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ABANDONMENT.

See INSURANCE, 3.

ACKNOWLEDGMENT.

See LOCAL LAW, 2, 3.

ACTION.

See CONSTITUTIONAL LAW, 15;
CONTRACT, 7.

ADMIRALTY.

1. The findings of fact in a cause in admiralty under the act of February 16, 1875, 18 Stat. 315, have the same effect as a special verdict in an action at law. *The Maggie J. Smith*, 349.
2. Rule 24 in § 4233 Rev. Stat. applies only when there is some special cause rendering a departure necessary to avoid immediate danger, such as the nearness of shallow water, or a concealed rock, the approach of a third vessel, or something of that kind. [See p. 353 for this rule.] *Ib.*
3. Where one ship has, by wrong manœuvres, placed another ship in a position of extreme danger, that other ship will not be held to blame, if she has done something wrong, and has not been manœuvred with perfect skill and presence of mind.
4. The allowance of interest and costs in a cause in admiralty rests in the discretion of the court below, and its action will not be disturbed on appeal. *Ib.*

See SALVAGE.

ALLOWANCE.

See SALARY, 3.

AMENDMENT.

See LOCAL LAW, 1.

APPEAL.

1. An appeal allowed in open court is of the date of its allowance, and to be kept in force, should reach this court before the end of the term to which it is made returnable. *Radford* v. *Folsom*, 725.
2. An appeal being allowed in open court, leaving the amount of the appeal bond to be settled afterwards, the acceptance of a bond by the

District Judge after the expiration of the term at which the decree was rendered, and without issue and service of citation, does not operate as a new appeal as of the date of the acceptance of the bond. *Ib.*

3. The appearance of an appellee by counsel, without citation, at a term after the term at which the appeal is returnable, and a motion to dismiss the appeal for want of filing the transcript of the record during the return term, do not waive the citation. *Ib.*

APPRAISER.

See CUSTOMS DUTIES.

ARBITRATION.

See SALVAGE, 2, 4.

ASSIGNMENT OF ERROR.

1. There being no assignment of errors in the transcript annexed to the writ of error, no specification of errors in the brief, no statement presenting the questions involved, no reference to pages in the argument, and generally a non-compliance with the provisions of the statute and the rules of this court in these respects, the case is dismissed for those causes. *Benites* v. *Hampton*, 519.
2. An assignment of errors on appeal from the District Court to the Supreme Court of a Territory cannot be accepted in this court as the equivalent of the assignment required by the statute. *Ib.*
3. If the jury return a verdict for the plaintiff after the court in its charge instructs them to "disregard altogether" evidence on the plaintiff's part, which had been improperly introduced and had been excepted to, the defendant cannot assign error here in this respect. *New York, Lake Erie, &c., Railroad* v. *Madison*, 525.

BANK CHECK.

1. A bank check for the payment of "five hundred dollars in current funds" is payable in whatever is current by law as money, and is a bill of exchange, within the meaning of the act of March 3, 1875, c. 137, defining the jurisdiction of the courts of the United States. *Bull* v. *Bank of Kasson*, 105.
2. A bank check, presented by a *bona fide* indorsee for payment six months after its date, the funds against which it was drawn remaining in the hands of the drawee, and the drawer having been in no way injured or prejudiced by the delay in presentment, is not overdue so as to be subject to equities of the drawer against a previous holder. *Ib.*

BILL OF EXCHANGE AND PROMISSORY NOTE.

See BANK CHECK.

BOND.

See CONTRACT, 7;
JURISDICTION, A, 16.

BOUNDARY.

See FLORIDA BOUNDARY;
LAND GRANT, 2.

CASES AFFIRMED.

