# INDEX.


ACTION.

*See* LOCAL LAW, 6, 7, 8;
PAYMENT.

ACTION ON THE CASE.

*See* MASTER AND SERVANT.

ADMIRALTY.

A fixed structure, contrived for the purpose of taking ships out of the water in order to repair them, and for no other purpose, consisting of a large oblong box, with a flat bottom and perpendicular sides, with no means of propulsion either by wind, steam, or otherwise, and not designed for navigation, but only as a floating dry dock, permanently moored, is not a subject of salvage service. *Cope* v. *Valette Dry Dock Co.*, 625.

*See* JURISDICTION, C, 1, 2;
LOCAL LAW, 8, 9, 10.

ALIEN.

*See* LOCAL LAW, 1.

AMENDMENT.

When the judgment of the court below is reversed by reason of failure of the pleadings to show the citizenship necessary to give jurisdiction, it is within the discretion of that court, on the case coming back, to allow amendments to cure the defect. *Halsted* v. *Buster*, 341.

APPEAL.

*See* COSTS;
COURT OF CLAIMS;
JURISDICTION, A, 1, 3, 8.

ASYLUM.

*See* EXTRADITION, 7.

ATTORNEY AT LAW.

*See* BANKRUPTCY, 2;
WITNESS.

## BAILMENT.

1. The robbery by burglars of securities deposited for safe-keeping in the vaults of a bank is no proof of negligence on the part of the bank. *Wylie* v. *Northampton Bank*, 361.
2. It is competent for a national bank to take steps for the recovery of its property stolen by burglars, and to agree to take like steps for the recovery of the property of others deposited with it for safe-keeping and stolen at the same time; and want of proper diligence, skill, and care in performing such an undertaking is ground of liability to respond in damages for failure: but the evidence in this case failed to establish either such an agreement, or the want of diligence and care, and the jury was properly instructed to return a verdict for defendant. *Ib.*

## BANKRUPTCY.

1. *Hennequin* v. *Clews*, 111 U. S. 676, affirmed and followed, in holding, on similar facts in this case, that there was no such fraud in the creation of the debt, and no such trust in respect to the possession of the bonds, as to bar the operation of the discharge in bankruptcy. *Palmer* v. *Hussey*, 96.
2. A, being defendant in a suit in a state court to set aside a deed of real estate, employed B as attorney and counsel to defend the suit. While the suit was pending A conveyed the tract to C as trustee to secure certain debts and liabilities of A. A became bankrupt, and D was appointed his assignee. After all these proceedings B succeeded in obtaining a decree establishing A's title in the tract, which decree recited that the assignee in bankruptcy had become a party to the decree, and that the cause was remanded by consent for a report as to what was a reasonable counsel fee for B, which was declared to be a lien on the premises. After report the property was sold to B to satisfy that lien. In an action to enforce the lien under the trust deed to C as superior to that of B; *Held:* (1) That the state court had jurisdiction so as to bind those who were parties to the suit and those whom the parties in law represented; (2) that the assignee in bankruptcy having appeared in the state court and litigated his rights there, he and those whom he represented were bound by the decree. *Winchester* v. *Heiskell*, 450.

*See* EQUITY, 4.

## BILLS OF EXCHANGE.

1. The acceptor of a bill of exchange discounted by a bank, with a bill of lading attached which the acceptor and the bank regard as genuine at the time of the acceptance, but which turns out to be a forgery, is bound to pay the bill to the bank at maturity. *Goetz* v. *Bank of Kansas City*, 551.

2. The bad faith in the taker of negotiable paper which will defeat a recovery by him must be something more than a failure to inquire into the consideration upon which it was made or accepted, because of rumors or general reputation as to the bad character of the maker or drawer. *Ib.*

*See* EVIDENCE, 9, 11;
LIS PENDENS;
PAYMENT.

## BILLS OF LADING.

*See* BILLS OF EXCHANGE, 1;
EVIDENCE, 9, 11.

## BOND.

In a bond "in the penal sum of $10,000, liquidated damages," with condition that certain third persons shall within a year release the obligee from a large number of debts held by them severally, and varying from $8000 to $10 each, the sum of $10,000 is a penalty, and not liquidated damages; and in an action thereon the obligee, upon proof that none of those debts were released by the holders within the year, but that immediately afterwards he was discharged from all of them in bankruptcy, can recover nominal damages only. *Brignall* v. *Gould*, 495.

## BURGLARY.

*See* BAILMENT.

## CALIFORNIA SCHOOL LANDS.

*See* PUBLIC LAND, 8, 9, 10.

## CASES AFFIRMED.

1. *Ames* v. *Kansas*, 111 U. S. 449, affirmed. *Germania Ins. Co.* v. *Wisconsin*, 473.
2. *Barney* v. *Latham*, 103 U. S. 258, affirmed. *Brooks* v. *Clark*, 502.
3. *Cardwell* v. *American Bridge Co.*, 113 U. S. 205, affirmed and applied. *Hamilton* v. *Vicksburg &c. Railroad*, 280; *Huse* v. *Glover*, 543.
4. *Escanaba Co.* v. *Chicago*, 107 U. S. 678, affirmed and applied. *Hamilton* v. *Vicksburg &c. Railroad*, 278; *Huse* v. *Glover*, 543.
5. *Hancock* v. *Holbrook*, 112 U. S. 229, followed. *Peper* v. *Fordyce*, 469.
6. *Hastings* v. *Jackson*, 112 U. S. 233, affirmed. *Mace* v. *Merrill*, 581.
7. *Hennequin* v. *Clews*, affirmed and followed. *Palmer* v. *Hussey*, 96.
8. *Looney* v. *District of Columbia*, 113 U. S. 258, affirmed. *Donnelly* v. *District of Columbia*, 339.
9. *Mahn* v. *Harwood*, 112 U. S. 354, affirmed. *Ives* v. *Sargent*, 652.
10. *Martin* v. *People*, 87 Ill. 524, followed. *Enfield* v. *Jordan*, 680.
11. *Mansfield &c. Railway* v. *Swann*, 111 U. S. 379, affirmed. *Peper* v. *Fordyce*, 469.
12. *Putnam* v. *Ingraham*, 114 U. S. 257, affirmed. *Brooks* v. *Clark*, 502.
13. *Shepard* v. *Carrigan*, 116 U. S. 593, affirmed. *Sutter* v. *Robinson*, 530.

14. *Starin* v. *New York*, 115 U. S. 218, affirmed. *Germania Ins. Co.* v. *Wisconsin*, 473.
15. *Thayer* v. *Life Association*, 112 U. S. 117, affirmed. *Peper* v. *Fordyce*, 469.
16. *Thomson* v. *Wooster*, 114 U. S. 104, affirmed. *Clark* v. *Wooster*, 322.
17. *Wollensak* v. *Reiher*, 115 U. S. 96, affirmed and applied. *Ives* v. *Sargent*, 652.

CASES DISTINGUISHED.

1. *Anderson County* v. *Beal*, 113 U. S. 227, distinguished. *Crow* v. *Oxford*, 215.
2. *Commissioners* v. *January*, 94 U. S. 202, distinguished. *Crow* v. *Oxford*, 215.
3. *Lewis* v. *Commissioners*, 105 U. S. 739, distinguished. *Crow* v. *Oxford*, 215.
4. *National Bank* v. *Commonwealth*, 9 Wall. 353, distinguished. *New Orleans* v. *Houston*, 265.
5. *Stone* v. *Mississippi*, 101 U. S. 814, distinguished. *New Orleans* v. *Houston*, 265.
6. *United States* v. *Railroad Co.*, 17 Wall. 322, distinguished. *New Orleans* v. *Houston*, 263.
7. *Yulee* v. *Vose*, 99 U. S. 539, distinguished. *Brooks* v. *Clark*, 502.

CASES OVERRULED.

*Welch* v. *Post*, 99 Ill. 471, overruled. *Enfield* v. *Jordan*, 680.

CERTIFICATE OF DIVISION.

*See* DIVISION OF OPINION.

CHOCTAWS.

*See* INDIAN.

CITIZENSHIP.

*See* AMENDMENT;
JURISDICTION, B, 2; C, 3, 5.

COLLECTOR OF CUSTOMS.

A collector of customs is not authorized by the provisions of the act of June 10, 1880, c. 202, 21 Stat. 173 to collect the freight upon the transported goods, or to receive it for the lien-holder; and if a deputy collector, who acts as cashier of the collector, does so collect or receive the freight, his act is an unofficial act which entails no official responsibility upon the collector, his superior. *Cleveland & Columbus Railroad* v. *McClung*, 454.

CONFLICT OF LAW.

When the statutes of the United States make special provisions as to the competency or admissibility of testimony, they must be followed in the courts of the United States, and not the laws or practice of the state in which the court is held, when they are different. *Whitford* v. *Clark County*, 522.

## CONSTITUTIONAL LAW.

### A. Of the United States.

1. A Pennsylvania fire insurance corporation began doing business in New York in 1872, and continued it afterwards till 1882, receiving from year to year certificates of authority from the proper officer, under a statute of New York passed in 1853. Chapter 694 of the laws of New York of 1865, as amended by c. 60 of the laws of 1875, provided that whenever the laws of any other state should require from a New York fire insurance company a greater license fee than the laws of New York should then require from the fire insurance companies of such other state, all such companies of such other state should pay in New York a license fee equal to that imposed by such other state on New York companies. In 1873, Pennsylvania passed a law requiring from every insurance company of another state, as a prerequisite to a certificate of authority, a yearly tax of 3 per cent. on the premiums received by it in Pennsylvania during the preceding year. In 1882, the insurance officer of New York required the Pennsylvania corporation to pay, as a license fee, a tax of 3 per cent. on the premiums received by it in New York in 1881. In a suit against such corporation, in a court of New York, to recover such tax, it was set up as a defence, that the tax was unlawful, because the corporation was a "person" within the "jurisdiction" of New York, and "the equal protection of the laws" had been denied to it, in violation of a clause in the Fourteenth Amendment to the Constitution of the United States. On a writ of error to review the judgment of the highest court of New York, overruling such defence; *Held:* That such clause had no application, because the defendant, being a foreign corporation, was not within the jurisdiction of New York, until admitted by the state on a compliance with the condition of admission imposed, namely, the payment of the tax required as a license fee. *Philadelphia Fire Association* v. *New York*, 110.

2. The business carried on by the corporation in New York, referred to in the preceding paragraph, was not a transaction of commerce. *Ib.*

3. The state of New York by statute imposed a tax upon the "corporate franchise or business" of corporations within the state, of one quarter mill upon the capital stock for each one per cent. of dividend of six per cent. or over. The Home Insurance Company claimed exemption from this tax upon so much of its capital as was invested in bonds of the United States which, by the acts of Congress under which they were issued, were exempt from state taxation. In a proceeding to enforce the collection of the tax, the Supreme Court of New York gave judgment for its recovery, which judgment was affirmed by the Court of Appeals of that state. This court affirms the judgment by a divided court. *Home Insurance Co.* v. *New York*, 129.

