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ABANDONED AND CAPTURED PROPERTY.

See COURT OF CLAIMS.

ABANDONMENT OF INVENTION.

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ADMIRALTY.

1. On an appeal by the libellants in a cause of salvage, from a decree of the Circuit Court which awarded to them a less amount than the District Court had awarded, on an appeal from that court taken only by the libellants, this court, being unable to say, from the findings of fact by the Circuit Court, that that court did not properly exercise its discretion in making the allowance it did, affirmed its decree. *Irvine* v *The Hesper*, 256.
2. An appeal in admiralty from a District Court to a Circuit Court vacates altogether the decree of the District Court, and the case is tried *de novo*, and this is true, whether both parties appeal, or whether only the one or the other appeals. *Ib.*

See COLLISION.

APPEAL.

When the transcript from a court below filed in an appellate court in due time is imperfect, and the imperfection can be cured by a writ of *certiorari*, the appeal is valid. *Clinton* v. *Missouri Pacific Railway*, 469.

See ADMIRALTY, 2;
JURISDICTION, A, 2, 3, 4, 5;
LOCAL LAW, 10.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

1. A payment by an insolvent debtor of a debt due to his wife, in advance and in contemplation of a general assignment for the benefit of creditors, does not invalidate the subsequent assignment. *Estes* v. *Gunter*, 450.
2. The taking of supplies and of money for family use from the store of an insolvent trader by his wife does not invalidate a general assignment for the benefit of creditors, subsequently made. *Ib.*

3. The court, being satisfied that the conveyance of real estate by the husband, when insolvent, to a trustee for the benefit of his wife (which is assailed in this suit), was made in good faith to secure an indebtedness from him to her for sums previously realized by him from sales of her individual property, sustains it, as coming within the doctrine, well settled here, that while such a deed, made under such circumstances, is not valid if its sole purpose is to secure the wife against future necessities, it is, if made to secure a prior existing indebtedness from the husband to the wife, as valid as if made to secure a like indebtedness to any other of his creditors. *Bean* v. *Patterson*, 496.

See ATTACHMENT;
LOCAL LAW, 8, 9.

ASSIGNMENT OF ERROR.
See PRACTICE, 2.

ASSUMPSIT.
See COURT AND JURY, 4;
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ATTACHMENT.

B. and M. sued out an attachment against the property of L. and A., who had made an assignment for the benefit of creditors. The writ coming to the hands of the marshal of the United States, he indorsed thereon an appointment of a special deputy, leaving the name of the latter blank, and verbally authorizing the attorney of the attaching creditors to fill the blank with the name of some "bonded officer." The blank was filled by the attorney with the name of a sheriff; and, he declining to act, his name was erased by the attorney, who then inserted the name of a town marshal. The latter having executed the writ by seizing the property of the debtors, on the same day turned over both the property and the writ to a regular deputy of a marshal. Subsequently the court, with the consent of the attaching creditors, the debtors and the assignee of the debtors, ordered the property to be sold, and the proceeds to be brought into court for the benefit of all the attaching creditors, in their order. After the money was paid to the clerk of the court, other creditors of the same debtors obtained judgments against them, and, having procured writs of garnishment to be served on the marshal and clerk, moved to discharge the levy under the attachment on the ground that it was made by an unauthorized person and was void. *Held*, that the attaching creditors, the debtors, and the assignee of the debtors having, in effect, waived their objections to the manner in which the property was seized, and the consent order of sale not being impeached for fraud, subsequent judgment creditors could not question the validity of the levy, or the disposition made of the proceeds of the property. *Walter* v. *Bickham*, 320.

BAILMENT.

See COMMON CARRIER, 1, 2.

BANKRUPTCY.

An assignee in bankruptcy has no standing to impeach a voluntary conveyance made by the bankrupt to his children prior to the adjudication in bankruptcy, unless such conveyance was void because of fraud; and, in Georgia, it is not fraudulent and void when the property conveyed forms an inconsiderable part of the grantor's estate, and there is no purpose to hinder and delay creditors. Only existing creditors have a right to assail such a conveyance. The assignee, there being no fraud, takes only such rights as the bankrupt had. *Adams* v. *Collier*, 382.

See FRAUDULENT CONVEYANCE; JURISDICTION, C; LIMITATION, STATUTES OF, 3, 4, 6, 7.

BILL OF LADING.

See COMMON CARRIER, 1, 2.

CASES AFFIRMED.

1. *Chicago, Burlington & Kansas City Railroad* v. *Guffey*, 120 U. S. 569, affirmed on petition for a rehearing, 56.
2. *Iron Mountain & Helena Railroad* v. *Johnson*, 119 U. S. 608, affirmed and applied. *Denver & Rio Grande Railway* v. *Harris*, 597.
3. *Maxwell Land Grant Case*, 121 U. S. 325, affirmed on petition for a rehearing, 365.
4. *Merchants' Ins. Co.* v. *Allen*, 121 U. S. 67, affirmed on a petition for rehearing, 376.
5. *Phœnix Ins. Co.* v. *Doster*, 106 U. S. 32, affirmed. *Goodlett* v. *Louisville & Nashville Railroad*, 391.
6. *Porter* v. *Pittsburg Bessemer Steel Co.*, 120 U. S. 649, affirmed on a petition for a rehearing, 267.
7. *Randall* v. *Baltimore & Ohio Railroad*, 111 U. S. 482, affirmed. *Goodlett* v. *Louisville & Nashville Railroad*, 391.
8. *Stanley* v. *Supervisors of Albany*, 121 U. S. 535. *Williams* v. *Albany*, 154.

CASES DOUBTED, EXPLAINED, OR QUESTIONED.

1. *Ralls County* v. *United States*, 105 U. S. 733, explained. *Harshman* v. *Knox County*, 306.
2. *State Tax on Railway Gross Receipts*, 15 Wall. 284, considered and questioned. *Philadelphia & Southern Steamship Co.* v. *Pennsylvania*, 326.

COLLISION.

1. Prior to a collision between two steam vessels, the C. and the M., they were moving on nearly parallel, opposite, but slightly converging lines, and that fact was apparent to the officers of both for some considerable time before the C. ported and ran across the course

of the M. The M. did not slacken her speed, or signal her intentions, or reverse until it was too late. The relative courses of the vessels, and the bearing of their lights, and the manifest uncertainty as to the intentions of the C., in connection with all the surrounding facts, called for the closest watch and the highest degree of diligence, on the part of each, with reference to the movements of the other: *Held*, that, although the C. was in fault, the M. was also in fault for not indicating her course by her whistle, and for not slowing, and for not reversing until too late. *The Manitoba*, 97.

2. The proper mode of applying a limitation of liability, where both vessels are in fault and the damages are divided, and both vessels are allowed such limitation, stated. *Ib.*

3. The M. having been bonded, in the limited liability proceedings, on a bond in a fixed sum, conditioned to "abide and answer the decree," that sum does not carry interest until the date of the decree of the District Court. *Ib.*

4. The loss of the C., with interest from the date of the collision to the date of the decree of the Circuit Court, exceeded the loss of the M., with like interest, by a sum, one-half of which was greater than the amount of such bond, with interest from the date of the decree of the District Court to the date of the decree of the Circuit Court. It was, therefore, proper for the Circuit Court to award to the C., as damages, the amount of the bond, with such interest. *Ib.*

COMMON CARRIER.

1. A bill of lading, acknowledging the receipt by a common carrier of "the following packages, contents unknown . . . marked and numbered as per margin, to be transported" to the place of destination, is not a warranty, on the part of the carrier, that the goods are of the quality described in the margin. *St. Louis Iron Mountain & Southern Railway* v. *Knight*, 79.