1. *Accident Ins. Co.* v. *Crandall*, 120 U. S. 524. *Northern Pacific Railroad* v. *Mares*, 710.
2. *Hayes* v. *Missouri*, 120 U. S. 68. *Spies* v. *Illinois*, 131.
3. *Hopt* v. *Utah*, 120 U. S. 430. *Spies* v. *Illinois*, 131.
4. *Huse* v. *Glover*, 119 U. S. 543. *Sands* v. *Manistee River Imp. Co.*, 288.
5. *Jewell* v. *Knight*, 426, followed in *Smith* v. *Craft*, 436.
6. *Oelbermann* v. *Merritt*, 356, affirmed in *Mustin* v. *Cadwalader*, 369.
7. *Stryker* v. *Goodnow*, 527, affirmed in *Chapman* v. *Goodnow*, 540.
8. *Stryker* v. *Goodnow*, 527, applied as to the effect of *Wolcott* v. *Des nes Co.*, 5 Wall. 681. *Litchfield* v. *Goodnow*, 549.

CASES DISTINGUISHED.

1. *First National Bank of Cleveland* v. *Shedd*, 121 U. S. 74. *Burlington, &c., Railway Co.* v. *Simmons*, 52.
2. *Parsons* v. *Robinson*, 122 U. S. 112. *Burlington, &c., Railway Co.* v. *Simmons*, 52.
3. *United States* v. *Langston*, 118 U. S. 389. *Mathews* v. *United States*, 182.

CASES EXPLAINED.

Osborn v. *Bank of the United States*, 9 Wheat. 738. *In re Ayers*, 443.
United States v. *Philbrick*, 120 U. S. 52. *United States* v. *Allen*, 345.

CERTIFICATE OF DIVISION OF OPINION.

See DIVISION OF OPINION.

CLERKS, OFFICIAL BONDS OF.

See JURISDICTION, A, 16.

COAL LAND.

See PUBLIC LAND, 1, 2.

COMMON CARRIER.

1. A railroad company is not responsible for the loss of a bag containing money and jewelry, carried in the hand of a passenger and by him accidentally dropped through an open window in the car, although, upon notice of the loss, it refuses to stop the train, short of a usual station, to enable him to recover it. *Henderson* v. *Louisville & Nashville Railroad*, 61.
2. The undertaking of a common carrier to transport live-stock, though differing in some respects from the responsibility assumed in the car-

riage of ordinary goods, includes the delivery of the live-stock. *North Penn. Railroad Co.* v. *Commercial Bank*, 727.

3. When a railroad company receives live-stock for transportation by means of connecting lines to a named consignee or to his order at a destination beyond its terminus, and gives a receipt or bill of lading in accordance therewith, and delivers the property safely to the next connecting line, from which it finally passes into the possession of the connecting company on whose line the point of destination is, the latter company is bound to deliver the property there to the consignee or to his order, if they are made known to it on receiving the freight; and it is not released from that liability by reason of a practice or custom to deliver all such freight to a drove-yard company without requiring the production of the bill of lading or receipt, or other authority of the shipper, knowledge of the practice or custom not being brought home to the holder of such receipt, bill of lading, or other authority. *Ib.*
4. A railroad company received live-stock to be transported over its line and over connecting lines to a distant point beyond its terminus. It gave the shipper a receipt stating that they were "consigned to order P. M.," who was also shipper and owner, "notify J. B." at the point of destination. The goods were safely transported to that point. The agents of the last transporting line received with the property a way-bill containing the same statement as to the consignee, and as to the party to be notified. *Held*, that knowledge of the destination and the consignee of the goods being thus brought to the notice of the company which carried the goods to their destination, it became its duty to deliver, or to instruct its agents to deliver, the property only to the consignee or his order; and that a delivery of the property to J. B. after such knowledge would not avail as a defence when sued for its value by a bank at the place of shipment, which had discounted a bill drawn by the shipper, and secured by an indorsement of the receipt as collateral. *Ib.*

CONFIRMATION.

See JUDGMENT, 1.

CONSTITUTIONAL LAW.