4. A commenced a proceeding in equity in a District Court of Iowa against B for violating the provisions of §§ 1540, 1542 of the Code of that

state respecting the sale of intoxicating liquors, and the owning and keeping such liquors with intent to sell the same. B filed his petition, alleging that by these proceedings and by the construction given to the statute by the Supreme Court of Iowa in another case, he was deprived of his rights under the Constitution and laws of the United States, and praying for the removal of the cause to the Circuit Court of the United States; and it was so removed. In that court A filed an amended complaint, and B filed an amended petition for removal; each by leave of court. A moved that the cause be remanded to the state court. The Circuit Court remanded it, from which order B appealed. This court affirms the decree of the court below by a divided court. *Schmidt* v. *Cobb*, 284.

5. A "duty of tonnage," within the meaning of the Constitution, is a charge upon a vessel, according to its tonnage, as an instrument of commerce, for entering or leaving a port, or navigating the public waters of the country. *Huse* v. *Glover*, 543.

6. The constitutional requirement that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state" implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home. *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 615.

*See* CORPORATION, 4;
EVIDENCE, 14;
EXTRADITION, 2, 4, 6;
JUDGMENT, 2 (4);
JURISDICTION, A, 12;
LOCAL LAW, 7, 8;
NAVIGABLE STREAM, 2;
PUBLIC LAND, 13, 14.

B. OF THE STATES.

*See* CORPORATION, 1, 2;
LOCAL LAW, 7;
MUNICIPAL CORPORATIONS, 2.

## CONTRACT.

1. In October, 1872, the secretary of the Board of Public Works of the District of Columbia wrote to the claimant that the Board had awarded him a contract at Board rates. The Board had, in fact, awarded a contract, but had not fixed rates. The claimant, after seeing the engineer of the district, went to work in 1872, and rendered bills from time to time, and was paid at less rates than Board rates. In 1873 he resumed work, and rendered bills from time to time, and was paid at the same rates as in 1872. The claimant having done a quantity of Macadam pavement on the work which was not called for by the agreement, the district recognized it and paid him for it. The Board of Public Works in 1872 ordered claimant's contract to be reduced to writing, but it was not reduced to writing and signed until December, 1873, when it was signed by Cooke, Shepherd, and Magru-

der on behalf of the Board. Cooke was a member in 1873, but had ceased to be one before December, 1873. The contract as signed corresponded in rates with the bills as rendered and paid, and they were not Board rates. Claimant contended that the contract, by reason of mutual mistakes, varied from the intent of the parties, and that the rates of payment should have been Board rates, and asked the court, as a Court of Equity, to reform it. *Held:* That the practical construction given by both parties showed that there was no mistake; that the contract, as signed, expressed the will of the parties; that when signed it related back to the work done previous to signature; and that it was immaterial whether it was valid as a contract, since, if invalid, it was still evidence of the intention of the parties. *Shipman* v. *District of Columbia*, 148, 703.

2. In 1874 the contract was renewed and extended so as to take in a much larger work. The claimant constructed a wall which contained more cubic yards of masonry than the plans of the engineer of the district called for. It appeared that this was done with the knowledge of the commissioners and of the assistant engineer, and that there was no concealment, and that it might have been known to the chief engineer. *Held:* That money paid for this, amounting to $20,459.19, could not be recovered back on a counter-claim alleging it to have been paid under a mistake of fact. *Ib.*

3. The contract called for the construction of the wall at five dollars per cubic yard, and said nothing about excavations for it. *Held:* That the claimant was bound to make the excavations for the wall without extra pay for it. *Ib.*

4. The contract called for a lining of coarse gravel in the rear of the retaining wall and made no provision for payment. There was no gravel near the work. *Held:* That the claimant was entitled to compensation for this work. *Ib.*

5. The contract called for a coping of ordinary stone on the wall. By agreement of parties North River bluestone was substituted at an extra compensation of forty cents per foot. Claimant contended that this was per square foot; defendant, that it was per running foot. Claimant contended further that he was entitled to be paid for the coping as masonry. Defendant did not deny this. Defendant paid an arbitrary rate of seventy-four and one half cents per running foot, which claimant accepted. *Held:* That this was a settlement of that part of the dispute, and that claimant could not recover for the coping as masonry in addition. *Ib.*

6. Claimant under an extension of the contract did work on another road. His work was measured, and a bill aggregating about $15,000 was rendered. The commissioners made out a new bill, fixing the rates so as to produce an aggregate of about $22,000, in order to make a payment in bonds of the district equivalent to a payment in cash, and paid the bill so made in bonds. *Held:* That a payment of a claim

against the district in its bonds at less than par was illegal; that this was an attempt to do indirectly what could not be done directly; and that in stating an account it must be treated as a cash payment of the face of the bonds. *Ib.*

7 A reply to an offer of sale, purporting to accept it on terms varying from those offered, is a rejection of the offer and leaves it no longer open. *Minneapolis &c. Railway* v. *Columbia Rolling Mill*, 149.

8. On December 8, A offered to sell to B 2000 to 5000 tons of iron rails on certain terms specified, adding that if the offer was accepted A would expect to be notified prior to December 20. On December 16, B replied, directing A to enter an order for 1200 tons, "as per your favor of the 8th." On December 18, A declined to fulfil B's order. *Held:* That the negotiation between the parties was closed, and that an acceptance by B on December 19 of the original offer did not bind A. *Ib.*

9. In this case, the court construed the language of a written contract for supplying materials and labor in constructing water works for the city of Fort Wayne, Indiana, in regard to extra work, and an increase in the quantity of work, caused by an alteration of plan; and in regard to defects in material, furnished by the city, causing delay and expense to the contractor; and reversed the judgment of the Circuit Court because of an erroneous construction by it of such language. *Wood* v. *Fort Wayne*, 312.

10. A, having received from B an order for goods, declined to comply with it on the ground that he was not sufficiently advised of B's responsibility. B thereupon procured from C a writing stating that C was acquainted with B, indorsed him as an honest, capable business man deserving of credit, and would satisfy all his orders that spring. B delivered this to A. A thereupon notified B that the guaranty was accepted and forwarded the goods. B having failed to pay his notes given for them, A sued on the letter of credit. C defended by setting up the original order given by B as part of and explanatory of the credit. The court below held that the letter of credit was complete and could not be changed by importing into it the previous order. This court sustains that ruling. *Gilbert* v. *Moline Plough Co.*, 491.

11. On the facts in this case as stated in the opinion of the court; *Held:* That the jury would not have been warranted in drawing the conclusion of fact from the evidence that there was such an agreement as that sued on; that the relation of the parties was not such as, in contemplation of law, to give rise to such liability; and that there was no error in the instruction of the court below to find a verdict for defendant. *Eldred* v. *Bell Telephone Co.*, 513.

12. On the facts in this case as stated in the opinion of the court; *Held:* That it was no error in the court below to direct the jury to find a verdict for defendant. *Hubbard* v. *Investment Co.*, 696.

*See* BAILMENT, 2;
INSURANCE.

## CORPORATION.

1. It is within the power of a legislature which creates a corporation and grants franchises to it, to authorize it to sell those franchises. *Willamette Co.* v. *Bank of British Columbia*, 191.

2. A corporation which is authorized to sell its franchises is authorized to mortgage them. *Ib.*

3. A statute which confers upon a corporation the right to take water from a river and to conduct it through canals, and the exclusive right to the hydraulic powers and privileges created by the water, and the right to use, rent, or sell the same or any portion thereof, authorizes the corporation to mortgage such powers and privileges. *Ib.*

4. A grant in the constitution of a State of a privilege to a corporation is not subject to repeal or change by the legislature of the state. *New Orleans* v. *Houston*, 265.

5. An assessment of a tax upon the shares of shareholders in a corporation appearing upon the books of the company, which the company is required to pay irrespective of any dividends or profits payable to the shareholder, out of which it might repay itself, is substantially a tax upon the corporation itself. *Ib.*

6 The Erie Railway Company, being embarrassed and in the hands of a receiver, appointed in a suit for the foreclosure of two of the mortgages upon the property of the company, its creditors and its shareholders, preferred and common, entered into an agreement for the reorganization of the company, to be accomplished by means of a foreclosure. Among other things it was agreed that there should be issued "preferred stock, to an amount equal to the preferred stock of the Erie Railway Company now outstanding, to wit, eighty five thousand three hundred and sixty nine shares, of the nominal amount of one hundred dollars each, entitling the holders to non-cumulative dividends, at the rate of six per cent. per annum, in preference to the payment of any dividend on the common stock, but dependent on the profits of each particular year as declared by the board of directors." The mortgage was foreclosed, and a new company was organized, and the new preferred stock was issued as agreed. The directors of the new company reported to its share and bond holders that during and for the year ending September 30, 1880, the operations of the road left a net profit of $1,790,620.71, which had been applied to making a double track, and other improvements on the property of the company. A, a preferred stockholder, on behalf of himself and other holders, filed a bill in equity to compel the company to pay a dividend to the holders of preferred stock. *Held:* That while the preferred stockholders are entitled to a six per cent. dividend in advance of the common stockholders, they are not entitled, as of right, to dividends, payable out of the net profits accruing in any particular year, unless the directors declare or ought to declare a dividend payable out of such profits; and that whether a dividend should be declared in any year, is a matter

belonging in the first instance to the directors to determine, with reference to the condition of the company's property and affairs as a whole. *N. Y., Lake Erie, & Western Railroad* v. *Nickals*, 296.

7. Where the charter of a corporation authorizes capital stock to be paid for in property, and the shareholders honestly and in good faith pay for their subscriptions to shares in property instead of money, third parties have no ground of complaint. *Coit* v. *Gold Amalgamating Co.*, 343.

*See* EQUITY, 5;
EVIDENCE, 3.

## COSTS.

1. When a decree or judgment of a Circuit Court is reversed for want of jurisdiction in that court, this court will make such order in respect to the costs of appeal as justice and right may seem to require. *Peper* v. *Fordyce*, 469.

## COURT AND JURY.

1. The submission of a question of law to the jury is no ground of exception if they decide it aright. *Minneapolis, &c., Railway* v. *Columbus Rolling Mill*, 149.

