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ABATEMENT.

See EVIDENCE.

ACTION.

A written contract, made in this country, by which "I, Gustaf Lundberg, agent for N. M. Höglund's Sons & Co. of Stockholm, agree to sell, and we, Albany and Rensselaer Iron and Steel Co., Troy, N. Y., agree to buy" certain Swedish pig iron, which contains no other mention of the Swedish firm, and is signed by Lundberg with his own name merely, as well as by the purchaser, will sustain an action by Lundberg in a court of the United States within the state of New York, by virtue of § 449 of the New York Code of Civil Procedure and § 914 of the Revised Statutes of the United States, if not at common law. *Albany & Rensselaer Co.* v. *Lundberg*, 451.

See TAX AND TAXATION, 2.

ADMIRALTY.

1. The ultimate disputed fact to be established in a suit in admiralty upon a marine policy of insurance being the seaworthiness or unseaworthiness of the vessel, it was no error in the Circuit Court at the trial to refuse to find the evidence from which this ultimate fact was deduced. *Merchants' Ins. Co.* v. *Allen*, 67.
2. The court discountenances attempts by counsel in preparing bills of exception in admiralty causes to have the cause retried here on the evidence. *Ib.*
3. Whether, since the act of February 16, 1875, new testimony can be taken after an appeal in admiralty to this court, or amendments to the pleadings allowed, is not decided. *Ib.*

See SHIP.

ADVANCEMENT OF CAUSES.

A case brought here in error from the Supreme Court of a state, in which the trial court refused to let go its jurisdiction on a petition for removal, and in which the Supreme Court of the state affirmed that ruling, is within the spirit of Rule 32, 108 U. S. 591–2, relating to the advancement of causes, and the court, on motion in such a cause,

advances it to be heard under the rules prescribed by Rule 6, 108 U. S. 574–5, in regard to motions to dismiss. *Burlington, &c., Railway* v. *Dunn*, 182.

AMENDMENT.

See ADMIRALTY, 3;
REMOVAL OF CAUSES, 4.

APPEAL.

See JURISDICTION, A, 1.

ASSIGNMENT OF ERROR.

See PRACTICE, 1.

BANKRUPTCY.

A discharge in bankruptcy may be set up in a state court to stay the issue of execution on a judgment recovered against the bankrupt after the commencement of the proceedings in bankruptcy and before the discharge; although the defendant did not before the judgment ask for a stay of proceedings under Rev. Stat. § 5106. *Boynton* v. *Ball*, 457.

BAILMENT.

See INNKEEPER.

BILL OF EXCHANGE AND PROMISSORY NOTE.

See MUNICIPAL CORPORATION, 5.

CASES AFFIRMED OR APPROVED.

1. *Ex parte Crow Dog*, 109 U. S. 556, affirmed. *United States* v. *Le Bris*, 278.
2. The case of *Home Insurance Co.* v. *Morse*, 20 Wall. 445, approved. *Barron* v. *Burnside*, 186.
3. The decision of this court in *Hoyt* v. *Sprague*, and in *Francklyn* v. *Sprague*, 103 U. S. 613, so far as applicable to this case, is affirmed and adhered to. *Francklyn* v. *Sprague*, 215.

CASES DISTINGUISHED OR EXPLAINED.

1. *Doyle* v. *Continental Insurance Co.*, 94 U. S. 535, explained. *Barron* v. *Burnside*, 186.
2. *Provident Savings Society* v. *Ford*, 114 U. S. 635; *Dupasseur* v. *Rochereau*, 21 Wall. 130; and *Crescent City Live-Stock Co.* v. *Butchers' Union Co.*, 120 U. S. 141, distinguished. *Carson* v. *Dunham*, 421.

CASES OVERRULED.

Stewart v. *Elliott*, 2 Mackey, 307, overruled. *Metropolitan Railroad* v. *Moore*, 558.

CIRCUIT COURTS OF THE UNITED STATES.

An order of the Circuit Judge of the Fourth District, made at Baltimore, Maryland, that a prisoner brought before him there from Richmond, Virginia, on a writ of *habeas corpus*, shall be discharged, is a proceeding before him as a judge and not as sitting as a court; and it is not converted into a proceeding of the latter kind by a further order that the papers in the case be filed in the Circuit Court of the United States at Richmond, and the order of discharge be recorded in that court. *Carper* v. *Fitzgerald*, 87.

See JURISDICTION, B;
REMOVAL OF CAUSES;
STATUTE, B.

CITATION.

Notice of a writ of error, given in open court at the same term the judgment is rendered, is not the equivalent of citation. *United States* v. *Phillips*, 254.

CLAIMS AGAINST THE UNITED STATES.

1. The fact that Congress, by several special acts, has made provision for the payment of several claims, part of a class of claims upon which the respective claimants could not have recovered in an action in the Court of Claims in the exercise of its general jurisdiction, furnishes no reason for holding the United States liable in an action in that court for the recovery of such a claim which Congress has made no provision for. *United States* v. *McDougal*, 89.
2. The fact that the Court of Claims has rendered judgment against the United States at various times upon claims of a particular class, from which judgments the Executive Department of the government took no appeal, furnishes no reason why judgment should be given against the United States in an action in the Court of Claims on another claim of the class, if the United States are not otherwise liable therefor. *Ib.*
3. No statute of the United States, either in express terms or by implication, authorized the Executive in holding treaties with the Indians to make contracts of the character sued on in this action. *Ib.*
4. No officer of the government is authorized to so bind the United States by contracts for the subsistence of Indians not based upon appropriations made by Congress, that a judgment may be given against them in the Court of Claims in the exercise of its general jurisdiction; and this rule is not affected by the fact that the United States were greatly benefited by the contracts. *Ib.*
5. No opinion is expressed upon the point whether a claim presented to an Executive Department, after the expiration of the period within which it would have been cognizable by the Court of Claims, (had suit been brought thereon without first filing it in the Department,) and by the

Department referred to the Court of Claims under the provisions of Rev. Stat. § 1063, is barred by the statute regulating the limitation of suits in that court. *Ib.*

COMMON CARRIER.

1. When the contract of a common carrier with a passenger assigns to the latter a particular part of the vessel or vehicle to be occupied by him during transportation, and he voluntarily occupies a place different from that contracted for, the carrier is released from liability for injuries which necessarily arise from the passenger's change of place; but it continues bound to furnish safe transportion, and to indemnify the passenger, under general rules of law, for injuries which do not directly arise by reason of his change of place, or which are caused by improper conduct of the carrier's servants, acting either in the scope of their general duties, or in the discharge of special duties imposed upon them. *New Jersey Steamboat Co.* v. *Brockett*, 637.
2. A common carrier undertakes absolutely to protect its passengers against the misconduct or negligence of its own servants, employed in executing the contract of transportation, and acting within the general scope of their employment. *Ib.*
3. What will be misconduct on the part of the servants of a common carrier towards a passenger cannot be defined by a general rule applicable to every case, but must depend upon the particular circumstances in which they are required to act; and in this case the issue was fairly placed before the jury by the court. *Ib.*

CONSTITUTIONAL LAW.

A. Of the United States.

1. The declaration of Article V of the Amendments to the Constitution, that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," is jurisdictional, and no court of the United States has authority to try a prisoner without indictment or presentment in such cases. The indictment here referred to is the presentation to the proper court, under oath, by a grand jury, duly impanelled, of a charge describing an offence against the law for which the party charged may be punished. *Ex parte Bain*, 1.
2. The statute of Iowa, approved April 6, 1886, c. 76, which requires that every foreign corporation named in it shall, as a condition of obtaining a permit for the transaction of business in Iowa, stipulate that it will not remove into the Federal court certain suits which it would, by the laws of the United States, have a right to remove, is void, because it makes the right to a permit dependent upon the surrender by the foreign corporation of a privilege secured to it by the Constitution and laws of the United States. *Barron* v. *Burnside*, 186.
3. A state statute which levies a tax upon the gross receipts of railroads

for the carriage of freights and passengers into, out of, or through the state, is a tax upon commerce among the states, and therefore void. *Fargo* v. *Michigan*, 230.

