# INDEX.

## ACCORD AND SATISFACTION.

The payment, after an adverse decree in the appellate court, of an agreed sum in compromise and settlement of his liability, by a surety on an appeal bond to the attorney of record in the suit, fully authorized by his principal to make the settlement and compromise, and a written receipt, signed by the attorney as attorney of record, stating that the money is paid "in full satisfaction of the decree rendered against" the surety, constitute an accord and satisfaction which can be set up in an action against the surety on the appeal bond; and proof that the proposition for compromise was made by defendant and accepted by plaintiff in the original suit, with the expectation that the litigation would be terminated, and that, notwithstanding this, other parties had taken a further appeal to this court to which the surety was not a party, is not admissible to vary the force of the satisfaction. *Boffinger* v. *Tuyes*, 198.

## ACKNOWLEDGMENT.

*See* DEED, 1, 2.

## ACTION.

*See* CORPORATION, 3, 4.

## ACTION ON THE CASE.

*See* MALICIOUS PROSECUTION.

## ADMIRALTY.

1. If a vessel in tow by one steam-tug collides on navigable waters with a vessel in tow by another steam-tug and is injured, and the two tugs are libelled in one proceeding in admiralty to recover damages for the injuries sustained, the burden of proof is on the libellant to establish negligence against each tug separately; and admissions in the answer on the part of one tug cannot be used against the other tug to relieve the injured vessel of this burden. *The L. P. Dayton*, 337.
2. The rule which presumes fault in case of a collision against a vessel in motion in favor of one at anchor, does not apply to the case of a vessel moved by a steam-tug colliding with another vessel moved by another steam-tug. *Ib.*
3. If a vessel towed by a steam-tug, colliding with a vessel towed by another steam-tug, libels the other steam-tug, its rights in the suit and its standing in court will be the same which its own steam-tug would

have had, in case the collision had been directly with her; but if it libels its own steam-tug, the latter is responsible, under its contract of towage, only for the results happening from the want of ordinary care on its part. *Ib.*

4. The relative position of the steam-tug of the other tow to the appellant and its tug, before and up to the instant before the accident, and its action during that time, were not such as to constitute a violation of Rev. Stat. § 4233, rule 19, that "if two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other." *Ib.*

APPEAL.

The entry, on the stipulation of the parties, in a suit in equity, in which an appeal has been allowed but the record is incomplete, of an order extending the time for filing the appeal bond and the certificate of evidence, is equivalent to an order as of that date renewing the allowance of appeal in open court in the presence of both parties, and the appeal is returnable at this court as if allowed at the date of the entry of the order; but if the appeal bond in such case is not filed until after the term in which the appeal was allowed by the court, citation or its equivalent is necessary to notify the appellee that the appeal allowed in term time has not been abandoned by failure to furnish the security, and the endorsement by counsel for appellees of his approval of the appeal bond is the equivalent of such notice. *Goodwin* v. *Fox*, 775.

*See* APPEAL BOND; JURISDICTION, A, 4; LOCAL LAW, 18, 19; PARTIES. JUDGMENT, 4;

APPEAL BOND.

An injunction bond in an action in the District Court of the United States for the District of Louisiana conditioned that the obligors "will well and truly pay the" obligee, "defendant in said injunction, all such damages as he may recover against us, in case it should be decided that the said writ of injunction was wrongfully issued," which bond was made under an order of court, "that the injunction be maintained on the complaining creditors giving bond and security to save the parties harmless from the effects of said injunction" is a sufficient compliance with the order of the court, and when construed with reference to the rule prevailing in the Federal courts (contrary to that prevailing in the state courts of Louisiana), that without a bond and in the absence of malice no damages can be recovered in such case, means that the obligors will pay such damages as the obligee may recover against them in a suit on the bond itself, whether incurred before or after the giving of the bond. *Meyers* v. *Block*, 206.

*See* APPEAL.

ARMY.

*See* MARINE CORPS.

## ASSIGNMENT.

*See* BANK.
HUSBAND AND WIFE, 1, 2.

## ASSUMPSIT.

1. In an action for goods sold and delivered, tried in the Circuit Court of the United States in Pennsylvania, the defendant under a plea of "payment with leave," and by way of recoupment, may prove damages resulting to him from a breach of warranty, or from a fraudulent representation of the seller that the goods were of a certain quality or fit for a certain purpose. *Dushane* v. *Benedict*, 630.
2. Under the statute of Pennsylvania of 1705, which allows the defendant, in an action upon a contract, to set off any matter of contract, and to recover judgment thereon against the plaintiff, upon proving that the plaintiff owes him more than he owes the plaintiff, the defendant in an action for goods sold and delivered, may set off a claim in the nature of assumpsit upon a warranty; but not a claim for a fraudulent representation, or other claim sounding in tort only. *Ib.*

## ATTACHMENT.

*See* GARNISHEE.

## BAILMENT.

1. At common law, a factor has no power to pledge, whether he is intrusted with the possession of the goods, or with the bill of lading or other symbol of property. *Allen* v. *St. Louis Bank*, 20.
2. A usage of trade for banks to take pledges from factors, as security for the payment of the general balance of account between them, of goods known to be held by them as factors, is unlawful. *Ib.*
3. An unauthorized pledge by a factor, of goods owned by a partnership of which he is a member, to secure the payment of his own debt to one who knows him as a factor only, is invalid against the partnership. *Ib.*
4. If a factor, to whom the owner of goods has made a negotiable promissory note and consigned the goods under an agreement between them that the proceeds of the goods when sold shall be applied to the payment of the note, indorses the note and pledges the goods to secure the payment of advances made to him by one who knows him to be a factor and to hold the goods as such, the pledgee is bound to apply the proceeds of the goods to the payment of the note, and the maker may set up this obligation in defence of an action by the pledgee on the note. *Ib.*

## BANK.

Without deciding the mooted question whether a check or draft of a person on a bank in which he has deposits operates as an equitable assignment of the fund so on deposit to the holder of the check to the amount of it, it is clear that such check or draft does not bind the

fund in the hands of the bank until it has notice of the draft or check by presentation for payment, or otherwise: until then, other checks drawn afterward may be paid, or other assignments of the fund, or part of it, may secure priority by giving prior notice. *Laclede Bank* v. *Schuler*, 511.

BANKRUPTCY.

*See* EQUITY PLEADING, 1;
HUSBAND AND WIFE, 1.

BELGIUM.

*See* TREATY.

BELLIGERENT RIGHTS AND POWERS.

*See* CLAIMS AGAINST THE UNITED STATES, 4, 5.

BOND.

*See* APPEAL BOND.

CALIFORNIA SCHOOL LAND.

1. Lands listed to California as indemnity school lands, and patented by the state, are not open to preëmption settlement while in possession of the patentee. *Durand* v. *Martin*, 366.
2. The act of March 1, 1877, 19 Stat. 267, "relating to indemnity school lands in the state of California," was a full and complete ratification by Congress, according to its terms, of the lists of indemnity school selections which had been before that time certified to the state of California, by the United States as indemnity school selections, no matter how defective or insufficient such certificates might originally have been, if the lands included in the lists were not any of those mentioned in § 4, and if they had not been taken up in good faith by a homestead or preëmption settler prior to the date of the certificate. *Ib.*

CASES AFFIRMED OR APPROVED.

1. *Blair* v. *Cuming County*, 111 U. S. 363, affirmed. *Nemaha County* v. *Frank*, 41.
2. *Davenport* v. *Dodge County*, 105 U. S. 237, affirmed. *Nemaha County* v. *Frank*, 41.
3. *New Orleans Water Works* v. *Rivers*, 115 U. S. 674, affirmed. *St. Tammany Water Works* v. *New Orleans Water Works*, 64.
4. *Oakley* v. *Goodnow*, 118 U. S. 43, affirmed. *Leather Manufacturers' Bank* v. *Cooper*, 778.
5. *Phipps* v *Sedgwick*, 95 U. S. 3, affirmed. *Huntington* v. *Saunders*, 78.
6. *Provident Savings Society* v. *Ford*, 114 U. S. 635, affirmed. *Leather Manufacturers' Bank* v. *Cooper*, 778.
7. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, affirmed and applied. *Corson* v. *Maryland*, 502.
8. *Trust Co.* v. *Sedgwick*, 97 U. S. 304, affirmed. *Huntington* v. *Saunders*, 78.

9. *United States* v. *Reese*, 92 U. S. 214, affirmed and applied. *Baldwin* v. *Franks*, 678.
10. *United States* v. *Taylor*, 104 U. S. 216, affirmed. *United States* v. *Cooper*, 124.
11. The court restates what was decided in *Winchester* v. *Heiskell*, 119 U. S. 450, and, on petition for rehearing, adheres to it. *Winchester* v. *Heiskell*, 273.
12. *Christian Union* v. *Yount*, 101 U. S. 352, commented upon, explained, and affirmed. *Gilmer* v. *Stone*, 586.

## CASES DISTINGUISHED.

1. *Bein* v. *Heath*, 12 How. 168, distinguished. *Meyers* v. *Block*, 206.
2. *Louisiana* v. *Jumel*, 107 U. S. 711, distinguished. *Rolston* v. *Missouri Fund Commissioners*, 390.
3. *Packet Co.* v. *Keokuk*, 95 U. S. 80, distinguished. *Baldwin* v. *Franks*, 678.
4. *Presser* v. *Illinois*, 116 U. S. 252, distinguished. *Baldwin* v. *Franks*, 678.

## CHATTEL MORTGAGE.

1. In Michigan, when a chattel mortgage is attacked as fraudulent against subsequent creditors or mortgagees in good faith, by reason of the mortgagor being permitted to remain in possession and to prosecute his business in the ordinary way, it is the province of the jury to determine whether such fraud is proved; but when the evidence is overwhelming, and leaves no room for doubt as to what the fact is, the court may give the jury a peremptory instruction covering the issue. *People's Savings Bank* v. *Bates*, 556.
2. In Michigan a creditor at large cannot attack a chattel mortgage made by the debtor, except through some judicial process, whereby he acquires an interest in the property; as by levy of attachment or execution. *Ib.*
3. In Michigan the mortgagee in a chattel mortgage, given to secure a preëxisting debt, is not a "mortgagee in good faith," within the intent of the statute of that state which provides that every such mortgage "which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed" in the place or places indicated in the act. *Ib.*
4. The doctrine that the *bona fide* holder for value of negotiable paper, transferred as security for an antecedent debt merely, and without other circumstances, is unaffected by equities or defences between prior parties of which he had no notice, does not apply to instruments conveying real or personal property as security, in consideration only of preëxisting indebtedness. *Ib.*

CHECK.

*See* BANK.

CIRCUIT COURT OF THE UNITED STATES.

*See* JURISDICTION, A, 3; B.

CITATION.

*See* APPEAL.

CITIZEN.

*See* STATUTE, B, 1.

CIVIL LAW.

*See* LANDLORD AND TENANT. STATUTE, A, 5.

CLAIMS AGAINST THE UNITED STATES.

1. It is not decided (1) whether after settlement of an account at the Treasury it can be reopened by the accounting officers on the ground of error arising only from mistake of law; nor (2) whether errors in accounts with the United States, stated closed and settled by payment, can be corrected otherwise than by regular judicial proceedings instituted by the United States. *United States* v. *Philbrick*, 52.
2. Contracts between the United States and a mail contractor, one for mail station service, and the other for mail messenger service, construed in reference to payment for extra service. *United States* v. *Otis*, 115.
3. Certain real property in Tennessee having been sold for direct taxes, under the act of Congress of August 5, 1861, and the surplus of the moneys received, after payment of the taxes and charges having been deposited in the Treasury; *Held*, that the owner of the property, prior to his application for the surplus had no claim therefor which could be enforced by suit against the United States; and that the statute of limitations began to run against it only from the date of his application. *United States* v. *Taylor*, 104 U. S. 216, on this point affirmed. *United States* v. *Cooper*, 124.
4. The United States are not responsible for the injury or destruction of private property caused by their military operations during the late civil war; nor are private parties chargeable for works constructed on their property by the United States to facilitate such operations. *United States* v. *Pacific Railroad*, 227.
5. Where bridges on the line of a railroad were destroyed during the civil war by either of the contending forces, their subsequent rebuilding by the United States as a measure of military necessity, without the request of, or any contract with, the owner of the railroad, imposes no liability upon such owner. *Ib.*

*See* SALARY, 1.

CLERKS OF COURTS OF THE UNITED STATES.

*See* FEES.

## COAHUILA AND TEXAS LAND GRANTS.

*See* TEXAS LAND GRANTS.

## COHABITING WITH MORE THAN ONE WOMAN.

*See* CRIMINAL LAW.

## COLLISION.

*See* ADMIRALTY.

## CONFLICT OF LAW.

*See* JURISDICTION, A, 3;
LOCAL LAW, 1;
MUNICIPAL BOND, 2.

## CONSPIRACY.

*See* CONSTITUTIONAL LAW, A, 10, 11;
STATUTE, B, 1, 2, 3.