2. A having applied for a patent for a placer mine in Montana, B filed an adverse claim in the register's office under the provisions of Rev. Stat. § 2325, and commenced suit for the settlement of the controversy in the District Court of the territory according to the provisions of Rev. Stat. § 2326. In the course of the trial, it appeared that, before the commencement of the suit, B had agreed with C, by a sufficient instrument under seal, to convey the premises in dispute to C "by good and sufficient deed of conveyance duly acknowledged," and that C was in possession when the suit was begun and still remained in possession. The Code of Montana provides that "an action may be brought by any person in possession, by himself or his tenant of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest." The court ordered a non-suit, which judgment was affirmed by the Supreme Court of the territory. This court reverses the judgment of the court below, and holds that C was holding under B, and that B was bound to C to have the title quieted so as to give him a good and sufficient deed of the property, and had a right to have the verdict of the jury on the questions of fact at issue. *Wolverton* v. *Nichols*, 485.

## COURT OF CLAIMS.

An appeal from a judgment of the Court of Claims, taken before the right of appeal has expired, is not vacated by the appropriation by Congress

of the amount necessary to pay the judgment. *United States* v. *Jones*, 477.

*See* JURISDICTION, A, 8.

COVENANT.

*See* DEED, 3.

DAMAGES.

1. Whenever the exercise of a right, conferred by law for the benefit of the public, is attended with temporary inconvenience to private parties, in common with the public in general, they are not entitled to damages therefor. *Hamilton* v. *Vicksburg, &c., Railroad*, 280.
2. A railroad company was authorized by the legislature of Louisiana to construct a railroad across that state, and as part of such road to construct necessary bridges for crossing navigable streams. The act made no provision for the form or character of such structures. A bridge across a navigable stream was constructed with a draw. In process of time it became decayed, and defendant in error, having succeeded to the rights of the company, employed a contractor to construct a new bridge in its place, the work to be done at a time of the year when it would least obstruct navigation. The contractor complied with his contract as to the time; but owing to unusual rains the river continued navigable, and the work was unavoidably prolonged, thereby obstructing its navigation and preventing the vessels of plaintiff in error from passing beyond the bridge. *Held:* That this was a case of *damnum absque injuriâ*. *Ib.*

*See* BOND.

DECEIT.

*See* EQUITY, 2.

DEED.

1. The grantor in a deed and all the subscribing witnesses being residents in a foreign country, proof of its execution by proof of the handwriting of the subscribing witnesses *held* sufficient. *Hanrick* v. *Patrick*, 156.
2. An unnoted erasure in a deed changing the name of the grantee from Elizabeth to Eliza may be explained by proof that Elizabeth and Eliza are identical and the same person. *Ib.*
3. A covenant of general warranty in a deed of "all the right, title, and interest" of the grantor in the premises described does not estop him from asserting a subsequently acquired title thereto. *Ib.*

*See* LOCAL LAW, 3.

DEPOSITION.

*See* EVIDENCE, 8.

## DIVISION OF OPINION.

1. Each question certified to this court upon a division of opinion of the judges in the Circuit Court must be a distinct point of law, clearly stated, and not the whole case, nor whether upon the evidence judgment should be for one party or for the other. *Williamsport Bank* v. *Knapp*, 357.

2. When a question in a certificate of division is stated in broad and indefinite terms, which admit of one answer under one set of circumstances, and of a different answer under another set of circumstances, this court must regard it as immaterial to the decision of the case. *Enfield* v. *Jordan*, 680.

## EQUITY.

1. A court of equity of the United States will not sustain a bill in equity, in a case of fraud, to obtain only a decree for the payment of money by way of damages, when the like amount might be recovered in an action at law. *Buzard* v. *Houston*, 347.

2. A bill in equity alleged that the defendant, after agreeing in writing to sell to the plaintiff a certain number of cattle at a specified price, induced him to surrender the agreement, and to receive instead thereof an assignment from the defendant of a similar contract of a third person with him, and also to pay the defendant a sum of money, and to give an obligation to pay him another sum, by false and fraudulent representations as to the solvency of that person; and prayed for a cancellation of the aforesaid assignment and obligation, for a reinstatement and confirmation of the original agreements, and its enforcement on such terms as the court might direct, or else for a repayment of the sum paid, and for damages, and for further relief. *Held*: That the bill showed no case for relief in equity, because an action of deceit would afford a full, adequate, and complete remedy. *Ib.*

3. If a bill in equity, showing ground for legal and not for equitable relief, prays for a discovery, as incidental only to the relief sought, and the answer discloses nothing, but the plaintiff supports the claim by independent evidence, the bill must be dismissed, without prejudice to an action at law. *Ib.*

4. A bill in equity by an assignee in bankruptcy against the bankrupt and another person, alleging that the bankrupt, with intent to defraud his creditors, concealed and sold his property, and that he invested the proceeds in a business carried on by him in the name of the other defendant, should, upon a failure to prove the latter allegation, be dismissed, without prejudice to an action at law against the bankrupt. *Kramer* v. *Cohn*, 355.

5. A transfer of shares in a corporation, procured from the owner while so intoxicated as to be incapable of transacting business, by fraud, with knowledge of his condition, and for a grossly inadequate consideration, will be set aside in equity; and if, without any fault of his,

he is unable to restore the consideration, provision for its repayment may be made in the final decree. *Thackrah* v. *Haas*, 499.

6. In the courts of the United States, as legal defences only can be interposed to legal actions, a defendant who has equitable grounds for relief against a plaintiff must seek to enforce them by a separate suit in equity; and this rule prevails in states where the law and practice permit the defendant in an action at law to set up a legal as well as an equitable defence. *Northern Pacific Railroad* v. *Paine*, 561.

7. A mere equitable claim, which a court of equity may enforce, will not sustain an action at law for the recovery of land or of anything severed from it. *Ib.*

*See* JURISDICTION, A, 10;
PATENT FOR INVENTION, 4, 6, 7.

ERROR.

*See* EVIDENCE, 7, 13.

ESTOPPEL.

*See* DEED, 3;
JUDGMENT, 2 (1) (2);
LIS PENDENS.

EVIDENCE.

1. In an action against a railroad company by a passenger to recover for injuries received by an accident to a train, a written statement as to the nature and extent of his injuries, made by his physician while treating him for them, for the purpose of giving information to others in regard to them, is not admissible in evidence against the company, even when attached to a deposition of the physician in which he swears that it was written by him, and that in his opinion it correctly states the condition of the patient at the time referred to. *Vicksburg & Meridian Railroad* v. *O'Brien*, 99.

2. The declaration of the engineer of the locomotive of a train which meets with an accident, as to the speed at which the train was running when the accident happened, made between ten and thirty minutes after the accident occurred, is not admissible in evidence against the company in an action by a passenger on the train to recover damages for injuries caused by the accident. *Ib.*

3. A gross and obvious overvaluation of property conveyed to a corporation in consideration of an issue of stock at the valuation, is strong evidence of fraud in an action against a stockholder by a creditor to enforce personal liability for his debt. *Coit* v. *Gold Amalgamating Co.*, 343.

4. A statute of Missouri authorized United States patents for lands within the state to be recorded, and provided that a certified copy of the

patent should be received as *prima facie* evidence of the contents of the patent. In the record of a patent recorded under the provisions of this act, it appeared that there was a seal in due form, and that the instrument was perfect in every respect. No seal appeared in the record of the same patent in the General Land Office in Washington. The original patent not being in the possession or under the control of either party to the action; *Held*: That the presumption of law is that all that is found in either copy was in the original; that any important matter found in one which was not in the other was due to an accidental omission; and, that the *prima facie* case made by the record from Missouri was not overcome by the record from the General Land Office. *Campbell* v. *Laclede Gas Co.*, 445.

5. Section 891 of the Revised Statutes providing that authenticated copies of records in the General Land Office shall be "evidence equally with the originals thereof" does not mean that in all cases the copy should have the same probative force as the original instrument, but that it should be regarded as of the same class, in the grades of evidence, as to written or parol, and primary and secondary. *Ib.*

6. Whether a letter-press copy can always be introduced in place of the original, *quære*. *Gilbert* v. *Moline Plough Co.*, 491.

7. When the introduction of a letter in evidence is immaterial and works no prejudice to the objecting party, this court will not reverse a judgment for that cause only. *Ib.*

8. When a witness, whose deposition is taken *de bene esse*, under § 863, Rev. Stat., lives more than one hundred miles distant from the place of trial when the deposition is taken, it will be presumed that he continues to live there at the time of trial, and no further proof on that subject need be offered by the party offering the deposition unless this presumption is overcome by proof from the other side; but if it be overcome, and the party offering the deposition has knowledge of his power to get the witness in time to secure an attendance at the trial, the deposition will be excluded. This rule does not apply to depositions taken under § 866. *Whitford* v. *Clark County*, 522.

9. In an action against the acceptor of a bill of exchange, with alleged fictitious bills of lading attached, articles from newspapers touching the drawer's conduct in drawing other drafts with like bills attached were properly excluded as having no connection with the transaction in controversy, it not appearing that the acceptor ever saw them. *Goetz* v. *Bank of Kansas City*, 551.

10. Declarations of an agent as to past transaction of his principal are inadmissible, as being mere hearsay. *Ib.*

11. In an action by a bank against the acceptor upon a draft discounted by the bank with a fraudulent bill of lading attached, the president of the bank, as a witness for it, having testified that he was ignorant of the forgeries, and also of the circumstances attending other drafts by the drawer with forged bills of lading attached which had been discounted by the bank, and that he could only explain why pains were

not taken in the matter by explaining the usage of the bank, it is competent for the court to receive such explanation of the usage. *Ib.*

12. When, under the law and practice in a state, a denial in one clause in an answer in a suit begun in a court of the state and removed to a Federal court is held to be qualified by an admission in another, and to excuse the plaintiff from the necessity of proof of it, the same rule prevails in the Federal court. *Northern Pacific Railroad* v. *Paine*, 561.
13. On a finding in the court below (1) that certain parol testimony is inadmissible because it tends to vary, explain, contradict, or qualify a written instrument discharging a mortgage; and (2) that if admitted it was not sufficient to prove any qualification or modification of the discharge, — it is immaterial in this court whether the court below was right in holding that the exception taken there to the parol evidence was error. *Ivinson* v. *Hutton*, 604.
14. Whenever it becomes necessary under Article IV, § 1, of the Constitution for a court of one state, in order to give faith and effect to a public act of another state, to ascertain what effect it has in that state, the law of the other state must be proved as a fact. *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 615.
15. The courts of the United States, when exercising their original jurisdiction, take notice without proof, of the laws of the several states of the United States; but in this court, when acting under its appellate jurisdiction, whatever was matter of fact in the state court whose judgment or decree is under review, is matter of fact here. *Ib.*

*See* CONFLICT OF LAW; DEED, 1; JURISDICTION, A, 7; LIS PENDENS; PATENT FOR INVENTION, 8, 9; PRACTICE, 2; WITNESS.

## EXCEPTION.

*See* COURT AND JURY, 1; EVIDENCE, 7, 13.