1. It is well settled that the first ten articles of amendment to the Constitution of the United States were not intended to limit the powers of the States, in respect of their own people, but to operate on the national government only. *Spies* v. *Illinois*, 131.
2. *Hopt* v. *Utah*, 120 U. S. 430, affirmed to the point that when a challenge by a defendant in a criminal action to a juror for bias, actual or implied, is disallowed, and the juror is thereupon peremptorily challenged by the defendant and excused, and an impartial and competent juror is obtained in his place, no injury is done the defendant if, until

the jury is completed, he has other peremptory challenges which he can use. *Ib.*

3. *Hayes* v. *Missouri*, 120 U. S. 68, affirmed to the point that the right to challenge is the right to reject, not the right to select a juror; and if from those who remain an impartial jury is obtained, the constitutional right of the accused is maintained. *Ib.*

4. A statute of Illinois passed March 12, 1874, Hurd's Stats. Ill. 1885, 752, c. 78, § 14, enacted that "in the trial of any criminal cause, the fact that a person called as a juror has formed an opinion or impression, based upon rumor or upon newspaper statements (about the truth of which he has expressed no opinion), shall not disqualify him to serve as a juror in such case, if he shall upon oath state that he believes he can fairly and impartially render a verdict therein in accordance with the law and the evidence, and the court shall be satisfied of the truth of such statement." At a trial, had in that State, of a person accused of an offence punishable, on conviction, with death, the court ruled that, under this statute, "It is not a test question whether the juror will have the opinion, which he has formed from the newspapers, changed by the evidence, but whether his verdict will be based only upon the account which may here be given by witnesses under oath." *Held*, that, as thus interpreted, the statute did not deprive the persons accused of a right to trial by an impartial jury; that it was not repugnant to the constitution of Illinois, nor to the Constitution of the United States; and that, if the sentence of the court, after conviction, should be carried into execution, they would not be deprived of their lives without due process of law. *Ib.*

5. When the ground relied on for the reversal by this court of a judgment of the highest court of a State is that the error complained of is so gross as to amount in law to a denial by the State of a trial by an impartial jury to one who is accused of crime, it must be made clearly to appear, in order to obtain a reversal, that such is the fact, and that the case is not one which leaves something to the conscience or discretion of the court. *Ib.*

6. The exaction of tolls, under a state statute, for the use of an improved natural waterway, is not within the prohibition of the Constitution of the United States that no State shall deprive a person of his property without due process of law. *Sands* v. *Manistee River Improvement Co.*, 288.

7. The internal commerce of a State, that is, the commerce which is wholly confined within its limits, is as much under its control as foreign or interstate commerce is under the control of the national government; and to encourage the growth of this commerce and render it safe, States may provide for the removal of obstructions from their rivers and harbors, and deepen their channels, and improve them in other ways, and levy a general tax or toll upon those who use the improvement to meet their cost; provided the free navigation of the waters, as permitted under the laws of the United States, is not impaired, and

provided any system for the improvement of their navigation, provided by the general government, is not defeated. *Ib.*

8. There was no contract in the fourth article of the Ordinance of 1787 respecting the freedom of the navigable waters of the territory northwest of the Ohio River emptying into the St. Lawrence, which bound the people of the territory, or any portion of it, when subsequently formed into a State and admitted into the Union; but from the very conditions on which the States formed out of that territory were admitted into the Union, the provisions of the Ordinance became inoperative, except as adopted by them. *Huse* v. *Glover*, 119 U. S. 543, affirmed. *Ib.*

9. Whether a State is the actual party defendant in a suit within the meaning of the 11th Amendment to the Constitution of the United States, is to be determined by a consideration of the nature of the case as presented by the whole record, and not in every case, by a reference to the nominal parties of the record. *Osborn* v. *Bank of the United States*, 9 Wheat. 738, 857, explained and limited. *In re Ayers*, 443.