## CONSTITUTIONAL LAW.

### A. OF THE UNITED STATES.

1. On similar facts, with reference to the same corporate grant, *New Orleans Water Works Co.* v. *Rivers*, 115 U. S. 674, is affirmed to the point that a legislative grant of an exclusive right to supply water to a municipality and its inhabitants, through pipes and mains laid in the public streets, and upon condition of the performance of the service by the grantee, is a grant of a franchise vested in the state, in consideration of the performance of a public service, and, after performance by the grantee, is a contract protected by the Constitution of the United States against state legislation, and against provisions in state constitutions, to impair it. *St. Tammany Water Works* v. *New Orleans Water Works*, 64.

2. A statute of a state which provides that in capital cases, in cities having a population of over 100,000 inhabitants, the state shall be allowed fifteen peremptory challenges to jurors, while elsewhere in the state it is allowed in such cases only eight peremptory challenges, does not deny the equal protection of the laws to a person accused and tried for murder in a city containing over 100,000 inhabitants; and does not violate the provision of the Fourteenth Amendment to the Constitution. *Hayes* v. *Missouri*, 68.

3. It is within the constitutional power of Congress to enact laws to provide for the punishment of the offences of counterfeiting notes of a foreign bank or corporation, or having in possession a plate from which may be printed counterfeits of the notes of a foreign bank or corporation; and it is not necessary to allege in an indictment for such an offence, or to show, that the notes of such a bank or corporation are notes of money or issue of a foreign government, sovereign, or power; nor is it necessary to allege that the offence is "an offence against the Law of Nations." *United States* v. *Arjona*, 479.

4. The United States being bound to protect a right secured by the Law of Nations to another nation or its people, Congress has the constitutional power to enact laws for that purpose; but this does not prevent a state from enacting laws to punish the same act when it may be an offence against the authority of the state as well as that of the United States. *Ib.*

5. Chapter 96, § 16, Stats. Tennessee, 1881, enacting that "all drummers and all persons not having a regular licensed house of business in the Taxing District 'of Shelby County,' offering for sale, or selling goods, wares, or merchandise therein by sample, shall be required to pay to the county trustee, the sum of $10 per week, or $25 per month for such privilege," applies to persons soliciting the sale of goods on behalf of individuals or firms doing business in another state; and, so far as it applies to them, it is a regulation of commerce among the states, and violates the provision of the Constitution of the United States, which grants to Congress the power to make such regulations. *Robbins* v. *Shelby County Taxing District*, 489.

6. Interstate commerce cannot be taxed at all by a state, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the state. *Ib.*

7. The power granted to Congress, to regulate commerce among the states, being exclusive when the subjects are national in their character, or admit only of one uniform system of regulation, the failure of Congress to exercise that power in any case, is an expression of its will that the subject shall be left free from restrictions or impositions upon it by the several states. *Ib.*

8. A state may enact laws which in practice operate to affect commerce among the states — as by providing, in the legitimate exercise of its police power and general jurisdiction, for the security and comfort of persons and the protection of property; by establishing and regulating channels for commercial facilities; by the passage of inspection laws and laws to restrict the sale of articles injurious to health and morals; by the imposition of taxes upon avocations within its borders not interfering with foreign or interstate commerce or employment, or with business exercised under authority of the Constitution of the United States; and in other ways indicated in the opinion of the court, subject in all cases to the limitations therein defined; but the statute of the State of Tennessee, considered in this opinion, is not such a law. *Ib.*

9. The Code of Maryland provided that "no person or corporation other than the grower, maker, or manufacturer, shall barter or sell, or otherwise dispose of, or shall offer for sale any goods, chattels, wares, or merchandise within the state, without first obtaining a license in the manner herein prescribed"; that the application for the license should state on oath "the amount of said applicant's stock of goods, wares, and merchandise generally kept on hand by him, or the concern in

which he is engaged, at the principal season of sale; or if said applicant shall not have previously engaged in such trade or business, the amount of such stock he expects to keep as aforesaid"; and it graduated the rate to be paid for the license according to the sworn statement of the applicant's stock in trade, at the principal season of sale, ranging from $15 to $150. A, a citizen and resident of New York, was indicted under this statute for offering to sell by sample in Baltimore, without first obtaining a license, goods for a New York firm to be shipped by them directly to the purchaser in Baltimore. *Held*, that these enactments in the Code, as applied to A, violated that provision of the Constitution of the United States which grants to Congress the power to make regulations of commerce among the states. *Corson* v. *Maryland*, 502.

10. Congress has power, under the Constitution, to provide for the punishment of persons guilty of depriving Chinese subjects of any of the rights, privileges, immunities, or exemptions guaranteed to them by the treaty of November 17, 1880; but Congress has not made such provision in § 5519, Rev. Stat., or in § 5508, or in § 5336. *Baldwin* v. *Franks*, 678.

11. Section 5519, Rev. Stat., is unconstitutional as a provision for the punishment of a conspiracy, within a state, to deprive an alien of rights guaranteed to him therein by a treaty of the United States: whether it can be enforced in a territory, against persons conspiring there with that object, is not now decided. *Ib.*

12. To give effect to the rule that when part of a statute is constitutional and part is unconstitutional, that which is constitutional will, if possible, be enforced, and that which is unconstitutional will be rejected, the two parts must be capable of separation, so that each can be read by itself; limitation by construction is not separation. *Ib.*

*See* JURISDICTION, B, 6.

B. OF A STATE.

1. The statute of Arkansas of March 31, 1883, § 46, which directs the board of railroad commissioners not to include the embankments, tunnels, cuts, ties, trestles, or bridges of railroads in the schedule of the property of railroad companies, prepared by them for the purpose of assessment of taxes, is in conflict with the provisions in the constitution of the state of 1874, relating to the assessment and taxation of property within the state; but the unconstitutional part being separable from the remainder, the latter continues valid. *Huntington* v. *Worthen*, 97.

2. The provisions of the constitution of the State of Missouri which went into effect November 30, 1865, relating to the lien held by the state upon any railroad, or to the release of the indebtedness of any corporation to the state, do not prevent the state authorities from complying with the requirements of the acts of February 20, 1865, and

March 25, 1881, respecting the lien upon the Hannibal and St. Joseph Railroad and the debt of that company to the state, when the company has performed the acts required by the Statutes to be done upon its part. *Rolston* v. *Missouri Fund Commissioner*, 390.

3. The provision in the state constitution of Missouri of 1865, that "no property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this state, to counties, or to municipal corporations within the state" applies to stock issued for constructing branches of the St. Joseph and Iowa Railroad in that state under the provisions of the statute of March 21, 1868, "to aid in the building of branch railroads in the State of Missouri"; and the provision in the charter of that railroad company, enacted in 1857, that its stock should be exempt from taxation for state and county purposes does not apply to the stock issued for branches constructed under the act of 1868. *Chicago, Burlington &c. Railroad* v. *Guffey*, 569.

4. The charter of East St. Louis in Illinois, which went into effect March 26, 1869, authorized it to borrow money not exceeding $100,000, and limited its power of special taxation to pay interest and provide a sinking fund to three mills on the dollar of the assessment. The constitution of Illinois which took effect August 8, 1870, forbade municipal corporations in the state from incurring indebtedness to an amount exceeding five per cent. on the value of the taxable property, including existing debt, and required them to provide for the collection of an annual tax sufficient to pay the interest on the debt as it falls due and to pay and discharge the principal within twenty years from the time of its contraction. The city of East St. Louis was in debt when this constitution took effect, and contracted other obligations after that time, but not in excess of the amount named in the charter, and imposed a tax of three mills to meet the debt as required by the charter, but failed for a series of years to collect a tax as directed by the constitution. On an application for mandamus to compel the collection of the latter tax, *Held*, that the constitution removed from the charter the limitation upon the power of the council to tax for the payment of any bonded indebtedness which might thereafter be incurred, and imposed upon the corporation the duty of collecting sufficient to pay the interest as it fell due, and the principal within twenty years, and that it was within the discretion of the court whether to order a single levy to meet all past due obligations under this head, or more than one levy if only one appeared to be oppressive. *East St. Louis* v. *Amy*, 600.

*See* LOCAL LAW, 15, 16;

RAILROAD, 1;

TEXAS LAND GRANTS, 12.

## CONSUL.

*See* TREATY.

## CONTRACT.

*See* ACCORD AND SATISFACTION;
CLAIMS AGAINST THE UNITED STATES, 2;
CORPORATION, 1, 2;
INSURANCE;
PROMISSORY NOTE.

## CORPORATION.

1. The president of a manufacturing corporation who is also its superintendent, having general authority to contract by parol contract without the corporate seal for making and delivering its manufactured goods, has like authority, unless the power is withdrawn, to authorize the termination and release of such a contract. *Indianapolis Rolling Mill* v. *St. Louis & Wichita Railroad*, 256.
2. A board of directors of a corporation to whom the president of the company communicates his execution of a contract on the part of the corporation, which is within its corporate powers but unauthorized by the board, will be presumed to ratify his act unless it dissents within a reasonable time; and a delay in the disaffirmance of six months after knowledge of the act is an unreasonable delay. *Ib.*
3. Where the statutes of the state which creates a corporation, making the stockholders liable for the corporate debts, provide a special remedy, the liability of a stockholder can be enforced in no manner in another court of the United States. *Fourth National Bank* v. *Francklyn*, 747.
4. Under the statutes of Rhode Island, making the stockholders of a manufacturing corporation liable for its debts until its capital stock has been paid in and a certificate thereof recorded; and originally providing that the property of stockholders might be taken on writ of attachment or execution issued against the corporation, or the creditor might have his remedy against the stockholders by bill in equity; and since modified by enacting that all proceedings to enforce the liability of a stockholder for the debts of a corporation shall be either by suit in equity, or by action of debt on the judgment obtained against the corporation; a creditor of a Rhode Island corporation cannot bring an action at law against the executor of a stockholder in the Circuit Court of the United States in New York, without having obtained a judgment against the corporation, even if the corporation has been adjudged bankrupt. *Ib.*

*See* EQUITY, 1;
LOCAL LAW, 17.

## COSTS.

*See* JURISDICTION, B, 4;
MORTGAGE.

## COUNTER CLAIM.

*See* JURISDICTION, B, 9.

COUNTERFEITING.

*See* CONSTITUTIONAL LAW, A, 3, 4;
LAW OF NATIONS.

COURT AND JURY.

1. If the evidence produced in a criminal action be of such a convincing character that the jurors would unhesitatingly be governed by it in the weighty and important matters of life, they may be said to have no reasonable doubt respecting the guilt or innocence of the accused, notwithstanding the uncertainty which attends all human evidence. Therefore, a charge to the jury that if, after an impartial comparison and consideration of all the evidence, they can truthfully say that they have an abiding conviction of the defendant's guilt, such as they would be willing to act upon in the more weighty and important matters relating to their own affairs, they have no reasonable doubt, is not erroneous. *Hopt* v. *Utah*, 430.
2. An allusion, in the final argument to the jury by the counsel for the prosecution, to the case as having been many times brought before the tribunals, is not a ground for reversing a judgment under the statute of Utah, which declares that on a new trial the "former verdict cannot be used or referred to either in evidence or argument." *Ib.*

*See* CHATTEL MORTGAGE, 1;
ERROR.

CRIMES.

*See* LOCAL LAW, 1; TREATY.

CRIMINAL LAW.

1. The offence of cohabiting with more than one woman, created by § 3 of the act of Congress of March 22, 1882, c. 47, 22 Stat. 31, is a continuous offence, and not one consisting of an isolated act. *In re Snow*, 274.
2. S. was convicted separately in a District Court of the Territory of Utah, on three indictments under that section, covering together a continuous period of time, each covering a different part, but the three parts being continuous, the indictments being found at the same time, by the same grand jury, on one oath and one examination, of the same witnesses, covering the whole continuous time. One judgment was entered on the three convictions. It first imposed a term of imprisonment and a fine. It next imposed two further successive terms of imprisonment, each to begin at the expiration of the last preceding sentence and judgment, with two further fines. It set forth the time embraced by each indictment and specified each of the three punishments as being imposed in respect of a specified one of the indictments. On a petition to a District Court of the Territory, by the defendant, for a writ of *habeas corpus*, setting forth that he had been imprisoned under the judgment for more than the term first imposed, and had paid the fine first imposed, and that the other two punish-

ments were in excess of the authority of the trial court, the writ was refused. On appeal to this court, *Held*, (1) There was but one entire offence for the continuous time. (2) The trial court had no jurisdiction to inflict a punishment in respect of more than one of the convictions. (3) As the want of jurisdiction appeared on the face of the proceedings, the defendant could be released from imprisonment on a *habeas corpus*. (4) The order and judgment of the court below must be reversed, and the case be remanded to that court, with a direction to grant the writ of *habeas corpus* prayed for. *Ib.*

*See* CONSTITUTIONAL LAW, A, 10, 11; COURT AND JURY; EVIDENCE, 3; INDICTMENT; JUROR, 2; STATUTE, B, 1, 2, 3.

