the property in dispute is sufficient to give it jurisdiction of the causes. *Wells* v. *Wilkins*, 230.

See PRACTICE, 1.

MUNICIPAL CORPORATION.

1. Evidence that the plan on which a sewer has been constructed by municipal authorities had not been judiciously selected is inadmissible to support an action against the municipality by the owner of land injured by the overflow of water from the sewer. *Johnston* v. *District of Columbia*, 19.
2. The action of a minority of the justices of the peace of the County Court of Shelby County, Tennessee, prior to May 5, 1870, did not operate as a ratification by the County Court of the previously invalid subscription of the county to stock in the Mississippi River Railroad Company: and on and after that day, on which the new Constitution of Tennessee took effect, no ratification could be made without previous assent of three fourths of the voters of the county. *Norton* v. *Shelby County*, 425.

See INTERNAL REVENUE, 2.
LOCAL LAW, 7.
PLEADING.
TAX AND TAXATION, 1.

MUNICIPAL ORDINANCES.

See CONSTITUTIONAL LAW, A, 4, 5, 6.

NATIONAL BANK.

1. In September, 1881, A held thirty shares of stock in a National Bank whose capital was $500,000, with a right to increase it to $1,000,000. In that month the directors voted to increase the capital to $1,000,000, the persons then holding stock to have the right to take new stock at par in equal amounts to that then held by them. A then subscribed for thirty additional shares, paid for it three days later, and subsequently took out a certificate of stock for it. The amount of increased capital subscribed and paid for was $461,300, instead of $500,000, but A had no knowledge of this deficiency until after the payment of said subscription, and of the assessment hereinafter referred to. On the 18th November, 1881, the bank became insolvent, and an examiner was placed in charge of it by the Comptroller of the Currency. In December, 1881, the directors cancelled the increase of stock above said sum of $461,300, and requested the Comptroller to issue a certificate for the increase as so reduced, which he did. No vote of the stockholders was taken either on the increase or decrease. The Comptroller then, under § 5205 Rev. Stat., called upon the bank for an assessment of 100 per centum on the holders of stock, to pay the deficiency in the capital stock. In January, 1882, the annual meeting of the stockholders was held, at which it was voted to levy the assessment so called for, whereupon the Comptroller permitted the directors to resume control of the bank. A, being notified of this assessment, paid the amount assessed upon his sixty shares, upon being assured by one of the directors of the bank that there would be no other assessment. On the twentieth day of the following May the bank ceased to do business, and the directors thereupon voted to go into liquidation. The Comptroller then appointed a receiver of the bank. In November, 1882, the Comptroller, under Rev. Stat., § 5151, made an assessment on the shareholders of 100 per cent. of the stock held by them respectively. A declining to pay, the receiver brought an action at law against him to recover that amount on the sixty shares standing in his name. A thereupon filed a bill in equity to restrain the prosecution of the action. *Held*, (1) That the increase of the capital stock of the company to $961,300 was valid. (2) That this increase was binding on A to the extent to which he paid for and received certificates of increased stock. (3) That the payments made in January, 1882, could not be applied, either at law or in equity, to the discharge of the assessments made by the Comptroller in the final liquidation of the bank. (4) That the payment was not made by A under a mistake against which equity can relieve him. *Delano* v. *Butler*, 634.

2. A, an owner of shares in the capital stock of a National Bank, employed a broker and auctioneer to sell them by public auction. They were bid off by B, who paid the auctioneer for them, and received from

him the certificate of stock with a power of attorney for transfer duly executed in blank. The auctioneer paid the purchase-money to A. B was employed by the president of the bank to make this purchase for a customer of the bank, who had made a deposit in the bank for the purpose, and he delivered the certificate and the power of attorney to the president, and received from the bank the money for the purchase. No formal transfer of the stock was made on the transfer, book of the bank. Shortly afterwards the bank became insolvent, and eventually went into the hands of a receiver, who made an assessment on the stockholders, under the provisions of Rev. Stat. § 5205, to make up the deficiency in the capital. Until after the stoppage A had no knowledge as to the purchaser, or as to the neglect to formally transfer the stock, and no reason to suppose that the transfer had not been made. In an action against A by the receiver, to recover the amount of the assessment upon his said stock, *Held:* That the responsibility of A ceased upon the surrender of the certificates to the bank, and the delivery to its president of a power of attorney sufficient to effect, and intended to effect, as the president knew, a transfer of the stock on the books of the bank. *Whitney* v. *Butler*, 655.

NEW ORLEANS DEBT.