10. In order to secure the manifest purpose of the constitutional exemption guaranteed by the 11th Amendment, it should be interpreted not literally and too narrowly, but with the breadth and largeness necessary to enable it to accomplish its purpose; and must be held to cover, not only suits brought against a State by name, but those against its officers, agents, and representatives, where the State, though not named, is the real party against which the relief is asked and the judgment will operate. *Ib.*

11. If a bill in equity be brought against the officers and agents of a State, the nominal defendants having no personal interest in the subject-matter of the suit, and defending only as representing the State, and the relief prayed for is a decree that the defendants may be ordered to do and perform certain acts which, when done, will constitute a performance of an alleged contract of a State, it is a suit against the State for the specific performance of the contract within the terms of the 11th Amendment to the Constitution, although the State may not be named as a defendant; and, conversely, a bill for an injunction against such officers and agents, to restrain and enjoin them from acts which it is alleged they threaten to do, in pursuance of a statute of the State, in its name, and for its use, and which if done would constitute a breach on the part of the State of an alleged contract between it and the complainants, is in like manner a suit against the State within the meaning of that Amendment, although the State may not be named as a party defendant. *Ib.*

12. The court does not intend to impinge upon the principle which justifies suits against individual defendants who, under color of the authority of unconstitutional state legislation, are guilty of personal trespasses and wrongs; nor to forbid suits against officers in their official capacity either to arrest or direct their official action by injunction or manda-

mus, where such suits are authorized by law, and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest. *Ib.*

13. A bill in equity was filed by aliens against the Auditor of the State of Virginia, its Attorney General, and various Commonwealth Attorneys for its counties, seeking to enjoin them from bringing and prosecuting suits in the name and for the use of the State, under the act of its General Assembly of May 12, 1887, against tax-payers reported to be delinquent, but who had tendered in payment of the taxes sought to be recovered in such suits tax-receivable coupons cut from bonds of the State. An injunction having been granted according to the prayer of the bill, proceedings were taken against the Attorney General of the State and two Commonwealth Attorneys for contempt in disobeying the orders of the court in this respect, and they were fined and were committed until the fine should be paid and they should be purged of the contempt. *Held*, that the suit was a suit against the State of Virginia, within the meaning of the 11th Amendment to the Constitution of the United States, and was not within the jurisdiction of the courts of the United States; that the injunction granted by the Circuit Court was null and void; that the imprisonment of the officers of the State for an alleged contempt of the authority of the Circuit Court was illegal; and that the prisoners, being before this court on a writ of *habeas corpus*, should be discharged. *Ib.*

14. The Virginia act of 1877 concerning suits to collect taxes from persons who had tendered coupons in payment contains no provision as to the tender, or the proof of it, or the proof of the genuineness of the coupon, which violates legal or contract rights of the party sued. *Ib.*

15. If the holder of Virginia coupons, receivable in payment of state taxes, sells them, agreeing with the purchaser that they shall be so received by the State, the refusal of the State to receive them constitutes no injury to him for which he could sue the State, even if it were suable; and cannot be made the foundation for preventive relief in equity against officers of the State. *Ib.*

16. State legislation which prohibits the manufacture of spirituous, malt, vinous, fermented, or other intoxicating liquors within the limits of the State, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege or immunity secured by the Constitution of the United States, or by the Amendments thereto. *Mugler* v. *Kansas*, 623.

17. The prohibition by the State of Kansas, in its constitution and laws, of the manufacture or sale within the limits of the State of intoxicating liquors for general use there as a beverage, is fairly adapted to the end of protecting the community against the evils which result from excessive use of ardent spirits; and is not subject to the objection that, under the guise of police regulations, the State is aiming to deprive the citizen of his constitutional rights. *Ib.*

18. Lawful state legislation, in the exercise of the police powers of the

State, to prohibit the manufacture and sale within the State of spirituous, malt, vinous, fermented, or other intoxicating liquors, to be used as a beverage, may be enforced against persons who, at the time, happen to own property whose chief value consists in its fitness for such manufacturing purposes, without compensating them for the diminution in its value resulting from such prohibitory enactments. *Ib.*