4. While a state may tax the money actually within the state, after it has passed beyond the stage of compensation for carrying persons or property, as it may tax other money or property within its limits, a tax upon receipts for this class of carriage specifically is a tax upon the commerce out of which it arises, and, if that be interstate commerce, it is void under the Constitution. *Ib.*
5. The states cannot be permitted, under the guise of a tax upon business transacted within their borders, to impose a burden upon commerce among the states, when the business so taxed is itself interstate commerce. *Ib.*
6. Offenders against the provisions of §§ 5511 and 5512 Rev. Stat. must be prosecuted by indictment and not by information, as the nature of the punishment makes the crime "infamous" within the meaning of the Fifth Amendment to the Constitution of the United States. *Parkinson* v. *United States*, 281.
7. The Constitution of the United States does not prevent a state from giving to its courts of equity power to hear and determine a suit brought by the holder of an equitable interest in land to establish his rights against the holder of the legal title. *Church* v. *Kelsey*, 282.
8. A state constitution is not a contract within the meaning of that clause of the Constitution of the United States which prohibits the states from passing laws impairing the obligations of contracts. *Ib.*
9. The provision in the Constitution of the United States that "no State shall pass any law impairing the obligation of contracts" necessarily refers to the law made after the particular contract in suit. *Lehigh Water Co.* v. *Easton*, 388.
10. Wharfage is, in the absence of Federal legislation, governed by local state laws, and if the rates authorized by them and by municipal ordinances enacted under their authority are unreasonable, the remedy must be sought by invoking the laws of the state. *Ouachita Packet Co.* v. *Aiken*, 444.
11. A municipal ordinance of New Orleans which authorizes the collection of a wharfage rate, to be measured by the tonnage of the vessels which use the wharves, and estimated to be sufficient to light the wharves, and to keep them in repair, and to construct new wharves as required, and which may realize a profit over these expenses, is *held* not to conflict with the Constitution or with any law of the United States. *Ib.*

B. Of a State.

1. Subscriptions and donations in aid of railroads, voted by municipal corporations of Illinois, prior to July 2, 1870, such vote being authorized by laws in force when it was taken, could be completed after that date, according to the conditions attached to the vote, or upon terms

that did not increase the public burdens, notwithstanding the provision in the constitution of 1870, that no municipality "shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of, such corporation." *Concord* v. *Robinson*, 165.

2. When, by reason of a change in the constitution of a state, its legislature has no constitutional authority to authorize a municipal corporation to issue negotiable bonds, it cannot validate an issue of bonds by such a corporation made before the change in the constitution, and when the legislature had such power. *Katzenberger* v. *Aberdeen*, 172.

CONTEMPT.

In a suit in equity, on the patent, a preliminary injunction having been granted and violated, the Circuit Court, in proceedings and by two orders, entitled in the suit, found the defendants guilty of contempt, and, by one order, directed that they pay to the plaintiff $250 "as a fine for said violation," and the costs of the proceeding, and stand committed till payment; and, by the other order directed that the defendants pay a fine of $1182 to the clerk, to be paid over by him to the plaintiff for "damages and costs," and stand committed till payment, the $1182 being made up of $682 profits made by the infringement, and $500 expenses of the plaintiff in the contempt proceedings; this court, in reversing a final money decree for the plaintiff, and dismissing the bill, reversed also the two orders, but without prejudice to the power and right of the Circuit Court to punish the contempt by a proper proceeding. *Worden* v. *Searles*, 14.

CONTRACT.

1. A merchant agreed in writing with the owner of a rolling mill to sell him "the entire product of 14,000 tons iron ore, to be manufactured into pig iron with charcoal" at the furnace of a third person, "and shipped in vessel cargoes, as rapidly as possible, during the season of navigation of 1880," to the buyer's mill, and "such portion of the product of said ore, as is made after the close of navigation of 1880, is to be shipped on the opening of navigation of 1881, or as near the opening as possible," but the buyer to have the privilege of ordering this portion to be forwarded by railroad during the winter of 1880–81. The whole amount of pig iron made from the 14,000 tons of ore was 8000 tons, of which 3421 tons were shipped before the close of navigation in 1880, and accepted and paid for. For want of a sufficient supply of charcoal to keep the furnace at work, only 3506 tons more were made and ready for shipment by the opening of navigation in 1881, and were then shipped as soon as possible; and the remaining 1073 tons were made afterwards, and shipped from time to time during the ensuing two months. *Held*, that the buyer might refuse to accept the iron shipped in 1881. *Cleveland Rolling Mill* v. *Rhodes*, 255.

2. The defendant agreed, in writing, to purchase from the plaintiff rails to be rolled by the latter, "and to be drilled as may be directed," and to pay for them $58 per ton. He refused to give directions for drilling, and, at his request, the plaintiff delayed rolling any of the rails until after the time prescribed for their delivery, and then the defendant advised the plaintiff that he should decline to take any rails under the contract. *Held:* (1) The defendant was liable in damages for the breach of the contract; (2) The plaintiff was not bound to roll the rails and tender them to the defendant; (3) The proper rule of damages was the difference between the cost per ton of making and delivering the rails and the $58. *Hinckley* v. *Pittsburgh Bessemer Steel Co.*, 264.
3. Upon the question whether a warranty, in a written contract of sale of Swedish pig iron, of a particular brand, that the iron shall contain no more than a specified proportion of phosphorus, has been complied with, evidence of the proportion of phosphorus in pig iron made in previous years at the same furnace out of ore from the same mine is irrelevant and incompetent. *Albany & Rensselaer Co.* v. *Lundberg*, 451.
4. In this case, the question being whether a contract was made by the defendants as copartners, or for a corporation, it was held that the instructions to the jury on the subject were proper. *McGowan* v. *American Tan Bark Co.*, 575.
5. Where, by a contract, the defendants were to erect machinery on a steamboat in 60 days from the date of the contract, and the plaintiff did not furnish the steamboat until after the expiration of the 60 days, and the defendants then went on to do the work, they were bound to do it in 60 days from the time the boat was finished. *Ib.*
6. A supplemental contract between the parties construed, as to its bearing on the original contract sued on. *Ib.*

See ACTION;
BANKRUPTCY;
SHIP.

CORPORATION.

1. A mining and manufacturing corporation in Virginia acquired title by deed to 10,000 acres of land in that part of the state which afterwards became West Virginia, and then, under a law of Virginia, acquired title, by condemnation, to a strip of land for a right of way to it from the Kanawha River over adjoining lands. The company becoming embarrassed, judgment creditors commenced proceedings in equity to secure the marshalling of the assets of the corporation and their application to the payment of its debts. These proceedings resulted in a sale to C., which sale was confirmed and a deed executed. Subsequently C. filed a bill to enforce certain trusts accompanying the purchase, and then an amended bill, making the corporation a party. In the latter it was averred that the tract for the roadway had been sold

under the decree, and had been left out from the deed by the commissioner by mistake, and the bill prayed that the tract should be decreed to be conveyed to C. The company answered by the same counsel representing C., admitting these facts to be true. The court decreed a sale of all the property, including both tracts, which was made accordingly, and the sale confirmed, and a deed to the purchaser made. *Held*, that the title of the corporation in the tract acquired by condemnation passed to the purchaser under the second sale as fully as if conveyed by the company by a deed under its corporate seal, and that, under the circumstances, the employment of the same counsel by the company and by C., was not evidence of fraud. *McConihay* v. *Wright*, 201.