See LOCAL LAW, 2, 3, 4.

OFFICER.

While acts of a *de facto* incumbent of an office lawfully created by law and existing are often held to be binding, from reasons of public policy, the acts of a person assuming to fill and perform the duties of an office which does not exist *de jure* can have no validity whatever in law. *Norton* v. *Shelby County*, 425.

See STATUTE, A, 3.

PARDON.

Although, before the joint resolution of March 2, 1867, forbidding the payment of claims like his, was passed, the claimant had received from the president a pardon "for all offences committed by him arising from participation, direct or implied, in the rebellion," the pardon did not authorize the payment of the claim, nor did the joint resolution take away anything which the pardon had conferred. *Hart* v. *United States*, 62.

See CASES DISTINGUISHED, 2.
JURISDICTION, D.

PARTIES.

See BANKRUPTCY.
MORTGAGE, 2.
PARTNERSHIP, 2.

PARTNERSHIP.

1. A sole surviving partner of an insolvent firm, who is himself insolvent, may make a general assignment of all the firm's assets, for the benefit of all joint creditors, with preferences to some of them: and such assignment is not invalidated by the fact that the assignor fraudulently withheld from the schedules certain partnership property for his own benefit, without the knowledge of the assignee or of the beneficiaries of the trust. *Emerson* v. *Senter*, 3.
2. The surviving partner of a partnership, after payment of the partnership debts, may retain the partnership property until the indebtedness of the firm to him is paid, if no proceedings are taken against him to enforce a settlement; in such case, if the statute of limitations runs against anybody, it is against the representatives of the deceased partner. *Clay* v. *Freeman*, 97.
3. A and B became partners in 1855 for the purpose of carrying on a plantation in Mississippi owned by them jointly as partners. B furnished the larger part of the capital, and received the firm's notes for the amount advanced by him in excess of A's advances. A died in 1859, and his administrator and B carried on the partnership business until the outbreak of the war, without a settlement. In July, 1867, B died, having been for some time administrator of A (but without receiving any property or filing any account), and leaving surviving his sole heir and daughter P, who became of age in November, 1869. On the death of B, C was appointed administrator of each estate, and obtained a decree of court for sale of the real estate. It was struck off at the sale to P, in December, 1869; the amount of the purchase-money was credited on the partnership notes; and P entered into possession; but the whole proceeding subsequently proved to be illegal and invalid, and the supposed sale and transfer to be void. In 1876 dower in the estate was allotted to the widow of A in a proceeding in which P contested her right to it. In 1880 the widow began suit, which is still pending, to recover damages for dower, and about the same time the heir at law of A, having come of age, sued to recover an undivided half-interest in the real estate, claiming that the partnership debts were outlawed. P then brought this bill in equity to settle the partnership business, and to charge all the real estate, including the undivided interest of the heir at law of A therein, and the interest of the widow, with the partnership debts. *Held*, That the statute of limitations could not be set up by the heir

at law of A or by the widow against P; that P was the proper party to bring the suit; that the cancellation of the sale restored P to her rights as partnership creditor; and that while the court would not set aside the assignment of dower, no further exaction for detention would be enforced. *Ib.*

PATENT FOR INVENTION.

1. The specification of letters-patent for a design for a carpet, which is accompanied by a photographic illustration, and merely states that the nature of the design is fully represented in such illustration, and claims "the configuration of the design hereunto annexed, when applied to carpeting," sets forth a sufficient description and claim, and the patent is valid. *Dobson* v. *Dornan*, 10.
2. An interlocutory decree which awards a recovery for profits and damages for the infringement of a patent for a design for a carpet, and orders an account of the profits from infringing by the manufacture, use, and sale of carpeting bearing the design, and of the damages by reason of the infringement, is not open to the objection that it awards the profits and damages resulting from the making and selling of the carpeting, instead of those resulting from the use of the design. *Ib.*
3. On the question of the infringement of a patent for a design for carpeting, in a suit in equity, where exhibits of carpets containing the patented and the infringing designs were produced in the Circuit Court, and it decided the question of infringement against the defendant, by the aid of ocular inspection of those exhibits, and, on an appeal by him, those exhibits were not produced in this court, and there was, in the record, testimony tending to show infringement, this court held, that, although there was contradictory testimony, it could not, in the absence of ocular inspection, say that the Circuit Court erred in finding infringement. *Ib.*
4. The plaintiff must show what profits or damages are attributable to the use of the infringing design. *Ib.*
5. The defendant made no profits on the manufacture and sale of carpets containing the infringing design. The plaintiff made a certain percentage of profit on the manufacture and sale of carpets containing the patented design. The defendant's carpets were far inferior in quality and market value to those of the plaintiff. The Circuit Court presumed that the defendant's carpets displaced those of the plaintiff, to the extent of the defendant's sales, and held that the entire profit which the plaintiff would have received, at such percentage, from the sale of an equal quantity of his own carpets of the same pattern, was the proper measure of his damages. There was no satisfactory evidence that those who bought the defendant's cheap carpets would have bought the plaintiff's higher-priced ones,