19. A prohibition upon the use of property for purposes that are declared by valid legislation to be injurious to the health, morals or safety of the community, is not an appropriation of property for the public benefit, in the sense in which a taking of property by the exercise of the State's power of eminent domain is such a taking or appropriation. *Ib.*
20. The destruction, in the exercise of the police power of the State of property used, in violation of law, in maintaining a public nuisance, is not a taking of property for public use, and does not deprive the owner of it without due process of law. *Ib.*
21. A State has constitutional power to declare that any place kept and maintained for the illegal manufacture and sale of intoxicating liquors shall be deemed a common nuisance, and be abated; and at the same time to provide for the indictment and trial of the offender. *Ib.*
22. There is nothing in the provisions of § 13 of the statute of the State of Kansas of March 7, 1885, amendatory of the act of February 19, 1881, so far as they apply to the proceedings reviewed in these cases, which is inconsistent with the constitutional guarantees of liberty and property; and the equity power conferred by it to abate a public nuisance without a trial by jury is in harmony with settled principles of equity jurisprudence. *Ib.*
23. If the provision that in a prosecution by indictment or otherwise the State need not, in the first instance, prove that the defendant has not the permit required by the statute has any application to the proceeding in equity authorized by the statute of Kansas of 1881, as amended in 1885, it does not deprive him of the presumption that he is innocent of any violation of law; and does him no injury, as, if he has such permit, he can produce it. *Ib.*
24. The record does not present a case which requires the court to decide whether the statutes of Kansas forbid the manufacture of intoxicating liquors to be exported or carried to other States; or whether they are repugnant upon that ground to the clause of the Constitution of the United States giving Congress power to regulate commerce with foreign nations and among the several States. *Ib.*

See JURISDICTION, A, 3;
TAX AND TAXATION, 2.

CONSUL.

See STATUTE, A.

CONTEMPT.

See HABEAS CORPUS.

CONTRACT.

1. A *bona fide* contract for the actual sale of grain, deliverable within a specified future month, the only option in which is an option in the seller to deliver it at any time within such month, is not a gambling contract, within the meaning of § 130 of c. 38, of the Revised Statutes of Illinois. (Hurd's ed. of 1883, p. 394; do. of 1885, p. 405.) *White* v. *Barber*, 392.

2. W. claimed to receive from B., by a suit in equity, money which he had put into the hands of B., as a broker, to be used by him in transactions which W. alleged were wagering contracts, because they were sales of wheat in regard to which both W. and B. did not intend there should be any delivery of the wheat: *Held*, that what W. did in connection with the transactions was inconsistent with such claim; that B. had no such understanding; that the sales of wheat were lawful; and that W. was not entitled to recover the money which B. had paid out. *Ib.*

3. B. having paid out the money in settlement of the sales according to the rules of the board of trade of Chicago, was not a "winner" of the money from W., within the meaning of § 132 of c. 38 of the Revised Statutes of Illinois. (Hurd's ed. of 1883, p. 394; do. of 1885, p. 405.) *Ib.*

4. Moreover, as W. set up as the ground of recovery that the transactions were gambling transactions, as between him and B., he could not recover back the money. *Ib.*

5. It is competent for parties who have contracted in writing with reference to personal property to make a subsequent verbal agreement as a substitute for a part of the written contract. *Teal* v. *Bilby*, 572.

6. When testimony is permitted to go to the jury without any objection, tending to show that changes had been made orally in a written contract between the parties, which were substituted by them in the place of the written contract, it is too late to contend that the jury cannot find, in case it is so proved, that the rights of the parties, as defined in the written contract, have been varied by the verbal agreement. *Ib.*

7. A railroad company, in a bond issued by it promised to pay the principal at a specified time and place, "with interest thereon at the rate of seven per cent per annum, payable annually on the 1st day of July in each year, as promised in the mortgage hereinafter mentioned." The bond also set forth, that the interest was secured by a mortgage lien on the net income of certain specified lines of road; and that, "in case such net earnings shall not in any one year be sufficient to enable the company to pay seven per cent interest on the outstanding bonds, then scrip may, at the option of the company, be issued for the interest." A certificate on the bond, by the mortgage trustees, stated that

the bond bore "seven per cent interest per annum, payable yearly." The mortgage stated that it was given to secure the payment of the principal and interest of the bonds "according to the terms thereof." On July 1st, 1882 and 1883, the company neither paid the interest in money nor declared its election to issue scrip for the interest. Shortly after each of those days it notified the bondholders that it was not prepared to pay interest, as the earnings of the railway were not sufficient. It took no action in reference to the issue of scrip until October, 1883. In a suit by a bondholder who refused to receive the scrip, to recover the interest in money: *Held*,

(1) If the company did not pay the interest in money by the interest day, it was bound to exercise, by that day, its option to pay it in scrip, and, if it did not, it became liable to the bondholders to pay the interest in money.