2. The provisions of § 20 of the act of the state of Virginia of March 11, 1837, relating to railroads, are not applicable to the railroad constructed by the Winifrede Mining and Manufacturing Company; or, if applicable, the charter of the company was in that respect altered by the Virginia Code of 1849; and this conclusion is not affected by the fact that the charter was granted by the legislature after the enactment of the code, but before it went into operation. *Ib.*
3. If the insolvency of the Winifrede Company, and the sale of its property as an entirety, including land acquired by condemnation for use as an outlet from its mines to a navigable river, constituted an abandonment of the property thus acquired, and a cesser of use, it did not thereby revert to the original owner; but the forfeiture could be enforced, if at all, only by the state. *Ib.*
4. On the organization of the A. & W. Sprague Manufacturing Company, and the conveyance to it of the assets of the old partnership, including the interests of minors conveyed under valid authority derived from the legislature of Rhode Island, the property ceased to be partnership property; the partners ceased to be partners and became shareholders; their lien on the partnership property as partners ceased when their character as stockholders began; and those who claim through a stockholder cannot set up such lien. *Francklyn* v. *Sprague*, 215.
5. A corporation, formed by and consisting of the members of a partnership, for the purpose of conducting the partnership business and taking the partnership property, takes the latter freed from partnership equities, all of which are settled and extinguished by the transfer. *Ib.*

See CONTRACT, 4;
MUNICIPAL CORPORATION;
NATIONAL BANK, 5, 6, 7, 8, 9, 14, 15.

COSTS.

See JURISDICTION, B, 2.

COUNTER-CLAIM.

See PLEADING, 2.

COURT AND JURY.

The charge of the court in this case was eminently favorable to the plaintiff below, who is plaintiff in error, and, when it is taken in connection with the testimony, it is clear that the jury found a verdict for defendant on the ground that the plaintiff was in fault, and that the defendant's agents used no unnecessary force. *Carpenter* v. *Washington & Georgetown Railroad*, 474.

CREDITOR'S BILL.

See NATIONAL BANK, 1, 4, 11.

CUSTOMS DUTIES.

1. Shells cleaned by acid, and then ground on an emery wheel, and some of them afterwards etched by acid, and all intended to be sold for ornaments, as shells, were not dutiable at 35 per cent. ad valorem, as "manufactures of shells," under Schedule M of § 2504 of the Revised Statutes, page 481, 2d edition, but were exempt from duty, as "shells of every description, not manufactured," under § 2505, page 488. *Hartranft* v. *Wiegmann*, 609.
2. Duties are never imposed on the citizen upon vague or doubtful interpretations. *Ib.*
3. This case is affirmed on the authority of *Hartranft* v. *Wiegmann*. *Hartranft* v. *Winters*, 616.

DAMAGES.

See CONTRACT, 2 (3).

DELIVERY.

See CONTRACT, 1.

DISTRICT OF COLUMBIA.

See LOCAL LAW, 3.

DOWER.

See REMOVAL OF CAUSES, 1.

DURESS.

See ESTOPPEL, 2.

EQUITY.

1. The test of equity jurisdiction in the courts of the United States — namely, the adequate remedy at law — is the remedy which existed when the Judiciary Act of 1789 was adopted, unless subsequently changed by Congress; and is not the existing remedy in a state or territory by virtue of local legislation. *McConihay* v. *Wright*, 201.
2. A bill in equity for the infringement of letters-patent for an invention

held, on a general demurrer, to be in proper form; and the requisites of such a bill considered. *McCoy* v. *Nelson*, 484.

3. A bill in equity to quiet title cannot be maintained, either under the general jurisdiction in equity, or under the statute of Nebraska of 1873, by one having an equitable title only. *Frost* v. *Spitley*, 552.

See CONSTITUTIONAL LAW, 7; CONTEMPT; CORPORATION, 1; EQUITY PLEADING; NATIONAL BANK, 1, 2, 4, 10, 11; PUBLIC LAND, 1, 2, 3; RAILROAD; RECEIVER.

EQUITY PLEADING.

1. A *cestui que trust* under twenty-six deeds of land executed to five different sets of trustees to secure the payment of money, filed a bill in equity in the Supreme Court of the District of Columbia, to procure a sale of the land. Some of the deeds covered only a part of the land. One of them covered the whole. All of the trustees were made defendants, and the bill was taken *pro confesso* as to all of them. As to the trustees in twenty-two of the deeds, the bill alleged that they had declined to execute the trusts. The holders of judgments and mechanics' liens and purchasers of the land were made defendants. Some of the trust deeds did not specify any length of notice of the time and place of sale by advertisement. The bill alleged the insolvency of the grantor, and the inadequate value of the land to pay the liens. On an objection by the grantor, that the *cestui que trust* could not maintain the bill: *Held*, that the objection could not be sustained. *Grant* v. *Phœnix Life Insurance Co.*, 105.

2. The bill was not multifarious. *Ib.*

3. The Special Term made a decree for the sale of the land, without hearing evidence on issues raised by the pleadings. On appeal, the General Term reversed the decree, and remanded the cause to the Special Term for further proceedings, with permission to the parties to apply to the Special Term for leave to amend their pleadings: *Held*, that this was a proper order under § 772 of the Revised Statutes of the District of Columbia. *Ib.*

4. A decree in a prior suit held not to be pleadable as *res adjudicata*, in view of the proceedings in that suit. *Ib.*

5. Pleas filed with an answer, where the answer extends to the whole matter covered by the pleas, held to have been properly overruled. *Ib.*

See NATIONAL BANK, 1.

ESTOPPEL.

1. In November, 1872, K. was the owner of all the capital stock, and in possession of all the real estate (using it as his own) of an agricultural association, incorporated under the laws of Minnesota. Two hundred shares of this stock he had purchased from G., giving notes therefor, secured by pledge of the stock, which notes and stock were trans-

ferred to a state bank by G. to secure payment of a loan to himself. One hundred shares of the stock were purchased by K. of M., who, in like manner, transferred them to the state bank as collateral. K. transferred the remaining shares to B. as collateral for his obligation to B., with authority, also, to hold them as additional security for K.'s note, held by the bank. In August, 1873, K. contracted in writing to sell a large part of the real estate to C., the purchase money to be paid in railroad bonds, and verbally agreed to transfer all the capital stock, and procure a deed of the real estate from the corporation. C. had no knowledge of the transaction with the bank and with B. It was then agreed between K., B., and the bank, that the bank should take part of the railroad bonds in exchange for the stock held by it, the stock to be sent to the Park Bank, in New York, for exchange; and K. gave an order on C. for the bonds. In pursuance of the agreement, K. procured a deed of the real estate to be executed by individual directors in the name of the corporation, which deed was never authorized by the directors at a meeting of the board, and delivered it to B., together with a warranty deed thereof in his own name. The order for the bonds was never presented to C., nor were the bonds deposited at the bank in New York, nor was the stock delivered to C.; but K. retained the bonds and C.'s notes for his own use. C. took possession of the real estate, and conveyed a part of it to a harvester company. The association and the state bank filed a bill in a state court in Minnesota against C., to have the respective rights of the parties in the property determined. The Supreme Court of that state held, on appeal, that the deed to C. conveyed no title to him; but that, subject to the rights of the bank and of B., C. was the equitable holder of the stock. Proceedings then took place at the motion of the state bank, which resulted in a pretended sale of the stock to various parties; whereupon C., who had filed his bill in the Circuit Court of the United States against the agricultural association and the state bank, filed a supplemental bill including the purchasers of the stock, — the general purpose of both bills being to establish his equities in the capital stock and corporate property of the association. *Held* (1), That it was not now open to him to set up that the deed of the directors was valid as the deed of the corporation, and that he acquired title through it and through K.'s deed, those being *res judicatæ;* (2) that the equities of the state bank in the stock were superior to those of C.; (3) that the pretended sale of the stock by the bank was not a real transaction; (4) that subject to some modifications, the decree below should be affirmed. *Minneapolis Association* v. *Canfield*, 295.

2. In June, 1846, a sale took place, at public auction, under a deed of trust, of land in Mississippi, the property of M., the husband of the plaintiff, and on which they lived. The plaintiff's father bought the land at the sale. His daughter and her husband continued to live on it. The

husband died in 1847; and, in 1848, she married L., and they continued to live on the land. In 1858, she and L. and her father executed an instrument, by which her father leased the land to her for her life, in consideration of natural love and affection and $100, and which acknowledged that the sole legal and equitable title and the right of property in and to the land were in her father. Five months afterwards, she and her husband duly acknowledged the execution of the lease, and recorded it in the proper office. In 1869, her father made his will, devising the land to her for her life, and to a grandson, in fee, after her death; and died in 1870. In 1881, she brought this suit in equity against the grandson, to cancel the lease, and set aside the devise to the grandson, on the ground that her father bought the land under a parol trust for her, and that her signature to the lease was obtained by duress. *Held*, that she was estopped from setting up the parol trust, and that no ground was shown for setting aside the lease. *Laughlin* v. *Mitchell*, 411.