2. P. shipped by rail a large quantity of cotton at different times, and at different points south of Texarkana, Ark., to be made up into bales there at a compress house, and to be thence forwarded to various destinations North and East. The work at the compress house was to be done by the carrier, but under direction of the shipper, who had control of the cotton there for that purpose, and who superintended the weighing, the classing, and the marking of it, and who selected for shipment the particular bales to fill the respective orders at the points of destination. Bills of lading for it were issued from time to time by the agents of the railroad company, sometimes in advance of the separation by P. of particular bales from the mass to correspond with them. P. was in the habit of drawing against shipments with bills of lading attached, and his drafts were discounted at the local banks. When shipments were heavy, drafts would often mature before the arrival of the cotton. 525 bales, marked on the margin as of a particu-

lar quality, were so selected and shipped to K. at Providence, Rhode Island. The bill of lading described them as "contents unknown," "marked and numbered as per margin." The contents of the bales, on arrival, were found not to correspond with the marks on the margin. The consignee had honored the draft before the arrival of the cotton. He refused to receive the cotton, and sold it on account of the railroad company, after notice to it, and sued in *assumpsit*, on the bill of lading, to recover from the company, as a common carrier, the amount of the loss. *Held*, (1) That the bill of lading was not a guarantee by the carrier that the cotton was of the quality described in the margin; (2) That if the railroad company was liable as warehouseman, that liability could not be enforced under this declaration; nor, under the circumstances of this case, by the consignee of the cotton; (3) That the company was not liable as a common carrier from points south of Texarkana for the specific bales consigned to K; (4) That its liability as common carrier began only when specific lots were marked and designated at Texarkana, and specifically set apart to correspond with a bill of lading then or previously issued. *Ib.*

CONSTITUTIONAL LAW.

1. It being the settled doctrine of this court that "the remedy subsisting in a state when and where a contract is made and is to be performed is a part of its obligation, and" that "any subsequent law of the state which so effects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void;" and the legislature of Missouri having, by the act of March 23, 1868, to facilitate the construction of railroads, enacted that the county court should from time to time levy and cause to be collected, in the same manner as county taxes, a special tax in order to pay the interest and principal of any bond which might be issued by a municipal corporation in the state on account of a subscription, authorized by the act, to the stock of a railroad company, which tax should be levied on all the real estate within the township making the subscription, in accordance with the valuation then last made by the county assessors for the county purposes, *Held:* (1) That it was a material part of this contract that such creditor should always have the right to a special tax to be levied and collected in the same manner as county taxes at the same time might be levied and collected; (2) That the provisions contained in §§ 6798, 6799, and 6800 of the Revised Statutes of Missouri of 1879 respecting the assessment and collection of such taxes are not a legal equivalent for the provisions contained in the act of 1868; and (3) That the law of 1868, although repealed by the legislature of Missouri, is still in force for the purpose of levying and collecting the tax necessary for the payment of a judgment recovered against a municipal corporation in the state, upon a debt incurred by subscribing to the stock of a railroad company in accordance with its provisions. *Seibert* v. *Lewis*, 284.

2. A state tax upon the gross receipts of a steamship company incorporated under its laws, which are derived from the transportation of persons and property by sea, between different states, and to and from foreign countries, is a regulation of interstate and foreign commerce, in conflict with the exclusive powers of Congress under the Constitution. *Philadelphia & Southern Steamship Co.* v. *Pennsylvania*, 326.

3. The statutes of the state of Indiana, §§ 4176, 4178, Rev. Stat. Ind. 1881, which require telegraph companies to deliver despatches by messenger to the persons to whom the same are addressed or to their agents provided they reside within one mile of the telegraphic station or within the city or town in which such station is, are in conflict with the clause of the Constitution of the United States which vests in Congress the power to regulate commerce among the states, in so far as they attempt to regulate the delivery of such despatches at places situated in other states. *Western Union Telegraph Co.* v. *Pendleton*, 347.

4. The authority of Congress over the subject of commerce by telegraph with foreign countries or among the states being supreme, no state can impose an impediment to its freedom, by attempting to regulate the delivery in other states of messages received within its own borders. *Ib.*

5. The reserved police power of a state under the Constitution, although difficult to define, does not extend to the regulation of the delivery at points without the state of telegraphic messages received within the state; but the state may, within the reservation that it does not encroach upon the free exercise of the powers vested in Congress, make all necessary provisions in respect of the buildings, poles, and wires of telegraph companies within its jurisdiction, which the comfort and convenience of the community may require. *Ib.*

6. A state constitution cannot prohibit judges of the courts of the United States from charging juries with regard to matters of fact. *St. Louis, Iron Mountain & Southern Railway* v. *Vickers*, 360.

See TAX, 3.

CONTRIBUTORY NEGLIGENCE.

See RAILROAD, 6.

CONTRACT.

1. When the language of a contract is ambiguous, the practical interpretation of it by the parties is entitled to great, if not controlling influence. *Topliff* v. *Topliff*, 121.

2. In this case the court holds that a contract made by the parties in 1870 is still in force, and that under its terms the appellee is entitled to make use of the combinations covered by the patent to John A. Topliff, one of the appellants, of August 24, 1875, without the payment of royalty, and without being charged with liability as an infringer. *Ib.*

3. A written instrument between A and B, held to constitute A the creditor of B, and not the partner, and not to make A liable to third parties on contracts made by B. *Davis* v. *Patrick*, 138.
4. From the evidence in this case the court is satisfied that the verbal contract which forms the subject of the controversy did not fix any time for the completion of the work, and that the work was completed within a reasonable time; and it affirms the decree of the court below. *Minneapolis Car Co.* v. *Kerr Murray Mfg. Co.*, 300.

See CONSTITUTIONAL LAW, 1;
PARTNERSHIP;
RAILROAD, 4, 5.

CORPORATION.

1. The Louisville and Nashville Railroad Company is a corporation of Kentucky, and not of Tennessee, having from the latter state only a license to construct a railroad within its limits, between certain points, and to exert there some of its corporate powers. *Goodlett* v. *Louisville & Nashville Railroad*, 391.
2. A corporation is liable *civiliter* for torts committed by its agents, under its authority, whether express or implied, written, and under seal, by vote of the corporation or otherwise. *Denver & Rio Grande Railway* v. *Harris*, 597.

See TRESPASS ON THE CASE.

COURT AND JURY.

1. In a suit by a third party against A to make him liable on such a contract, where the written instrument is in evidence, an instruction to the jury is erroneous, which overrides the legal purport of the instrument. *Davis* v. *Patrick*, 138.
2. An instruction to a jury, based upon a theory unsupported by evidence, and upon which theory the jury may have rendered the verdict, is erroneous. *Ib.*
3. The rule announced in *Phœnix Insurance Company* v. *Doster*, 106 U. S. 32, and in *Randall* v. *Baltimore & Ohio Railroad*, 111 U. S. 482, as to when a case may be withdrawn from a jury by a peremptory instruction reaffirmed. *Goodlett* v. *Louisville & Nashville Railroad*, 391.
4. When a declaration in assumpsit contains a special count, under which on the proofs the plaintiff can recover, and also general counts, an instruction to the jury that the plaintiff can recover under the general counts, if it be erroneous, works no injury to the defendent. *Struthers* v. *Drexel*, 487.
5. If, in regard to any particular subject or point pertinent to the case the court has laid down the law correctly, and so fully as to cover all that is proper to be said on the subject, it is not bound to repeat this

instruction in terms varied to suit the wishes of either party. *Northwestern Ins. Co.* v. *Muskegon Bank*, 501.

See CONSTITUTIONAL LAW, 6; PRACTICE, 6;
INSURANCE, 3 (3) (4) (5); RAILROAD, 2, 6.

COURT-MARTIAL.

Article 65 of the Articles of War in the act of April 10, 1806, 2 Stat. 359, 367, "for the government of the armies of the United States," enacted that "neither shall any sentence of a general court-martial, in time of peace, extending to the loss of life, or the dismission of a commissioned officer, or which shall, either in time of peace or war, respect a general officer, be carried into execution until after the whole proceedings shall have been transmitted to the Secretary of War to be laid before the President of the United States, for his confirmation or disapproval, and orders in the case." *Held:* (1) That the action required of the President by this article is judicial in its character, and in this respect differs from the administrative action considered in *Wilcox* v. *Jackson*, 13 Pet. 498; *United States* v. *Eliason*, 16 Pet. 291; *Confiscation Cases*, 20 Wall. 92; *United States* v. *Farden*, 99 U. S. 10; *Wolsey* v. *Chapman*, 101 U. S. 755. (2) That (without deciding what the precise form of an order of the President approving the proceedings and sentence of a court-martial should be, or that his own signature should be affixed thereto), his approval must be authenticated in a way to show, otherwise than argumentatively, that it is the result of his own judgment and not a mere departmental order which may or may not have attracted his attention, and that the fact that the order was his own must not be left to inference only. (3) That until the President acted in the manner required by the article, a sentence by a court-martial of dismissal of a commissioned officer from service in time of peace was inoperative. *United States* v. *Runkle*, 543.