(2) No demand by a bondholder was necessary, in order to entitle him to the payment of the interest in money, on the failure of the company so to exercise such option. *Texas Pacific Railway* v. *Marlor*, 687.

See EVIDENCE, 6; FRAUD; INSURANCE; MUNICIPAL CORPORATION; PLEDGE; RAILROAD.

CONTRIBUTORY NEGLIGENCE.

Under all circumstances set forth in the statement of facts and the opinion of the court, it was for the jury to determine whether the failure on the part of the plaintiff to work with his fellow-servant was, in fact, contributory negligence on his part, and on the whole case it appears that the cause was submitted by the court to the jury fairly, and with an accurate statement of the law applicable to the relation between the parties. *Northern Pacific Railroad Co.* v. *Mares*, 710.

COSTS.

See ADMIRALTY, 4.

COURT AND JURY.

1. At a trial by jury in a court of the United States, the judge may express to the jury his opinion upon questions of fact which he submits to their determination. *United States* v. *Reading Railroad Co.*, 113.

2. A claim of the United States against a railroad corporation for taxes on undivided profits during a certain period was, after full examination of the books of the corporation by officers of the government, and argument before the assessor of internal revenue for the district, settled and adjusted by agreement between the assessor and the corporation at a certain sum, which the corporation paid and took the collector's receipt for. Nearly twelve years afterwards, an internal revenue agent made another examination of the books of the corporation, resulting,

as he testified, in charging it with a further sum for taxes during the same period. In a suit to recover this sum, the judge, in charging the jury, told them that the first assessment, the payment of money in pursuance of it, and the acquiescence of the government for so long a time since, raised a presumption that the assessment was correct, and that the money paid covered the defendant's entire liability; that the burden was thus cast upon the government of proving, by such evidence as to fully satisfy the mind, that the assessment was erroneous; that whether it had done so was for the jury to determine, and that the judge did not desire to control their finding, but was of opinion that under the circumstances they should not return a verdict for the government. *Held*, no error. *Ib.*

3. A Circuit Court of the United States may direct a verdict for the plaintiff when it is clear from all the evidence in the case that he is entitled to recover, and no matter affecting his claim is left in doubt to be determined by the jury. *North Penn. Railroad Co.* v. *Commercial Bank*, 727.

See ASSIGNMENT OF ERROR, 3;
CONTRIBUTORY NEGLIGENCE.

CRIMINAL LAW.

See JURISDICTION, A, 3.

CROSS EXAMINATION.

See JURISDICTION, A, 3.

CUSTOMS DUTIES.

1. Under § 2930 of the Revised Statutes, the merchant appraiser must be a person familiar with the character and value of the goods; and under § 2901 he must open, examine and appraise the packages designated by the collector and ordered to be sent to the public stores for examination. *Oelbermann* v. *Merritt*, 356.
2. In a suit to recover back duties paid under protest, an importer has a right to show that those provisions of the statute have not been complied with. *Ib.*
3. For that purpose the merchant appraiser is a competent witness. *Ib.*
4. Under § 2930 of the Revised Statutes, the merchant appraiser must be a person familiar with the character and value of the goods. *Mustin* v. *Cadwalader*, 369.
5. In a suit to recover back duties paid under protest, an importer has a right to show that that provision of the statute has not been complied with. *Ib.*

DEED.

See LOCAL LAW, 2, 3, 4.

DES MOINES RIVER LAND GRANT.