or that the design added anything to the defendant's price, or promoted his sale of the particular carpet; and none to show what part of the defendant's price was to be attributed to the design: *Held*, That the Circuit Court was in error. *Ib.*

6. The decree was reversed, and the case remanded, with direction to disallow the award of damages, and to award six cents damages, and to allow the defendant a recovery of his costs after interlocutory decree, and to the plaintiff a recovery of his costs to and including interlocutory decree. *Ib.*

7. The decision of the Commissioner of Patents, granting an application for a patent, a former application for which has been rejected or withdrawn, is not conclusive upon the question of abandonment of the invention in a suit brought for the infringement of the patent. *U. S. Rifle Co.* v. *Whitney Arms Co.*, 22.

8. An inventor, whose application for a patent has been rejected by the Patent Office and withdrawn by him, and who, without substantial reason or excuse, omits for eight years to reinstate or renew it, during which time many patents embodying the substance of the invention are granted to other persons, must be held to have abandoned the invention. *Ib.*

9. When the defendant in a suit for the infringement of a patent sets up a prior publication of a machine anticipating the patented invention, and it appears that there are obvious differences between the two machines in the arrangement of the separate parts, in the relation of the parts to each other, and in their connection with each other in performing the functions for which the machine is intended, and experts differ upon the questions whether these differences are material to the result, and whether they required the faculty of invention, those questions are questions of fact to be left to the determination of the jury, under proper instructions from the court. *Keyes* v. *Grant*, 25.

10. Claim of reissued letters-patent No. 9094, granted to William Gardner, Oliver L. Gardner, and Jane E. Gardner, February 24, 1880, for an improvement in chair-seats (the original patent, No. 127,045, having been granted to George Gardner and Gardner & Gardner, as assignees of George Gardner, as inventor, May 21, 1872, and having been reissued as No. 7203, to George Gardner, William Gardner, and Jane E. Gardner July 4, 1876), namely, "2. A chair-seat made of laminæ of wood glued together, with the grains in one layer crossing those of the next, concave on the upper surface, convex on the lower surface, and perforated, as a new article of manufacture, substantially as set forth," does not claim any patentable invention. *Gardner* v. *Hertz*, 180.

11. A patent cannot be taken out for an article, old in purpose and shape and mode of use, when made for the first time out of an existing material, and with accompaniments before applied to such an article,

merely because the idea has occurred that it would be a good thing to make the article out of that particular old material. *Ib.*

12. The suggestion in the second reissue, that "the seat is adapted to be secured to any chair-frame, as it is easily cut and fitted to the same," is not found in the original patent, or in the first reissue, and is new matter, so far as anything in it can be invoked to confer patentability on the article. *Ib.*
13. The question as to whether the thing patented amounts to a patentable invention may be raised by a defendant in a suit for infringement, independently of any statutory permission so to do. *Ib.*
14. Under the Constitution and the statute, a thing, to be patentable, must not only be new and useful, but it must amount to an invention or discovery. *Ib.*

See CASES AFFIRMED OR APPROVED, 2.

PENALTY.

See TAX AND TAXATION, 4.

PILOT.

See CONSTITUTIONAL LAW, A, 1, 2.

PLEADING.

In an action upon a negotiable bond issued by a town authorized by the public laws of the State to issue such bonds for certain purposes only, a declaration alleging that the defendant is a municipal corporation, existing under the laws of the State, with full power and authority pursuant to those laws to execute negotiable commercial paper, and that pursuant to those laws it executed the bond sued on—without showing for what purpose the bond was made—is bad on demurrer. *Hopper* v. *Covington*, 148.

See REMOVAL OF CAUSES, 4, 6.

POST-OFFICE DEPARTMENT.

See CONTRACT, 3.

PRACTICE.