## EXTRADITION.

1. Apart from the provisions of treaties on the subject, there exists no well-defined obligation of one independent nation to deliver to another fugitives from its justice; and though such delivery has often been made, it was upon the principle of comity. The right to demand it has not been recognized as among the duties of one government to another which rest upon established principles of international law. *United States* v. *Rauscher*, 407.
2. In any question of this kind which can arise between this country and a foreign nation, the extradition must be negotiated through the Federal government, and not by that of a state, though the demand may be for a crime committed against the law of that state. *Ib.*
3. With most of the civilized nations of the world with which the United States have much intercourse, this matter is regulated by treaties, and

the question now decided arises under the treaty of 1842 between Great Britain and the United States, commonly called the Ashburton Treaty. *Ib.*

4. The defendant in this case being charged with murder on board an American vessel on the high seas, fled to England, was demanded of the government of that country, and was surrendered on this charge. The Circuit Court of the United States for the Southern District of New York, in which he was tried, did not proceed against him for murder, but for a minor offence not included in the treaty of extradition; and the judges of that court certified to this court for its judgment the question whether this could be done. *Held:* (1) That a treaty to which the United States is a party is a law of the land, of which all courts, state and national, are to take judicial notice, and by the provisions of which they are to be governed, so far as they are capable of judicial enforcement. (2) That, on a sound construction of the treaty under which the defendant was delivered to this country, and under the proceedings by which this was done, and acts of Congress on that subject, Rev. Stat. §§ 5272, 5275, he cannot lawfully be tried for any other offence than murder. (3) The treaty, the acts of Congress, and the proceedings by which he was extradited, clothe him with the right to exemption from trial for any other offence, until he has had an opportunity to return to the country from which he was taken for the purpose alone of trial for the offence specified in the demand for his surrender. The national honor also requires that good faith shall be kept with the country which surrendered him. (4) The circumstance that the party was convicted of inflicting cruel and unusual punishment on the same evidence which was produced before the committing magistrate in England, in the extradition proceedings for murder, does not change the principle. *Ib.*

5. A plea to an indictment in a state court, that the defendant has been brought from a foreign country to this country by proceedings which are a violation of a treaty between that country and the United States, and which are forbidden by that treaty, raises a question, if the right asserted by the plea is denied, on which this court can review, by writ of error, the judgment of the state court. *Kerr* v. *Illinois*, 436.

6. But where the prisoner has been kidnapped in the foreign country and brought by force against his will within the jurisdiction of the state whose law he has violated, with no reference to the extradition treaty, though one existed, and no proceeding or attempt to proceed under the treaty, this court can give no relief, for these facts do not establish any right under the Constitution, or laws, or treaties of the United States. *Ib.*

7. The treaties of extradition to which the United States are parties do not guarantee a fugitive from the justice of one of the countries an asylum in the other. They do not give such person any greater or more sacred right of asylum than he had before. They only make provision that for certain crimes he shall be deprived of that asylum

and surrendered to justice, and they prescribe the mode in which this shall be done. *Ib.*

8. The trespass of a kidnapper, unauthorized by either of the governments, and not professing to act under authority of either, is not a case provided for in the treaty, and the remedy is by a proceeding against him by the government whose law he violates, or by the party injured. *Ib.*
9. How far such forcible transfer of the defendant, so as to bring him within the jurisdiction of the state where the offence was committed, may be set up against the right to try him, is the province of the state court to decide, and presents no question in which this court can review its decision. *Ib.*

FEES.

*See* BANKRUPTCY, 2.

FORCIBLE ENTRY AND DETAINER.

There is nothing in the nature of the possession of a railroad, or of a section of a railroad, which takes it out of the operation of the language of the Statutes of Arkansas against forcible entry and detainer, or out of the general principle which lies at the foundation of all suits of forcible entry and detainer, that the law will not sanction or support a possession acquired by violence, but will, when appealed to in this form of action, compel the party who thus gains possession to surrender it to the party whom he dispossessed, without inquiring which party owns the property or has the legal right to the possession. *Iron Mountain & Helena Railroad* v. *Johnson*, 608.

FRAUD.

*See* EQUITY, 2, 4, 5.

GUARANTY.

*See* CONTRACT, 10.

HABEAS CORPUS.

This court will not issus a writ of *habeas corpus*, even if it has the power, (about which no opinion is expressed,) in cases where it may as well be done in the proper Circuit Court, if there are no special circumstances in the case, making direct action or intervention by this court necessary. *Ex parte Mirzan*, 584.

HUSBAND AND WIFE.

1. In Oregon there is no sound reason why a married woman, in possession with her husband of property which rightfully belongs to another, may not be jointly sued with him for its recovery. *Barrell* v. *Tilton*, 637.
2. A constitutional provision that "the property and possessory rights of every married woman . . . shall not be subject to the debts or

contracts of the husband" does not control her voluntary disposal of it, and in the absence of other restrictions she may mortgage it to secure the payment of a debt owing from the husband. In this case that question is not open to contention. *Ib.*

*See* LOCAL LAW, 2, 3.

## INDIAN.

1. The relations between the United States and the Indian tribes being those of a superior towards an inferior, who is under its care and control, its acts touching them and its promises to them, in the execution of its own policy and in the furtherance of its own interests, are to be interpreted as justice and reason demand in cases where power is exerted by the strong over those to whom they owe care and protection. *United States* v. *Kagama*, 118 U. S. 375, cited and applied. *Choctaw Nation* v. *United States*, 1.

2. The act of March 3, 1881, 21 Stat. 504, authorizing the Court of Claims "to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw nation, and to render judgment thereon," and granting it power to review the entire question of differences *de novo*, and providing that "it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the Treaty of 1855," denied to that award conclusive effect as *res judicata*, but did not set it aside, or deny to it effect as *prima facie* evidence of the validity of the claims adjudged by it. The act operated to reopen that award and the questions decided by it, so far as to cast upon the United States, in the trial in the Court of Claims, the burden of disproving the justice and fairness of the award. *Ib.*

3. By the terms of the submission in the Treaty of June 22, 1855, 11 Stat. 611, under which the Senate acted as arbitrator of the differences between the United States and the Choctaws, it was clearly submitted to that body to determine whether, under all the circumstances, and as a matter of justice and fair dealing, the Choctaws ought to receive the proceeds of the sale of the lands ceded by them to the United States by the Treaty of September 27, 1830, 7 Stat. 333, whether as deducible from the terms of the treaty, or as a just compensation to be awarded to them for its breaches. The delegation by the Senate to the Secretary of the Interior to ascertain and report the detailed sums due the Choctaws upon the principles settled by the award was within the powers conferred upon that body by the terms of the submission. No notice to the United States was necessary of the intention of the Senate to proceed as arbitrator under the submission. And the whole proceedings were ratified and confirmed by the United States by the acts of March 2, 1861, 12 Stat. 238; and of June 23, 1874, 18 Stat. 230. *Ib.*

4. The award of the Senate upon the differences between the Choctaws and the United States, submitted to it under the provisions of the Treaty of June 22, 1855, furnishes the nearest approximation to the

justice and right of the case that, after the lapse of time, it is practicable for a judicial tribunal to reach; and, not being affected by any of the facts found by the Court of Claims, is taken by this court as the basis of its judgment on the subjects in dispute in this case, which arose prior to the treaty of 1855, and were passed upon in the award. In addition to the amount of that award, the Choctaw nation is entitled to further sums, (1) for unpaid annuities; and (2) for land taken from them in locating the boundary of Arkansas under the act of March 3, 1875, 18 Stat. 476. *Ib.*

*See* PUBLIC LAND, 1, 3, 4, 7.

## INJUNCTION.

*See* PATENT FOR INVENTION, 7.

## INSURANCE.

A policy of marine insurance was effected April 5 for a term of six months, with this agreement written in the margin: "This policy to continue in force from the date of expiration until notice is given this company of its discontinuance, the assured to pay for such privilege *pro rata* for the time used." On the 9th October following the assured sent to the insurer a check for $66.67, with a letter stating that it was "one monthly premium from Oct. 5 to Nov. 5" on the insurance "as specified in the policy." No other notice was given to the insurer before the loss, which happened November 6. *Held:* that the payment was not notice to discontinue the policy, nor an election to have it continued in force for the additional month and no longer, but that the policy continued in force by its own terms until the assured should give notice of its discontinuance. *Greenwich Ins. Co.* v. *Providence Steamship Co.*, 481.

## INTERNATIONAL LAW.

*See* EXTRADITION.

## INTOXICATION.

*See* EQUITY, 5.

## JUDGMENT.

1. A personal judgment for costs may not be rendered against the defendant, on default, in an action of trespass to try title to real estate, if citation was served on him by publication, as a non-resident, and not personally; and if such judgment be entered, it cannot be enforced against other property of the defendant within the jurisdiction of the court. *Freeman* v. *Alderson*, 185.
2. A, a citizen of New Jersey, recovered judgment in a civil action on a contract against B, a citizen of Minnesota, whose property and estate

were situated, principally, in California. B died leaving a will by which he devised real estate and bequeathed legacies to various persons in Minnesota. The will was admitted to probate in Minnesota, and letters testamentary thereon were issued to C and D. Ancillary proof of it was then made in California, and letters testamentary thereon were issued to D, who administered the estate in California in accordance with the laws of that state, and distributed it according to the will, and rendered a final account to the probate court in California, and was discharged by that court. A did not present his claim for payment in California, and has never been paid. He brought suit on it in Minnesota against C as executor. C appeared and, among other defences, denied that he was or ever had been executor. The court found that C had accepted the trust, and entered judgment for A, on which judgment execution was awarded *de bonis propriis*. C brought the judgment to this court by writ of error, and died while it was pending here. His executor appeared, and on his motion the judgment was reversed as erroneous in form, *Smith* v. *Chapman*, 93 U. S. 41, and, the cause being remanded, the court, on the previous finding, entered judgment for A, *nunc pro tunc*, as of the date of the first judgment. A, within twelve months from the date when the last judgment *nunc pro tunc* was ordered, commenced suit in Minnesota to recover the amount of his judgment the statute of that state giving to the unpaid creditors of a testator a right of action against legatees, provided the action is commenced within one year from the time when the claim is established; and courts of Minnesota having settled that the claim must first be established by judicial proceedings, and that the suit against the legatees must be brought within one year from the date of such establishment. *Held:* (1) That the former judgment in this court concluded the executor of C in this suit from contending that C had not accepted the trust as executor. (2) That A was not barred by the proceedings and decrees in California for the prosecution of the suit. (3) That he had the right to follow into the hands of their holders in Minnesota the assets of B which had been distributed by order of the probate court in California. (4) That there was nothing to interfere with that right in the provision of the Constitution, respecting the faith to be given to judgments and public acts of each state in every other state. (5) That this action was not barred by the limitation in the Minnesota statute. *Borer* v. *Chapman*, 587.