The litigation and decisions respecting the grants of land on the Des

Moines River, above the Raccoon Fork, stated. *Stryker* v. *Goodnow*, 527.

See ESTOPPEL;
JURISDICTION, A, 9, 10, 12;
JUDGMENT, 3.

DIPLOMATIC AND CONSULAR APPROPRIATION ACT.

See STATUTE, A.

DISTRICT OF COLUMBIA.

See LOCAL LAW, 2, 3.

DIVISION OF OPINION.

1. Questions certified to this court upon a division of opinion of two judges in the Circuit Court must be distinct points of law, clearly stated, so that they can be definitely answered, without regard to other issues of law or of fact; and not questions of fact, or of mixed law and fact, involving inferences of fact from particular facts stated in the certificate; nor yet the whole case, even if divided into several points. *Jewell* v. *Knight*, 426.
2. Whether a sale and delivery of a debtor's stock of goods, by way of preference of a *bona fide* creditor, is fraudulent against other creditors, involves a question of fact, depending upon all the circumstances, and cannot be referred to this court by certificate of division of opinion. *Ib.*
3. Whether an agreement to prefer a *bona fide* creditor is so fraudulent against other creditors, as to avoid a subsequent preference of the former, involves a question of fact, depending upon all the circumstances, and cannot be referred to this court by certificate of division of opinion. *Smith* v. *Craft*, 436.

EQUITY.

1. In this suit the facts found are not materially and substantially different from those alleged in the bill, and they will support a decree for the relief asked for. *Tufts* v. *Tufts*, 76.
2. If the plaintiff's contention is well founded that the duty of the Commissioner of the General Land Office to take up, hear and determine his appeal exists, that duty, so far as relates to entering upon its performance, is strictly ministerial, and his remedy is at law, by mandamus, and not in equity. *Craig* v. *Leitensdorfer*, 189.
3. The controversy in this case being confined to the conflicting claims of actual settlers, "holding possession under titles or promises to settle," made by Cornelio Vigil and Ceran St. Vrain, and established under the provisions of the acts of June 21, 1860, 12 Stat. 71, and February 25, 1869, 15 Stat. 275; and it appearing from the pleadings, as amended, that the plaintiff below did not aver an equitable interest in himself in the lands which were so established in favor of the defend-

ant, and that the only remedy, which he sought, was to have it judicially determined that the defendant's title was obtained by means of the fraudulent act of an executive officer in the Land Office, whereby the plaintiff was illegally deprived of a right of appeal from the decision of that officer touching his own claims; *Held*, That the pleadings presented no question to give a Circuit Court jurisdiction in equity over the case. *Ib.*

4. To a bill in equity to cancel a patent of land from the United States to a preëmptor, solely on the ground that there was no actual settlement and improvement on the land, as falsely set out in affidavits in support of the preëmption claim, the defence of a *bona fide* purchaser without notice is perfect. *Colorado Coal & Iron Co.* v. *United States*, 307.

5. From a careful examination of all the evidence in this case, the court is satisfied with the action of the Circuit Court dismissing the bill, and the cross-bill as dependent upon the bill. *Dewey* v. *West Fairmont Gas Coal Co.*, 329.

6. In April, 1853, R. made a deed to himself, as trustee, of land in Georgia, for the benefit of his wife and their children, during the life of the wife, and, after her death, of such children, which deed was recorded in May, 1853, in the office of the clerk of the Superior Court of the county in which R. resided. In May, 1870, R. mortgaged to W. the trust land and other land. W. foreclosed the mortgage, and on a sale, in 1876, bid in the mortgaged lands, and obtained from the sheriff a deed of them and took possession of them. In 1881, the beneficiaries under the trust deed brought a bill in equity in the Circuit Court of the United States, against W., to have the trust established. Among the defences set up by W., he alleged that the trust deed was fabricated after the mortgage was made, and was antedated, and that he had no notice of the existence of the trust deed at or before the execution of the mortgage of May, 1870, or before the sheriff's sale in 1876. The Circuit Court, without making any previous order for the trial of issues of fact by a jury, had a trial by jury of the two questions above mentioned. The jury found in favor of the plaintiffs on both questions. The defendant had bills of exceptions signed to the rejection of evidence and to the instructions to the jury. The suit in equity was heard by the same judge who presided at the jury trial. No motion was made for a new trial. The decree was for the plaintiffs, on the same proofs which were before the jury. On appeal by the defendant, *Held:*