There being no sufficient evidence that the action of the court-martial which dismissed Major Runkle from the service was approved by the President, it follows that he was never legally cashiered or dismissed from the army. *Ib.*

COURT OF CLAIMS.

The appellant on the 17th February, 1886, filed his petition in the Court of Claims setting forth his appointment as assignee in bankruptcy of one Robert Erwin and of Hardee, his partner, in business in Savannah; that Erwin in 1864 and in 1865 was the owner of a quantity of cotton in the state of Georgia, which was seized and captured, and the proceeds of which passed into the Treasury of the United States; that Congress on the 5th February, 1877, passed an act to permit the Court of Claims to take jurisdiction of the claims of Erwin for this cotton, his right of action therefor being then barred; that at the time of the passage of said act Erwin's said claims had passed into

the hands of his assignee and were a part of his assets in bankruptcy; and that this suit was brought in pursuance of the special act; and he prayed judgment for the amount in the Treasury. The United States demurred to this and also moved to dismiss the petition. The Court of Claims dismissed the petition. On appeal that judgment is affirmed by a divided court. *Rice* v. *United States*, 611.

COURTS OF THE UNITED STATES.

See CONSTITUTIONAL LAW, 6;
JURISDICTION, A, B, C.

CUSTOMS DUTY.

1. Under § 2839 of the Revised Statutes, there can be no recovery by the United States for a forfeiture of the value of imported merchandise, the property of its foreign manufacturer, against the person to whom he had consigned it for sale on commission, and who entered it as such consignee, the forfeiture being claimed on the ground that the merchandise was entered at invoice prices lower than its actual market value at the time and place of exportation. *United States* v. *Auffmordt*, 197.
2. Section 2839 applies only to purchased goods. *Ib.*
3. Section 2864, so far as it provides for a forfeiture of the value of merchandise, is repealed by the provisions of § 12 of the act of June 22, 1874, c. 391, 18 Stat. 188. *Ib.*
4. The amendment made to § 2864, by the act of February 18, 1875, c. 80, 18 Stat. 319, by inserting the words "or the value thereof," did not have the effect of enacting that the value of merchandise is to be forfeited under § 2864, notwithstanding the act of June 22, 1874, c. 391. The object and effect of the amendment were only to correct an error in the text of § 2864, and to make it read as it read, when in force, on the 1st of December, 1873, as a part of § 1 of the act of March 3, 1863, c. 76, 12 Stat. 738. *Ib.*
5. Rosaries composed of beads of glass, wood, steel, bone, ivory, silver, or mother-of-pearl, each rosary having a chain and cross of metal, were, under the Revised Statutes, dutiable at 50 per cent ad valorem, under the head of "beads and bead ornaments," in Schedule M of § 2504, 2d ed., p. 473; the duty on manufactures of the articles of which the beads were composed, and on manufactures of the metal of the chain and cross, being less than 50 per cent ad valorem; and § 2499 requiring that "on all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which any of its component parts may be chargeable;" and rosaries not being an enumerated article. *Benziger* v. *Robertson*, 211.

See TREATY.

DAMAGES.

See COLLISION, 4;
TRESPASS ON THE CASE, 2, 3.

DEFAULT.

See MANDAMUS, 1.

DES MOINES VALLEY IMPROVEMENT GRANT.

See PUBLIC LAND, 1.

DIVISION OF OPINION.

See JURISDICTION, A, 1.

EQUITY.

1. The court finds no fraud or irregularity in the transactions assailed in the bill to warrant a reversal of the decree. *Sanger* v. *Nightingale*, 176.
2. In order to justify a resort to a court of equity for the enforcement of an equitable estoppel, some ground of equity, other than the estoppel itself, must be shown whereby the party entitled to the benefit of it is prevented from making it available in a court of law; and it must be made to appear that forms of law are being used to defeat that which, in equity, constitutes the right. *Drexel* v. *Berney*, 241.
3. When in a suit in equity brought to restrain the respondent from enforcing against the complainant in an action at law a demand against which the complainant claims to have an equitable defence which is set forth in the bill, it appears to be altogether uncertain whether the complainant can avail himself in the action at law of the defence asserted in the bill, the bill should not be dismissed upon general demurrer, but the respondent should be required to answer. *Ib.*
4. B., a citizen of the United States, died in France, having in Europe, lodged with bankers in London and elsewhere, a large amount of personal securities. He left a will naming his widow, his brother J. of Alabama, one S., a citizen of France, and others as executrix and executors. With the knowledge and consent of the widow and of the other parties interested J. caused the will to be admitted to probate in Alabama, obtained a decree that the decedent was domiciled there, and letters testamentary were issued to J. only. The Surrogate of New York, upon this probate, issued ancillary letters testamentary to J.; and, under the same probate, S., likewise with the widow's consent, received a power of attorney from J. as executor to take possession of the property in Europe and administer upon the estate there. In pursuance of this authority he, in company with the widow, proved the will in common form in England and took out letters testamentary there in the name of himself and the widow, and took possession of the property, among which were registered bonds of the United States

to a large amount. These bonds were sent by him to D. in New York (the plaintiff in error) to be sold and the proceeds to be invested in coupon bonds of the United States. D. made this exchange, and transmitted the coupon bonds to S. as directed. S. made a settlement with J. as executor, and afterwards died; and after his death it appeared that he had diverted the coupon bonds to his own use. The widow then took out letters from the Surrogate in New York, in her own name, ancillary to the probate in England, and thereupon brought an action at law in the Circuit Court of the United States for the Southern District of New York, in her name, as sole executrix under and by virtue of the letters so issued to her, against the complainants for conversion of said United States bonds, alleging that the decedent was domiciled in France, and the Alabama probate was invalid for that reason, and that these letters testamentary to her were conclusive on D. so far as the right to maintain the action was concerned. D. thereupon filed a bill in equity against F., in which the relief sought was an injunction against setting up or claiming in the action at law or elsewhere that the decedent was not domiciled in Alabama, that his will was not duly admitted to probate there, and that the administration thereunder of J. as sole executor and S. as his attorney were not valid and binding, and against using in support of such allegations the ancillary letters testamentary, which defendants had fraudulently and unlawfully procured to be issued to or in the name of the widow, discovery of the facts within defendants' knowledge, &c. On general demurrer this bill was dismissed. *Held*, that the demurrer should have been overruled, and the defendant required to answer. *Ib.*

5. In this case the bill having called for answers under oath, and such answers having been made denying each and every allegation of fraud, and the evidence of two witnesses, or of one witness corroborated by circumstances, being wanting in support of the charges of fraud, this court will not reverse the decree dismissing the bill. *Morrison* v. *Durr*, 518.

See LIMITATION, STATUTES OF, 1, 2;
TAX AND TAXATION, 1.

EQUITY PLEADING.

1. If a decree in equity be broader than is required by the pleadings, it will be so construed as to make its effect only such as is needed for the purpose of the case made by the pleadings, and of the issues which the decree decides. *Barnes* v. *Chicago, Milwaukee & St. Paul Railway*, 1.

2. The decree entered in accordance with the opinion of this court in *James* v. *Railroad Co.*, 6 Wall. 752, when properly construed, invalidated the foreclosure of the mortgage made by the La Crosse and Milwaukee Railroad Company to the plaintiff in error only as to the creditors of the company subsequent to the mortgage who assailed it in

that suit, but did not affect it as to the rights of the plaintiff in error or of the bondholders secured by the mortgage, which were acquired under that foreclosure. *Ib.*

3. On a bill in equity filed under § 4915 of the Revised Statutes, to obtain an adjudication in favor of the granting of a patent, the plaintiff must allege and prove that a delay of two years and more in prosecuting the application after the last action therein of which notice was given to him was unavoidable, or the application will be regarded as having been abandoned, within the provision of § 4894. *Gandy* v. *Marble*, 432.