## CUSTOMS DUTIES.

1. Wool of the third class was dutiable under § 1 of the act of March 2, 1867, c. 197, 14 Stat. 560, at three cents per pound, if its value at the last port or place whence exported into the United States, excluding charges in such port, was twelve cents or less per pound; and at six cents per pound, if such value exceeded twelve cents per pound. On January 5, 1874, such wool, bought in Russia, in October, 1873, the actual cost of which, exclusive of charges, was below twelve cents per pound, at the time and place of exportation, was entered at the custom-house at the port of New York, at an invoice value stated in Russian silver roubles. The collector computed the rouble at 77.17 cents, under the authority of a proclamation to that effect made by the Secretary of the Treasury in December, 1873, in pursuance of an estimation of the value of the rouble for the year 1874, made by the director of the mint, as required by the act of March 3, 1873, c. 268, 17 Stat. 602. Prior to that act the value of the rouble had been fixed by statute at seventy-five cents. If the rouble had been computed at seventy-five cents, the invoice value of the wool would have been less than twelve cents per pound. Computing it at 77.17 cents raised such invoice value above twelve cents per pound. The collector exacted a duty of six cents per pound. In an action to recover back the excess of duty over three cents per pound, *Held*, (1) The effect of the act of 1873 was to repeal the prior statute; (2) the requirement of § 7 of the act of March 3, 1865, c. 80, 13 Stat. 493, forbade the assessment of duty on an amount less than the invoice or entered value; (3) the collector was, therefore, required to compute the rouble at 77 17 cents, although the cost of the goods, computing the rouble at seventy-five cents, was twelve cents or less per pound. *Heinemann* v. *Arthur*, 82.
2. Construing together §§ 2931 and 3011 of the Revised Statutes, the decision of the Secretary of the Treasury, on an appeal from a collector of customs, as to the rate and amount of duties, is not final and conclusive, except in a case where, after a protest and appeal, a payment of duties is made in order to obtain possession of goods, and then a

suit is not brought to recover back the duties within the times and under the limitations prescribed by § 2931. *United States* v. *Schlesinger*, 109.

3. Such decision is not final, in a suit brought by the United States against an importer, where, on entering goods, he paid the estimated duties, and the goods were delivered to him, and on a reliquidation of the entry further duties were assessed, and he duly protested, and appealed to the Secretary, who sustained the action of the collector, the suit being brought to recover such further duties. *Ib.*
4. In such suit the defendant may show, as a defence, that the further duties were illegally assessed. *Ib.*
5. Webbing made of india-rubber, wool, and cotton, and known as "wool elastic webbing," is not subject to duty as webbing made of wool, or of which wool is a component material, at fifty cents per pound and in addition thereto fifty per cent. ad valorem; but as webbing composed wholly or in part of india-rubber, at thirty-five per cent. ad valorem. *Beard* v. *Nichols*, 260.
6. Punchings and clippings of wrought iron boiler plates and of wrought sheet iron, left after the completion of the process of the manufacture of the boiler plates into boilers, and of the ends of bridge-rods and beams of wrought iron, cut off to bring the rods and beams to the required length and to remove imperfections, were in "actual use," within the meaning of the statute, in the manufacture of those respective things, and on importation into the United States are subject to duty as "wrought scrap iron." *Schlesinger* v. *Beard*, 264.

DAMAGES.

*See* ASSUMPSIT, 1, 2;
EVIDENCE, 9.

DEED.

1. A deed, dated May 26, 1856, by C. L., grantor, described as "sister and heir-at-law of H. M.," and as "of the county of St. Clair and state of Michigan," which conveyed to the grantee a tract of land in Illinois, and was signed and sealed by C. L. and by W. L., the name of W. L. not appearing in the granting clause of the deed, and which was acknowledged May 27, 1856, by said "C. L. and W. L. her husband," *held* sufficient to pass said title of husband and wife, under the statute of Illinois of February 22, 1847, then in force, respecting the conveyance of lands or real estate situate in Illinois by a *feme covert* not residing within the state, and respecting her joining with her husband in the execution of the deed. *Schley* v. *Pullman Car Company*, 575.
2. A magistrate's certificate, attached to a deed of land in Illinois, that on the 27th of May, 1856, personally came C. L. and W. L., her husband, "known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed," is equivalent to stating that they came before the officer, and were per-

sonally known to him to be the real persons who subscribed the deed, and in this respect complied with the requirements of the statutes of Illinois then in force. *Ib.*

3. An officer's certificate of the acknowledgment on the 27th May, 1856, of a deed of land in Illinois by a married woman, showing her privy examination separate and apart from her husband, and which shows that she, "fully understanding the contents of the foregoing instrument, acknowledged," &c., is a sufficient compliance with the statutes of the state in force at that time respecting the communicating the contents of such a deed to her. *Ib.*

DIVISION OF OPINION.

The question whether either of the counts in an indictment charges an offence under the laws of the United States, is too vague and general to be certified in a Certificate of Division of Opinion. *United States* v. *Northway*, 327.

*See* JURISDICTION, A, 1.

EJECTMENT.

*See* EVIDENCE, 5, 6, 7, 8;
LOCAL LAW, 6, 11, 12, 14.

EQUITY.

1. The city of Quincy, Illinois, in 1877 contracted with an Illinois corporation to supply it with gas for four years. Disputes arose, payments were in arrear, and in May, 1881, the city notified the company that it would be no longer bound by the contract. A, a citizen of Alabama, on the 13th August, 1885, filed a bill in equity in the Circuit Court of the United States for the Southern District of Illinois, setting forth that the company had a claim against the city recoverable at law, that he had at different times tried to induce the directors to enforce it, that he was, and for more than four years had been, a stockholder in the company, that he had not succeeded in inducing the directors to institute suit, that his last request was made August 1, 1885, and that the claims were about to be barred by the statute of limitations, and he asked for a mandamus to compel the payment of the company's debt. The respondent demurred. This court sustains the demurrer, on the ground that the real contest being between two Illinois corporations, the proper remedy was an action at law by one of those corporations against the other upon the contract, and that A has not, by the averments in his bill, brought himself within the directions prescribed by Equity Rule 94, 104 U. S. ix–x, respecting suits brought by stockholders in a corporation against the corporation and other parties, founded on rights which might be properly asserted by the corporation. *Quincy* v. *Steel*, 241.

2. At the hearing upon a plea in equity and a general replication, no fact is in issue but the truth of the matter pleaded. *Farley* v. *Kittson*, 303.

3. A bill in equity to enforce a contract between the plaintiff and the defendants to purchase for their joint benefit the bonds, secured by mortgages, of two railroads, of one of which the plaintiff was receiver, and of the other general manager under the trustees in the mortgage, alleged that he performed the agreement on his part; that the defendants purchased the bonds through an agent of the bondholders, and afterwards purchased the railroads under decrees of foreclosure, and entered into possession and made large profits, and refused to account to the plaintiff for his share; and that the plaintiff, pleading the negotiations for the purchase of the bonds, informed the agent of the bondholders of his interest, and at all times answered to the best of his knowledge and ability all inquiries of the bondholders or their agent, or of the trustees or any person interested in the property, and always acted honestly and in good faith towards all such persons. The defendants filed a plea, averring that neither the agent nor the bondholders had any notice of the plaintiff's interest until after the sale of the railroads under the decrees of foreclosure, and that the agreement sued on was a breach of his trusts as receiver and as manager, and did not entitle him to relief in equity. A general replication was filed, and at the hearing the truth of the fact averred in the plea was disproved. *Held*, that the plea must be overruled, and the defendants ordered to answer the bill. *Ib.*

4. A court of equity will not assist one who has slept upon his rights, and shows no excuse for his laches in asserting them. *Speidel* v. *Henrici*, 377.

5. If a bill in equity shows upon its face that the plaintiff, by reason of lapse of time and of his own laches, is not entitled to relief, the objection may be taken by demurrer. *Ib.*

6. A bill in equity against persons holding a fund avowedly in trust for the common benefit of the members of a voluntary association, living together as a community and subject to its regulations, cannot, whether the trust is lawful or unlawful, be maintained by one who has left the community, and for fifty years afterwards taken no step to claim any interest in the fund. *Ib.*

*See* EQUITY PLEADING;
LIMITATION, STATUTES OF, 1, 4, 5;
PATENT FOR INVENTION, 2.

## EQUITY PLEADING.

1. A bill in equity against husband and wife by the assignees in bankruptcy of the husband, which alleges that the husband before the bankruptcy transferred a large amount of personal property in the form of bonds, stocks, &c., to the wife for the purpose of concealing the same from his creditors, and delaying, hindering, and defrauding them, and in contemplation of bankruptcy, and which does not describe the property, but avers inability to do so, and which waives

answer under oath and asks as relief for a transfer to the assignee of the property in whatever form it may exist, as assets of the bankrupt, sets forth no case for relief in equity, and should be dismissed on demurrer. *Huntington* v. *Saunders*, 78.

2. Objections to the equity of the plaintiff's claim, as stated in his bill, cannot be taken by plea. *Farley* v. *Kittson*, 303.

3. A plea in equity, though under oath, and negativing a material averment in the bill, is no evidence in the defendant's favor. *Ib.*

*See* EQUITY, 2, 3, 4, 5;
PATENT FOR INVENTION, 2.

ESTOPPEL.

*See* JUDGMENT, 1.

ERROR.

The refusal of the court to instruct the jury, at the close of the plaintiff's evidence, that he is not entitled to recover, cannot be assigned for error, if the defendant afterwards introduces evidence. *Accident Ins. Co.* v. *Crandal*, 527.

EVIDENCE.

1. In an action by an attorney to recover for services rendered in defending a suit for the foreclosure of a mortgage upon a tract of land near a large town, and in preventing the foreclosure, and in bringing about a favorable sale of the property, evidence as to the character of the land and its possible value as a future suburb of the town is admissible. *Forsyth* v. *Doolittle*, 73.

2. As the length of hypothetical statements presented to a witness to ascertain his opinion upon any matter, growing out of the facts supposed, necessarily depends upon the simple or complicated character of the transactions recited, and upon the number of particulars which must be considered for the formation of the opinion desired, it must in a great degree be left to the discretion of the court; and in this case that discretion was properly exercised. *Ib.*

3. Evidence, or what purports to be evidence, in a criminal case, printed in a newspaper, is "a statement in a public journal" within the meaning of the act of Utah declaring that no person shall be disqualified as a juror by reason of his having formed or expressed an opinion upon the matter or cause to be submitted to him, "founded upon public rumor, statements in public journals, or common notoriety, provided it appear to the court, upon his declaration under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters submitted to him." *Hopt* v. *Utah*, 430.

4. The opinion of a physician, after making a post-mortem examination of the deceased, who came to his death by a blow inflicted upon his head, as to the direction from which the blow was delivered, is admissible in evidence. *Ib.*

5. Defendants in ejectment having produced a regular chain of title under a deed from a grandson of the original owner of a lot in Rhode Island, including the land in controversy, which was executed in 1768 and recorded soon afterwards in the land records of the town in which it was situated; and having shown that the ancestors in title paid the taxes on said lot for twenty years preceding 1805, and that afterward, up to the trial of the action in 1882, a period of seventy-seven years, they or their ancestors in title had uninterruptedly paid the taxes on the lot; and having shown an entry in 1835 by their ancestor upon the lot under a deed, for the purpose of quarrying a ledge of rock running through it, and the quarrying of the ledge with occasional intervals from 1846 to the commencement of this action in 1874, a period of twenty-eight years, the said entry being made with claim of title to the whole lot. *Held*, in an action brought by the heirs of the devisee of the original proprietor, under a will executed in 1749, and probated in 1756, none of whom had made any claim to the premises for three-quarters of a century after the death of the original proprietor, under whose will they now assert title, nor paid taxes on the property, nor after that time ever taken possession of the premises or paid taxes upon them, that the jury might presume a deed to the grandson from the original proprietor, or from his devisee, to quiet the possession of the defendants claiming under such grandson; and that in making such presumption the jury were not to be restricted to consideration of what they fairly supposed actually occurred, but to what may have occurred, and seems requisite to quiet title in the possessors. It is sufficient that the evidence leads to the conclusion, that the deed might have been executed, and that its execution would be a solution of difficulties arising from its non-execution. *Fletcher* v. *Fuller*, 534.