1. The cause was submitted, under Rule 20, January 7, 1886. The court finding nothing from which it could be inferred that the value of the matter in dispute exceeded $5000, dismissed the case for want of jurisdiction, January 19, 1886. On the 26th April, 1886, the plaintiffs in error moved to reinstate the cause, accompanying the motion with affidavits in its support. *Held*, That the motion was too late. *Johnson* v. *Wilkins*, 228.

2. The court will not consider the merits of the question involved in a case, on a motion to dismiss unaccompanied by a motion to affirm. *Bohanan* v. *Nebraska*, 231.
3. The proper way to bring here for review a cause tried before a jury in a Territory is by writ of error. *United States* v. *Hailey*, 233.
4. A charge to the jury which, though incorrect, does no injury to the excepting party, is not sufficient ground for setting aside the judgment. *Evans* v. *Pike*, 241.
5. When the same cause is brought to this court by appeal and by writ of error, on the same record, it is not necessary to docket it twice. *Plymouth Mining Co.* v. *Amador Canal Co.*, 264.
6. As the court has no jurisdiction in this case, 116 U. S. 55, and it was decided at the present term, the judgment is vacated, the mandate recalled, and the writ of error dismissed. *Cannon* v. *United States*, 355.

See EVIDENCE, 2.
JURISDICTION, A, 6, 7.

PRINCIPAL AND AGENT.

See CORPORATION, 2, 3.

PROBATE.

See JURISDICTION, A, 2.

PROMISSORY NOTE.

1. A promissory note payable on demand, with interest, was made by a railroad corporation to a stockholder for money lent, and with the understanding that assessments to be laid on his shares should, when payable, be considered as payments upon the note. Assessments to a greater amount than the note afterwards became payable, and the difference only was paid by him. *Held*, That the note was paid as between the corporation and the payee, and as against a subsequent endorsee taking the note when overdue. *Paine* v. *Central Vt. Railroad Co.*, 152.
2. By the Statutes of Massachusetts and of Vermont, promissory notes payable on demand are overdue in sixty days after date. *Ib.*

See PLEADING.

PUBLIC LAND.

1. The acts of Congress of March 3, 1863, July 1, 1864, and July 26, 1866, granting lands to the State of Kansas for railroad purposes, are to be construed *in pari materia*, as having the one purpose of building a single road from Fort Riley, down the Neosho Valley, to the southern line of that State, and not as distinct grants for different roads, which

may come in conflict in the claims under them in regard to the lands granted. *Kansas City, &c. Railroad* v. *The Attorney General*, 682.

2. The junction of this road with the one from Leavenworth by way of Lawrence, in the direction of Galveston Bay, as provided in the act of 1863, was not required to be on the very crest of the Neosho Valley, as reached by the latter road, but at a convenient point for such crossing in the narrow valley of the Neosho River; and as this point has been adopted by the companies building both roads, and accepted by the officers of the Land Department in selecting indemnity lands, there is no sufficient reason to be found in the point of junction to vacate the certification of these lands to the State for the company which has built the road and received the patents of the State. *Ib.*
3. Nor is there any other sufficient reason found in the record in this case for setting aside the evidences of title to these lands issued to the corporation which built the road within the time required by law, to the approval of the officers of the government, whose primary duty it was to certify these lands, and who did so within the scope of their powers. *Ib.*

See EQUITY, 4.
EVIDENCE, 2.
MINERAL LAND.

QUARANTINE.

See CONSTITUTIONAL LAW, A, 10–14.

QUIA TIMET.

See EQUITY, 1.

RAILROAD.

1. The Boston, Hartford & Erie Railroad Company became a corporation of the State of New York, by virtue of the act of the legislature of that State, passed April 25, 1864, Laws of New York, 1864, ch. 385, p. 884, it being already a corporation of Connecticut, Massachusetts, and Rhode Island. *Graham* v. *Boston, Hartford & Erie Railroad*, 161.
2. A railroad corporation, which, though made up of distinct corporations, chartered by the legislatures of different States, has a capital stock which is a unit, and only one set of shareholders, who have an interest, by virtue of their ownership of shares of the stock, in all of its property everywhere, has a domicil in each State, and the corporation or shareholders can, in the absence of any statutory provision to the contrary, hold meetings and transact corporate business in any one State, so as to bind the corporation as to its property everywhere. *Ib.*
3. The Berdell mortgage, executed by the Boston, Hartford & Erie Railroad Company, March 19, 1866, was valid originally, and the proceedings of the company whereby the mortgage was made were ratified

by the legislatures of the four States above named, which included the holding in the city of New York of the meeting of the shareholders which authorized the making of the mortgage. *Ib.*