ESTOPPEL.

See EQUITY, 2, 3, 4;
INSURANCE, 1, 2.

EVIDENCE.

The letter of the defendant in error of March 20, 1876, was admissible in evidence. *Struthers* v. *Drexel*, 487.

See INSURANCE, 3, (1) (2);
TRESPASS ON THE CASE, 2;
WARRANTY.

EXCEPTION.

1. No question is presented for the decision of this court by a bill of exceptions which does not state any rulings in matter of law, or any exceptions to such rulings, otherwise than by referring to an exhibit annexed, containing the whole charge of the court to the jury, and notes of a conversation ensuing between the judge and the counsel of both parties as to the meaning and effect of the charge, interspersed with remarks of either counsel that he excepted to that part of the charge which bore upon a certain subject, or to the refusal of the court to charge as orally requested in the course of that conversation. *Hanna* v. *Maas*, 24.
2. When a bill of exceptions is so framed as not to present any question of law in a form to be revised by this court, the judgment must be affirmed. *Ib.*
3. Where a bill of exceptions is signed after the beginning of the term of this court when the writ of error is returnable, and during a term of the Circuit Court succeeding that at which the case was tried, but was seasonably submitted to the judge for signature, and the delay was caused by the judge and not by the plaintiff in error, the bill of exceptions will not be stricken out. *Davis* v. *Patrick*, 138.

See PRACTICE, 3, 7.

EXECUTIVE.

See COURT-MARTIAL.

FIXTURES.

See RAILROAD, 4.

FRAUD.

The transcript of the evidence at the trial of this case, which is contained in the bill of exceptions, does not connect the defendant in error with the frauds which gave rise to this suit. *McLeod* v. *Fourth National Bank of St. Louis*, 528.

FRAUDULENT CONVEYANCE.

K. owing property of the value of $91,400, and owing individually $3400 of debts, and about $3000 more as a member of a firm, conveyed land in Alabama, to his daughter, in 1866, as an advancement on her marriage. In 1876, K. was adjudged a bankrupt. His assignee in bankruptcy sued the daughter in equity, to set aside the deed of the land, alleging in the bill that the deed, being voluntary, was void under the laws of Alabama. No fraud as to creditors was alleged: *Held*, that the assignee did not represent the prior creditors, because the land was not conveyed in fraud of creditors, within the meaning of § 14 of the Bankruptcy Act of March 2, 1867, c. 176, 14 Stat. 522, now §§ 5046 and 5047 of the Revised Statutes. *Warren* v. *Moody*, 132.

See BANKRUPTCY.

HUSBAND AND WIFE.

See ASSIGNMENT FOR BENEFIT OF CREDITORS, 1, 2, 3.

INSURANCE.

1. An owner of one-fourth interest in a vessel took out a policy of insurance on his interest in the vessel, which contained these words: "Warranted by the assured that not more than $5000 insurance, including this policy, now exists, nor shall be hereafter effected on said interest, either by assured or others, to cover this or any other insurable interest in said interest, during the continuance of this policy." The acceptors of drafts drawn by the master effected for their own protection insurance on the freight and earnings of the vessel in excess of this amount, and a like insurance on freight and earning in excess was effected on account of other owners: *Held*, that this was no breach of the covenant of warranty. *Merchants' Ins. Co.* v. *Allen*, 376.
2. P., as agent for an insurance company in Hartford, Connecticut, received at Southbridge, in Massachusetts, the application of E. for an insurance upon his life, and the premium therefor (paid May 24, 1882); transmitted both to the company; received from the company a policy, and delivered the latter to E. The policy contained a provision that in case of death of the assured, his representatives should "give immediate notice in writing to the company, stating the time, place, and cause of death," and should "within seven months thereafter, by direct

and reliable evidence, furnish the company with proofs of the same, giving full particulars." E. died June 19, 1882. P. was verbally informed of it on the same day, and a day or two afterwards informed the family that he was going to Hartford, and would notify the company of the death, and would procure the necessary blanks for proof. He went there, gave the notice to the company, with all the information in his possession, obtained the blanks, and gave them to a representative of the administratrix, telling him to return them to him (P.) when completed. The blanks were filled in and were returned to P. on the 3d of July, 1882. When more than seven months had expired after the death, P., who had not forwarded the papers to Hartford returned them to the administratrix, saying that they were incomplete and asking for fuller information. The papers were then completed in accordance with P.'s directions, were returned to him January 29, 1883, and were by him transmitted to the company February 7, 1883, and received by it without objection. *Held*, that without deciding whether the verbal notice to P. was a sufficient compliance with the terms of the contract in that respect, or whether it would have been sufficient to deliver the proofs of death to P., if there were no more than that in the case, the action of the company, upon P.'s communicating the death of E., and its delivering to him of blank affidavits and forms to be filled up, together with the subsequent correspondence, showed that P. was regarded throughout by the company as its agent; and the company is therefore bound by what he did. *Travellers' Ins. Co.* v. *Edwards*, 457.

3. An application for a policy of life insurance contained these questions and answers: *Q.* "Are you, or have you ever been, in the habit of using alcoholic beverages or other stimulants?" *A.* "Yes, occasionally." *Q.* "Have you read and assented to the following agreement?" *A.* "Yes." The agreement referred to contained the following: "It is hereby declared that the above are the applicant's own fair and true answers to the foregoing questions, and that the applicant is not, and will not become, habitually intemperate or addicted to the use of opium." The policy declared that if the assured should become intemperate so as to impair his health or induce *delirium tremens*, or if any statement in the application, on the faith of which the policy was made, should be found to be in any material respect untrue, the policy should be void. The assured having died, his creditor for whose benefit the insurance was made sued the insurer to recover on the policy. The defendant set up (1) that at the time of making the policy the insured was and had been habitually intemperate, and that his statements on which the policy had been issued were fraudulent and untrue; (2) That after the policy was issued he became so intemperate as to impair his health and to induce *delirium tremens*. On both these issues the insurer assumed the affirmative, taking the opening and close at the trial. *Held:* (1) That the opinion of a witness as to the

effect upon the assured at the time of the issue of the policy, of a habit of drunkenness five years before that date (the witness knowing nothing of them during the intervening period), was properly excluded. (2) That under the 1st issue the defendant was bound to prove that the assured was habitually intemperate when the policy issued; and under the 2d, that he was so after it issued. (3) That while in a very clear case a court may assume on the one hand that certain facts disclose a case of habitual intemperance, or on the other that they warrant the opposite conclusion, in the main these are questions of fact to be submitted to the jury. (4) That the charge of the court contained all that it was necessary to say by way of assisting the jury to arrive at a just verdict, and that he was not required to give them the same instructions over again in language selected by the defendants' counsel. (5) That other requests made by defendant's counsel took from the jury the decision of the question which should be left to them. *Northwestern Ins. Co.* v. *Muskegon Bank*, 501.

INTEREST.

See COLLISION, 3.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 2.

JUDGMENT.

See JURISDICTION, A, 4.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. The question whether, upon all the facts specially found by the Circuit Court when a trial by jury has been waived, the plaintiff has the legal right to recover, is not one which can be brought to this court by a certificate of division of opinion. *State Bank* v. *St. Louis Rail Fastening Co.*, 21.
2. In a suit in equity brought in the Circuit Court by two or more persons on several and distinct demands, the defendant can appeal to this court as to those plaintiffs only, to each of whom more than $5000 is decreed. *Gibson* v. *Shufeldt*, 27.
3. A debtor having made an assignment of his property to a trustee to secure a preferred debt of more than $5000, other creditors filed a bill in equity in the Circuit Court against the debtor, the trustee, and the preferred creditor; the defendants denied the allegations of the bill, but asked no affirmative relief; and the decree adjudged the assignment to be fraudulent and void as against the plaintiffs, and ordered the property to be distributed among them. *Held*, that this court had no jurisdiction of an appeal by the defendants, except as to those plaintiffs who had recovered more than $5000 each. *Ib.*

4. Proceedings were commenced to foreclose a railroad mortgage in which the trustee of the mortgage, the railroad company, and others were respondents, and one bondholder originally, and another by intervention, were complainants. A decree was entered that the complainants were entitled to have a sale of the mortgaged property upon failure of the company to pay an amount to be fixed by reference to a master within a time to be named by the court, and an order of reference was made. The master reported, and a decree of foreclosure was entered in which the trustee was directed to sell the mortgaged property, "at such time and place and in such manner as the court may hereafter determine:" and a reference was ordered to a master to report the extent and amount of the prior liens on the mortgaged property, "full and detailed statements" of the property "subject to the lien of said general mortgage," and "what liens, if any, are upon the several properties" of the railroad company, "junior to said general mortgage and the order of their priority." *Held,* that this was not a final decree, which terminated the litigation between the parties on the merits of the case, and that the appeal must be dismissed. *Parsons* v. *Robinson*, 112.