3. Whether an order for entry of judgment *nunc pro tunc* shall be made, is matter of discretion with the court, to be exercised as justice may require, in view of the circumstances of the particular case, and it is a proper exercise of that discretion when, by reason of the intervening death of a party, there would otherwise be a failure of justice for which the other party is not responsible. *Ib.*

4. For the purpose of a statute of limitations the date of the entry of a judgment *nunc pro tunc* is the date of the order of such entry, and not the day as of which the judgment is ordered to take effect. *Ib.*

5. A court has control over its judgments during the term at which they are rendered, and may change their form to suit the purposes of justice; and though it would be more orderly in the second to refer to the first, and to explain the changes, it is not essential to do so, if a comparison of the two judgments or decrees discloses the changes or modifications made. *Barrell* v. *Tilton*, 637.

## JURISDICTION.

### A. Jurisdiction of the Supreme Court.

1. A decree, to be final for the purposes of appeal, must leave the case in such a condition that, if there be an affirmance in this court, the court below will have nothing to do but to execute the decree it has already entered. *Dainese* v. *Kendall*, 53.
2. The decision of the highest court of a state upon a motion, accompanied by affidavits as proof, to perpetually enjoin the collection of a judgment obtained in a court of the state on the ground of the discharge of the defendant in bankruptcy, raises a Federal question which may be reviewed by this court. *Palmer* v. *Hussey*, 96.
3. When a jury is waived in a territorial court in the trial of an action at law, the case cannot be brought up for review by writ of error; but must, under the act of April 7, 1874, c. 80, 18 Stat. 27, come, if at all, by appeal, as provided in that act. *Story* v. *Black*, 235.
4. The jurisdictional value referred to in c. 355, 23 Stat. 443, is the value at the time of the final judgment or decree; not at the time of the appeal or writ of error: the patent referred to in the second section of the act is a patent for an invention or discovery, not a patent for land. *Street* v. *Ferry*, 385.
5. After examining affidavits in the cause filed in the court below after allowance of appeal, and in this court since the case was docketed, the court is satisfied that the value of the land in dispute is not sufficient to give jurisdiction. *Ib.*
6. When the record in the court below is silent as to the value of the matter in dispute, it is good practice for that court to allow affidavits and counter-affidavits of value to be filed under directions from the court. *Wilson* v. *Blair*, 387.
7. The burden of proof is on plaintiff in error, when the record is silent as to the value of the subject-matter in dispute, to establish that it is of the jurisdictional value. *Ib.*
8. In the exercise of its general jurisdiction, appeals lie to this court, from judgments of the Court of Claims. *United States* v. *Jones*, 477.
9. As it appears that the right of the state of California to have the lands which are in dispute in this action listed is admitted, it is held that this court is without jurisdiction over the judgment of the Supreme Court of California upon the adverse claims of the parties. *Mace* v. *Merrill*, 581.
10. The equity jurisdiction of this court is independent of that conferred

by the states on their own courts, and can be affected only by the legislation of Congress. *Borer* v. *Chapman*, 587.

11. This court is without jurisdiction to vacate a supersedeas granted where no writ of error was sued out, as it has no legal effect. *Ex parte Ralston*, 613.
12. When the decision of a state court holding a contract valid or void is made upon the general principles by which courts determine whether a consideration is good or bad on principles of public policy, no question arises under the provision of the Constitution respecting the faith and credit to be given in each state to the public acts, records, and judicial proceedings of another state, and this court cannot review the decision. *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 615.
13. In order to give this court jurisdiction to review a decision of a state court respecting the power of a corporation of another state to make a contract, it is not sufficient to aver in the pleadings that whatever force might be given to it in the court of the forum, it was beyond the powers of the corporation under its act of incorporation as construed by the courts of the state incorporating it; but it must appear affirmatively in the record that the facts as presented for adjudication, made it necessary for the court to consider and give effect to the act of incorporation in view of the peculiar jurisprudence of the state enacting it rather than the general law of the land. *Ib.*

*See* COURT OF CLAIMS; DIVISION OF OPINION; EVIDENCE, 14; EXTRADITION, 5; PARTIES; PRACTICE, 1.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. If the jurisdiction of the Circuit Court of the United States does not appear on the face of the record in some form, the decree is erroneous and must be reversed. *Peper* v. *Fordyce*, 469.
2. A, a citizen of Arkansas, conveyed to B, a citizen of the same state, real estate in Arkansas, in trust to secure the payment of notes due to C, a citizen of Missouri, with power of sale in case of non-payment. Subsequently A became insolvent and assigned his property to D, a citizen of Arkansas, in trust for the benefit of his creditors. *Held:* That, in proceedings in equity commenced by D to determine the amount of indebtedness from A to C, and to prevent the sale of the trust property by B, and to obtain a cancellation of the conveyance to B on payment of the amount found due to C, B was a necessary party, with interests adverse to D; and as both were citizens of the same state, and as the jurisdiction of the Circuit Court depended alone upon the citizenship of the parties, it was without jurisdiction. *Ib.*
3. A suit cannot be said to be one arising under the Constitution or laws of the United States until it has in some way been made to appear on the face of the record that "some title, right, privilege, or immunity, on which the recovery depends, will be defeated by one construction

of the Constitution or a law of the United States, or sustained by an opposite construction." *Germania Ins. Co.* v. *Wisconsin*, 473.

4. An insurance company of New Orleans was summoned into a state court of Wisconsin by the State in order to recover from it statutory penalties for doing business in the state without complying with its laws. Service of process was made on A, a citizen of Wisconsin who was described in the sheriff's return as "being then and there an agent" of the company. The company made a special appearance and moved to vacate all proceedings for want of jurisdiction, and filed in support of it affidavits to the effect that A was never its agent, and that it had no agent in the state and had had none for ten years then last past. *Held:* That this issue was a mixed question of law and fact, in no way dependent upon the construction of the Constitution or any law of the United States, and as the complaint disclosed no reason for the removal of the cause to a Federal court, it was not removable. *Ib.*

*See* REMOVAL OF CAUSES, 1, 5.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

1. In the absence of an act of Congress or a statute of a state giving a right of action therefor, a suit in admiralty cannot be maintained in the courts of the United States to recover damages for the death of a human being on the high seas, or on waters navigable from the sea, which is caused by negligence. *The Harrisburg*, 199.
2. If a suit *in rem* can be maintained in admiralty against an offending vessel for the recovery of damages for the death of a human being on the high seas, or on waters navigable from the sea, which is caused by negligence, when an action at law is given therefor by statute in the state where the wrong was done or where the vessel belonged, (which is not decided,) it must be commenced within the period prescribed by the state statute for the beginning of process there; the time within which the suit should be commenced operating as a limitation of the liability created by statute, and not of the remedy only. *Ib.*
3. A declaration in an action at law in a Circuit Court of the United States by an administrator against an insurance company, which alleges that the intestate was a citizen of the state in which the action is brought, and that letters of administration were granted plaintiff in that state, and that the company is a citizen of another state, without any allegation respecting the citizenship of the administrator, fails to show a citizenship in the plaintiff to give the Circuit Court jurisdiction, and cannot be amended in that respect in this court: but the court below may, on the case being remanded, in its discretion, allow this to be done. *Continental Ins. Co.* v. *Rhoads*, 237.
4. A, a citizen of Alabama, filed a bill in equity in a court of that state, making the Memphis and Charleston Railroad, a corporation of

Tennessee, of Alabama, and of Mississippi, and the East Tennessee, Virginia and Georgia Railroad, a corporation of Tennessee and of Georgia, defendants. The bill alleged that complainant was a stockholder in the Memphis and Charleston Company, that a lease of the road of that company had been made to the other company for a term of years not yet expired, that the lease was not within the corporate power of either company, and that an arrangement had been made between the two companies, and was about to be carried into effect, for the surrender and cancellation of the lease on the payment by the lessor of a large sum of money to the lessee, which was to be raised by the sale of a large amount of new stock at a very low rate; and it prayed for an injunction to restrain the lessee from operating the road, and the lessor from paying the sum of money or any sum for the cancellation, and from issuing the new stock. On the petition of the lessee the suit was removed to the Circuit Court of the United States on the ground that the lessee was a citizen of Tennessee, and the complainant a citizen of Alabama, and that there was a controversy wholly between citizens of different states, which could be fully determined between them. The Circuit Court, on motion, remanded the cause. This court, on appeal, affirms that judgment. *East Tennessee, &c., Railroad* v. *Grayson*, 240.

5. When the jurisdiction of a circuit court of the United States in an action at law depends upon the citizenship of the parties to the suit, the declaration must show the necessary relative citizenship. *Halsted* v. *Buster*, 341.

D. Jurisdiction of State Courts.

*See* Bankruptcy, 2;
Local Law, 8.

KIDNAPPING.

*See* Extradition, 5, 6, 7, 8, 9.

LICENSE FEE.

*See* Constitutional Law, A, 1.

LIMITATION, STATUTES OF.

*See* Judgment, 2 (5), 4;
Jurisdiction, C, 2.

LIQUIDATED DAMAGES.

*See* Bond.

LIS PENDENS.

The pendency of a suit relating to the validity of negotiable paper not yet due is not constructive notice to subsequent holders thereof before

maturity; and this general rule cannot be changed by state laws or decisions, so as to affect the rights of persons not residing and not being within the state. *Enfield* v. *Jordan*, 680.