See JUDGMENT.

EVIDENCE.

1. It was not improper to admit evidence which was unnecessary and which could not affect the merits of the case, or evidence from which it appears no prejudice resulted. *Hinckley* v. *Pittsburgh Bessemer Steel Co.*, 264.
2. In an attachment suit in Missouri the defendant, R., filed a plea in abatement, on which a trial was had, sustaining the abatement. The attachment had been levied on goods claimed by H., by transfer from R., and H. filed an interplea, which was tried. On the trial the court admitted in evidence the proceedings on the trial on the plea in abatement, to show that the transfer was fraudulent on the part of R.; *Held*, that this was error, because H. was not a party to the proceedings on the plea in abatement. *Huiskamp* v. *Moline Wagon Co.*, 310.
3. Where an objection to the admission of evidence is so general as not to indicate the specific grounds upon which it is made, it is unavailing on appeal, unless it be of such a character that it could not have been obviated at the trial. *Noonan* v. *Caledonia Mining Co.*, 393.
4. Extrinsic evidence, when not inconsistent with the record, and not impugning its verity, is admissible at the trial of an action to show that a former action in a court of record between the same parties, in which judgment was rendered on the merits, involved matters in issue in the suit on trial, and were necessarily determined by the first verdict. *Wilson* v. *Deen*, 525.
5. Declarations made by one officer to another officer of a steamboat, while both are engaged in violently removing a passenger from a part of the vessel in which his contract of transportation did not entitle him to be, are admissible in evidence as a part of the *res gestæ*, in an action brought by the passenger against the corporation owning the steam-

boat and transporting the passenger, to recover damages for injuries resulting from the assault. *New Jersey Steamboat Co.* v. *Brockett*, 637.

See CONTRACT, 3;
PUBLIC LAND, 8;
REMOVAL OF CAUSES, 3.

EXECUTION.

See BANKRUPTCY.

GARNISHEE.

On the facts found by the court below, this court holds that the fund in dispute in this case is subject to be applied, by virtue of the garnishee proceedings, to the payment of the judgment debt due to the defendant in error from the plaintiff in error. *Milwaukee & Northern Railway* v. *Brooks Locomotive Works*, 430.

See JURISDICTION, A, 3.

GUARDIAN AND WARD.

While a person of unsound mind remains a minor, an ordinary guardian is all the custodian of either his person or estate that is necessary; and an act done by such guardian in relation to his estate, is as valid as if done by a committee appointed to take charge of him and his estate, as a person of unsound mind. *Francklyn* v. *Sprague*, 215.

HABEAS CORPUS.

See CIRCUIT COURTS OF THE UNITED STATES;
INDICTMENT, 3;
JURISDICTION, A, 1.

HUSBAND AND WIFE.

See ESTOPPEL, 2.

INDIAN.

1. The reservation of the Red Lake and Pembina Indians, in Polk County, Minnesota, is Indian country, within the meaning of § 2139 Rev. Stat. *United States* v. *Le Bris*, 278.
2. *Ex parte Crow Dog*, 109 U. S. 556, affirmed to the point that § 1 of the act of June 30, 1834, though repealed, may be referred to for the purpose of determining what is meant by the term "Indian country" when found in sections of the Revised Statutes which are reënactments of other sections of that act. *Ib.*

See CLAIMS AGAINST THE UNITED STATES, 4.

INDICTMENT.

1. When an indictment is filed with the court no change can be made in the body of the instrument by order of the court, or by the prose-

cuting attorney, without a re-submission of the case to the grand jury. And the fact that the court may deem the change immaterial, as striking out of surplus words, makes no difference. The instrument, as thus changed, is no longer the indictment of the grand jury which presented it. This was the doctrine of the English courts under the common law. It is the uniform ruling of the American courts, except where statutes prescribe a different rule, and it is the imperative requirement of the provision of Art. V. Amendments to the Constitution, which would be of little avail if an indictment once found can be changed by the prosecuting officer, with consent of the court, to conform to their views of the necessity of the case. *Ex parte Bain*, 1.

2. Upon an indictment so changed the court can proceed no farther. There is nothing (in the language of the Constitution) which the prisoner can "be held to answer." A trial on such indictment is void. There is nothing to try. *Ib.*

3. According to principles long settled in this court the prisoner, who stands sentenced to the penitentiary on such trial, is entitled to his discharge by writ of *habeas corpus*. *Ib.*

See CONSTITUTIONAL LAW, A, 6.

INNKEEPER.

1. The particular responsibility imposed, at common law, upon innkeepers does not extend to goods lost or stolen from a room in a public inn furnished to a person for purposes distinct from his accommodation as a guest. *Fisher* v. *Kelsey*, 383.

2. A statute of Missouri provides that no innkeeper in that state "shall be liable . . . for the loss of any merchandise for sale or sample belonging to a guest, unless the guest shall have given written notice of having such merchandise for sale or sample in his possession after entering the inn, nor shall the innkeeper be compelled to receive such guest with merchandise for sale or sample." *Held*, that actual knowledge that a guest has in his possession merchandise for sale, or the consent of the innkeeper to the guest's use of one of his rooms for such a purpose, does not fix upon the innkeeper full responsibility for the safety of such merchandise: such responsibility arises only upon written notice being given as required by the statute. *Ib.*

INSURANCE.

1. While a vessel was in transit on a voyage from Liverpool to New Orleans, its home port, a policy was taken out, "to navigate the Atlantic Ocean between Europe and America, and to be covered in port and at sea," these words being written in the printed blank, and the insurers knowing the home port of the vessel. The policy also contained in print the words: "Warranted by the assured not to use port or ports in Eastern Mexico, Texas, nor Yucatan, nor anchorage thereof during the continuance of this insurance." The vessel com-

pleted the voyage to New Orleans, went thence to Ship Island for a return cargo to Liverpool, and was lost from peril of the sea in the Gulf of Mexico, on the way from Ship Island to Liverpool. *Held*, that there was no conflict between the written and the printed parts of the policy; that the insurers contemplated that the vessel would navigate the Gulf of Mexico, except the designated ports, and that the policy covered the vessel at the time of the loss. *Merchants' Ins. Co.* v. *Allen*, 67.

2. An over-insurance of cargo is not a breach of warranty by the owner of the vessel not to insure his interest in the vessel beyond a stipulated amount; and the over-insurance in this case, if any, does not tend to establish fraud in the loss of the vessel. *Ib.*

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, A, 3, 4, 5.

JUDGMENT.

A judgment rendered on the merits in an action in a court of record is a bar to a second suit between the same parties on the same cause of action; and when the second suit involves other matter as well as the matters in issue in the former action, the former judgment operates as an estoppel as to those things which were in issue there and upon the determination of which the first verdict was rendered. *Wilson* v. *Deen*, 525.

See BANKRUPTCY; JURISDICTION, A, 3; CLAIMS AGAINST THE UNITED STATES, 2; EVIDENCE, 4; RECEIVER, 1, 2.

JURISDICTION.

A. OF THE SUPREME COURT.

1. No appeal lies to this court from an order of a Circuit Judge of the United States, sitting as a judge, and not as a court, discharging a prisoner brought before him on a writ of *habeas corpus*. *Carper* v. *Fitzgerald*, 87.
2. An order of the general term remanding to the special term a petition of the receiver that a tenant may attorn to him, for inquiry into the facts, and action on the petition, is an interlocutory order and not appealable to this court. *Grant & Another* v. *Phœnix Life Ins. Co.*, 118.
3. An order of court directing the payment into the registry of the court of a garnishee fund, claimed by a third party, pending the determination of the right to it, is not a final judgment or decree within the meaning of that term as used in the acts of Congress giving this court jurisdiction on appeals and writs of error. *Louisiana Bank* v. *Whitney*, 284.
4. The judgment of the highest court of a state involving the enforcement or interpretation of a contract is not reviewable in this court, under

the clause of the Constitution protecting the obligation of contracts against impairment by state legislation, and under the existing statutes defining and regulating its jurisdiction, unless by its terms or necessary operation it gives effect to some provision of the state constitution, or some legislative enactment of the state claimed by the unsuccessful party to impair the contract in question. *Lehigh Water Works* v. *Easton*, 388.