6. Though a presumption of a deed may be rebutted by proof of facts inconsistent with its supposed existence, yet, where no such facts are shown, and the things done and the things omitted, with regard to the property in controversy, by the respective parties for long periods of time after the execution of the supposed conveyance can be explained satisfactorily only upon the hypothesis of its existence, the jury may be instructed that it is their duty to presume such a conveyance, and thus quiet the possession. *Ib.*

7. Though as a general rule, it is only where the possession has been actual, open, and exclusive for the period prescribed by the statute of limitations to bar an action for the recovery of land, that the presumption of a deed can be invoked; yet that presumption may properly be invoked where a proprietary right has been exercised beyond such statutory period, although the exclusive possession of the whole property, to which the right is asserted, may have been occasionally interrupted during such period if, in addition to the actual possession, there have been other open acts of ownership. *Ib.*

8. The assessment of taxes on an entire parcel of real estate to the person in possession under claim of title, and to his ancestors and privies in

estate, for over a hundred years, is powerful evidence of a claim of right to the whole lot; and, taken in connection with the exclusive working of a quarry on the estate for more than twenty years under claim of title to the whole tract, by virtue of conveyances in which it was described, may authorize a jury to infer continuous possession of the whole, notwithstanding a temporary and occasional intrusion by others upon a different part of the tract, which did not interfere with the work. *Ib.*

9. If rags sold as clean and free from infection, and fit to be manufactured into paper, are proved to have been infected with the small-pox, and to have caused it to break out in the buyer's paper-mill, whereby some of the workmen died, others were disabled from working, and the buyer paid certain sums to support those so disabled, and was obliged to run his mill short-handed, and lost a considerable part of a profitable trade; and the seller testifies that he bought the rags in a region where he knew the small-pox was epidemic, from any and all dealers, not knowing where they were collected, and that they were assorted and baled up under his instructions; and falsely testifies that the rags sold had been baled up in his warehouse for a year before, and had no disinfectants in them; this is sufficient evidence to be submitted to a jury of a breach of warranty or a fraudulent representation on the part of the seller, and of damages to the buyer. But the court may properly decline to permit the buyer to testify in general terms what he estimates the amounts of his damages to be, without stating the items of damage, or any facts upon which his opinion is based. *Dushane* v. *Benedict*, 630.

10. The testimony of witnesses, not shown to be experts, that the infected condition of rags was the cause of a breaking out of the small-pox is incompetent. *Ib.*

*See* ADMIRALTY, 1, 2, 3; PATENT FOR INVENTION, 2; LOCAL LAW, 4, 12, 14; TEXAS LAND GRANTS, 1, 3, 6, 9.

## EXCEPTION.

1. A bill of exceptions should not contain the whole charge of the court to the jury, but should only state distinctly the several matters of law excepted to. *Phœnix Life Ins. Co.* v. *Raddin*, 183.

2. A bill of exceptions cannot be sustained to an instruction or to a refusal to instruct in matter of law, without showing that there was evidence to which the instruction given or refused was applicable. *Ib.*

*See* JURISDICTION, A, 1.

## EXECUTIVE DEPARTMENT.

*See* NAVY.

## EXECUTIVE REGULATION.

The authority of the head of an Executive Department to issue orders and regulations under directions of the President to have the force of

law is subject to the condition that they conflict with no act of Congress; and an order by the Secretary of the Navy that a service shall not be a sea service which Congress has directed shall be a sea service is invalid. *United States* v. *Symonds*, 46; *United States* v. *Bishop*, 51.

EXECUTOR AND ADMINISTRATOR.

A clause in a will gave to C the interest of $4000 for life, "the said sum" of $4000 to be equally divided, at C's death, between M, S, and J, or so many of them as should then be living. The will appointed P executor for New York, and G and D executors for Michigan. G and D, before the death of C, executed a paper and recorded it in Michigan, by which they, as executors, "set apart for the benefit of" C and "to be held" by them "in trust for the purpose of paying" said interest, and, upon the death of C, "for distribution" among M, S, and J, a bond and mortgage for $4000, on land in Michigan, given to the testator in his lifetime, which was overdue seventeen months when the paper was executed. None of the legatees assented to this proceeding or ratified it or waived their rights, nor was it authorized by any order of any court. C having died without the full interest on the $4000 having been paid to him, his administrator, and M, S, and J, filed a bill in equity in Michigan against G and D, as executors, praying for an accounting and for the payment of the legacies. The executors set up as a defence that the bond and mortgage were the sole fund for the payment of the legacy, and that the general estate was not liable for it; *Held*, that the paper was revocable at any time, and did not amount to the decisive and irrevocable act which must exist to have the effect to transmute the property. *Sherman* v. *Jerome*, 319.

*See* LIMITATION, STATUTES OF, 2, 3.

FACTOR.

*See* BAILMENT.

FEES.

It was the custom in the United States courts in Massachusetts, from 1839 to December, 1884, known and approved by the judges, for the clerk to charge $3 as fees in naturalization proceedings. The clerk of the District Court never included those fees in his returns. That fact was known to the judges to whom his accounts were semiannually exhibited, and by whom they were passed without objection in that particular. Relying on that custom, and believing that those fees formed no part of the emoluments to be returned, the clerk of the District Court appointed in 1879 did not include those fees in his accounts. This was known to the district judge when he examined and certified the accounts, and his accounts so made out, to July, 1884, were examined and adjusted by the accounting officers of the Treasury. Under a

rule made by the District Court in 1855, the clerk had charged and received the $3 as a gross sum, for examining, in advance of their presentation to the court, the application papers, and reporting to the court whether they were in conformity with law; and had made no division for specific services, according to any items of the fee bill in §§ 823 *et seq.* of the Revised Statutes. In a suit brought in December, 1844, on the official bond of the clerk, against him and his surety, to recover the amount of the naturalization fees; *Held*, that the provision in § 823, taken from § 1 of the act of February 26, 1853, c. 80 (10 Stat. 161), that the fees to clerks shall be "taxed and allowed, applies, *prima facie*, to taxable fees and costs in ordinary suits between party and party, prosecuted in a court; and there is no specification of naturalization matters in fees of clerks. *United States* v. *Hill*, 169.

FINAL DECREE.

*See* JUDGMENT, 4.

FORTUITOUS EVENT.

*See* LANDLORD AND TENANT, 2.

FRAUD.

*See* CHATTEL MORTGAGE;
LIMITATION, STATUTES OF, 1;
EQUITY PLEADING, 1.

FRAUDULENT REPRESENTATIONS.

*See* ASSUMPSIT;
EVIDENCE, 9, 10.

GARNISHEE.

A garnishee has a right to set up any defence against the attachment process which he could have done against the debtor in the principal action; and if the debtor be insolvent, and owes the garnishee on a note not due for which he has no sufficient security, he is not bound to risk the loss of his debt in answer to the garnishee process. *Schuler* v. *Israel*, 506.

HABEAS CORPUS.

*See* JURISDICTION, A, 4, 6; B, 1;
CRIMINAL LAW, 2.

HUSBAND AND WIFE.

1. While a creditor who finds specific property of his debtor in the hands of the debtor's wife to whom it had been assigned by the debtor before bankruptcy may follow it and have it appropriated to the payment of his debt, a judgment *in personam* for its value cannot be taken against her in case the property itself cannot be found. *Huntington* v. *Saunders*, 78.
2. In a suit in equity by a wife against a life insurance company and her

husband, in the Circuit Court of the United States in Kentucky, to recover, as assignee of her husband by a written assignment, the amount insured by a policy issued by the company in favor of the husband and his assigns, on the life of a debtor of his, for $20,000, the husband having, after the date of such assignment and before the death of the debtor, delivered the policy to the company, with a written assignment by him to it, indorsed on the policy of "all right and title to the within policy," and expressing a consideration of $4000, and received the $4000, the Circuit Court having dismissed the bill, this court, on appeal, affirmed the decree, on the ground that the assignment to the wife was not satisfactorily proved to have been made or delivered before the transaction between the husband and the company. *Roberts* v. *Phœnix Life Ins. Co.*, 86.

*See* DEED, 1, 2, 3;
EQUITY PLEADING, 1.

## INDICTMENT.

1. The question whether either of the counts in an indictment charges an offence under the laws of the United States, is too vague and general to be certified in a Certificate of Division of Opinion. *United States* v. *Northway*, 327.
2. An indictment charging that the defendant, "as president and agent" of a national bank, did the acts forbidden by Rev. Stat. § 5209, does not vitiate the counts in which he is so described. *Ib.*
3. In an indictment, under Rev. Stat. § 5209, for wilfully misapplying the funds of a national bank, it is not necessary to charge that the moneys and funds alleged to have been misapplied had been previously intrusted to the defendant; since a wilful and criminal misapplication of the funds of the association may be made by its officer or agent without having previously received them into his manual possession. *Ib.*
4. In charging, in an indictment, the president of a bank with aiding and abetting its cashier in the misapplication of the funds of the bank, it is not necessary to aver that he then and there knew that the person so aided and abetted was the cashier. *Ib.*
5. An indictment which charges in substance that the defendant was president and agent of a certain national bank theretofore duly organized and established, and then existing and doing business, under the laws of the United States, and that, being such president and agent, he did then and there "wilfully and unlawfully and with intent to injure the said national banking association, and without the knowledge and consent thereof, abstract and convert to his own use certain moneys and funds of the property of the said association of the amount and value," &c., sufficiently describes and identifies the crime of abstracting the funds of the bank created by Rev. Stat. § 5209. *Ib.*
6. An indictment which charges that the defendant "was then and there president and agent of a certain national banking association, to wit:

[naming the association] theretofore duly organized and established, and then existing and doing business at [naming the place] under the laws of the United States," sufficiently states that that bank was organized under the national banking act, or to carry on the business of banking under a law of the United States. *Ib.*

*See* CRIMINAL LAW, 2.

INEVITABLE ACCIDENT.

*See* LANDLORD AND TENANT, 2.

INFORMER.

*See* INTERNAL REVENUE.

INSURANCE.

1. Answers to questions propounded by insurers in an application for life insurance, unless they are clearly shown by the form of the contract to have been intended by both parties to be warranties, to be strictly complied with, are to be construed as representations, as to which substantial truth in everything material to the risk, is all that is required of the applicant. *Phœnix Life Ins. Co.* v. *Raddin*, 183.
2. When upon the face of an application for life insurance, a direct question of the insurers appears to be not answered at all, or to be imperfectly answered, the issue of the policy without further inquiry is a waiver of the want or imperfection of the answer, and renders the omission to answer more fully immaterial. *Ib.*
3. A policy of life insurance stated that it was issued and accepted by the assured upon certain express conditions, one of which was that "if any of the declarations or statements made in the application for the policy, upon the faith of which this policy is issued, shall be found in any respect untrue, this policy shall be null and void." The application contained a number of printed questions "to be answered by the person whose life is proposed to be insured," and "declared that the above are fair and true answers to the foregoing questions," and that it was agreed by the applicant "that this application shall form the basis of the contract for insurance," "and that any untrue or fraudulent answers, or any suppression of facts" should avoid the policy. One of those questions was: "Has any application been made to this or any other company for assurance on the life of the party? If so, with what result? What amounts are now assured on the life of the party, and in what companies?" To this question the applicant answered, "$10,000, Equitable Life Assurance Society." A policy of that society was in fact the only other existing insurance. *Held:* that the answers were not warranties, but representations; and that the issue of a policy without further inquiry, was a waiver of the right of the insurers to require further answers as to the particulars mentioned in this question, and estopped them to set up that the omission, though intentional, to disclose unsuccessful applications for additional insurance was material and avoided the policy. *Ib.*

4. The acceptance by insurers of payment of a premium, after they know that there has been a breach of a condition of the policy, is a waiver of the right to avoid the policy for that breach. *Ib.*

5. Where the declaration in an action on a policy of insurance alleges that the consideration of the contract was the payment of a certain premium at once, and of future annual premiums, and the policy given in evidence is expressed to be made "in consideration of the representations made in the application for the policy" and of the sums paid and to be paid for premiums, and this application contains no promise or agreement of the assured, there is no variance. *Ib.*

6. A policy of insurance against "bodily injuries, effected through external, accidental and violent means," and occasioning death or complete disability to do business; provided that "this insurance shall not extend to death or disability which may have been caused wholly or in part by bodily infirmities or disease, or by suicide, or self-inflicted injuries;" covers a death by hanging one's self while insane. *Accident Ins. Co.* v. *Crandal*, 527.

7. Statements in an application for a policy of insurance, expressing the applicant's understanding of what will be the effect of the insurance, cannot control the legal construction of the policy afterwards issued and accepted, although the application warrants the facts stated therein to be true, and the policy is expressed to be made "in consideration of the warranties made in the application." *Ib.*

*See* HUSBAND AND WIFE, 2;
NEGLIGENCE.

INTEREST.

*See* RAILROAD, 1;
SUBROGATION.

INTERNAL REVENUE.

On the 29th April, 1871, A gave notice to a collector of internal revenue of frauds upon the revenue by a railroad company, whereby it had become liable to penalties. In consequence of this information, an action was commenced for the recovery of the penalties, which resulted in a compromise in June, 1874, and the payment of a sum by the company in discharge of its liability. A applied for the informer's share of this sum under the provisions of § 179, act of June 30, 1864, 13 Stat. 305, as amended by the act of July 13, 1866, 14 Stat. 145. It was conceded that A was the informer as claimed, and that he was entitled to the amount claimed, if the duty and power to make the payment were not taken away by § 39 of the act of June 6, 1872, 17 Stat. 256, repealing those previous provisions. Payment was refused at the treasury, whereupon claimant brought suit in the Court of Claims, and obtained judgment for the recovery of his claim. On appeal this court affirms that judgment by a divided court. *United States* v. *Ramsay*, 214.

## INTERNATIONAL LAW.

*See* LAW OF NATIONS;
LOCAL LAW, 1;
TREATY.