4. The act of July 1, 1862, "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," 12 Stat. 489, and the act of July 2, 1864, 13 Stat. 356, amending the same, and the act of May 7, 1878, 20 Stat. 56, commonly called the Thurman Act, are *in pari materia* and to be construed together; and so construed, the act of May 7, 1878, restores provisions of the act of 1862 respecting retention of compensation for services performed by the railroads for the United States, which had been changed by the amendment of 1864, and requires the Treasury to withhold all payment for services performed on the roads constructed by the aid of government grants, but not on roads owned or operated by the same companies which were not constructed with such aid. *United States* v. *Central Pacific Railroad Co.*, 235.
5. In the case of an existing railroad corporation organized under the laws of one State, which is authorized by the laws of another State to extend its road into the latter, it does not become a citizen of the latter State by exercising this authority, unless the statute giving this permission must necessarily be construed as creating a new corporation of the State which grants this permission. *Pennsylvania Co.* v. *St. L., Alton & T. H. Railroad Co.*, 290.
6. Where a lease of a railroad for ninety-nine years contained covenants for the payment of monthly instalments of rent, to keep the road in repair, and to keep accounts of all matters connected with its business, as affecting the amount of rent to be paid, which covenants were guaranteed by other parties than the lessee, a bill which shows failure to pay rent, depreciation of the road, and combination of the guarantors and lessee to divert the earnings of the road to the benefit of the guarantors, presents a case of equitable jurisdiction when it prays for specific performance of the obligations of the lease. In such a case a suit at law on each instalment of rent as it falls due is not an adequate remedy. *Ib.*
7. Unless specially authorized by its charter, or aided by some other legislative action, a railroad company cannot by lease or other contract turn over to another company for a long period of time its road and all its appurtenances, the use of its franchises, and the exercise of its powers, nor can any other railroad company, without similar authority, make a contract to run and operate such road, property, and franchises of the first corporation. Such a contract is not among the ordinary powers of a railroad company, and is not to be inferred from the usual grant of powers in a railroad charter. *Ib.*
8. The act of the Illinois legislature of February 12, 1855, is a sufficient authority on the part of the St. Louis, Alton & Terre Haute Company to make the lease sued on in this case. *Ib.*

9. But if the other party to the contract, the Indianapolis and St. Louis Company, had no such authority, the contract is void as to it; and if the other companies had no power to guarantee its performance, it is void as to them, and cannot give a right of action against them. *Ib.*
10. An examination of the statutes of Indiana and of the decisions of its courts fails to show, in the one or the other, any authority for an Indiana railroad company to make such a contract as that between the principal contracting companies in this case. *Ib.*
11. Nor is any authority found in the charters of any of these guaranteeing companies, or of the laws of the States under which they are organized, to guarantee the performance of such a contract as this; the parties to it and the road which it relates to being outside the limits of these States, and having no direct connection with their roads. *Ib.*
12. The doctrine is sound that when acts have been done and property has changed hands under void contracts which have been fully executed, courts will not interfere; but relief in such cases must be based on the invalidity of the contract, and not in aid of its enforcement. While the plaintiff in this case might recover in an appropriate action the rental value of the use of its road against the lessee company, the other defendants who had received nothing, but had been paying out money under a void contract, cannot be compelled to pay more money under the same contract. *Ib.*
13. No authority is found in the statutes of Indiana for the lease of an entire railroad, property, and franchise for a period of ninety-nine years. The court adheres to its views on the other questions involved in this case. *Ib.* 630.

See CONSTITUTIONAL LAW, 15.
CONTRACT, 3.
DAMAGES.
EVIDENCE, 3, 4, 5.
MORTGAGE, 2.
PUBLIC LAND.

RATIFICATION.

See MUNICIPAL CORPORATION, 2.

REBELLION.

See CASES DISTINGUISHED, 1.
JURISDICTION, D.
PARDON.

REMOVAL OF CAUSES.

1. The removal of a cause from a State court on the ground of local prejudice can be had only where all the parties to the suit on one side are citizens of different States from those on the other; and 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. *Cambria Iron Co.* v. *Ashburn*, 54.