5. On the 6th of October, 1880, a decree was entered in a Circuit Court of the United States dismissing a bill brought to quiet title. Complainant appealed, and the appeal was dismissed at October Term, 1880, it not appearing that the matter in dispute exceeded $5000. In the Circuit Court W. then suggested the complainant's death, appeared as sole heir and devisee, filed affidavits to show that the amount in dispute exceeded $5000, and took another appeal August 30, 1881, which appeal was docketed here September 24, 1881, and was dismissed April 5, 1884, for want of prosecution. Another appeal was allowed by the Circuit Court in September, 1884, and citation was issued and served, and the case was docketed here again. *Held*, that the decree appealed from being rendered in 1880, an appeal from it taken in 1884 was too late. *Whitsitt* v. *Union Depot Co.*, 363.

6. This court has no power to review a judgment of the Superior Court of the state of Kentucky, unless it appears not only that the judgment is one of the class in which the statute of that state provides that the judgment of that court may be final, but also that an application was made, within proper time, for an appeal to the Court of Appeals, and that the application was refused by the Superior Court. *Fisher* v. *Perkins*, 522.

7. This court cannot dismiss a case for want of jurisdiction here, because the court below ought to have dismissed it. *Lanier* v. *Nash*, 630.

See EXCEPTION, 1, 2, 3;
PRACTICE, 7.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. If a bill in equity to restrain an infringement of letters-patent be filed before the expiration of the patent, the jurisdiction of the Circuit

Court is not defeated by the expiration of the patent by lapse of time before the final decree. *Beadle* v. *Bennett*, 71.

See REMOVAL OF CAUSES.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

When an assignee in bankruptcy files a petition in the District Court, sitting in bankruptcy, under § 5063 of the Revised Statutes, showing a dispute between him and others, as to property which has come into his possession, or which is claimed by him, the court — all parties interested appearing, and asking a determination of the dispute — has power to determine, at least, the question of title. *Adams* v. *Collier*, 382.

LA CROSSE AND MILWAUKEE RAILROAD FORECLOSURE.

1. The consent of bondholders required by the statute of Wisconsin to enable the plaintiff in error to commence proceedings for the foreclosure of the mortgage of the La Crosse and Milwaukee Railroad was duly given; and the outstanding bonds which were not actually surrendered and exchanged for stock were held by persons who, in law, must be regarded as consenting by silence to the proceedings, and the present holders took them with full notice of that fact. *Barnes* v. *Chicago, Milwaukee & St. Paul Railroad*, 1.
2. The plaintiff in error has no title under which he can maintain a bill in equity to take advantage of alleged frauds or irregularities in the foreclosure of prior liens upon the La Crosse and Milwaukee Railroad; or to recover money paid by the Milwaukee and Minnesota Railroad Company to redeem the Bronson and Soutter mortgage of that railroad. *Ib.*

See EQUITY PLEADING, 2.

LIMITATION, STATUTES OF.

1. Following the decisions of the Supreme Court of Georgia, this court holds that the act of the legislature of Georgia, of March 16, 1869, which provided that actions upon contracts or debts "which accrued prior to the 1st of June, 1865, and are now barred, shall be brought by 1st January, 1870, or both the right and right of action to enforce it shall be forever barred" is an ordinary statute of limitations; that it was a personal privilege of the debtor to plead it; and that to avail himself of it he must plead it. *Sanger* v. *Nightingale*, 176.
2. The proposition that a purchaser with the legal title, whose right accrued subsequent to a mortgage debt barred by the statute of limitations, can avail himself of the statute, when sued to foreclose the equity of redemption, has been sustained in Georgia only in cases where the party setting it up has become the owner of the title or of the entire equity of redemption, or has been found in possession of the mortgaged property. *Ib.*

3. An assignee in bankruptcy cannot transfer to a purchaser the bankrupt's adverse interest in real estate in the possession of another claiming title, if two years have elapsed from the time when the cause of action accrued therefor in the assignee; and the right of the purchaser in such case is as fully barred by the provisions of Rev. Stat. § 5057, as those of the assignee. *Wisner* v. *Brown*, 214.

4. It is unnecessary to decide in this case whether the provisions contained in Rev. Stat. § 5063 refer to a case in which only the interest of the bankrupt is ordered to be sold, without attempting to affect the title or interest of other persons. *Ib.*

5. A promissory note, secured by mortgage of the same date, is not taken out of the statute of limitations as against the debtor, by a writing signed by him, by which "in consideration of the indebtedness described in the" mortgage, a claim of his against the government, and its proceeds, are "pledged and made applicable to the payment of said indebtedness, with interest thereon at the rate of eight per cent per annum until paid," and he promises that those proceeds shall "be applied to the payment of said indebtedness, with interest as aforesaid, or to so much thereof as" those proceeds "are sufficient to pay." *Shepherd* v. *Thompson*, 231.

6. Section 5057 of the Revised Statutes, prescribing the limitation of two years as to suits touching any property or rights of property transferable to or vested in an assignee in bankruptcy, applies as well to suits by the assignee as to suits against him. *Adams* v. *Collier*, 382.

7. When an assignee files his petition in the District Court, sitting in bankruptcy, showing a dispute between him and others as to property in his possession as such assignee, and the parties sued appear and unite in the prayer for the determination of the suit, and the assignee, after the expiration of two years, without the consent of the defendants dismisses his suit and files a bill in equity in the Circuit Court covering substantially the same object, the latter suit is to be deemed a continuation of the former for the purposes of limitation prescribed by § 5057 of the Revised Statutes. *Ib.*

See COURT OF CLAIMS;
EQUITY PLEADING, 3.

LIMITED LIABILITY.

See COLLISION, 2, 3.

LOCAL LAW.

1. In Illinois, under an unverified plea of the general issue in assumpsit against a common carrier for goods lost, the defendant may at the trial deny his liability under the bill of lading; § 34 of the Practice Act having no application to such a denial. *St. Louis, Iron Mountain & Southern Railway* v. *Knight*, 79.

2. The lien law and the redemption law of the state of Indiana considered. *Porter* v. *Pittsburg Bessemer Steel Co.*, 267.
3. The effect of a redemption under the Revised Statutes of Indiana, §§ 770 to 776, considered. *Ib.*
4. In Pennsylvania a private survey cannot be received in evidence for the purpose of making out a title from the proprietaries, even though it may have been referred to in other surveys; and parol and circumstantial evidence is inadmissible to establish such a survey. *Paxton* v. *Griswold*, 441.
5. The non-return of a survey to the land office in Pennsylvania for one hundred and thirty years is proof of abandonment. *Ib.*
6. The rules adopted in the land office in Pennsylvania in 1765 made no alteration as to returns of surveys, which before that date were required to be returned to the land office, in order that it might appear by the records of that office what lands were alienated, and what not. *Ib.*
7. In Pennsylvania, unless a survey is returned to the land office in a reasonable time, which time has been fixed by the courts of that state, at seven years, it is regarded as abandoned. *Ib.*
8. In Mississippi an insolvent debtor may make a general assignment of his property for the benefit of his creditors, with preferences. *Estes* v. *Gunter*, 450.
9. A deed by an insolvent debtor in Mississippi to secure securities on his note made in advance of, and in contemplation of, a general assignment for the benefit of creditors is valid under the laws of that state, although containing a provision that the grantor shall remain in possession until the maturity of the note. *Ib.*
10. The sixty days during which a right of appeal is given by the statutes of Nebraska from the assessment of damages by commissioners appointed under proceedings for the condemnation of land for the use of a railroad, begin to run when the commissioners' report is filed. *Clinton* v. *Missouri Pacific Railway*, 469.