## INTERSTATE COMMERCE.

*See* CONSTITUTIONAL LAW, A, 6, 7, 8, 9.

## JUDGMENT.

1. A judgment entered upon motion of defendant's attorney of record that "it appearing that the subject-matter in this suit has been adjusted and settled by the parties, it is therefore ordered that this cause be, and the same is, hereby dismissed," is a judgment on the merits, final in form and nature, and is a bar to a subsequent suit against the defendant for the same cause of action. This rule also prevails in Nevada by statute. Gen. Stat. Nevada, 1885, § 3173. *United States* v. *Parker*, 89.
2. The difference between a *retraxit* and a non-suit pointed out. *Ib.*
3. A judgment recovered in one court may be pleaded as a defence to a suit on the same cause of action pending in another, when by law the cause of action is merged in the judgment. *Schuler* v. *Israel*, 506.
4. The question of what is a final decree, from which an appeal can be taken, considered. *Porter* v. *Pittsburg Bessemer Steel Co.*, 649.
5. The denial of compulsory process to enable a person charged with crime to obtain witnesses at the trial in the court below, does not invalidate the judgment. *Ex parte Harding*, 782.

*See* CORPORATION, 4;
JURISDICTION A, 3;
PROBABLE CAUSE, 2.

## JURISDICTION.

### A. JURISDICTION OF THE SUPREME COURT.

1. In an action in which a jury has been waived in writing, and the judgment of the Circuit Court is for more than $5000, the question whether the facts set forth in a special finding of the court are sufficient in law to support the judgment may be reviewed on writ of error, without any bill of exceptions or Certificate of Division of Opinion. *Allen* v. *St. Louis Bank*, 20.
2. An averment in a motion for a new trial (contained in a record, brought up in error from a state court) that a statute of the state upon which the suit was based is "unconstitutional and void," may apply to the constitution of the state, and, taken by itself, raises no question for decision below, which this court can review in error. *Kansas Endowment Association* v. *Kansas*, 103.
3. The judgments and decrees of the Circuit Courts of the United States, sitting in a particular state, are to be accorded in the courts of that

state, whether as the foundation of an action, or of a defence, either by plea or in proof, such effect, and such effect only, as would be accorded in similar circumstances to the judgments and decrees of a state tribunal of equal authority; and whether such due effect has been given by a state court to a judgment or decree of a court of the United States is a Federal question within the jurisdiction of this court, on a writ of error to the Supreme Court of the State. *Crescent City Co.* v. *Butchers' Union Co.*, 141.

4. Where a District Court in the Territory of Utah refuses to issue a writ of *habeas corpus* involving the question of personal freedom, an appeal lies to this court from its order and judgment of refusal. *In re Snow*, 274.

5. An action at law in a state court of California by A against B, to recover the value of a crop raised on land occupied by B who claims as preëmptor, adversely to A, claiming under the state, by B's labor and at B's expense, does not involve the title to the land, and the issue presents no Federal question. *Martin* v. *Thompson*, 376.

6. *Ex parte Wilson*, 114 U. S. 417, affirmed on the point that this court cannot discharge on *habeas corpus* a person imprisoned under the sentence of a Circuit or District Court, in a criminal case, unless the sentence exceeds the jurisdiction of that court, or there is no authority to hold the prisoner under sentence. *Ex parte Harding*, 782.

*See* LOCAL LAW, 5.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. A Circuit Court of the United States has jurisdiction to issue a writ of *habeas corpus* to determine whether one of the crew of a foreign vessel in a port of the United States, who is in the custody of the state authorities, charged with the commission of a crime, within the port, against the laws of the state, is exempt from local jurisdiction under the provisions of a treaty between the United States and the foreign nation to which the vessel belongs. *Wildenhus's Case*, 1.

2. The parties in this case on both sides being all citizens of Louisiana, it is held that the facts as stated in the opinion of the court show no real and substantial dispute or controversy arising under the Constitution or laws of the United States, so as to authorize the removal of the case from the state court of Louisiana, to the Circuit Court of the United States. *Gibbs* v. *Crandall*, 105.

3. An averment that the complainant in a bill of equity "resides" in a state is not an averment that he is a citizen of the state, so as to give a Circuit Court of the United States jurisdiction over the subject-matter by reason of citizenship of the parties. *Everhart* v. *Huntsville College*, 223.

4. When the jurisdiction of a Circuit Court depends upon the citizenship of the parties, and that court takes jurisdiction and renders judgment, and the record in this court in error or on appeal fails to show the

requisite citizenship, the judgment will be reversed and the case remanded by this court on its own motion, and the party in default adjudged to pay costs here. *Ib.*

5. An order drawn upon a county treasurer by county officials in favor of A or order unindorsed, and a like order in favor of A, both assigned by A to B for a valuable consideration, constitute no cause of action in B's favor on which B can maintain an action in a Circuit Court of the United States on the ground of citizenship, if A could not maintain the action there on the same ground; and if, in such action in B's favor A's necessary qualification of citizenship does not affirmatively appear in the record in this court, the writ of error will be dismissed whether the question of jurisdiction be made or not, and plaintiff in error adjudged to pay costs in this court. *King Bridge Co.* v. *Otoe County*, 225.
6. This suit is brought to compel state officers to do what a statute of the state requires them to do, and is not a suit against the state, but against the officers. *Rolston* v. *Missouri Fund Commissioners*, 390.
7. A Circuit Court of the United States cannot acquire jurisdiction, by removal from a state court, under § 2 of the act of March 3, 1875, c. 137 (18 Stat. 470) of an original proceeding to obtain a mandamus against the treasurer or the board of supervisors of a city, to compel them to take action, in accordance with a statute of the state, to pay the interest or principal of bonds issued by the city. *Rosenbaum* v. *Bauer*, 450.
8. Section 716 of the Revised Statutes, giving power to a Circuit Court to issue all writs not specifically provided for by statute, which may be necessary for the exercise of its jurisdiction and agreeable to the usages and principles of law, construed in connection with §§ 1 and 2 of the act of 1875, operates to prevent the issuing by the Circuit Court of a writ of mandamus, except in aid of a jurisdiction previously acquired by that court. *Ib.*
9. In an action to recover less than $5000, in which the defendant asks for judgment upon a counterclaim for more than that sum, and the Circuit Court renders a general judgment for the plaintiff, a writ of error sued out by the defendant is within the jurisdiction of this court, under the act of February 15, 1875, c. 77, § 3. *Dushane* v. *Benedict*, 630.

*See* TREATY.

C. OF TERRITORIAL COURTS.

A territorial court is not deprived of its jurisdiction to try a person indicted for a criminal offence by the fact that an alien sat on the grand jury that found the indictment, under a provision of a territorial statute permitting it. *Ex parte Harding*, 782.

*See* CRIMINAL LAW, 2.

D. OF STATE COURTS.

*See* TREATY.

## JUROR.

1. The judgment of the court as to the competency of the juror upon his declaration under oath or otherwise, as above, is conclusive. *Hopt* v. *Utah*, 430.
2. When a challenge by a defendant in a criminal action to a juror, for bias, actual or implied, is disallowed, and the juror is thereupon peremptorily challenged by the defendant, and excused, and an impartial and competent juror is obtained in his place, no injury is done to the defendant, if until the jury is completed he has other peremptory challenges which he can use. *Ib.*

*See* CONSTITUTIONAL LAW, A, 2;
EVIDENCE, 3.

## LACHES.

*See* EQUITY, 4, 5;
LOCAL LAW, 23 (4).

## LANDLORD AND TENANT.

1. The Civil Code of Louisiana, following the civil law of Rome, Spain, and France, and differing from the common law, regards a lease for years as a mere transfer of the thing leased; and holds the landlord bound, without any express covenant, to keep it in repair and otherwise fit for the use for which it is leased, even when the want of repair or the unfitness is caused by an inevitable accident; and if he does not do so, authorizes the tenant to have the lease annulled or the rent abated. *Viterbo* v. *Friedlander*, 707.
2. The breaking of a crevasse in the levees by the waters of the Mississippi River is a fortuitous or unforeseen event, within the meaning of the Civil Code of Louisiana; and if in consequence thereof a sugar plantation, leased for five years, with the buildings, mules, and implements necessary for the cultivation of sugar-cane, and with the growing crop of cane (which the lessee agrees to cut and plant as seed cane, and, by way of reimbursing the lessor for it, to leave a certain amount of growing cane on the plantation at the end of the lease), is overflowed for three months, all the cane destroyed, the canals and ditches necessary for drainage filled up, the bridges swept away, and a deposit from three to six inches deep left over the whole ground, making it necessary, in order to cultivate it as a sugar plantation the following year, to spend large sums of money to dig out canals and ditches, repair bridges, and buy seed cane, the plantation is partially destroyed, or ceases to be fit for the use for which it was leased, within the meaning of articles 2697 (2667) and 2699 (2669) of that code, and the lessee is entitled to have the lease annulled; notwithstanding the provision of article 2743 (2719) that the tenant of a predial estate cannot claim an abatement of rent for a destruction of a whole or part of his crop by inevitable accidents, unless they are of such a nature that they could not have been foreseen by either party when the lease was made. *Ib.*

LATENT AMBIGUITY.

*See* WILL.

LAW OF NATIONS.

The counterfeiting of foreign securities, whether national or corporate, which have been put out under sanction of public authority at home — especially the counterfeiting of bank notes and bank bills — is an offence against the Law of Nations. *United States* v. *Arjona*, 479.

*See* CONSTITUTIONAL LAW, A, 3, 4.

LEASE.

*See* LANDLORD AND TENANT.

LEGACY.

*See* WILL.

LETTERS TESTAMENTARY.

*See* LIMITATION, STATUTES OF, 2, 3.

LIFE INSURANCE.

*See* INSURANCE.

LIMITATION, STATUTES OF.

1. When relief is asked in equity in courts of the United States on the ground of fraud, time will not run in favor of defendant until discovery of the fraud, or until, with reasonable diligence, it might have been discovered; and this rule is not affected in the state of New York by the provisions of § 382 of the code of that state as amended in 1877 in so far as they may be construed to modify it. *Kirby* v. *Lake Shore & Southern Michigan Railroad*, 130.
2. A statute of a state which provides that "the time which shall have elapsed between the death of any person and the granting of letters testamentary or of administration on his estate, not exceeding six months, and the period of six months after the granting of such letters shall not be deemed any part of the time limited by any law for the commencement of actions by executors or administrators," does not give the party claiming the benefit of its provisions both periods of six months therein mentioned, but only such time, not exceeding six months, as elapsed after the death of the testator or intestate, before the granting of letters, and the additional time of six months after the granting of letters. *Ib.*
3. In a state where ancillary letters are authorized to be issued on a will proved in another state, on depositing in the office of the probating court a certified copy of the will and its probate, the executor cannot prevent the state statute of limitations from running against him in a Circuit Court of the United States sitting within the state, by unreasonable delay in taking out ancillary letters. *Ib.*

4. The general rule that express trusts are not within the statute of limitations does not apply to a trust openly disavowed by the trustee with the knowledge of the cestui que trust. *Speidel* v. *Henrici*, 377.
5. Implied trusts are barred by lapse of time. *Ib.*

*See* CLAIMS AGAINST THE UNITED STATES, 3;
EQUITY, 4, 5, 6.

## LOCAL LAW.

1. Unless exempted by treaty, a foreign merchant vessel, entering a port of the United States for purposes of trade, is subject to the local law, and the local courts may punish for crimes committed upon the vessel, within the port, by one foreigner upon another foreigner. *Wildenhus's Case*, 1.
2. The statute of Missouri of March 4, 1869, gives no validity to a transfer, without indorsement in writing, of a bill of lading or warehouse receipt. *Allen* v. *St. Louis Bank*, 20.
3. The statute of Missouri of March 28, 1874, making the pledge of goods by a factor, without the written authority of the owner, a criminal offence, does not render such a pledge valid as between the owner and the pledgee. *Ib.*
4. In Illinois when a declaration in an action at law alleges a joint liability of two defendants, a plea in bar which does not traverse this allegation admits it, and makes the declarations of one defendant not served with process evidence against the other who has appeared and answered. *Forsyth* v. *Doolittle*, 73.
5. According to the law and practice of Louisiana, the Supreme Court of that state, in cases brought before it by appeal from inferior courts, determines the matter in controversy, as presented by the record, both as to fact and law, without regard to the particular rulings of the courts below, and its opinion, showing the grounds of its judgment, constitutes part of the record to be reviewed in this court, upon writ of error, when the question for determination is whether the Supreme Court of the state decided a Federal question, necessary to the decision of the case, without respect to the rulings of the inferior state court. *Crescent City Co.* v. *Butchers' Union Co.*, 141.
6. It appearing by the record in this court that the verdict at the trial of an action of ejectment in the Circuit Court of the United States sitting in Florida did not state the quantity of the estate or describe the land, the judgment was reversed and the cause remanded for a new trial. *Pensacola Ice Co.* v. *Perry*, 318.
7. Following the decisions of the Supreme Court of Kentucky, this court holds that the justices of the peace of Muhlenburg County, in that state, do not form a necessary part of the county court when levying a tax to satisfy a judgment against the county, under § 9 of the Act of the Legislature of Kentucky, of February 24, 1868, amending the charter of the Elizabethtown and Paducah Railroad Company. *Meriwether* v. *Muhlenburg County Court*, 354.