2. The question whether a State has power to tax franchises of a corporation derived from acts of Congress, and property used in connection therewith ; and the question whether a statute of California, under the operation of which the railroad of the Southern Pacific Railroad Company is subjected to taxation in California without deduction of its mortgage encumbrances, while in the valuation of the property of other corporations, not railroad corporations, and of individuals, for taxation in the State, the mortgage encumbrances are deducted, is repugnant to the Fourteenth Amendment to the Constitution—are questions arising under the Constitution and laws of the United States, which, when properly raised in a suit at law or in equity of a civil nature, pending in a State court, authorize its removal into a Circuit Court of the United States ; and this although other issues, not Federal, are raised by the pleadings in the case. *Southern Pacific Railroad Co.* v. *California*, 109.
3. A suit brought by the State of California in one of its own courts against the Southern Pacific Railroad Company, to recover an amount claimed to be due for taxes, is a suit at law, of a civil nature, within the meaning of the removal clauses in the act of March 3, 1875. *Ib.*
4. A complaint or declaration charging a corporation, and individuals who are its agents and servants, with polluting a stream of water belonging to the plaintiff and rendering it unfit for use, and seeking a remedy against the defendants jointly, does not present a controversy separable for the purposes of removal from a State court, although the defendants answer separately, setting up separate defences. *Plymouth Mining Co.* v. *Amador Canal Co.*, 264.
5. When a complaint or declaration in an action in a State court sets up a joint cause of action in tort against several defendants, for injuries done jointly to plaintiff, separate answers of the defendants, setting up that the acts complained of were committed under direction of one of them, and were justified by a contract between plaintiff and that particular defendant, and that the acts complained of as done by the other defendants were done by them as his servants and under his directions, do not necessarily change the controversy between the plaintiff and that defendant into a separate controversy, removable to the courts of the United States under the removal acts ; and allegations in the petition for removal that the agents were joined as defendants in order to prevent the removal of the cause to the Circuit Court of the United States are of no avail, if not proved. *Ib.*
6. An action was commenced in a court of the State of South Carolina against plaintiff in error and other defendants. Plaintiff in error, after an answer prepared and verified by counsel had been filed, in which it was stated that she was a citizen of New York, petitioned for its removal to the Circuit Court of the United States on the

ground of a separable controversy, alleging that she was a citizen of Massachusetts, that plaintiffs below were citizens of New York, except one, a citizen or subject of Spain, and that the other defendants below were citizens of different States named other than Massachusetts. The State court disallowed the petition for removal, on the ground that it appeared from the answer that plaintiff in error was a citizen of New York : *Held*, That this question was one of fact to be determined by the Circuit Court of the United States, and not by the State court ; that plaintiff in error was not estopped by the answer from setting up that she was a citizen of New York ; and that, as a case for removal was made out on the face of the petition, the petition was improperly denied. *Carson* v. *Hyatt*, 279.

7. On the proof the court is satisfied that plaintiff in error was, when the suit was commenced, and continued to be, a citizen of Massachusetts ; and that on her petition the cause should have been removed to the Circuit Court of the United States. *Ib.*

8. The court also holds, on an examination of the record and the proof and the Code of South Carolina, that the petition for the removal in this case was made "at the term at which the cause could first be tried," according to the meaning of that phrase as construed in *Babbitt* v. *Clark*, 103 U. S. 606 ; and *Pullman Palace Car Co.* v. *Speck*, 113 U. S. 84. *Ib.*

9. A suit in a State court against several defendants, some of whom are citizens of the same State with the plaintiff, charging all as joint contractors or joint trespassers, cannot be removed into a Federal court by defendants who are citizens of another State, although they allege in their petition for removal that they are not jointly interested or liable with the other defendants, and that their controversy with the plaintiff is a separate one. *Little* v. *Giles*, 596.

10. When it appears that the interest of a nominal party to a suit is simulated and collusive, and created for the purpose of giving jurisdiction to a court of the United States, the court should dismiss the suit, under the provisions of § 5, Act of March 3, 1875, 18 Stat. 472. *Ib.*

11. After removal of a cause in equity from a State court to a court of the United States, a motion was made under § 5, Act of March 3, 1875, to remand it on the ground that the title of one of the parties had been collusively acquired for the purpose of removal from the State court. A suit at law involving the same subject-matter was then pending in the Federal court. The same issue of collusion had been made in that cause by a plea in abatement, and the parties stipulated that the issue on the plea in abatement should be tried and that the decision thereon should be taken and entered of record as the decision in the action at law, and also of the issues in the suit in equity as far as they were the same. The trial of the issues on the plea resulted in a finding that the plea had not been sustained, and this, together with all the evidence, being incorporated into the equity suit, the

motion to remand the latter was denied : *Held*, That there was nothing in the stipulation to deprive this court of the power of reviewing the action of the court below in denying the motion. *Ib.*

See JURISDICTION, A, 1 ; B.

SALARY.