See CONSTITUTIONAL LAW, 1; CORPORATION, 1; LIMITATION, STATUTES OF, 1, 2; TAX AND TAXATION, 4, 5, 6.

MANDAMUS.

1. Allegations of material facts and of traversable facts in a declaration which are necessary to be proved in order to support a recovery, are confessed by a default; and in mandamus against the proper municipal officers to enforce the collection of a tax to pay the judgment entered against a municipal corporation upon such default, the respondent is estopped from denying such allegations. *Harshman* v. *Knox County*, 306.
2. Mandamus to enforce the collection of a tax to pay a judgment against a municipal corporation being a remedy in the nature of an execution,

nothing can be alleged by the respondent to contradict the record of the judgment. *Ib.*

3. An application for mandamus against the head of an executive department abates on his retirement from office. *Warden* v. *Chandler*, 642.

MASTER AND SERVANT.

When a servant, in the execution of his master's business, receives an injury which befalls him from one of the risks incident to the business, he cannot hold the master responsible, but must bear the consequences himself. *Tuttle* v. *Detroit, Grand Haven & Milwaukee Railway*, 189.

See RAILROAD, 3.

MAXWELL LAND GRANT.

See PUBLIC LAND, 2–6.

MINERAL LAND.

1. When there are surface outcroppings from the same vein within the boundaries of two claims, the one first located necessarily carries the right to work the vein. *Argentine Mining Co.* v. *Terrible Mining Co.*, 478.

2. When a mining claim crosses the course of the lode or vein instead of being "along the vein or lode," the end lines are those which measure the width of the claim as it crosses the lode: and thus the lines which separate the locations of the parties in this case are end lines across which, as they are extended downward vertically, the defendant cannot follow a vein, even if the apex or outcropping is within its surface boundaries. *Ib.*

See PRACTICE, 5.

MORTGAGE.

See EQUITY PLEADING, 2; LIMITATION, STATUTES OF, 2; JURISDICTION, A, 4; RAILROAD, 4, 5; LA CROSSE AND MILWAUKEE RAILROAD FORECLOSURE.

MOTION TO DISMISS.

A motion to dismiss a case in which the record has not been printed will not be granted if the motion papers present the case in a way requiring the court to refer to the transcript on file. *Maag* v. *Hyde*, 632.

MUNICIPAL BONDS.

See CONSTITUTIONAL LAW, 1; MANDAMUS, 1, 2.

MUNICIPAL CORPORATION.

See CONSTITUTIONAL LAW, 1; MANDAMUS, 1.

NATIONAL BANK.

See TAX AND TAXATION, 3.

NEGLIGENCE.

See RAILROAD, 6.

PARTNERSHIP.

1. By an agreement of partnership between A, B, and C, A sold, for sums specified, to B one half, and to C one fourth, of his interest in certain bonds of a railroad corporation, secured by mortgage, retaining one fourth himself, and was to hold the bonds as collateral security for the payment of those sums; the whole amount of the bonds was to be held together, and neither partner was to sell or dispose of the whole or any part of his interest without the consent of the others; "but A shall have the privilege of selling the whole amount of bonds at his discretion at any time, and apply the proceeds to the payment of said sums due to him;" or A might, if he deemed best, foreclose the mortgage; and the proceeds of a foreclosure, "or, if the bonds are sold, the net proceeds of the sale, after paying the said sums of money and expenses of foreclosure, shall be considered as due to each party in proportion as the bonds are now held, but may be held by A as collateral security for the payment of the aforesaid sums respectively;" and special provisions were made for the application to the payment of certain small debts, and for the distribution among the partners, of "any profits arising from the sale, foreclosure, or any other disposition of said bonds." Upon a contract made by A for a sale of the bonds, which was not carried out, he received in part payment stock in another corporation; and he afterwards sold the bonds to another person for cash, retaining this stock. *Held*, that he was not bound, on receiving the stock, to apply it at once to the payment of the sums due him from his copartners, but might hold it as the property of all the partners under the partnership agreement. *Simonton* v. *Sibley*, 220.
2. A person who conducts himself with reference to the general public in such a way as to induce a person, acting with reasonable caution, to believe that he is a partner in a partnership, is liable as such to a creditor of the partnership who contracted with it under such belief, although he may not be in fact a partner. *Sun Insurance Co.* v. *Kountz Line*, 583.
3. The conduct of the several appellees towards the general public in their business relations with each other was such as to induce a shipper, acting with reasonable caution, to believe that they had formed a combination in the nature of a partnership, or were engaged as joint traders under the name of the Kountz Line. *Ib.*

PATENT FOR INVENTION.

1. The reissued letters-patent No. 4372, issued to Nelson W. Green, May 9, 1871, for an improved method of constructing artesian wells, are for

the process of drawing water from the earth by means of a well driven in the manner described in the patent, and are for the same invention described and claimed in the original letters-patent issued to Green, January 14, 1868. It is a reasonable inference from the language employed in the original description that the tube, in the act of being driven into the earth, to and into a water-bearing stratum, would form an air-tight connection with the surrounding earth, and that the pump should be attached to it by an air-tight connection. The changes made in the amended specification did not enlarge the scope of the patent, or describe a different invention; but only supplied a deficiency in the original description, by describing with more particularity and exactness the means to be employed to produce the desired result. The omission in the second claim of the words, "where no rock is to be penetrated," which are found in the first claim, did not change the obvious meaning of the original claim. *Eames* v. *Andrews*, 40.

2. The reissued letters-patent No. 4372, to Nelson W. Green, were not for the same subject as the letters-patent issued to James Suggett, March 29, 1864, and do not conflict with them; nor was the invention patented in them anticipated in any of the publications referred to in the opinion of the court within the rule as to previous publications laid down in *Seymour* v. *Osborne*, 11 Wall. 516; *Cohn* v. *United States Corset Co.*, 93 U. S. 366; and *Downton* v. *Yeagher Milling Co.*, 108 U. S. 466. *Ib.*

3. The evidence shows a clear case of infringement on the part of the defendant in error. *Ib.*

4. The case of *Eames* v. *Andrews*, just decided, is applied to the issues in this case, so far as they are identical with those in that case. *Beedle* v. *Bennett*, 71.

5. The use of this invention by the inventor in the manner stated in the opinion of the court, and his delay in applying for a patent under the circumstances therein detailed for more than two years prior to his application, did not constitute an abandonment of his invention, or a dedication of it to the public, and did not forfeit his right to a patent under the law, as it stood at the time of his application. *Ib.*

6. The use by the respondents of driven wells for their personal use on their farms, which wells were operated by means of the process patented to Green, constituted an infringement of that patent. *Ib.*

7. Claim 3 of letters-patent No. 215,679, granted to George Bartholomae, as assignee of Leonard Meller and Edmund Hoffman, as inventors, May 20, 1879, for an "improvement in processes for making beer," namely, "3. The process of preparing and preserving beer for the market, which consists in holding it under controllable pressure of carbonic acid gas from the beginning of the kraeusen stage until such time as it is transferred to kegs and bunged, substantially as described," is a valid claim to the process it purports to cover. *New Process Fermentation Co.* v. *Maus*, 413.

8. The state of the art of brewing beer, so far as it concerns the invention of the patentees, explained. *Ib.*

See CONTRACT, 2;
EQUITY PLEADING, 3;
JURISDICTION, B.

PRINCIPAL AND AGENT.

See INSURANCE, 2.

PLEADING.

8. contracted with D. in writing, in which, after reciting that D. had purchased 400 shares of a certain stock at $50 per share, S., in consideration of one dollar, agreed at the end of one year from date if D. desired to sell the shares at the price paid, to purchase them of him and pay that amount with interest. When the time expired, D. elected to sell, and tendered the stock; and, S. refusing to take it and pay for it, D. sued him for the contract price, declaring on a contract whereby the plaintiff sold and agreed to deliver the defendant 400 shares of the stock at $50 per share, to be paid by defendant on delivery, in consideration whereof the defendant undertook and promised to accept the stock and pay for the same on delivery. *Held*, That this declaration set forth properly the legal effect of the contract, and the omission of the statement of the nominal consideration was immaterial, and need not be proved. *Struthers* v. *Drexel*, 487.