8. The State of Missouri having loaned its credit to the Hannibal and St. Joseph Railroad Company for $3,000,000, upon a first lien of the road and property of the company, the legislature on the 20th February, 1865, authorized that company to mortgage its road and property to trustees to secure an issue of bonds to that amount, and further enacted that whenever those trustees should "pay into the treasury of the state a sum of money equal in amount to all indebtedness due or owing by said company to the state, and all liabilities incurred by the state by reason of having issued her bonds and loaned the same to said company as a loan of the credit of the state, together with all interest that has and may at the time when such payment shall be made have accrued and remain unpaid by said company, and such fact shall have been certified to the governor of the state by the treasurer," the governor should "make over, assign, and convey to the trustees aforesaid all the first liens and mortgages now held by the state." The act further required the state treasurer to receive of the trustees in payment of the $3,000,000 any outstanding bonds of the state, bearing not less than six per cent. interest, or any of the unpaid coupons thereof at their par value. *Held*, that this meant that if payment was made in money, and not in state bonds or coupons, it must be of an amount equal to the face value of the bonds issued to the company and the accrued interest thereon to the time of payment, together with such further sum, if any, as would be necessary to enable the state to cancel then, or within a reasonable time thereafter, $3,000,000 of its outstanding liabilities, bearing interest at the rate of six per cent. per annum. *Rolston* v. *Missouri Fund Commissioners*, 390.

9. The act of the General Assembly of Missouri of March 26, 1881, to provide for the transfer to the sinking fund of surplus money in the treasury, recognized the act of February 20, 1865, providing for the reduction of the state indebtedness, and constituted an agreement, on the part of the state, that all moneys paid into the treasury by the railroad company should be put into the state debt sinking fund, and that all option bonds should be called in and paid as soon as it could lawfully be done; and the use of the money so paid in taking up six per cent. bonds of the state operated to discharge the company from liability for the payment of either the principal or interest of an equal amount of the bonds which had been issued for its benefit. *Ib.*

10. The provisions of the Constitution of the State of Missouri which went into effect November 30, 1865, relating to the lien held by the state upon any railroad, or to the release of the indebtedness of any corporation to the state, do not prevent the state authorities from complying with the requirements of the acts of February 20, 1865, and March 25, 1881, respecting the lien upon the Hannibal and St. Joseph Railroad and the debt of that company to the state, when the company has performed the acts required by the statutes to be done upon its part. *Ib.*

11. In Pennsylvania a warrant and survey, and payment of the purchase

money, confer a legal estate as against all but the Commonwealth, together with a legal right of entry which will support ejectment; and this action of ejectment may be maintained by the owner who paid the purchase money, without any conveyance from the person in whose name the application was made and the warrant issued. *Herron* v. *Dates*, 464.

12. The plaintiff in an action of ejectment in Pennsylvania, to prove title, offered in evidence certified copies of (1) an application numbered 12,969, in the names of six separate persons for six separate tracts of four hundred acres each, adjoining lands of A; (2) of old purchase voucher, dated November 26, 1793, also numbered 12,969, in the same names, with like quantities of land also adjoining lands of A; (3) of old purchase blotter dated June 14, 1794, also numbered 12,969, at the side of which were written the words: "A gen'l rec't wrote," and in the body of which, after the number and date and the name of A, were the words "6 W'r'ts of 400 a's Am't, 2400 a's 50*s* p. c't p'd specie ch. £60 = =. Fees 60*s*. p'd, rem'r charge of 168 D's. Rec't d'd." *Held*, (1) That these documents were competent evidence to prove the payment of the money and by whom it was paid; (2) that the money for the six tracts was all paid in full by A; (3) that he was the owner of the warrant by virtue thereof; (4) that notwithstanding the differences between the date of the application and warrant (November 16, 1793), and the date of the receipt of the purchase money (June 14, 1794), the issue of the warrant was, in view of the settled practice in Pennsylvania, evidence of the payment of the purchase money sufficient to establish *prima facie* a legal title in A, which was not liable to be overcome by a subsequent patent from the Commonwealth, purporting on its face, but not otherwise proved, to be connected with the warrant and survey, and under which no claim of title had been asserted for more than seventy-five years. *Ib.*

13. When the Orphan's Court in Pennsylvania has jurisdiction of a subject matter, its orders, judgments, and decrees therein cannot be impeached collaterally. *Ib.*

14. The plaintiff in ejectment in Pennsylvania having proved title to the premises by establishing a warrant and survey and payment of the purchase money perfected by return of the deputy surveyor into the land office, evidence on the part of the defendant of a subsequent patent from the Commonwealth, with no proof of its connection with the warrant and survey except recitals to that effect in it, is inadmissible. *Ib.*

15. The act of the legislature of Kentucky of January 30, 1878, respecting the compromise and settlement of the county of Carter with its creditors is not in conflict with the provision in the constitution of the State that "no law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title." *Carter County* v. *Senton*, 517.

16. Carter County in Kentucky under legislative authority subscribed to

the capital stock of a railroad company, and issued its negotiable coupon bonds in payment of the subscription. Subsequently Boyd and Elliott counties were created, in each of which were included townships which formed part of Carter County when the subscription was made and the bonds issued, and in each case legislative provision was made for the continuation of the liability of the persons and property set off to the new counties on the subscription. Default being made in the payment of interest, an act was passed in 1878 authorizing the County Court of Carter County to compromise and settle with the holders of the bonds on behalf of Carter County, and on behalf of the parts of the other counties taken from Carter County, and a compromise was made under which new bonds of Carter County and of those parts of each of the other counties taken from Carter County were issued. Default being made in the payment of interest due on these latter bonds, a holder of the coupons brought suit against Carter County to recover on them. *Held:* (1) That the legislature had authority under the constitution of Kentucky to authorize the County Court of Carter County to bind those parts of the counties of Boyd and Elliott taken from Carter County; (2) that under the act of 1878 the County Court of Carter County was authorized to contract for the issue of negotiable bonds of the county and of the parts of the county in order to retire the old negotiable bonds of the county; (3) that in the suit to recover upon the coupons of the new bonds, it was not necessary to make the parts of Boyd and Elliott counties, which had been parts of Carter County, parties to the suit. *Ib.*

17. The restriction upon the right of a congregation, formed for religious purposes, to receive "land not exceeding in quantity . . . ten acres," which is imposed by § 42 of the act of the legislature of Illinois of April 18, 1872, applies to congregations incorporated for the object named in § 35 of that act, viz.: "the purpose of religious worship;" and does not affect foreign benevolent or mission societies incorporated either with the objects named in the incorporation of the Board of Foreign Missions of the Presbyterian Church in the United States, or with the objects named in the incorporation of the Board of Home Missions of that church, although both organizations are important agencies in the general religious work of that church. *Gilmer* v. *Stone*, 586.

18. A statute of Washington Territory enacts that "a part of several coparties may appeal or prosecute a writ of error; but in such case they must serve notice thereof upon all the other parties." One of two defendants in a cause served upon the other written notice, entitled in the cause, that he would, on a day therein named, "file a notice of appeal and stay bond and appeal said cause," and added, "You are herewith requested to join in said appeal." The other defendant answered in writing, "I hereby accept service of the above notice," "and decline to join in an appeal in said cause." *Held*, that this was an exact and

effectual compliance with the provision of the statute. *Ex parte Parker*, 737.

19. A statute of Washington Territory relating to appeals provides that "in an action by equitable proceedings, tried upon written testimony, the depositions and all papers which were used as evidence are to be certified up to the Supreme Court, and shall be so certified, not by transcript, but in the original form: but a transcript of a motion, affidavit, or other paper, when it relates to a collateral matter, shall not be certified unless by direction of the appellant. In an appeal in equity the appellant requested the clerk to "transmit to the Supreme Court all the papers filed in this cause except subpœnas as by law provided." The cause had been referred to a referee, who had returned with his report and finding, five packages, numbered 1, 2, 3, 4, and 5, with a certificate that it was "the evidence written down before me and taken in said action, and that the same, with the documentary evidence returned herewith by me into court, constitutes the evidence submitted to and taken by me in said action." The clerk of the court transmitted these packages to the Supreme Court with a certificate that "the letters, papers, and exhibits herewith transmitted and numbered . . . are all the papers, letters, and evidence introduced in said cause before said referee, and by him deposited with the clerk of said court," and further certified that the transcript on appeal was a "full, true, and correct transcript of so much of the record . . . as I am by statute and directions of attorneys in said cause required to transmit to the Supreme Court." *Held*, that the certificates showed that the transcript contained all the evidence introduced by the parties on the trial below, and that the appeal had been duly taken and perfected. *Ib.*

20. In Louisiana a holder of a first mortgage on real estate, duly executed before a notary with *pact de non alienando*, is not bound to give notice to subsequent mortgagees, or to any person but the debtor in possession, when he proceeds by executory process to obtain seizure and sale of the mortgaged property to satisfy the mortgage debt. *New Orleans Banking Association* v. *Le Breton*, 765.

21. In Louisiana a mortgage given to secure a future balance on an open unliquidated account is valid; and the acknowledgment of the amount of the balance by the debtor, before a notary, is all that is necessary to be done under the code, in order to ascertain it for the purposes of executory process. *Ib.*

22. In Louisiana informalities connected with or growing out of any public sale, made by any person authorized to sell by public auction, are prescribed against by those claiming under the sale after the lapse of five years from the time of making it, whether against minors, married women, or interdicted persons. *Ib.*

23. W, owning a plantation in Louisiana, and being embarrassed, agreed with several of his creditors and with K, that W should remain in possession and work the plantation; that K should make annual ad-

vances to a stipulated amount to enable him to work it, and should receive and dispose of the crops and apply their products, first to the payment of his own account, and next to the payment of the debts of the creditors; and that for these advances and the balance on his account K should have a first mortgage on the plantation with *pact de non alienando*, and the debts of said creditors should be secured by a mortgage subsequent to the lien to secure K's account. A second mortgage was afterwards made to K, with a like *pact*, and with an agreement, in which all joined, that it should have priority over the first mortgage. The plantation was worked at a loss, and K having made large advances, W acknowledged the amount of them before a notary, and K proceeded by executory process to obtain a sale of the plantation, and it was sold under judicial process. In a suit brought after the lapse of eight years by one of said creditors to foreclose the creditor's mortgage, and to set aside the sale under the mortgage to K: *Held*, (1) That no notice to the creditors of the proceedings to foreclose K's mortgage was necessary; (2) That W's acknowledgment of the balance due on K's account was all the ascertainment that was required; (3) That the relation of trustee and *cestuis que trust* did not arise between K and the creditors; (4) That the creditors were guilty of laches in allowing so long time to elapse after knowledge of the sale, before commencing proceedings to disturb it. *Ib.*

*See* CHATTEL MORTGAGE, 1, 2, 3;
CONSTITUTIONAL LAW, A, 2, 3, 4;
CORPORATION, 4;
DEED, 1, 2, 3;
JUDGMENT, 1;
LANDLORD AND TENANT;
LIMITATION, STATUTES OF, 1, 2, 3;
MALICIOUS PROSECUTION;
PLEADING;
STATUTE, A, 5;
TREATY.

## LONGEVITY PAY.

1. Under that claim in the act of March 3, 1883, 22 Stat. 473, which provides for crediting an officer of the navy with his time of service in the regular or volunteer army or navy, or both, in the same manner as if all the service "had been continuous, and in the regular navy in the lowest grade, having graduated pay held by" him "since last entering the service," officers are entitled to be credited as of the lowest grade with graduated pay held by them after reëntering the service, and not as of a still lower grade in which they may actually have served, but to which no graduated pay was attached. *United States* v. *Rockwell*, 60.

2. Service by an officer of the navy as an enlisted man in the marine corps is to be credited to him in calculating his longevity pay under the act of March 3, 1883, 22 Stat. 472, 473, c. 97. *United States* v. *Dunn*, 249.

## MALICIOUS PROSECUTION.

In Louisiana, an action for malicious prosecution is founded on the principles, and is subject to the defences, established by the common law;

and in order to sustain it, it is necessary to show: (1) that the suit had terminated unfavorably to the prosecutor; (2) that in bringing it the prosecutor had acted without probable cause; (3) that he was actuated by legal malice, that is, by improper or sinister motives; and that these three elements concur. *Crescent City Co.* v. *Butchers' Union Co.*, 141.

*See* PROBABLE CAUSE, 1, 2.

MANDAMUS.

The writ of mandamus properly lies in cases where the inferior court refuses to take jurisdiction where by law it ought so to do, or where, having obtained jurisdiction in a cause, it refuses to proceed in the due exercise thereof; but it will not lie to correct alleged error occurring in the exercise of its judicial discretion while acting within its jurisdiction. In this case it is ordered that it be issued. *Ex parte Parker*, 737.