## LOCAL LAW.

1. Following the decisions of the Supreme Court of Texas, and also agreeing with them, this court holds that § 9 of the act of the Legislature of Texas, of March 18, 1848, so far as it conferred upon aliens a defeasible estate by inheritance from a citizen, notwithstanding the alienage, is not repealed by § 4 of the act of February 13, 1854; and that immediately after the passage of the British Naturalization Act of 1870, defeasible titles of British alien heirs to land in Texas became indefeasible. *Hanrick* v. *Patrick*, 156.
2. The general rule in Texas that property purchased during the marriage, whether the conveyance be to husband or wife, is *prima facie* community property holds only where the purchase is made with community funds; and the presumption may be rebutted by proof that the purchase was intended for the wife. *Ib.*
3. When a deed of land in Texas is made to a married woman for a nominal consideration, the presumption is that it was intended to vest the title in her as separate property. *Ib.*
4. A court-house in North Carolina being destroyed by fire, the county commissioners rented a building on another site, about two hundred yards distant from the old site, to be used as a court-house; and after five years' occupancy purchased the building and paid for the same by issuing bonds of the county to the seller. In an action on the bonds against the county; *Held:* That the act of the Legislature of North Carolina of 1868, c. 20, relating to the removal of county buildings, does not apply to such a case. *Washington County* v. *Sallinger*, 176.
5. The provisions contained in the proviso in § 5 of the act of the Legislature of North Carolina, of February 27, 1877, to establish county governments, apply only to commissioners to be chosen thereafter under the provisions of that act. *Ib.*
6. The service of process in this case having been upon the mayor of New Orleans, and the city having appeared and answered, the municipality is properly in court. *New Orleans* v. *Houston*, 265.
7. The effect of article 167, of the constitution of Louisiana of 1879, is to revive the charter of the Louisiana State Lottery Company of 1868, except as to the clause conferring upon it the exclusive privilege of establishing a lottery, and dealing in lottery tickets, notwithstanding its repeal in 1879; and to recognize the charter thus modified as a contract binding on the state for the period therein specified. *Ib.*
8. The jib-boom of a vessel towed by a steam-tug, in the Chicago River, at Chicago, Illinois, struck a building on land, through the negligence of the tug, and caused damage to it, and the loss of shelled corn stored in it. A statute of Illinois gave a lien on the tug for the dam-

age, to be enforced by a suit *in personam* against her owner, with an attachment against the tug, and a judgment *in personam* against her owner and the surety in a bond for her release. In such a suit, in a court of Illinois, to recover such damage, such a bond having been given, conditioned to pay any judgment in the suit, and the tug having been released, an application afterwards by J., claiming to be part owner of her, to be made a defendant in the suit, was denied, and a judgment for the damage was given against the defendant and the surety in the bond, without personal notice to the latter, which was affirmed by the Supreme Court of Illinois, on a writ of error from this court; *Held:* (1) The cause of action was not a maritime tort of which an admiralty court of the United States would have jurisdiction; (2) the state could create the lien and enact rules to enforce it, not amounting to a regulation of commerce, or to an admiralty proceeding *in rem*, or otherwise in conflict with the Constitution of the United States; (3) the actual proceeding in this case was a suit *in personam*, with an attachment to enforce the lien, and was not forbidden by that Constitution; (4) the provision of subdivision 6, of § 9, of article 1, of the Constitution of the United States, in regard to giving a preference to the ports of one state over those of another, is not a limitation on the power of a state; (5) the judgment against the surety was proper, as the statute provided for it, and formed part of the bond; (6) J. was not unlawfully denied a hearing, because he did not apply to be made a defendant until after the tug was discharged. *Johnson* v. *Chicago & Pacific Elevator Co.*, 388.

9. Where, under the Code of Practice of Louisiana, a steam-tug is sequestered by judicial process, and, under article 279, the plaintiff in sequestration gives a bond, with surety, to the sheriff, and takes the tug into his possession, and uses her, and afterwards restores her to the sheriff, he is not liable to the defendant in sequestration for the fruits or revenues of her use. *Baldwin* v. *Black*, 643.

10. Being in the lawful possession of the tug, his agent is not liable to the defendant in sequestration, either in contract or tort, in respect to any earnings of the tug, or any compensation for or value of her use. *Ib.*

11. The claim of the plaintiff in sequestration having been founded on a mortgage on the tug, and it appearing that on a sale of her to him, on a judgment in his favor in the sequestration suit, there was a deficiency in the net proceeds of her sale to pay the mortgage debt and certain lien and privileged debts, having precedence of the mortgage, which the plaintiff in sequestration paid, under subrogations, legal as well as express, to the rights of the creditors holding those debts, between the date of the seizure of the tug and the day of her sale, no cause of action could exist against the plaintiff in sequestration in respect to any earnings received by him from the use of the tug. *Ib.*

12. In Illinois an incorporated "town" and an incorporated "village" are one and the same thing. *Enfield* v. *Jordan*, 680.

13. In Illinois the making the place of payment of a municipal bond at a place which is not the office of the treasurer of the municipality does not affect the validity of the bond, or charge the holder of such a bond, being negotiable and not yet matured, with notice of judicial proceedings between a previous holder and the municipality so as to work an estoppel. *Ib.*

*See* CONFLICT OF LAW; COURT AND JURY, 2; EXTRADITION, 9; HUSBAND AND WIFE, 1; NAVIGABLE STREAM, 2; REMOVAL OF CAUSES, 6.

## MARRIED WOMAN.

*See* HUSBAND AND WIFE; LOCAL LAW, 2, 3.

## MASTER AND SERVANT.

1. While A, a longshoreman in the employ of a steamship company, was engaged in his regular work, a tub filled with coal fell upon him and injured him seriously. The fall was caused by the breaking of a rope which suspended the tub. A sued the company to recover damages, claiming that the injury was caused by the negligence of B in not providing a proper rope to hold the tub after notice of the insufficiency and weakness of the one which broke, and that B was an agent of the company, for whose acts or omissions it was responsible. The company defended, setting up (1) contributory negligence in A; and (2) that B was a fellow-servant of A, for whose acts or omissions the company was not responsible. The judge who presided at the trial refused to direct a verdict for the company, and referred the question of contributory negligence to the jury; and also referred to them the question as to what the authority of B was. There were various exceptions by the company to the charge, and to refusals to charge. A verdict was rendered in favor of A, and judgment entered on the verdict. This court affirms that judgment by a divided court. *Cunard Steamship Co.* v. *Carey*, 245.

2. Defendant in error was in the employ of plaintiff in error as a car repairer. While mounted at a side track upon a ladder which rested against a car that he was repairing by order of his immediate superior, he was thrown from the ladder by reason of the car being struck by a switching engine and car, and was seriously injured. He brought a suit against the railway company under § 1307, Code of Iowa of 1873. The railway company defended upon the grounds: (1) that there was no negligence on the part of its employés which entailed responsibility on the company; (2) that there was contributory negligence on the part of the plaintiff below. The case was tried before a jury, and resulted in a verdict of $15,000 for plaintiff below, and

judgment was entered on the verdict. This court, on the case made by the record in error, affirms that judgment by a divided court. *Chicago & Northwestern Railway* v. *McLaughlin*, 566.

MINERAL LAND.

*See* COURT AND JURY, 2.

MUNICIPAL BOND.

1. Bonds issued by a town in Illinois, signed by its supervisor and town clerk, as a donation to a railroad company, stated that the faith, credit, and property of the town were thereby pledged, "under authority of" an act of the General Assembly of the state, giving its title and date, and each bond also stated that it and other bonds, giving their numbers and amounts, were "the only bonds issued by said town" "under and by virtue of said act." The act prescribed the general route of the road, and authorized the town to make a donation to the company, to aid in constructing and equipping the road, if the donation should be voted for as prescribed. It provided for a written application by voters to the town clerk to have an election held, and the giving by him of notice of the election; that the election should "be held and conducted and return thereof made as is provided by law;" and that, if a majority of the legal voters voting should vote for the donation, the town should, "by its proper corporate authorities," make the donation, as should "be determined at said election," and should issue to the company its bonds, "signed by the supervisor and countersigned by the clerk," and should, "by its proper corporate authority," levy an annual tax to pay interest and principal. The application was made, and the notice given, and the election was held and presided over, not by the election judges of the town, but by a moderator and the town clerk, in the manner required for the election of town officers, and resulted in a majority for the donation. The terms of the vote were that the bonds should not be issued, and the vote should be void, unless the road was completed by a day specified. The road was not completed by that day. The supervisor and one of the two justices of the town having resigned, the other justice and the town clerk, on the day before an election for a justice was to be held, appointed a new supervisor, antedating the appointment papers more than three months, to the day after the supervisor resigned, and the new supervisor, and the town clerk, on the same day, signed the bonds and delivered them to the company. The next day a new justice and a new supervisor were elected by the people. In a suit against the town, to recover on coupons cut from the bonds, by a *bona fide* holder of the bonds and coupons for a valuable consideration, without notice, it was set up in defence, that the officers of the company conspired with the justice and the town clerk, and their appointee, to have the bonds issued before a new supervisor should be elected by

the people; *Held:* (1) The bonds were not void, as having been executed through "fraud or circumvention," under the statute of Illinois, Gross' Stat., 1869, vol. 1, 3d ed., c. 73, p. 462, § 11. (2) The appointment of the supervisor was valid. (3) The bonds were issued in compliance with a vote of the people held prior to the adoption of the Illinois constitution of 1870, in pursuance of a law providing therefor, within the meaning of § 12, of article 9, of that constitution, although the condition as to the completion of the road was not complied with, because, as against the plaintiff, the recitals in the bonds were made by officers intrusted under the statute, with the duty of determining whether the condition had been complied with, and the town was thereby estopped from asserting the contrary. (4) The election was properly held, though presided over by a moderator, and the donation was, therefore, authorized under existing laws, by a vote prior to the adoption of additional section or article 2 to the constitution of Illinois, within the meaning of that section. *Oregon* v. *Jennings*, 74.

2. In a suit on bonds of the same issue as those adjudged to be invalid, in *McClure* v. *Township of Oxford*, 94 U. S. 429, it was sought to uphold the bonds as issued under the general act of Kansas, of March 2d, 1872, c. 68, the bonds purporting, by their face, to have been issued under the special act of March 1, 1872, c. 158. As the general act required certain proceedings to be taken before the bonds could be lawfully issued, and the town records showed that those proceedings were not taken, and that all that was done under the special act, the possibility that the bonds were issued under the general act was excluded, and the recitals in the bonds could not aid the plaintiff. *Crow* v. *Oxford*, 215.

3. The certificate of the auditor of the state, indorsed on each bond, that it was "regularly and legally issued," purporting to have been made in accordance with the general act, could not aid the plaintiff, because the bonds were not such as the auditor was authorized by that act to register and certify. *Ib.*

*See* LOCAL LAW, 4.

MUNICIPAL CORPORATION.

1. The provision in the act of February 24, 1869, of the legislature of Illinois, giving authority to "any village, city, county, or township organized under the township organization law, or any other law of the state, along or near the route of the railway" therein mentioned, "to subscribe to the stock of the railroad company, or make donations to it," applies to a town along or near the route. *Enfield* v. *Jordan*, 680.

2. The proviso in the clause of the constitution of Illinois regarding municipal subscriptions to the stock of, or donations or loan of credit to, railroads or private corporations, applies to donations as well as to subscriptions to stock. *Ib.*

*See* LOCAL LAW, 4, 5, 12, 13.

## NATIONAL BANK.

*See* BAILMENT, 2.

## NAVIGABLE STREAM.

1. A river does not change its legal character as a highway if crossings by bridges or ferries are allowed under reasonable conditions, or if dams are erected under like conditions. *Huse* v. *Glover*, 543.
2. If, in the opinion of a state, its commerce will be more benefited by improving a navigable stream within its borders, than by leaving the same in its natural state, it may authorize the improvements, although increased inconvenience and expense may thereby attend the business of individuals. *Ib.*

*See* DAMAGES, 2.

## NEGLIGENCE.

*See* BAILMENT, 1, 2;
JURISDICTION, C, 1, 2;
MASTER AND SERVANT, 1, 2.