5. When the case below is tried by a court without a jury, its findings upon questions of fact are conclusive; and this court can consider only its rulings on matters of law properly presented in a bill of exceptions, and the further question, when the findings are special, whether the facts found are sufficient to sustain the judgment rendered. *Stanley* v. *Albany*, 535.

See LOCAL LAW, 3.

B. CIRCUIT COURTS OF THE UNITED STATES.

1. G. being embarrassed, assigned his property, amounting in value to more than $5000, to S. for the benefit of his creditors, with preferences in favor of E. to the amount of $10,000. B., an unpreferred creditor, sued out a writ of attachment for $3000, which was followed by similar writs on behalf of other creditors. E. filed a bill in equity against G. and S. and B., and other attaching creditors, to enjoin a sale under the attachments and to have the assignment declared valid; but during the progress of the suit dismissed the suit as to the other attaching creditors. The bill was dismissed on the ground that the assignment was made to hinder and delay creditors. E. appealed to this court. On a motion to dismiss on the ground that the claim of B. was not sufficient to give this court jurisdiction: *Held*, that the court had jurisdiction, the suit being brought not simply to defeat B.'s attachment, but to establish the assignment and make it available for E.'s benefit. *Estes* v. *Gunter*, 183.

2. It is again held that when the jurisdiction of a Circuit Court depends alone on citizenship, an averment that the plaintiff is a "resident" in one state named, and that the defendant is a "resident" in another state named confers no jurisdiction; and a judgment rendered below in such case in favor of the defendant and brought up in error by the plaintiff, is reversed with costs in this court against the plaintiff in error. *Menard* v. *Goggan*, 253.

3. When, after all the pleadings are filed in a cause in a Circuit Court of the United States between citizens of the same state, it appears that the averments in the declaration which alone gave the court jurisdiction are immaterial in the determination of the matter in dispute, and are made for the purpose of creating a case cognizable by the court, it is the duty of the Circuit Court to dismiss the bill for want of jurisdiction. *Robinson* v. *Anderson*, 522.

4. The rights of each and all of the parties in this case being separate and

distinct, but depending on one contract, they elected to join in enforcing the common obligation; and, as one citizen of Ohio is a necessary party on one side, and another citizen of that state a necessary party on the other, with interests so conflicting that the relief prayed for cannot be had without keeping them opposed, the cause is remanded (with costs against the appellants in this court) to the Circuit Court with directions to dismiss it for want of jurisdiction. *Peninsular Iron Co.* v. *Stone*, 631.

5. Land in Louisiana claimed by L., a citizen of New Jersey, having been seized on an execution recovered in a state court of Louisiana, L. filed "a petition of third opposition" under the practice in that state, asking for an injunction against the sheriff to restrain the sale. It was stated in the petition that the state judge of the district was absent from the state, and an order of injunction was granted by the clerk of the court under circumstances set out in the opinion of the court. L. then petitioned for the removal of the cause to the Circuit Court, which was done. The Circuit Court remanded the cause to the state court. *Held*, that under the circumstances no injunction had been granted by the state court; that the case must be treated as having been taken to the Circuit Court to get an injunction; and that it was properly remanded. *Lawrence* v. *Morgan's Railroad and Steamship Co.*, 634.

See CIRCUIT COURTS OF THE UNITED STATES;
REMOVAL OF CAUSES;
STATUTE, B.

LIMITATION, STATUTES OF.

See NATIONAL BANK, 4.

LOCAL LAW.

1. The power given by the act of March 24, 1869, of the legislature of Illinois, relating to the Chicago, Danville and Vincennes Railroad, to townships, towns, and cities, which had voted to contribute aid in the construction of said road, to borrow money and issue bonds in payment of such contributions, if not acted upon prior to July 2, 1870, was withdrawn by the constitution of Illinois of 1870, and could not, thereafter, be exercised. *Concord* v. *Robinson*, 165.
2. The curative act of the legislature of Mississippi of March 16, 1872, did not legalize bonds issued illegally before the adoption of the new constitution of 1869, which would not be valid if issued after its adoption. *Katzenberger* v. *Aberdeen*, 172.
3. An appeal lies to the general term of the Supreme Court of the District of Columbia from a denial by that court in special term of a motion for a new trial, made on the ground that the verdict was against the weight of evidence; but the legal discretion of that court respecting the disposition of such a motion is not reviewable in this court. *Metropolitan Railroad* v. *Moore*, 558.

See ACTION;
CONSTITUTIONAL LAW, A, 11; B, 1;
CORPORATION, 2, 3;
EQUITY, 3;
EQUITY PLEADING, 3;
MUNICIPAL CORPORATION, 1, 2, 3, 4, 5, 7;
RECEIVER, 4, 5.

MAXWELL LAND GRANT.

1. It does not satisfactorily appear that the grant of Governor Armijo of 1841 to Beaubien and Miranda, since ascertained to amount to 1,714,764.94 acres, was of that character which, by the decree of the Mexican Congress of 1824, was limited to eleven square leagues of land for each grantee. *Maxwell Land-Grant Case*, 325.
2. It does appear that, though the attention of Congress was turned to this question, it confirmed the grant in the act of June 21, 1860, to the full extent of the boundaries as described in the petition of claimants. *Ib.*
3. In such case the courts have no jurisdiction to limit the grant, as the Constitution, by Article IV, § 1, vests the control of the public lands in Congress. *Tameling* v. *United States Freehold Co.*, 93 U. S. 644. *Ib.*
4. In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill, and the decree of the Circuit Court dismissing it is affirmed. *Ib.*

See PUBLIC LAND, 1, 2, 3.

MINERAL LAND.

Where a party was in possession of a mining claim in the Black Hills of Dakota, within the Indian reservation, on the 28th day of February, 1877, (the day when the Indian reservation was given up, and the land in which the mine existed was ceded back to the United States,) with the requisite discovery, with the surface boundaries sufficiently marked, with the notice of location posted, with a disclosed vein of ore, he could, by adopting what had been done, causing a proper record to be made, and performing the amount of labor or making the improvements necessary to hold the claim, date his rights from that day; and such location, labor, and improvements gave him the right of possession. *Noonan* v. *Caledonia Mining Co.*, 393.

See PARTIES, 1.

MONEYED CAPITAL.

See NATIONAL BANK, 13.

MORTGAGE.

See RAILROAD.

MUNICIPAL CORPORATION.

1. A town in Connecticut cannot make a contract, or authorize any officer or agent to make one in its behalf, except by vote of the inhabitants at a meeting warned by publicly posting a notice specifying the subject of the vote; and any one, who relies upon a vote as giving him rights against the town, has the burden of proving such a notice, although the selectmen and town clerk have neglected their duty of filing and recording the notice, and although the record of the meeting states that it was "legally warned." *Bloomfield* v. *Charter Oak Bank*, 121.
2. The property of any inhabitant of a town in Connecticut may be taken on execution upon a judgment against the town. *Ib.*
3. Neither the selectmen nor the treasurer of a town in Connecticut have general power to make contracts, to borrow money, or to incur debts, in behalf of the town. *Ib.*
4. The reports made to an annual meeting of a town in Connecticut by the selectmen and treasurer, as required by statute, are not, unless acted on by the town, evidence to charge it with debts which those officers had no authority to contract in its behalf. *Ib.*
5. A promissory note, made by the treasurer of a town in Connecticut to a bank, of which he has borrowed money without the knowledge of the town, does not bind the town, unless authorized or ratified by a vote of the town at a meeting warned for the purpose; and is not made valid, nor the town estopped to deny its invalidity, by the acceptance, at an annual meeting, of the reports of the selectmen and treasurer, showing various sums paid to other persons, or received, "on town notes," and an "indebtedness of the town by notes;" or by a vote at a subsequent meeting duly warned, authorizing the selectmen to pay certain notes made by the treasurer to other persons, and by the selectmen's paying those notes accordingly. *Ib.*
6. A grant to a municipal corporation of power to appropriate money in aid of the construction of a railroad, accompanied by a provision directing the levy and collection of taxes to meet such appropriation, and prescribing no other mode of payment, does not authorize the issuing of negotiable bonds in payment of such appropriation. *Concord* v. *Robinson*, 165.
7. The act of the legislature of Mississippi of November, 1858, amending the charter of the city of Aberdeen in that state, conferred no power upon the municipality to issue its negotiable bonds in payment of subscription to railroad stock, and to levy a tax for their payment, until the legal voters of the city should approve of the tax by a vote of a majority of such voters at an election held as other elections in the city. *Katzenberger* v. *Aberdeen*, 172.