See STATUTES, A, 3.

SALE.

1. In the absence of fraud an agreement for a conditional sale of personal property, accompanied by delivery, is good and valid, as well against third persons as against the parties to the transaction. *Harkness* v. *Russell*, 663.
2. A bailee of personal property, who receives it under an agreement that he may purchase it on the performance of conditions on his part, cannot convey title to it or subject it to execution for his own debts, until performance of the conditions on which the agreement to sell is made. *Ib.*
3. A, having agreed to sell certain personal property to B on the performance of conditions on his part, delivered it to him, and took from him a promissory note stating the following as the condition of the sale: "The express condition of this transaction is such that the title, ownership, or possession of said property does not pass from the said A until this note and interest shall have been paid in full, and the said A has full power to declare this note due and take possession of said engine and saw-mill when he may deem himself insecure, even before the maturity of this note. In case said property shall be taken back, A may sell the same at public or private sale without notice, or he may without sale endorse the true value of the property on this note, and I agree to pay on the note any balance due thereon after such endorsement, as damages and rental for said machinery." B entered into possession, and, without performing the conditions of sale, sold the property to C, who knew that it had not been paid for, and that A claimed title to it. At the time of the sale to C the value of the property was less than the amount due on the note. In an action against C to recover the value of the property : *Held*, That this transaction was not a mortgage, but was an executory conditional sale ; and, being free from fraud, that it was valid. *Ib.*

SECRETARY OF THE NAVY.

See CONTRACT, 1.

SHIPS AND VESSELS.

The Repauno was a wooden vessel 37 feet in length at the water line, 8 feet

beam, 3 feet 9 inches depth of hold, 2 feet 1 inch draught, with a small engine and boiler ; could carry 25 persons in smooth water, and was used to transport her owner and superintendent, and occasionally some workmen, across the Delaware, between Thompson's Point and Chester : *Held*, That, although it is sometimes difficult to draw the line between vessels so small and insignificant that they do not come within the inspection laws, and larger vessels which do come within them, the Repauno was liable to inspection under the statutes of the United States. *Hartranft* v. *Du Pont*, 223.

See LIMITED LIABILITY.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. Where the meaning of the Revised Statutes is plain, the court cannot recur to the original statutes to see if errors were committed in revising them, but it may do so when necessary to construe doubtful language used in the revision. *Cambria Co.* v. *Ashburn*, 54.
2. If a clause in a statute which violates the Constitution of the United States cannot be rejected without causing the statute to enact what the legislature never intended, the whole clause must fall. *Spraigue* v. *Thompson*, 90.
3. A statute which fixes the annual salary of a public officer at a designated sum, without limitation as to time, is not abrogated or suspended by subsequent enactments appropriating a less amount for his services for a particular fiscal year, but containing no words which expressly or impliedly modify or repeal it. *United States* v. *Langston*, 389.
4. This court follows the decisions of the highest court of a State, in construing the Constitution and laws of the State, unless they conflict with or impair the efficacy of some principle of the Federal Constitution, or of a federal statute, or a rule of commercial or general law. *Norton* v. *Shelby County*, 425.
5. The decisions of State courts on questions relating to the existence of its subordinate tribunals, and the eligibility and election or appointment of their officers, and the passage of its laws, are conclusive upon federal courts. *Ib.*

See CONSTITUTIONAL LAW, A, 4; C.
MINERAL LAND, 2.
RAILROAD, 4.

B. STATUTES OF THE UNITED STATES.

See ARIZONA.
CONSTITUTIONAL LAW, A, 1, 2, 12.
CONTRACT, 1.
EQUITY, 4.
INDIAN, 1, 2.
INTERNAL REVENUE, 1.
JURISDICTION, A, 7; D.
See LIMITED LIABILITY, 1 (1), 7.
MINERAL LAND, 1, 2, 3.
PARDON.
PUBLIC LAND.
RAILROAD, 4.
REMOVAL OF CAUSES, 1, 3, 8, 10, 11.
SHIPS AND VESSELS.

C. STATUTES OF STATES AND TERRITORIES.

Arizona.	*See* ARIZONA.
California.	*See* LOCAL LAW, 6. TAX AND TAXATION, 3, 4.
Connecticut.	*See* RAILROAD, 1.
Georgia.	*See* CONSTITUTIONAL LAW, A, 1.
Illinois.	*See* CONSTITUTIONAL LAW, 15 RAILROAD, 8.
Indiana.	*See* RAILROAD, 10.
Louisiana.	*See* CONSTITUTIONAL LAW, 10. LOCAL LAW, 3, 4.
Massachusetts.	*See* PROMISSORY NOTE, 2. RAILROAD, 1.
Michigan.	*See* TRUST, 1, 2.
Missouri.	*See* LOCAL LAW, 1.
New York.	*See* RAILROAD, 1.
Rhode Island.	*See* RAILROAD, 1.
Tennessee.	*See* LOCAL LAW, 7.
Vermont.	*See* PROMISSORY NOTE, 2.