## NEGOTIABLE PAPER.

*See* BILLS OF EXCHANGE; LIS PENDENS;
EVIDENCE, 9, 11; PAYMENT.

## ORDINANCE OF 1787.

The provision in the ordinance of 1787 that the navigable waters leading into the Mississippi and the St. Lawrence shall be common highways, forever free, without tax, impost, or duty therefor, refers to rivers in their natural state, and does not prevent the state of Illinois from improving the navigation of such waters within its limits, or from charging and collecting reasonable tolls from vessels using the artificial improvements, as a compensation for the use of the artificial facilities. *Huse* v. *Glover*, 543.

## PARTIES.

When the statutes of the state in which an action at law in a Federal court is tried permit a third party to intervene *pro interesse suo*, as in equity, and on the trial a general verdict is rendered and a general judgment entered against both the intervenor and the losing party, the intervenor is not a necessary party to the writ of error to this court, if his interest is clearly separable and distinct. *Hanrick* v. *Patrick*, 156.

*See* LOCAL LAW, 1.

## PATENT FOR INVENTION.

1. In view of the construction given in *Consolidated Safety-Valve Co.* v. *Crosby Steam-Gauge and Valve Co.*, 113 U. S. 157, to the claim of

letters-patent No. 58,294, granted to George W. Richardson, September 25th, 1866, for an improvement in safety-valves, and to the claim of letters-patent No. 85,963, granted to said Richardson, July 19th, 1869, for an improvement in safety-valves for steam-boilers or generators, the defendant's safety-valves in this case, having no huddling chamber, and no strictured orifice, were held not to infringe either patent. *Consolidated Safety-Valve Co.* v. *Kunkle*, 45.

2. The claim of the inventor in letters-patent must be construed according to its terms; and when its import is plain, resort cannot be had to the context for the purpose of enlarging it. *White* v. *Dunbar*, 47.
3. A reissue which materially enlarges the claim in the original letters-patent, and which was made five years after their issue, is held to be invalid. *Ib.*
4. In a suit in equity by the trustees of a dissolved Missouri corporation to compel an employé of the corporation to convey to the plaintiffs the title to letters-patent obtained by him for an invention made while he was in their employ, it not appearing, from the facts set forth in the bill, that there was any agreement between the employé and the corporation, that it was to have the title to the invention, or to any patent he might obtain for it, it was held, on demurrer, that the bill could not be sustained. *Hapgood* v. *Hewitt*, 226.
5. Although the dissolved corporation assigned its right in the premises to an Illinois corporation organized by the stockholders of the former, whatever implied license the former had to use the invention was confined to it, and was not assignable. *Ib.*
6. The employé could bring no suit for infringement against the Missouri corporation, for it was dissolved; nor any suit in equity against its trustees, for an infringement, for they were not alleged to be using the invention; and a suit at law against the trustees, or the stockholders, of the Missouri corporation, for infringement by it, could not be enjoined, because the theory of the bill was that there was a perfect defence to such a suit. *Ib.*
7. If a suit in equity to restrain from infringing letters-patent and to recover profits and damages, be commenced so late that under the rules of the court no injunction can be obtained before the expiration of the patent, the bill should be dismissed for want of equity jurisdiction: but if it be begun in such time that an injunction can be obtained before the expiration of the patent, although only three days remain for it to run, it is within the discretion of the court to take jurisdiction; and if it does so, it may, without enjoining the defendant, proceed to grant the other incidental relief sought for. *Clark* v. *Wooster*, 322.
8. This court will not assume, without proof, that a reissue made fourteen years after the issue of the original patent enlarges the original claim, or that it was sought for the purpose of enlarging it. *Ib.*
9. Established license fees are the best measure of damages in suits for infringing patents. *Ib.*

10. The claim of letters-patent No. 187,100, granted to John Clark, February 6th, 1877, for an "improvement in cheese-formers for cider-presses," namely, "The guide-frame D, in combination with an extended pomace-rack, and a cloth to enclose a layer of pomace therein, substantially as described," is invalid, because it did not require invention to use the described guide-frame in connection with the racks and the cloths. *Pomace Holder Co.* v. *Ferguson*, 335.
11. The racks and the cloths had been before used in connection, and an enclosure was used with them, which enabled the operator to make the pomace of uniform depth on each rack, and prevented the lateral spreading of the pomace; and it required only ordinary mechanical skill and judgment to make either the guide-frame or the rack of the desired size. *Ib.*
12. The first claim of reissued letters-patent No. 8986, granted to Robert Newton, December 2d, 1879, for an improvement in gang-ploughs, (the original patent, No. 56,812, having been granted to F. S. Davenport, as inventor, October 9th, 1886,) namely, "1. In a wheel-plough, the combination, with a swing-axle and ground or carrying-wheel, of friction-clutch mechanism, and means for engaging and disengaging the latter with the ground or carrying-wheel, said parts being constructed and adapted to raise the plough by locking the swing-axle to the carrying-wheel by friction-clutch engagement, and raise the plough-beam by the draft or power of the team, substantially as set forth," is, in view of the state of the art at the time of the invention of Davenport, not improved by an apparatus in which the axle and the friction-clutch mechanism are different, as devices, from those of the patent. *Newton* v. *Furst & Bradley Co.*, 373.
13. The first claim of the reissue is invalid, the reissue having been applied for more than thirteen years after the original patent was granted, and after the defendant had begun to make machines of the pattern complained of. *Ib.*
14. The defendant's machine did not infringe the original patent, and the reissue was taken to cover it. *Ib.*
15. Reissued letters-patent No. 4364, granted to John J. Schillinger, May 2d, 1871, for an improvement in concrete pavements, on the surrender of original letters-patent No. 105,559, granted to him July 19th, 1870, are not, in view of the disclaimer filed by the patentee, March 1st, 1875, infringed by the defendant's pavement in this case. *California Paving Co.* v. *Schalicke*, 401.
16. A patentee is not at liberty to insist in the courts upon a construction of his patent which the Patent Office required him to expressly abandon and disavow as the condition of the issue of his patent. *Sutter* v. *Robinson*, 530.
17. The improvement in the apparatus for resweating tobacco which was patented to Abraham Robinson, June 10th, 1879, by letters-patent No. 216,293, consisted in the substitution of a wooden vessel in place of a metallic one for holding the tobacco while being resweated. *Ib.*

18. The first claim of letters-patent No. 177,334, granted to Abner B. Hutchins, May 16th, 1876, for an improvement in hydro-carbon stoves, namely, "1. The water-vessel A, with its perforated top-plate A′ and hot-air 'cylinder' C, hinged at *c* to plate A′, and top perforated plate L, all arranged and connected together substantially as and for the purpose set forth," the perforated top-plate A′ being described in the specification as a plate in which, arranged around a central opening, is a series of perforations "through which atmospheric air passes down into the top part of the vessel A, and thence up through the hot-air cylinder and its chimneys," is not infringed by a stove in which, instead of the perforated top-plate A′, there are three equidistant struts on which the hot-air cylinder rests, with an open space between every two of the struts, the struts not performing the office so described as that performed by the perforated top-plate A′. *Sharp* v. *Riessner*, 631.

19. It is the duty of a patentee, receiving letters-patent for an invention, to examine them within a reasonable time to ascertain whether they fully cover his invention; and if he neglects so to do for the period of three years, and the real invention is then found to be infringed by a construction which is manufactured and sold without infringing the patent as originally granted, he must suffer the penalty of his own laches, and cannot, by means of a reissue, correct the error. *Ives* v. *Sargent*, 652.

20. The reissue No. 9901, dated October 18, 1881, of letters-patent No. 202,158, dated April 9, 1878, and granted to Frank Davis for an improvement in door-bolts is void, as containing new matter introduced into the specification, and as being for a different invention from that described in the original patent. *Ib.*

21. When two persons invent the same invention at about the same time, and employ the same solicitor, who in good faith assigns the priority of invention to the wrong person, and makes claims and takes out patents for each on that theory, limiting the claim of the real inventor to a narrower claim, not within the claim of the other inventor, and both acquiesce in this decision for a period of nine or ten years, the acquiescence of the real inventor must be regarded, so far as his claims are concerned, as an abandonment of any right on his part to a patent for the broad and real invention; and so far as the patentee of it is concerned, the validity of his patent fails, because he was not the inventor, and was not entitled to the patent. *Hartshorn* v. *Saginaw Barrel Co.*, 664.

22. The shade roller manufactured by the appellee does not infringe patent No. 69,169, granted to Jacob David, September 24, 1867, and assigned to the appellants. *Ib.*

*See* JURISDICTION, A, 4.

## PAYMENT.

A creditor who receives from his debtor a negotiable instrument of the debtor for the amount of his debt, and sells it for its market value to

a third person, cannot sue the debtor on the original debt. *Donnelly* v. *District of Columbia*, 339.

PENALTY.

*See* BOND.

PLEADING.

*See* EVIDENCE, 12;
EXTRADITION, 5;
JURISDICTION, B, 4; C, 3, 5.

PLEDGE.

*See* LOCAL LAW, 9, 10, 11.

PRACTICE.

1. The opinion of the highest court of New York, authenticated by the proper officer, and transmitted to this court with the record in compliance with Rule 8, examined to aid in determining whether that court decided against defendant the Federal question stated in CONSTITUTIONAL LAW, 1. *Philadelphia Fire Ass'n* v. *New York*, 110.
2. When it is within the discretion of the court whether to admit evidence in rebuttal which might have been offered in chief, the party offering it is entitled to the exercise of the discretion at the time of the offer. *French* v. *Hall*, 152.
3. On a finding in the court below (1) that certain parol testimony is inadmissible because it tends to vary, explain, contradict or qualify a written instrument discharging a mortgage; and (2) that if admitted it was not sufficient to prove any qualification or modification of the discharge, — it is immaterial in this court whether the court below was right in holding that the exception taken there to the parol evidence was error. *Ivinson* v. *Hutton*, 604.

*See* JURISDICTION, A, 1, 2, 5;
WRIT OF ERROR, 2.

PREFERRED STOCK.

*See* CORPORATION, 6.

PRINCIPAL AND AGENT.

*See* COLLECTOR OF CUSTOMS;
EVIDENCE, 10.

PUBLIC LAND.

1. The grant by the act of Congress of July 2, 1864, to the Northern Pacific Railroad Company, of lands to which the Indian title had not been

extinguished, operated to convey the fee to the company, subject to the right of occupancy by the Indians. *Buttz* v. *Northern Pacific Railroad*, 55.