See CONSTITUTIONAL LAW, B, 1;

LOCAL LAW, 1, 2;

NATIONAL BANK, 17, 18.

NATIONAL BANK.

1. A bill in equity filed by a judgment creditor of an insolvent national bank, which alleges that the president of the bank, under cover of a voluntary liquidation, was converting its assets, in a manner stated in the bill, in fraud of the rights of the complainant and other creditors, and which prays a discovery of all the assets, and of what moneys and assets have come into the president's hands, and what disposition has been made of them, and that the sales and conveyances of corporation property may be set aside, and that the property of the bank may be delivered up to the court, and that a receiver be appointed, and that the proceeds of the property may be applied to the payment of the complainant's debt, is in fact a bill to obtain judicial administration of the affairs of the bank, and to thus secure the equal distribution of its property: and an amended bill which states that it is filed on behalf of the complainant and of all the creditors who may become parties, and which charges that some stockholders named have parted with their stock for assets of the bank after it had gone into liquidation and in fraud of the creditors, and which prays that all the stockholders may be individually subjected to the liability created by the statute, and that the fund realized from the assets and from this liability may be distributed among the creditors, is germane to the original bill, and does not materially change the substance of the case nor make it multifarious, so as to make the allowance of the amendment an improper exercise of the discretion of the Circuit Court, within the rule laid down in *Hardin* v. *Boyd*, 113 U. S. 761. *Richmond* v. *Irons*, 27.

2. Under the original act respecting national banks, and before the act of June 30, 1876, 19 Stat. 63, a court of equity had jurisdiction of a suit to prevent or redress maladministration or fraud against creditors in the voluntary liquidation of such a bank, whether contemplated or executed; and such suit, though begun by one creditor, must necessarily be for the benefit of all. *Ib.*

3. The act of June 30, 1876, 19 Stat. 63, whether considered as declaratory of existing law, or as giving a new remedy, warranted the Circuit Court in granting leave to file the amended bill in this case. *Ib.*

4. The rights, under a statute of limitations, of a creditor who becomes party to a pending creditors' bill depend upon the date of the filing of the creditors' bill, and not upon the date of his becoming a party to it. *Ib.*

5. The statutory liability of a shareholder in a national bank for the debts of the corporation survives against his personal representatives. *Ib.*

6. A stockholder in a national bank continues liable for the debts of the company, under the statutes of the United States, until his stock is actually transferred upon the books of the bank, or until the certificate has been delivered to the bank, with a power of attorney authorizing the transfer, and a request, made at the time of the transaction,

to have the transfer made: a delivery to the president of the bank as vendee and not as president is insufficient to discharge the shareholder under the rule in *Whitney* v. *Butler*, 118 U. S. 655. *Ib.*

7. Without express authority from the shareholders in a national bank, its officers, after the bank goes into liquidation, can only bind them by acts implied by the duty of liquidation. *Ib.*
8. Creditors of a national bank who, after it suspends payment and goes into voluntary liquidation, receive in settlement of their claims bills receivable, indorsed or guaranteed in the name of the bank by its president, cannot claim as creditors against the stockholders; as the original debt is paid, and the stockholders, in the absence of express authorization, are not liable on the contract of indorsement or guarantee, made after suspension. *Ib.*
9. A shareholder in a national bank, who is liable for the debts of the bank, is liable for interest on them to the extent to which the bank would have been liable, not in excess of the maximum liability fixed by the statute. *Ib.*
10. The expenses of a receivership of a national bank appointed in a creditors' suit, contesting a voluntary liquidation of the bank, cannot be charged upon stockholders as part of their statutory liability, but must come from the creditors at whose instance the receiver was appointed. *Ib.*
11. No person is entitled to share as a creditor in the distribution under a creditor's bill, who does not come forward to present his claim. *Ib.*
12. The main purpose of Congress in fixing limits to state taxation on investments in shares of national banks was, to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business, and operations and investments of like character. *Mercantile Bank* v. *New York*, 138.
13. The term "moneyed capital," as used in Rev. Stat. § 5219, respecting state taxation of shares in national banks, embraces capital employed in national banks, and capital employed by individuals when the object of their business is the making of profit by the use of their moneyed capital as money — as in banking as that business is defined in the opinion of the court; but it does not include moneyed capital in the hands of a corporation, even if its business be such as to make its shares moneyed capital when in the hands of individuals, or if it invests its capital in securities payable in money. *Ib.*
14. The mode of taxation adopted by the state of New York in reference to its corporations, excluding trust companies and savings banks, does not operate in such a way as to make the tax assessed upon shares of national banks at a greater rate than that imposed upon other moneyed capital in the hands of individual citizens. *Ib.*
15. Although trust companies created under the laws of New York are not banks in the commercial sense of the word, shares in such com-

panies are moneyed capital in the hands of individuals: but as these companies are taxed upon the value of their capital stock, with deductions on account of property in which it is invested either otherwise taxed or not taxable, and are additionally taxed upon their income by way of franchise tax, it does not appear that the rate of taxation thus imposed by the laws of New York is less than that upon shares in national banks. *Ib.*

16. Deposits in savings banks are exempted from state taxation for just reasons, and, as the exemption does not operate as an unfriendly discrimination against investments in national bank shares, it cannot affect the rule for the taxation of the latter. *Ib.*
17. The amount of bonds of the city of New York which are exempt from taxation under state laws is too small, as compared with the whole amount of personal property and credits which are the subject of taxation, to affect, under Rev. Stat. § 5219, the validity of an assessment. *Ib.*
18. The bonds of municipal corporations are not within the reason of the rule established by Congress for the taxation of national banks. *Ib.*
19. There is no material difference between this case and *Mercantile Bank* v. *New York City*, *ante*, 138, and on the authority of that case this is affirmed. *Newark Banking Co.* v. *Newark*, 163.

NON COMPOS MENTIS.

See GUARDIAN AND WARD.

NON-INTERCOURSE ACT.

See REBELLION.

PARTIES.

1. During the trial in Dakota of adverse claims to a mineral location, it appeared that one M. not a party to the record, asserted an interest in the lode and was a necessary party to a complete determination of the matters in controversy. By consent of parties he was made a codefendant, defendant's counsel appearing for him, and an entry of it was made in the journal of proceedings, and a further entry that "any amendments to pleadings required to be prepared and served during the pendency of this action or at its conclusion." The trial then proceeded, M. participating as codefendant, and resulted in a verdict for the plaintiff. Before the entry of judgment plaintiff's attorney served on defendants' attorney a notice of an amendment to the complaint by inserting therein the name of M., together with an additional paragraph averring that he set up a claim of interest in the property, that it was without foundation, and asking the same relief against him as against the other defendants. Objection was taken to this mode of amending the pleadings for the first time in the Supreme Court of the territory on appeal. *Held*, that M. was sufficiently made party to the

case by the proceedings and the amendment filed, and that he must be presumed to have adopted the answer of his codefendants. *Noonan* v. *Caledonia Mining Co.*, 393.