*See* JURISDICTION, B, 7, 8.

MARINE CORPS.

The marine corps is a military body, primarily belonging to the navy, and under control of the Naval Department, with liability to be ordered to service in connection with the army, and in that case under the command of army officers. *United States* v. *Dunn*, 249.

*See* LONGEVITY PAY.

MARRIED WOMEN.

*See* HUSBAND AND WIFE.

MEXICAN LAND GRANTS.

*See* TEXAS LAND GRANTS.

MILITARY NECESSITY.

*See* CLAIMS AGAINST THE UNITED STATES.

MOIETY.

*See* INTERNAL REVENUE.

MORTGAGE.

In a suit for foreclosing a mortgage, it appearing that a receiver has been appointed of the mortgaged premises, and that the mortgagor, appellant, is unable to pay the cost of printing the record on appeal, and that there are rents and profits in the receivers' hands collected during the pendency of the suit, the court orders the receiver to pay to the clerk the sum estimated to be necessary to complete the cost of printing the record. *Grant* v. *Phœnix Life Ins. Co.*, 271.

*See* CHATTEL MORTGAGE, 4;
EVIDENCE, 1;
LOCAL LAW, 19, 21, 22, 23;
RAILROAD, 1, 2, 3;
TRUST.

## MOTION TO DISMISS.

If the other appellants oppose a motion, made by one of several appellants, to dismiss an appeal on the ground that since it was taken the Supreme Court of a state has enjoined all the appellants from enforcing the claims which form the subject matter of the appeal, it will be denied. *Marsh* v. *Shepard*, 595.

## MUNICIPAL BOND.

1. It has been settled by this court in *Davenport* v. *Dodge County*, 105 U. S. 237, and *Blair* v. *Cuming County*, 111 U. S. 363, that coupons like those sued on in this case are obligations of the county, and that an action may be maintained against the county upon them. *Nemaha County* v. *Frank*, 41.

2. By the act of the legislature of Illinois incorporating the Dixon, Peoria and Hannibal Railroad Company, passed March 5, 1867, authority was given to certain cities, incorporated towns, and townships, to subscribe to its stock not exceeding $35,000. At an election duly called and held, August 3, 1868, the town of Brimfield voted to subscribe $35,000, and at the same time and place, but without legislative authority therefor, the same electors voted to make an additional subscription of $15,000. March 31, 1869, the legislature passed an act reciting that the latter sum had been voted by a majority of the legal voters in said township at said election, and provided that said election "is hereby legalized and confirmed, and is declared to be binding upon said township in the same manner as if said subscription had been made under the provisions of said charter." The township, by its proper officers, May 5, 1869, issued bonds for both the subscriptions: *Held*, (1) At the time the bonds were issued there was no decision of the highest court of Illinois denying the power of the legislature, by subsequent enactment, to legalize a municipal subscription to railroad stock which would have been originally lawful if it had been made, in the mode in which it was made, under legislative authority previously granted. (2) In such case this court is at liberty to exercise its independent judgment as to the validity of such curative statutes. (3) The act of March 31, 1869, is not in violation of the constitution of Illinois of 1848. It only gave effect to the wishes of the corporate authorities — the electors — of Brimfield, as ascertained in the customary mode. *Bolles* v. *Brimfield*, 759.

*See* CONSTITUTIONAL LAW, B, 4;
LOCAL LAW, 16.

## MUNICIPAL CORPORATION.

*See* MUNICIPAL BOND.

## NATIONAL BANK.

*See* INDICTMENT, 2, 3, 4, 5, 6;
REMOVAL OF CAUSES, 2.

NATURALIZATION FEES.

*See* FEES.

NAVY.

Before the passage of the act of March 3, 1835, forbidding it, 4 Stat. 757, it was lawful for the Secretary of the Navy to make allowances out of appropriations in gross to officers of the navy beyond their regular pay, for quarters, furniture, lights, fuel, &c., and the repeal of that act by the act of April 17, 1866, 14 Stat. 33, restored the right to make such allowances; and such as were made by him and were settled at the Treasury Department, between the date when the latter act went into effect and the passage of the act of February 25, 1871, 16 Stat. 431, were made in accordance with the executive construction of the statutes respecting the navy and the Navy Department prior to 1835, and this court will not at this late day question their validity. *United States* v. *Philbrick*, 52.

*See* LONGEVITY PAY;
MARINE CORPS;
SALARY, 1.

NEGLIGENCE.

In a suit in equity by an insurance company against a transportation company, and the transferee of its property, to recover the amount paid by the insurance company, as insurer of goods alleged to have been lost, in transportation, by the negligence of the transportation company: *Held*, without passing on any other question, that negligence was not proved, and that the loss happened by perils excepted in the contract of transportation. *Hibernia Ins. Co.* v. *St. Louis Transportation Co.*, 166.

NEGOTIABLE PAPER.

*See* CHATTEL MORTGAGE, 4.

NONSUIT.

*See* JUDGMENT, 2.

OFFICER.

*See* SALARY, 2, 3.

ORPHANS' COURT.

*See* LOCAL LAW, 3.

PACT DE NON ALIENANDO.

*See* LOCAL LAW, 19.

PARTIES.

A respondent to a bill in equity in a state court, who allows a decree *pro confesso* to be taken against him in the lower state court, and is not a party to the appeal of the Supreme Court of the state, nor to the petition for a writ of error to this court, cannot make himself a party here

against the objections of other respondents, who appeared and contested the cause in the state courts, and sued out the writ of error to this court. *Marsh* v. *Nichols*, 598.

*See* LOCAL LAW, 16 (3).

PARTNERSHIP.

*See* BAILMENT, 3.

PATENT FOR INVENTION.

1. In view of the state of the art, claim 4 of letters-patent No. 190,368, granted to Asa Quincy Reynolds, May 1, 1877, for an "improvement in automatic fruit-driers," namely, "4. In combination with a fruit-drier, the outer wall of which is made up of the frames of the several trays, as explained, a suspending device, operating substantially as described, and supporting said drier from a point in or on the lowermost tray thereof, for the objects named," is not infringed by an apparatus constructed in accordance with the description in letters-patent No. 221,056, granted to George S. Grier, October 28, 1879, for an "improvement in fruit-driers." *Grier* v. *Wilt*, 412.
2. In a suit in equity for the infringement of letters-patent, prior letters-patent, though not set up in the answer, are receivable in evidence to show the state of the art, and to aid in the construction of the claim of the patent sued on, though not to invalidate that claim on the ground of want of novelty, when properly construed. *Ib.*
3. The reissued letters-patent No. 2355, dated September 11, 1866, granted to the Tucker Manufacturing Company as assignee of Hiram Tucker, for an improved process of bronzing or coloring iron, and No. 2356, of like date and grantee, for the product resulting from that process, are in fact for but one invention, and the new article of manufacture called Tucker bronze is a product which results from the use of the process described in the patent, and not one which may be produced in any other way: and they are not infringed by the manufacture, by the defendants, by the different process used by them, of an article which cannot be distinguished, by mere inspection, from Tucker bronze, *Plummer* v. *Sargent*, 442.

PENALTY.

*See* INTERNAL REVENUE.

PETITION FOR REHEARING.

*See* CASES AFFIRMED, 11.

PLEADING.

As pleadings in Nevada are required to be construed in a sense to support the cause of action or defence, and as facts in the record not fully set forth in defendant's plea clearly show that the cause of action sued on in this case is the cause of action in the judgment pleaded in bar: *Held*, that the defendant's plea sufficiently avers all the facts necessary to constitute the former judgment a bar to this action. *United States* v. *Parker*, 89.

*See* ASSUMPSIT, 2;
EQUITY PLEADING;
INSURANCE, 5;
JURISDICTION, A, 2;
LOCAL LAW, 4;
PRACTICE, 2.

## PLEDGE.

*See* BAILMENT;
LOCAL LAW, 3.

## POSSESSION.

*See* EVIDENCE, 5, 7, 8.

## PRACTICE.

1. This court, on reversing a judgment of the Circuit Court for the plaintiff on a special finding which ascertains all the facts of the case, will order judgment for the defendant without further trial. *Allen* v. *St. Louis Bank*, 20.
2. When the defendant in an action at law denies each and every allegation in the declaration, and puts the plaintiff on his proof, it is not error to order stricken from the answer special defences which may be set up under this general denial. *Nemaha County* v. *Frank*, 41.
3. An irregular act of practice by an attorney of record rebuked. *Schley* v. *Pullman Car Company*, 575.

*See* APPEAL;
CASES AFFIRMED;
ERROR;
EXCEPTION;
JURISDICTION, A, 1;
LOCAL LAW, 18, 19;
MORTGAGE.

## PRESUMPTION.

*See* EVIDENCE, 5, 6, 7, 8.

## PRINCIPAL AND AGENT.

*See* BAILMENT.

## PROBABLE CAUSE.

1. The question of probable cause is a question of law, where the facts are undisputed; and the judgment of the court, in favor of the plaintiff, is conclusive proof of probable cause for the prosecution of the suit alleged to be malicious, notwithstanding its subsequent reversal by an appellate court, unless it is shown to have been obtained by means of fraud. This rule seems to reconcile the apparent contradiction in the authorities, is well grounded in reason, fair and just to the parties, and consistent with the principle on which the action for malicious prosecution is founded. *Crescent City Co.* v. *Butchers' Union Co.*, 141.
2. The decree of the Circuit Court of the United States, relied on by the plaintiff in error in this case, as a defence, was sufficient evidence of probable cause for the prosecution of the suit, notwithstanding its reversal, on appeal, by this court. It does not detract from its effect that in another previous suit, between the plaintiff in error and

another defendant, the Supreme Court of Louisiana had decided the questions of law on which alone his right depended adversely to him. *Ib.*

*See* MALICIOUS PROSECUTION.

PROMISSORY NOTE.

An agreement by the payee of a promissory note to release the maker from the payment of the principal on the payment, in advance each year, until payee's death, of interest at a rate above the legal rate, is no defence in a suit by the payee's executor, without proof of such payment until his death. *Harmon* v. *Adams*, 363.

*See* BAILMENT, 4;
GARNISHEE.

PUBLIC LAND.

*See* CALIFORNIA SCHOOL LAND;
TEXAS LAND GRANTS.

RAILROAD.

1. The provision in the constitution of Arkansas of 1874 that "no private corporation shall issue stock or bonds except for money or property actually received, or labor done; and all fictitious increase of stock or indebtedness shall be void" does not prevent the carrying out of an agreement between mortgage bondholders of an embarrassed railroad company in that state by which it was agreed that trustees should buy in the mortgaged property on foreclosure, and convey it to a new company to be organized by the bondholders which should issue new mortgage bonds to pay the expenses of the sale, and other new mortgage bonds to be taken by the bondholders in lieu of their old bonds, and full paid-up stock subject to the mortgage debt, to be delivered to and held by the bondholders without any payment of money; and the bonds issued under such an agreement are not subject to the provisions of § 5, 488 Rev. Stat. Ark., Mansfield's Digest, page 1057, respecting the legal rate of interest for certain classes of railroad securities. *Memphis & Little Rock Railroad* v. *Dow*, 287.
2. Trustees under a mortgage from a railroad company with covenants of warranty are entitled to protect the trust property against a forced sale under a prior incumbrance, and upon the payment of that incumbrance to have the benefit of its lien as against the company, and to be reimbursed the amount so paid by them with legal interest. *Ib.*
3. In this case unsecured floating debts, due by a railroad company for construction, were, in the absence of a statutory provision, held not to be a lien on the railroad superior to the lien of a valid mortgage on it, duly recorded, and of bonds secured thereby, and held by *bona fide* purchasers for value. *Porter* v. *Pittsburg Bessemer Steel Co.*, 649.

*See* EQUITY, 3.

REBELLION.

*See* CLAIMS AGAINST THE UNITED STATES, 4, 5.

RECEIVER.

*See* MORTGAGE.

RECOUPMENT.

*See* ASSUMPSIT, 1.

RELIGIOUS CORPORATION.

*See* LOCAL LAW, 17.

REMOVAL OF CAUSES.

1. An application for the removal of a case from a state court, filed not only after the trial had begun, but when it had progressed far enough to get a verdict of the jury subject only to the decision of the court on questions presented by a demurrer to the evidence, is clearly too late. *Bank of Maysville* v. *Claypole*, 268.
2. Since the act of July 12, 1882, c. 290, took effect, a suit by or against national banks cannot be removed from a state court to a circuit court of the United States, unless a similar suit by or against a state bank in like situation with the national bank could be so removed. *Leather Manufacturers' Bank* v. *Cooper*, 778.
3. A case does not arise under the laws of the United States simply because this court has decided in another suit the questions of law which are involved. *Ib.*
4. A case is not removable because a colorable assignment has been made to give a state court exclusive jurisdiction. *Ib.*

REPEAL.

*See* CUSTOMS DUTIES, 1;
STATUTE, A, 1.

RETRAXIT.

*See* JUDGMENT, 2.

RULES.

*See* EQUITY, 1.