STATUTE OF FRAUDS.

See TRUST, 1, 2.

SUPREME COURT.

See JURISDICTION, A.
STATUTE, A, 4, 5.

TAX AND TAXATION.

1. A statute authorizing a municipal corporation to create a debt, required a tax to be levied on real estate to pay it. After the debt was contracted, an amendment to the act authorized the levy for that purpose to be made on personal property also. The debt not being paid, and both acts being in force, the creditor acquired by due proceedings the right to a writ of mandamus, directing the levy of a tax in order to pay his debt. *Held*, That he was entitled to a writ commanding the levy on both species of property. *Cape Girardeau County* v. *Hill*, 68.
2. An assessment of a tax is invalid, and will not support an action for the recovery of the tax, if, being laid upon different kinds of property as a unit, it includes property not legally assessable, and if the part of the tax assessed upon the latter property cannot be separated from the other part of it. *Santa Clara County* v. *Southern Pacific Railroad*, 394.
3. The State Board of Equalization of California was required by law to assess the franchise, roadway, &c., of all railroads operated in more than one county, and apportion the same to the different counties in

proportion to the number of miles of railway in each. They made such assessment of the Southern Pacific Railroad, improperly including therein the fences between the roadway and the conterminous proprietor, and apportioned it and returned it as required to the different counties. In a suit by one of the counties to recover its proportion of the tax levied in accordance with such apportionment and return, the court below, at the trial, found that "said fences were valued at $300 per mile," which was the only finding on the subject; and it did not appear that the county, plaintiff, offered to take judgment for a sum excluding the rate on the value of the fences within the county at that valuation. *Held*, (1) That the finding was too vague and indefinite to serve as a basis for estimating the aggregate valuation of the fences included in the assessment, or the amount thereof apportioned to the respective counties; (2) that, under the circumstances, the court could not assume that the State Board included the fences in their assessment at the rate of $300 per mile for every mile of the railroad within the State, counting one or both sides of the roadway; and could not, after eliminating that amount from the assessment, give judgment for the balance of the tax, if any. *Ib.*

4. This case differs from *Santa Clara County* v. *Southern Pacific Railroad Company*, *ante*, 394, only in this—that after entry of judgment defendant below paid the taxes claimed under a stipulation that the payment should be "without prejudice to the right of the plaintiff in the case to proceed for penalties, interest, and attorney's fees claimed." *Held*, That, as the plaintiff would not have been entitled to judgment for the taxes originally claimed, it could not have judgment in its favor for penalty, interest, and attorney's fees. *San Bernardino County* v. *Southern Pacific Railroad*, 417.

See LOCAL LAW, 6, 7.
REMOVAL OF CAUSES, 2, 3.

TRESPASS ON THE CASE.

See CORPORATION, 2.
MUNICIPAL CORPORATION, 1.

TRUST.

1. A series of letters and agreements passing between the parties interested, all relating to the same property, which, when read together, show a purpose in all the parties to create a trust respecting it, and which express and define that trust and the parties and their respective interests, creates a trust fully expressed and clearly defined within the meaning of the statute of the State of Michigan which enacts that "express trusts" may "be created" "for the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined on the face of the instrument creating it." *Loring* v. *Palmer*, 321.

2. The statute of Michigan which enacts that "every disposition of land" shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested, and not to any other, to the use of or in trust for such person; and if made to one or more persons, in trust for or to the use of another, no estate legal or equitable shall vest in the trustee," does not apply to a trust not expressed in the deed, but created by an independent instrument or instruments, executed at a different time, or times, from the execution of the deed. *Ib.*

See DEED, 5.
LIMITATION, STATUTES OF.

ULTRA VIRES.

See CORPORATION, 3.
INTERNAL REVENUE, 2.
RAILROAD, 7, 9, 10, 11, 12, 13.

UNITED STATES.

See CONTRACT, 1.
EQUITY, 4.
LIMITATION, STATUTES OF.
STATUTES, B.

WILL.

See DEED, 3.
JURISDICTION, A, 2.