2. On the facts proved the court holds that this suit was properly brought in the name of the plaintiffs in error, but that they were acting as trustees for others for whose benefit its results were to be applied, and it affirms the judgment of the court below. *Lanier* v. *Nash*, 404.

See ACTION;
EVIDENCE, 2.

PARTNERSHIP.

1. One partner may, with the consent of his copartner, apply the partnership property to the payment of his individual debt, as against a creditor of the partnership, who has acquired no lien on the property. *Huiskamp* v. *Moline Wagon Co.*, 310.
2. Where such payment is claimed to be lawful on the ground that the property so applied has become the individual property of the partner making the payment, no creditor of the partnership acquires any right in respect of the property by the fact that he does not know of the transfer of the property to such partner, so long as he has no lien on the property, and it is applied in good faith by such partner to pay his individual debt. *Ib.*

See CORPORATION, 4, 5.

PATENT FOR INVENTION.

1. Reissued letters-patent No. 5400, granted to Erastus W. Scott and Anson Searls, May 6, 1873, for an "improvement in whip-sockets," on an application for reissue filed January 16, 1873, (the original letters-patent, No. 70,627, having been granted to E. W. Scott, November 5, 1867, on an application filed August 23, 1867,) are invalid, as an unlawful expansion of the original patent. *Worden* v. *Searles*, 14.
2. A whip-holder constructed in accordance with the specification and drawings of letters-patent No. 70,075, granted to Henry M. Curtis and Alva Worden, October 22, 1867, for an "improvement in self-adjusting whip-holder," did not infringe the original Scott patent, regarding the Scott invention as earlier in date than that of Curtis and Worden, and the Scott patent was reissued with a view of covering the device of Curtis and Worden. *Ib.*
3. A combination of well-known separate elements, each of which, when combined, operates separately and in its old way, and in which no result is produced which cannot be assigned to the independent action of one or the other of the separate elements, is not patentable. *Thatcher Heating Co.* v. *Burtis*, 286.
4. Letters-patent No. 104,376, dated June 14, 1870, granted to John M. Thacher for improvements in fireplace heaters, are not for a particular

device for effecting the combination described in the patentees' claim, but for the combination itself, no matter how or by what means it may be effected, and, as such, are void. *Ib.*

5. In view of the previous state of the art, the claims in the patent granted to Charles B. Bristol, May 16, 1865, for an improvement in harness hooks or snaps must be restricted to the precise form and arrangement of parts described in the specification and to the purpose therein indicated. *Bragg* v. *Fitch*, 478.
6. The first claim in letters-patent No. 127,933, granted to the Buffalo Dental Manufacturing Company as assignee of George B. Snow, June 11, 1872, for a new and useful improvement in steam bell-ringers is limited to a combination in which the piston and piston-rod are detached from each other, and is not infringed by the use of steam bell-ringers constructed and operated in conformity to the drawings and specifications of letters-patent granted August 25, 1874, to Charles H. Hudson for a new and useful improvement in steam bell-ringing apparatus. *Snow* v. *Lake Shore Railroad*, 617.

See CONTEMPT;
EQUITY, 2.

PATENT FOR PUBLIC LANDS.

See PUBLIC LAND, 1, 2, 3.

PLEADING.

1. An information being filed against Royall for practising as a lawyer without having first obtained a revenue license, he pleaded payment of the license fee partly in a coupon cut from a bond issued by the state of Virginia under the provisions of the act of March 30, 1871, and partly in cash. The Commonwealth demurred to this plea. *Held*, that the demurrer admitted that the coupon was genuine and bore on its face the contract of the state to receive it in payment of taxes, &c., and that this showed a good tender and brought the case within the ruling in *Royall* v. *Virginia*, 116 U. S. 572. *Royall* v. *Virginia*, 102.
2. A counterclaim or recoupment must be set up in the answer to be available. *McGowan* v. *American Tan Bark Co.*, 575.

See REMOVAL OF CAUSES, 4, 6.

PRACTICE.

1. No assignments of error being made in these cases, and there being no appearance for plaintiffs in error, the court affirms the judgments below under Rule 21, § 4, 108 U. S. 585, for want of due prosecution of the writs of error. *Dugger* v. *Tayloe*, 286.
2. The findings of a jury, on which the Circuit Court reserved points of law, having been treated by that court, and by the counsel for both parties in it, as amounting to either a special verdict or an agreed

statement of facts, this court overlooked the irregularity, on a writ of error, and considered the case on its merits. *Hartranft* v. *Wiegmann*, 609.

See ADMIRALTY; ADVANCEMENT OF CAUSES; CITATION; PARTIES, 1.

PUBLIC LAND.

1. While courts of equity have the power to set aside, cancel, or correct patents or other evidences of title obtained from the United States by fraud or mistake, and to correct under proper circumstances such mistakes, this can only be done on specific averments of the mistake or the fraud, supported by clear and satisfactory proof. *Maxwell Land-Grant Case*, 325.

2. The general doctrine on this subject is, that, when in a court of equity it is proposed to set aside, to annul, or correct a written instrument, for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. *Ib.*

3. Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent on these official instruments, demand that the effort to set them aside should be successful only when the allegations on which this attempt is made are clearly stated and fully proved. *Ib.*

4. The grant of swamp and overflowed lands to the several states by act of September 28, 1850, is one *in præsenti*, passing title to the lands of the character therein described, from its date, and requiring only identification thereof to render such title perfect. *Wright* v. *Roseberry*, 488.

5. Such identification by the Secretary of the Interior is conclusive against collateral attack as being the judgment of the special tribunal on which such duty was imposed. *Ib.*

6. On neglect or failure of that officer to make such designation, it is competent for the grantees of the state to identify the lands in any other appropriate mode to prevent their rights from being defeated. *Ib.*

7. After segregation of the lands by the state, and adoption of the segregation surveys by the proper Federal officers, the right of the state's grantees to maintain an action for recovery thereof cannot be defeated because such lands have not been certified or patented to the state. *Ib.*

8. The issue of patents for these lands to defendants or their grantors, under the preëmption laws, upon claims initiated subsequent to the swamp grant to the state is not conclusive at law as against parties claiming under such grant, and in an action for their possession evidence is admissible to determine whether or not the lands were in fact swamp and overflowed at the date of the swamp land grant: if proved

to have been such, the rights of subsequent claimants under other laws are subordinate thereto. *Ib.*

9. The provisions contained in § 1 of the act of July 23, 1866, "to quiet land titles in California," do not relate to the swamp lands granted to the state by the act of September 8, 1850; the provisions in §§ 4 and 5 relate to swamp lands. *Ib.*
10. The legislation of Congress respecting swamp lands, the Departmental construction of that legislation, the line of decisions by this court respecting it, and the decisions of the highest courts of many of the states concerning it, stated. *Ib.*

See MAXWELL LAND GRANT;
MINERAL LAND.

RAILROAD.

1. In two suits for the foreclosure of two mortgages of an insolvent railway, which had, by amendments and crossbills, become practically consolidated, the two sets of trustees, acting in harmony and in good faith, and with the approbation of the holders of a majority of the bonds issued under each mortgage, (but against the wishes and objections of persons holding a minority of one of the issues as collateral, and contesting the priority of lien as to some of the property and the legality of some of the issues of bonds,) procured the entry of a decree which ordered a speedy sale of all the property covered by either or both mortgages, as being for the best interest of all concerned, but left the conflicting claims as to the priority of lien and the amount of bonds issued to be settled by a subsequent decree or decrees. *Held*, that the court below had power to make this decree; that it was a final decree from which an appeal could be taken to this court; and that it was right. *Bank of Cleveland* v. *Shedd*, 74.
2. In a suit for foreclosing a railroad mortgage, the court being satisfied that money loaned the railroad company by a bank, an intervening creditor, at a time when the company was much embarrassed, and shortly before the commencement of the suit, went into the general funds of the company, and not especially to the payment of mortgage interest, and that there was no fraud or deception on the part of the trustees, and no misuse of current income by the receiver of the road to the injury of the bank; *Held*, that the bank had only the rights of a general creditor in the distribution of the proceeds from the sale of the mortgaged property. *Penn* v. *Calhoun*, 251.