See LOCAL LAW, 1; TRESPASS ON THE CASE, 2;
MANDAMUS, 1, 2; WARRANTY.

PRACTICE.

1. When exceptions taken by the plaintiff to a ruling in favor of the defendant at one trial have been erroneously sustained and a new trial ordered, and a contrary ruling upon the same point at the second trial has been erroneously affirmed upon exceptions taken by the defendant, this court, upon a writ of error sued out by him, will not, on reversing the judgment of affirmance, direct judgment to be entered on the first verdict, but will only order that the second verdict be set aside and another trial had. *Shepherd* v. *Thompson*, 231.

2. The assignment or error in this case is precise and specific, and complies with the requirement of the rule in that respect. *Clinton* v. *Missouri Pacific Railway*, 469.

3. No exceptions were necessary to bring before this court the judgment of the Circuit Court below dismissing the appeal from the Cass County Court to the District Court of that county. *Ib.*

4. When a cause is removed from a state court to a Circuit Court of the United States, the transcript from the state court forms part of the record in the Circuit Court, and in any writ of error from this court necessarily becomes a part of the record here. *Ib.*

5. V. sued to recover mining ground. Defendant answered, and V. filed a replication. V. transferred his interest in the mine to a company. The company appeared, was substituted as plaintiff, and filed a new complaint, substantially identical with the first, to which the defendant filed a new answer, substantially like the first answer. No replication was filed to this. The parties went to trial without objection for want of a plea of replication, and judgment was entered for plaintiff. *Held*, That it was too late to take the objection in this court. *Argentine Mining Co.* v. *Terrible Mining Co.*, 478.

6. The instructions asked by the defendant below were sound in law; but their refusal worked him no injury, as, when the jury found the disputed fact in favor of the plaintiff, the principle involved in the instruction asked cut off the right asserted by the defendant. *Ib.*

7. If a record in error contains the charge in full, with a memorandum at the close that certain portions are excepted to, but they are not verified or included in a proper bill of exception, it is not part of the record for any purpose. *Struthers* v. *Drexel*, 487.

See EXCEPTION, 1, 2, 3; MANDAMUS, 1; PUBLIC LAND, 5.

PUBLIC LAND.

1. The joint resolution of the two Houses of Congress of March 2, 1861, 12 Stat. 251, relinquishing to the state of Iowa certain lands along the Des Moines River above the mouth of Raccoon Fork, did not operate to determine the withdrawal of all the lands on that river above Raccoon Fork from entry and preëmption which was originally made in 1850, and which was continued in force from that time and of which renewed notice was given in May, 1860: that resolution was only a congressional recognition of the title which had passed to grantees of the state of Iowa to lands certified to the state under the act of 1846, which certificates had been held by this court in *Dubuque & Pacific Railroad* v. *Litchfield*, 23 How. 66, to have been issued without authority of law. *Bullard* v. *Des Moines & Fort Dodge Railroad*, 167.

2. The court rested its judgment in this case, 121 U. S. 325, not upon the fact of the grant to Beaubien and Miranda being an *empresario* grant, but upon the fact that Congress, having confirmed it as made to Beaubien and Miranda, and as reported for confirmation by the Surveyor General of New Mexico to Congress, without qualification as to its extent, acted in that respect entirely within its power, and that its action was conclusive upon the court. *Maxwell Land-Grant Case*, 365.

3. The court stated in its former opinion, and repeats now, its conviction that the grant by Armijo to Beaubien and Miranda described the boundaries in such a manner that Congress must have known that the grant so largely exceeded twenty-two leagues that there could be no question upon that subject, and it must have decided that the grant should not be limited by the eleven leagues of the Mexican law. *Ib.*

4. The court repeats the conviction expressed in its former opinion, with further reasons in support of it, that Beaubien, in the petition which he presented against the intrusion of Martinez, did not refer to his own grant as being only fifteen or eighteen leagues, but to the grant under which Martinez was claiming. *Ib.*
5. The court assumes that references in the petition to newly discovered and material evidence touching the fraudulent character of the grant are addressed to the Secretary of the Interior and the Attorney General, as the rehearing in this court can be had only on the record before the court, as it came from the Circuit Court. *Ib.*
6. The court remains entirely satisfied that the grant, as confirmed by Congress, is a valid grant; that the survey and the patent issued upon it, as well as the original grant by Armijo, are free from fraud on the part of the grantees or those claiming under them; and that the decision could be no other than that made in the Circuit Court, and affirmed by this court. *Ib.*

See MINERAL LAND.

RAILROAD.

1. There is no rule of law to restrict railroad companies as to the curves they shall use in its freight stations and its yards, where the safety of passengers and of the public are not involved. *Tuttle* v. *Detroit, Grand Haven & Milwaukee Railway*, 189.
2. The engineering question as to the curves proper to be made in the track of a railroad within the freight stations or the yards of the railroad company is not a question to be left to a jury to determine. *Ib.*
3. Brakemen and other persons employed by a railroad company within the freight stations and the yards of the company, when they accept the employment assume the risks arising from the nature of the curves existing in the track, and the construction of the cars used by the company; and they are bound to exercise the care and caution which the perils of the business demand. *Ib.*
4. Rails and other articles which become affixed to and a part of a railroad covered by a prior mortgage, will be held by the lien of such mortgage in favor of *bona fide* creditors, as against any contract between the furnisher of the property and the railroad company, containing a stipulation that the title to the property shall not pass till the property is paid for, and reserving to the vendor the right to remove the property. *Porter* v. *Pittsburg Bessemer Steel Co.*, 267.
5. Notice of such a contract to a purchaser of bonds covered by such mortgage will not affect his rights if he purchased the bonds from those who were *bona fide* holders of them, free from any such notice. *Ib.*
6. The foreman of a section gang on a railway, knowing that a train was approaching, ran his hand-car into a deep cut, and was struck by the train and injured. He sued the company to recover damages for the injury, claiming that there was negligence on the part of the engineer

and firemen in not seeing him and arresting the train. *Held*, that he had been guilty of contributory negligence, and that the court below had properly directed the jury to find a verdict for the defendant. *Goodlett* v. *Louisville & Nashville Railroad*, 391.

See COMMON CARRIER;
CONSTITUTIONAL LAW, 1;
CORPORATION, 1;
EQUITY PLEADING, 2;
JURISDICTION, A, 4;
LA CROSSE AND MILWAUKEE RAILROAD FORECLOSURE;
LOCAL LAW, 10;
TAX AND TAXATION, 4, 5, 6;
TRESPASS ON THE CASE, 1.

REMOVAL OF CAUSES.

1. When a petition for a removal of the cause to a Circuit Court of the United States is filed in a cause pending in a state court, the only question left for the state court to determine is the question of law whether, admitting the facts stated in the petition to be true, it appears on the face of the record, including the petition, the pleadings and the proceedings down to that time, that the petition is entitled to a removal; and if an issue of fact is made upon the petition, that issue must be tried in the Circuit Court. *Burlington & Cedar Rapids Railway* v. *Dunn*, 513.
2. If a cause pending in a state court against several defendants is removed thence to the Circuit Court of the United States on the petition of one of the defendants under the act of 1875, 18 Stat. 470, on the grounds of a separate cause of action against the petitioning defendant, in which the controversy was wholly between citizens of different states, it should be remanded to the state court if the action is discontinued in the Circuit Court as to the petitioning defendant. *Texas Transportation Co.* v. *Seeligson*, 519.
3. An Illinois corporation recovered judgment against P., a citizen of Minnesota, in a court of that state. An execution issued therein was placed in the sheriff's hands with directions to levy on property of P. which had been transferred to F., and was in F.'s possession, the corporation giving the officer a bond with sureties. F. sued the officer in trespass, and he answered, setting up that the goods were the property of the execution debtor. The corporation and the sureties then intervened as defendants, and answered, setting up the same ownership of the property, and further, that the sheriff had acted under their directions, and that they were the parties primarily liable. The plaintiffs in that suit replied, and the intervenors then petitioned for the removal of the cause to the Circuit Court of the United States, setting forth as a reason therefor that the plaintiff and the sheriff were citizens of Minnesota, the intervenors and petitioners citizens of Illinois; that the real controversy was between the plaintiff and the petitioners; and that the petitioners believed that through prejudice and local influence they could not obtain justice in the state court. The cause was removed on this petition, and a few days later was remanded to the

state court on the plaintiff's motion. *Held*, that, on their own showing the intervenors were joint trespassers with the sheriff, if any trespass had been committed, and by their own act they had made themselves joint defendants with him, and that on the authority of *Pirie* v. *Tvedt*, 115 U. S. 41, and *Sloane* v. *Anderson*, 117 U. S. 275, the cause was not removable from the state court. *Thorn Wire Hedge Co.* v. *Fuller*, 535.