2. The manner, time, and conditions of extinguishing such right of occupancy were exclusively matters for the consideration of the government, and could not be interfered with nor put in contest by private parties. *Ib.*
3. The agreement of the Sisseton and Wahpeton bands of Dakota or Sioux Indians for the relinquishment of their title was accepted on the part of the United States when it was approved by the Secretary of the Interior, on the 19th of June, 1873. That agreement stipulating to be binding from its date, May 19, 1873, and the Indians having retired from the lands to their reservations, the relinquishment of their title, so far as the United States are concerned, held to have then taken place. *Ib.*
4. Upon the definite location of the line of the railroad, on the 26th of May, 1873, the right of the company, freed from any incumbrance of the Indian title, immediately attached to the alternate sections; and no preëmptive right could be initiated to the land, so long as the Indian title was unextinguished. *Ib.*
5. When the general route of the road provided for in section six of the act of July 2, 1864, was fixed, and information thereof was given to the Land Department by the filing of a map thereof with the Secretary of the Interior, the statute withdrew from sale or preëmption the odd sections to the extent of forty miles on each side thereof; and, by way of precautionary notice to the public, an executive withdrawal was a wise exercise of authority. *Ib.*
6. The general route may be considered as fixed, when its general course and direction are determined, after an actual examination of the country or from a knowledge of it, and it is designated by a line on a map, showing the general features of the adjacent country and the places through or by which it will pass. *Ib.*
7. That part of section three of said act, which excepts from the grant lands reserved, sold, granted, or otherwise appropriated, and to which a preëmption and other rights and claims have not attached, when a map of definite location has been filed, does not not include the Indian right of occupancy within such "other rights and claims;" nor does it include preëmptions where the sixth section declares that the land shall not be subject to preëmption. *Ib.*
8. Where, under the eighth section of the act of July 23, 1866, "to quiet land titles in California," a survey is made by the United States Surveyor General for California of a claim to land under a confirmed Mexican grant, and land is set off by him in satisfaction of the grant, the survey is operative without the approval of the Commissioner of the General Land Office. Land lying outside of such survey then becomes subject to state selection in lieu of school sections covered by

the grant, and is open to settlement under the preëmption laws. *McCreery* v. *Haskell*, 327.

9. As between the state and the settler, the party which first commences the proceedings required to obtain the title, if they are followed up to the final act for its transfer, is considered to have priority of right. The rule prevails in such cases, first in time first in right. *Ib.*
10. For lands selected by the state of California, it has not been the practice of the Land Department to issue patents. When the selections are approved by the Secretary of the Interior, a list of them, with the certificate of the Commissioner of the General Land Office, is forwarded to the state authorities. This listing operates to transfer the title to the lands, as of the date when the selections were made and reported to the local land office, and cuts off all subsequent claimants. Accordingly, where a selection was made in 1868, which was subsequently approved by the Secretary of the Interior, and the lands were listed to the state by the Commissioner of the General Land Office, a patent for the same lands issued upon a settlement made in December, 1869, under the preëmption laws, conferred no title as against the state. *Ib.*
11. The entry in the Land Office of a portion of the public lands in the territory of Montana, settled upon and occupied as a town-site, under the act of Congress of March 2, 1867, "for the relief of the inhabitants of cities and towns on the public lands," being "in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the state or territory in which the same may be situated," it was held that the occupant of a lot in the town which had been surveyed and platted into streets, alleys, blocks, and lots, continued to possess after such entry the same right of way over an adjoining alley which he had previously possessed as appurtenant to his lot. *Ashby* v. *Hall*, 526.
12. The interests which the occupants possessed previous to the entry, either in the land occupied by them or in rights of way over adjoining streets and alleys, were secured by it. *Ib.*
13. The power vested in the legislature of the territory was confined to regulations for the disposal of the lots and the proceeds of the sales. These regulations might extend to provisions for the ascertainment of the nature and extent of the occupancy of different claimants of lots, and the execution and delivery to those found to be occupants in good faith of some official recognition of title in the nature of a conveyance; but they could not authorize any diminution of the rights of the occupants when the extent of their occupancy was established. *Ib.*
14. The legislature of the territory could not, under the authority conferred by the above act of Congress, change or close the streets, alleys,

and blocks of the town by a new survey. Whatever power it may have over them does not come from the town-site act, but, if it exist at all, from the general grant of legislative power under the organic act of the territory. *Ib.*

*See* COURT AND JURY, 2;
EVIDENCE, 4, 5.

## RAILROAD.

*See* CORPORATION, 6;
DAMAGES, 2;
EVIDENCE, 1, 2;
FORCIBLE ENTRY AND DETAINER;
PUBLIC LAND, 4, 5, 6, 7.

## REMOVAL OF CAUSES.

1. A suit against a collector of the customs in a state court, in which the declaration alleges that the collector by his deputy delivered imported goods upon which there was a lien for freight to the consignee on receipt of the freight charges, without notifying the carrier as required by the act of June 10, 1880, § 10, 21 Stat. 175, and which seeks to recover the money so received, is removable into the Circuit Court of the United States under Rev. Stat. § 643, although the collector may allege in his defence that the act charged was not done. *Cleveland & Columbus Railway* v. *McClung*, 454.
2. Subsections "First" and "Second" of Rev. Stat. § 639, relating to the removal of causes from state courts to Federal courts, were repealed by the act of March 3, 1875, 18 Stat. 470; but subsection "Third" was not so repealed. *Baltimore & Ohio Railroad* v. *Bates*, 464.
3. Under subsection "Third" of Rev. Stat. § 639, a petition for the removal of a cause from a state court to a Federal court may be filed at any time before final trial or hearing. *Ib.*
4. On a petition for removal of a cause from a state court under subsection "Third" of Rev. Stat. § 639, the petitioning party is required to offer to the court the "good and sufficient surety" required by that section for the purposes therein set forth; and not the surety required by the act of March 3, 1875, § 3, 18 Stat. 471, for the purposes named in that act. *Ib.*
5. A suit by a state in one of its own courts cannot be removed to a Federal court under the act of 1875, unless it be a suit arising under the Constitution or laws of the United States, or treaties made under their authority. *Germania Ins. Co.* v. *Wisconsin*, 473.
6. On the 31st December, 1884, A, a citizen of Pennsylvania, sued out of a court of that state a summons, in an action on contract to recover a balance of money lent, against B, a citizen of New York, and C, a citizen of Pennsylvania, surviving partners of D, returnable on the 1st Monday in January then next, and C accepted service before the return day. On the 26th of January, 1885, judgment was entered against both

defendants for want of defence, under the practice in that state. On the 3d February, 1885, B voluntarily appeared and accepted service with the like force as if the writ had been returnable on the 1st Monday in April and had been served on the 1st Monday in March. On May 2, 1885, B filed his affidavit of defence, and immediately filed a petition for the removal of the cause to the Circuit Court of the United States, on the ground that the controversy in the suit was between citizens of different states. The cause being removed, it was, on motion of the plaintiff, remanded to the state court on the ground that it appeared by the record that defendants were not both citizens of another state than plaintiff, and that plaintiff was a citizen of Pennsylvania. *Held:* (1) That under the practice in Pennsylvania this was a proceeding in the original suit, under the original cause of action; (2) that the controversy was not a separable one within the meaning of the removal act of 1875; (3) that the fact that the liability of C had been fixed by the entry of judgment against him did not affect the principle. *Brooks* v. *Clark*, 502.

7. A removal of a cause from a state court to a Federal court made on a petition under the act of March 3, 1875, 18 Stat. 470 on the ground of a separable controversy, takes the whole cause from the jurisdiction of the state court; but a removal for the same cause under the act of 1866 may take only the separate controversy of the petitioning defendant, leaving the state court to proceed against the other defendants. *Ib.*

8. A suit cannot be removed from a state court to a circuit court of the United States on the ground of prejudice or local influence, under subsection 3 of § 639 Rev. Stat., unless all the plaintiffs or all the defendants are citizens of the state in which the suit was brought, and of a state other than that of which those petitioning for the removal are citizens. *Hancock* v. *Holbrook*, 586.

*See* CONSTITUTIONAL LAW, 4;
JURISDICTION, B, 3, 4; C, 4.

SALE.

*See* CONTRACT, 7, 8.

SEQUESTRATION.

*See* LOCAL LAW, 9, 10, 11.

SERVICE OF PROCESS.

*See* LOCAL LAW, 6.

STATUTE.

A. CONSTRUCTION OF STATUTES.
*See* CONFLICT OF LAW;
CORPORATION, 2, 3.

B. Statutes of the United States.

*See* Collector of Customs;
Court and Jury, 2;
Evidence, 5, 8;
Extradition, 4 (2);
Indian, 2, 3, 4;
Jurisdiction, A, 3, 4;
Public Land, 1, 5, 7, 8, 10, 11;
Removal of Causes.

C. Statutes of States and Territories.

*Iowa.* *See* Constitutional Law, A, 4;
Master and Servant, 2.
*Illinois.* *See* Local Law, 3, 8, 12, 13;
Municipal Bond, 1;
Municipal Corporation, 1.
*Kansas.* *See* Municipal Bond, 2.
*Louisiana.* *See* Damages, 2;
Local Law, 7, 9, 10, 11.
*Minnesota.* *See* Judgment, 2.
*Missouri.* *See* Evidence, 4.
*Montana.* *See* Court and Jury, 2.
*New York.* *See* Constitutional Law, A, 1, 3.
*North Carolina.* *See* Local Law, 4, 5.
*Pennsylvania.* *See* Removal of Causes, 6.
*Texas.* *See* Local Law, 1.

D. Foreign Statutes.

*Great Britain.* *See* Local Law, 1.

## SUPERSEDEAS.

*See* Jurisdiction, A, 11.

## TAX AND TAXATION.

*See* Corporation, 5.

## TERRITORIAL LEGISLATION.

*See* Public Land, 13, 14.

## TONNAGE DUTY.

*See* Constitutional Law, A, 5.

## TRANSCRIPT OF RECORD.

*See* Writ of Error, 2.

## TREATIES.

*See* Extradition.

## TRUST.

The evidence in this case, if admissible, establishes as a fact that the defendant was entitled to reimburse himself in full out of the trust estate before satisfying the demand of the plaintiff. *Newhall* v. *Le Breton*, 257.

## WITNESS.

An attorney at law, prosecuting or defending in a civil action, is a competent witness on behalf of his client at the trial of the action. *French* v. *Hall*, 152.

*See* EVIDENCE, 8.

## WRIT OF ERROR.

The clerk below is not required to furnish a transcript of the record in a cause in error, until a writ of error has issued to which it can be annexed. *Ex parte Ralston*, 613.

In error to a state court it has been the prevailing custom, from the beginning, for the clerk of this court or the clerk of the Circuit Court for the proper circuit to issue the writ, and for such writ to be lodged with the clerk of the state court before he could be called on to make the necessary transcript to be lodged in this court. *Ib.*

*See* JURISDICTION, A, 3.

PARTIES.