REBELLION.

A mortgage made in enemy's territory to a loyal citizen of the United States does not necessarily imply unlawful intercourse between the parties, contrary to the non-intercourse proclamation and act. *Carson* v. *Dunham*, 421.

RECEIVER.

1. The appointment of a receiver twenty days after the filing of the bill, to collect rents and to lease unrented property, upheld, as within the rule laid down in *Kountze* v. *Omaha Hotel Co.*, 107 U. S. 378, 395. *Grant* v. *Phœnix Life Ins. Co.*, 105.
2. The appointment of a receiver by an interlocutory decree held not to have been superseded, because it was not expressly continued by the final decree. *Ib.*
3. In a suit in equity to enforce trust deeds, a receiver appointed to receive rents and to lease unrented property, may apply to the court for directions in regard to the expenditure of funds in his hands as receiver. *Grant & Another* v. *Phœnix Life Ins. Co.*, 118.
4. The reference of a suit in equity by the Special Term of the Supreme Court of the District of Columbia to the General Term for hearing in the first instance does not deprive the Special Term of authority to afterwards hear such application of the receiver, especially when the General Term has made an order granting leave to the receiver to apply to the Special Term for instructions. *Ib.*
5. Such an application may be made by the receiver to the Special Term even after an appeal to this court from the final decree of the General Term which operates as a supersedeas. *Ib.*

See JURISDICTION, A, 2;
NATIONAL BANK, 10.

RECOUPMENT.

See PLEADING, 2.

REMOVAL OF CAUSES.

1. In a suit by a widow in a court of the state of which she is a citizen, seeking to have dower assigned to her in land within the state conveyed by her husband to A., a citizen of another state, and by the latter conveyed to a corporation created under the laws of the state in which the land lies, to which suit A. is made party defendant, there is no separable controversy (if there be any controversy at all) as to A., which warrants its removal to a Circuit Court of the United States. *Laidly* v. *Huntington*, 179.
2. A petition for removal filed after the case has been heard on demurrer on the ground that the bill does not state facts sufficient to entitle the complainant to the relief prayed for, and after a decree sustaining the demurrer, is too late. *Ib.*
3. When a cause is removed from a state court to a Circuit Court of the United States on the ground that the controversy is wholly between citizens of different states, and the adverse party moves in the Circuit Court to remand it, denying the averments as to citizenship, the burden is on the party at whose instance the suit was removed to

establish the citizenship necessary to give jurisdiction to the Circuit Court. *Carson* v. *Dunham*, 421.

4. A petition filed in a state court, showing on its face sufficient ground for the removal of the cause to a Circuit Court of the United States, may be amended in the latter court by adding to it a fuller statement of the facts, germane to the petition, upon which the statements in it were grounded. *Ib.*

5. In order to give jurisdiction to a Circuit Court of the United States of a cause by removal from a state court, under the removal clauses of the act of March 3, 1875, c. 137, it is necessary that the construction either of the Constitution of the United States, or of some law or treaty of the United States, should be directly involved in the suit; but the jurisdiction for review of the judgments of state courts given by § 709 of the Revised Statutes extends to adverse decisions upon rights and titles claimed under commissions held or authority exercised under the United States, as well as to rights claimed under the Constitution laws or treaties of the United States. *Ib.*

6. A petition for the removal of a cause from a state court should set out the facts on which the right is claimed; not the conclusions of law only. *Ib.*

See JURISDICTION, B, 4, 5;
STATUTE, B.

RES JUDICATA.

See EQUITY PLEADING, 4;
ESTOPPEL, 1.

RULES.

Rule 34, 117 U. S. 708, explained. *Carper* v. *Fitzgerald*, 87.

See ADVANCEMENT OF CAUSES;
PRACTICE, 1.

SALE.

See CONTRACT, 1.

SHIP.

A vessel was chartered to carry a cargo of oranges from Palermo to Boston. The words "captain engages himself to take the northern passage" were written into the printed blank. The cargo was badly damaged, and the charterers libelled the vessel to recover for the loss. The court below found that "northern passage" appeared from the proof to be a term of art, unintelligible without the aid of testimony, that the evidence concerning it was conflicting, and that it was immaterial to decide it, as the claimant was entitled to the least strict definition, and the actual course of the vessel came within that definition. *Held*, that this was error; that if the term was a term of art, it should have

been found by the court; and that if there was no passage known as "northern," the vessel was bound to take the one which would carry it in a northerly direction through the coolest waters into the coolest temperature, and the court should have ascertained from the proof what passages between Gibraltar and Boston vessels were accustomed to take, and should have determined which of them the contract permitted the vessel to choose. *The John H. Pearson*, 469.

STATUTE.

A. Construction of Statutes.

When Congress adopts a state system of jurisprudence, and incorporates it, substantially in the language of the statute of the State creating it, into the Federal legislation for the District of Columbia, it must be presumed to have adopted it as understood in the state of its origin, and not as it might be affected by previous rules of law, either prevailing in Maryland, or recognized in the courts of the District. *Metropolitan Railroad* v. *Moore*, 558.

See Statute, B.

B. Statutes of the United States.

To constitute a collusive assignment under § 5 of the act of March 3, 1875, c. 137, when the title made by the transfer is complete so as to give the assignee power to maintain suit in his own name, it must appear that the object of the transfer was to create a case cognizable under the act of 1875. *Lanier* v. *Nash*, 404.

See Action;
Bankruptcy;
Claims against the United States, 5;
Constitutional Law, A, 6;
Customs Duties, 1;
Equity, 1;
Equity Pleading, 3;
Indian, 1, 2;
Maxwell Land Grant;
National Bank, 2, 3, 4, 5, 6, 13, 17;
Public Land, 4, 9;
Rebellion;
Removal of Causes, 5;
Supersedeas.

C. Statutes of States and Territories.

Illinois. *See* Local Law, 1.
Iowa. *See* Constitutional Law, A, 2.
Mississippi. *See* Local Law, 2.
Missouri. *See* Innkeeper, 2.
Nebraska. *See* Equity, 3.
New York. *See* Action.
Virginia. *See* Corporation, 2; Pleading, 1.

D. Foreign Statutes.

Mexico. *See* Maxwell Land Grant, 1.

SUPERSEDEAS.

The provision in Rev. Stat. § 1007, that if a plaintiff in error "desires to stay process, he may, having served his writ of error as" directed in the Revised Statutes, "give the security required by law within sixty days after the rendition of judgment, or afterwards with the permission of a justice or judge of the appellate court," applies to an appeal from a final decree against an intervenor in a suit in equity when a partial supersedeas is granted below, and furnishes a reason why a motion on his behalf for a full supersedeas should be denied here. *Covington Stock-Yards Co.* v. *Keith*, 248.

SWAMP LAND.

See Public Land, 4 to 10.

TAX AND TAXATION.

1. When the statutes of a state provide a board for the correction of errors and irregularities of assessors in the assessment of property for purposes of taxation, the official action of that body is judicial in character, and its judgments are not open to attack collaterally. *Stanley* v. *Albany*, 535.
2. A party who feels himself aggrieved by over-valuation of his property for purposes of taxation, and does not resort to the tribunal created by the state for correction of errors in assessments before levy of the tax, cannot maintain an action at law to recover the excess of taxes paid beyond what should have been levied on a just valuation. *Ib.*

See National Bank, 12 to 18.

TRUST.

See Equity Pleading, 1;
Estoppel, 2;
Parties, 2.

VIRGINIA COUPONS.

See Pleading, 1.

USURY.

Commissions on loans, not paid by the borrower to the lender, held not to constitute usury. *Grant* v. *Phœnix Life Ins. Co.*, 105.

WARRANTY.

See Contract, 3;
Insurance, 2.

WHARFAGE.

See CONSTITUTIONAL LAW, A, 10.

WITNESS.

An objection to the competency of an expert witness to testify, overruled. *McGowan* v. *American Tan Bark Co.*, 575.

WRIT OF ERROR.

See CITATION.