See PRACTICE, 4.

SALVAGE.

See ADMIRALTY, 1.

SCIENTER.

See WARRANTY.

SERVICE OF PROCESS.

See ATTACHMENT.

SHIP.

See COLLISION.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See COURT-MARTIAL, 1;
COURT OF CLAIMS.
CUSTOMS DUTY, 1, 2, 3, 4, 5;
EQUITY PLEADING, 3;
FRAUDULENT CONVEYANCE;
JURISDICTION, C;
LIMITATION, STATUTES OF, 3, 4, 6, 7;
PUBLIC LAND, 1.

B. STATUTES OF STATES AND TERRITORIES.

Alabama. *See* FRAUDULENT CONVEYANCE.
Georgia. *See* LIMITATION, STATUTES OF, 1, 2.
Illinois. *See* LOCAL LAW, 1.
Indiana. *See* CONSTITUTIONAL LAW, 3; LOCAL LAW, 2, 3.
Kentucky. *See* CORPORATION.
Missouri. *See* CONSTITUTIONAL LAW, 1; TAX AND TAXATION, 4, 5.
Nebraska. *See* LOCAL LAW, 10.
New York. *See* TAX AND TAXATION, 3.
Tennessee. *See* CORPORATION.

SUPERSEDEAS.

1. When a supersedeas has been obtained on an appeal to this court, it is to be presumed that parties submit to it; and an order to stay execution will not be granted in the absence of proof of its necessity. *Lanier* v. *Nash*, 630.
2. There is no such merger of the judgment nor supersedeas in this case as will operate to stay a proceeding against other property not involved herein. *Lanier* v. *Nash*, 637.

TAX AND TAXATION.

1. *Stanley* v. *Supervisors of Albany*, 121 U. S. 535, affirmed to the point that a party who feels himself aggrieved by overvaluation 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. His remedy is in equity, to enjoin the collection of the illegal excess upon payment or tender of the amount due upon what is admitted to be a just valuation. *Williams* v. *Albany*, 154.

2. The mode in which property shall be appraised; by whom and when that shall be done; what certificate of their action shall be furnished by the board which does it; and when parties may be heard for the correction of errors, are all matters within legislative discretion; and it is within the power of a state legislature to cure an omission or a defective performance of such of the acts required by law to be performed by local boards in the assessment of taxes as could have been in the first place omitted from the requirements of the statute, or which might have been required to be done at another time than that named in it; provided always, that intervening rights are not impaired. *Ib.*

3. The statute passed by the legislature of New York, April 30, 1883, to legalize and confirm the assessments in Albany for the years 1876, 1877, and 1878, was not in conflict with the acts of Congress respecting the taxation of shares of stock in national banks, and was a valid exercise of the power of the legislature to cure irregularities in assessments. *Ib.*

4. It being now conceded that the taxes in suit in this case refer not only to the branch referred to in the former opinion of the court in this case, reported in 120 U. S. 569–575, but to the taxes assessed upon that part of the main line which extends from Unionville in Putnam County to the boundary line between Missouri and Iowa, the court now decides, on an application for a rehearing of this case: (1) That it is satisfied with the construction which it has already given to the statute of the legislature of Missouri of March 21, 1868; (2) That the statute of that legislature enacted March 24, 1870, as interpreted by the court, in its application to the main line, does not impair the obligation of any contract which the St. Joseph and Iowa Railroad Company had, by its charter, with the state of Missouri. *Chicago, Burlington & Kansas City Railroad* v. *Guffey*, 561.

5. The statute of Missouri of March 24, 1870 (Art. 2, c. 37, § 57, Wagner's Statutes of Missouri, 1872), subjecting to taxation railroads acquired by a foreign corporation by lease, also applies to roads acquired by such corporations by purchase. *Ib.*

6. No question arises in this case under the provision in the charter of the St. Joseph and Iowa Railroad Company which authorizes it to pledge

its property and franchises to secure an indebtedness incurred in the construction of its road. *Ib.*

See CONSTITUTIONAL LAW, 1, 2;
MANDAMUS, 1, 2.

TELEGRAPH COMPANIES AND TELEGRAMS.

See CONSTITUTIONAL LAW, 3, 4, 5.

TREATY.

The provisions in the treaty of friendship, commerce, and navigation with the king of Denmark, concluded April 26, 1826, and revived by the convention of April 11, 1857, do not, by their own operation, authorize the importation, duty free, from Danish dominions, of articles made duty free by the convention of January 30, 1875, with the king of the Hawaiian Islands, but otherwise subject to duty by a law of Congress, the king of Denmark not having allowed to the United States the compensation for the concession which was allowed by the king of the Hawaiian Islands. *Bartram* v. *Robertson*, 116.

TRESPASS ON THE CASE.

1. The Atchison, Topeka and Santa Fé Railway Company was in peaceable possession of a railroad from Alamosa to Pueblo, and while so in possession the Denver and Rio Grande Railway Company, by an armed force of several hundred men, acting as its agents and employes, and under its vice-president and assistant general manager, attacked with deadly weapons the agents and employes of the Atchison, Topeka and Santa Fé Railway Company having charge of the railroad, and forcibly drove them from the same, and took forcible possession thereof. There was a demonstration of armed men all along the line of the railroad seized, and while this was being done, and the seizure was being made, the plaintiff, an employe of the Atchison, Topeka and Santa Fé Railway Company, while on the track of the road, in the line of his employment, was fired upon by men as he was passing, and seriously wounded and injured. Immediately upon the seizure of the railroad as aforesaid the Denver and Rio Grande Company accepted it, and entered into possession and commenced and for a time continued to use and operate it as its own. The plaintiff brought this suit to recover damages for his injuries. *Held*, that the Denver and Rio Grande Company was liable in tort for the acts of its agents, and that the plaintiff could recover damages for the injuries received, and punitive damages under the circumstances. *Denver & Rio Grande Railway* v. *Harris*, 597.
2. In trespass on the case to recover for injuries caused by gunshot wounds inflicted by defendant's servants, evidence of the loss of power to have offspring, resulting directly and proximately from the nature

of the wound, may be received and considered by the jury, although the declaration does not specify such loss as one of the results of the wound. *Ib.*

3. In an action of trespass on the case against a corporation to recover damages for injuries inflicted by its servants in a forcible and violent seizure of a railroad, punitive damages, within the sum claimed in the declaration, may be awarded by the jury, if it appears to their satisfaction that the defendant's officers and servants, in the illegal assault complained of, employed the force with bad intent, and in pursuance of an unlawful purpose, wantonly disturbing the peace of the community and endangering life. *Ib.*

USURY.

The transaction between the parties, so far as disclosed by the record, was not a loan of money, and consequently no question of usury could arise. *Struthers* v. *Drexel*, 487.

WAREHOUSEMAN.

See COMMON CARRIER, 2.

WARRANTY.

In an action in tort for the breach of an express warranty, in the sale of bonds of a municipality, that they were genuine and valid bonds of the municipality, when in fact they were forgeries, and false and fraudulent, the warranty is the gist of the action, and it is not necessary to allege or to prove a *scienter*. *Shippen* v. *Bowen*, 575.

See COMMON CARRIER, 1, 2;

INSURANCE, 1.