SALARY.

1. The sea-pay given to officers of the navy by Rev. Stat. § 1556 may be earned by services performed under orders of the Navy Department in a vessel employed, by authority of law, in active service in bays, inlets, roadsteads, or other arms of the sea, under the general restrictions, regulations, and requirements that are incident or peculiar to service on the high sea. *United States* v. *Symonds*, 46; *United States* v. *Bishop*, 51.
2. A clerk in the office of the President of the United States, who is also appointed to be the clerk of a committee of Congress, and who

performs the duties of both positions, is entitled to receive the compensation appropriated and allowed by law for each. *United States* v. *Saunders*, 126.

3. Sections 1763, 1764, and 1765 of the Revised Statutes have no application to the case of two distinct offices, places, or employments, each with its own duties and compensation, but both held by one person at the same time. *Ib.*

*See* LONGEVITY PAY.

SEA-PAY.

*See* SALARY.

SET-OFF.

*See* ASSUMPSIT, 2.

SHIPS AND SHIPPING.

*See* ADMIRALTY;
LOCAL LAW, 1;
TREATY.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. Prior to the enactment in the act of February 25, 1871, 16 Stat. 431, now Rev. Stat. § 12, that "whenever an act is repealed, which repealed a former act, such former act shall not thereby be revived unless it shall be expressly so provided," it was the general rule of law that the repeal of a repealing act restored the law as it was before the passage of the latter act without formal words for that purpose, unless otherwise provided either in the repealing act or by some general statute. *United States* v. *Philbrick*, 52.

2. The contemporaneous construction of a statute by the Executive Department charged with its execution is entitled to great weight, and ought not to be overturned unless clearly erroneous. *Ib.*

3. A statute being of doubtful construction as to what fees were to be returned, the interpretation of it by judges, heads of departments, and accounting officers, contemporaneous and continuous, was one on which the obligors in the bond had a right to rely, and, it not being clearly erroneous, it will not now be overturned. *United States* v. *Hill*, 169.

4. When the title of a statute of a state clearly and distinctly expresses the whole object of the legislature in the enactment, and there is nothing in the body of the act which is not germane to what is there expressed, the act sufficiently complies with a requirement in the constitution of the state that no law "shall relate to more than one subject, and that shall be expressed in the title;" although some provisions in the act respecting details in the execution of the purpose of the legislature may not be expressed in the title. *Carter County* v. *Sinton*, 517.

5. In construing those articles of the Civil Code of Louisiana, which were originally enacted both in French and in English, the French text may be taken into consideration for the purpose of clearing up obscurities or ambiguities in the English text. *Viterbo* v. *Friedlander*, 707.

*See* CONSTITUTIONAL LAW, A, 2, 12;
CUSTOMS DUTIES, 1 (1), 2;
NAVY.

B. STATUTES OF THE UNITED STATES.

1. In describing the defence against a citizen of the United States for which punishment is provided by Rev. Stat. § 5508, the word "citizen" is used in its political sense, with the same meaning which it has in the Fourteenth Amendment to the Constitution; and not as being synonymous with "resident," "inhabitant," or "person." *Baldwin* v. *Franks*, 678.
2. To constitute the offence described in the first clause of Rev. Stat. § 5336, it is not enough that a law of the United States is violated, but there must be a forcible resistance to a positive assertion of their authority as a government. *Ib.*
3. To constitute an offence under the second clause Rev. Stat. § 5336 there must be a forcible resistance to the authority of the United States while they are endeavoring to carry their laws into execution. *Ib.*

*See* ADMIRALTY, 4;
CALIFORNIA SCHOOL LANDS, 2;
CLAIMS AGAINST THE UNITED STATES, 3;
CONSTITUTIONAL LAW, A, 10, 11;
CRIMINAL LAW, 1;
CUSTOMS DUTIES;
FEES;
INDICTMENT, 2, 3, 5;
INTERNAL REVENUE;
JURISDICTION, B, 7, 8, 9;
LONGEVITY PAY;
NAVY;
REMOVAL OF CAUSES, 2;
SALARY, 1, 3;
STATUTE, A, 1.

C. STATUTES OF STATES AND TERRITORIES.

*Arkansas.* *See* CONSTITUTIONAL LAW, B, 1;
RAILROAD, 1.

*Illinois.* *See* CONSTITUTIONAL LAW, B, 4;
DEED, 1, 2, 3;
LOCAL LAW, 17;
MUNICIPAL BOND, 2.

*Kentucky.* *See* LOCAL LAW, 7, 15, 16.

*Louisiana.* *See* LANDLORD AND TENANT.

*Maryland.* *See* CONSTITUTIONAL LAW, A, 9.

*Missouri.* *See* CONSTITUTIONAL LAW, B, 2, 3;
LOCAL LAW, 2, 3, 8, 9, 10.

*Nevada.* *See* JUDGMENT, 1.

*New York.* *See* LIMITATION, STATUTES OF, 1.

*Rhode Island.* *See* CORPORATION, 4.

*Tennessee.* *See* CONSTITUTIONAL LAW, A, 5, 8.
*Texas.* *See* TEXAS LAND GRANTS, 11, 12.
*Washington.* *See* LOCAL LAW, 18, 19.

D. FOREIGN STATUTES.

*See* TEXAS LAND GRANTS.

STEAM TUG.

*See* ADMIRALTY, 1, 2, 3, 4.

STOCKHOLDERS' LIABILITY.

*See* CORPORATION, 4.

SUBROGATION.

Trustees under a mortgage from a railroad company with covenants of warranty are entitled to protect the trust property against a forced sale under a prior incumbrance, and upon the payment of that incumbrance to have the benefit of its lien as against the company, and to be reimbursed the amount so paid by them with legal interest: but the rate to be allowed is to be determined by the law in force at the time of the subrogation. *Memphis & Little Rock Railroad* v. *Dow*, 287.

TAX AND TAXATION.

Immunity from taxation by the state will not be recognized, unless granted in terms too plain to be mistaken. *Chicago, Burlington, &c., Railroad* v. *Guffey*, 569.

*See* CONSTITUTIONAL LAW, A, 5, 6, 9; B, 1, 2, 3, 4;
CLAIMS AGAINST THE UNITED STATES, 3.

TEXAS LAND GRANTS.

1. The Congress of Coahuila and Texas on the 28th April, 1832, passed a law respecting the grant of public lands. One Gonzales applied for a grant under this law, and, on the 16th October, 1832, the governor made the grant of the land in dispute, under which the plaintiffs claim, in the customary form for such grants. A commissioner was appointed to give possessory title to the tract, and on the 18th April, 1834, he delivered to the grantee at Dolores formal possession of the tract and executed and delivered a formal "testimonio" thereof. On the 26th March, 1834, the Congress of Coahuila and Texas at Monclova repealed the act of April 28, 1832. The laws of the Mexican states did not then take effect in any part of the country until promulgated there. There was no evidence of the promulgation of the repealing act at Dolores, but there was presumptive evidence tending to show that on the 3d May, 1836, it had not been promulgated there. *Held:* that under all the circumstances, and in view of the distance of Dolores from Monclova, the presumption was that the repealing act had not been promulgated when the commissioner extended the title to Gonzales. *Gonzales* v. *Ross*, 606.

2. The act of the Congress of Coahuila and Texas of March 26, 1834, creating a new system of disposing of the public lands, did not abrogate the grants and sales which had been made under the act of April 28, 1832, nor abolish the office and function of commissioners necessary for extending such grants. *Ib.*
3. From the notorious public history of the colony of Beales and Grant, and from other notorious facts which are stated in the opinion of the court, it is *Held*, that the governor in the grant to Gonzales, which is the subject matter of this suit, intended to designate and did designate the commissioner of the neighboring enterprise as the officer to locate the grant and deliver possession to the grantee, and that his official acts therein, having been accepted and acquiesced in by the government, must be considered as valid, even if done by him only as commissioner *de facto*. *Ib.*
4. The public officer who extended the lands in dispute must be presumed to have extended them in the proper department, and this presumptive conclusion of law is made certain in fact by examining the laws referred to in the opinion of the court. *Ib.*
5. In 1834 the state of Coahuila and the department of Monclova extended eastwardly at least as far as the river Nueces. *Ib.*
6. As all favorable presumptions will be made against the forfeiture of a grant, and as it will be presumed, unless the contrary be shown, that a public officer acted in accordance with law and his instructions, and as the government acquiesced in the commissioner's acts in extending the grant in dispute and no attempt had been made to revoke them or to assert a forfeiture: *Held*, that he had authority to extend the title, and his acts must be considered valid. *Ib.*
7. The testimonio in this case sufficiently connects itself with the original grant and the subsequent steps taken under it: it is not necessary that it should be attached to it by a physical connection. *Ib.*
8. The grant in this case gave power and authority to the commissioner to extend it, and no further order was necessary. *Ib.*
9. The extension of the title of the grantee by the commissioner in a Mexican grant completed the title, without patent or other act of the govment, and notwithstanding the imposition of conditions subsequent; and the non-performance of such conditions subsequent constituted no objection to the admission of plaintiff's evidence to show such extension. *Ib.*
10. If a forfeiture of a Mexican land grant from non-payment or condition subsequent can be availed of by a private person at all, it can only be after he has shown some right to the land in himself by virtue of a subsequent purchase or grant from the sovereignty of the soil. *Ib.*
11. Prior to the adoption of the constitution of 1876 the laws of Texas did not require that a title under a Mexican grant should be registered in the county or deposited among the archives of the land office, in order to give it vitality; and it was only void as against third persons acquiring title from the sovereignty of the soil, not having notice of it. *Ib.*

12. Defences against Spanish and Mexican titles in Texas under Art. XIII of the constitution of Texas of 1876 constitute no objection to the admission of evidence in support of such titles. *Quære*, as to the effect of the provisions in that article prohibiting the future registration of titles, or the depositing of them in the land office. *Ib.*

TREASURY SETTLEMENT.

*See* CLAIMS AGAINST THE UNITED STATES, 1.

TREATY.

Article XI of the Convention between Belgium and the United States of March 9, 1880, 21 Stat. 781, conferring power upon Belgian consuls in the United States to take cognizance of differences between captains, officers, and crews of Belgian merchant vessels which are in ports of the United States, and providing that the local authorities shall not interfere except when a disorder arises of such a nature as to disturb tranquillity or public order on shore or in the port, does not apply to a case of felonious homicide committed on board of a Belgian merchant vessel in a port of the United States, and does not deprive the local authorities of the port of jurisdiction over such a crime so committed by one Belgian upon the person of another Belgian, both belonging to the crew of the vessel. *Wildenhus's Case*, 1.

*See* JURISDICTION, B, 1;
LOCAL LAW, 1.

TRUST.

A mortgage of a railroad and of lands granted by Congress to aid in its construction, to trustees which directs the trustees to apply moneys arising from the sale of the lands to the payment of the coupons attached to the bonds secured by the mortgage, also authorizes them to purchase therewith over-due coupons which have been cut from those bonds and have been deposited with the trustees of the mortgage for the purpose of securing scrip issued to the holders of those coupons, with the object of extending the payment of the amount due on them beyond the time of payment named in them. *Little Rock & Fort Smith Railway* v. *Huntington*, 160.

*See* EQUITY, 3;
LIMITATION, STATUTES OF, 4, 5;
SUBROGATION.

UNFORESEEN EVENT.

*See* LANDLORD AND TENANT, 2.

UNITED STATES.

*See* CLAIMS AGAINST THE UNITED STATES.

USAGE.

*See* BAILMENT, 2.

VARIANCE.

*See* INSURANCE, 5.

VERDICT.

*See* LOCAL LAW, 6.

WAIVER.

*See* INSURANCE, 2, 3, 4.

WARRANTY.

*See* ASSUMPSIT, 1, 2;
EVIDENCE, 9;
INSURANCE, 1, 3.

WILL.

A, a resident in Irish Grove, Illinois, died there, leaving a will by which, after bequeathing his library to the Presbyterian church of Irish Grove, and $500 for the erection of another Presbyterian church in Illinois, and $50 to be paid on the minister's salary of the Presbyterian church of Irish Grove for 1884, and some other bequests, he bequeathed and devised the remainder of his estate "to be equally divided between the board of foreign and the board of home missions." The Presbyterian Church in the United States of America has a corporate "Board of Foreign Missions" and a corporate "Board of Home Missions;" but it was agreed by counsel that several other religious bodies in the United States have similar organizations, for the same purposes. *Held*, that there was a latent ambiguity in the will respecting the object of the residuary gift, which ambiguity could be removed by extrinsic evidence; and that the evidence introduced on that point, taken in connection with the other bequests in the will for the benefit of Presbyterian churches, showed that the testator, in making the residuary gift, had in his mind the Board of Foreign Missions and the Board of Home Missions of the Presbyterian Church of the United States of America, of which he was a member and an officer. *Gilmer* v. *Stone*, 586.

*See* EXECUTOR AND ADMINISTRATOR.

WITNESS.

*See* EVIDENCE, 10.

WRIT OF ERROR.

*See* JURISDICTION, A, 1.