   (1) No previous order for a jury trial was necessary, nor any certificate to the chancellor of the findings;

   (2) The submission to the jury of the particular issues was not an unlawful exercise of the discretion of the Circuit Court;

   (3) The formal exceptions taken on the jury trial will not be considered by this court;

   (4) The decree was correct, on the facts;

(5) The voluntary settlement was authorized by the statute law of Georgia in force at the time it was made, it having been recorded within three months, and was good against W., under such statute law, because of the notice of its existence, which he so had. *Wilson* v. *Riddle*, 608.

7. Multifariousness as to subjects or parties, within the jurisdiction of a court of equity, does not render a decree void, so that it can be treated as a nullity in a collateral action. *Hefner* v. *Northwestern Ins. Co.*, 747.

8. A court of equity, in a suit to forclose a mortgage, may permit a person, to whom the land has been sold and conveyed for non-payment of taxes assessed after the date of the mortgage, to be made a party, and may determine the validity of his title. *Ib.*

9. A bill in equity by A against B and C to foreclose a mortgage from B to A alleged that C claimed some interest in the premises, the exact nature of which the plaintiff was unable to set out, and prayed for a decree of foreclosure, and that the right, title, and interest of each defendant be forever barred and foreclosed, and for a sale of the premises, and for further relief. In the decree C's default was recited and confirmed, and it was adjudged that the mortgage was a lien prior and paramount to the lien of each defendant, and that the right, title, and equity of redemption of each defendant be by a sale under the decree forever barred and foreclosed, and that the purchaser at such sale should take the premises by title absolute, relating back to the date of the mortgage. Under that decree the land was sold to A. *Held*, that the decree was a conclusive adjudication that C had no valid title or lien, and estopped him to set up, in defence to an action of ejectment by A, a tax title subsequent to the mortgage and prior to the suit for foreclosure. *Ib.*

See CONSTITUTION LAW, 15; PLEDGE, (4);
JURISDICTION, A, 1; B, 3; TRUST, 2, 3.

ERROR.

See ASSIGNMENT OF ERROR;
PRACTICE, 2.

ESTOPPEL.

1. *Homestead Company* v. *Valley Railroad*, 17 Wall. 153, is a judicial precedent, which might have been referred to as a reason for holding that taxes paid, under the circumstances in which the payments of taxes in contention in these suits were made, cannot be recovered by the party paying them from the true owners of the land; but it is no bar, as an estoppel, to the recovery in these cases. *Stryker* v. *Goodnow*, 527.

2. The judgment of this court in *Wolcott* v. *Des Moines Company*, 5 Wall. 681, while it may be referred to by the parties in this suit as a judicial

precedent, does not operate as an estoppel against the defendant in error. *Ib.*

3. While the judgment of this court in *Wolcott* v. *Des Moines Company*, 5 Wall. 681, may be referred to by parties as a judicial precedent, it is not an estoppel as against the defendant in error. *Stryker* v. *Goodnow*, *ante*, 527, affirmed to this point. *Chapman* v. *Goodnow*, 540.

4. The plaintiff in error's intestate was not a party to *Homestead Company* v. *Valley Railroad*, nor in privity with those who were parties, and was not bound by the proceedings; and, as estoppels to be good must be mutual, the Homestead Company and its assignees were not bound. *Litchfield* v. *Goodnow*, 549.

See EQUITY, 9.

EVIDENCE.

1. Copies of official letters from the Commissioner of the General Land Office to a person claiming title under a warrant and survey, reciting the date of the filing of the survey in the office, being verified by the oath of the person who was a clerk in that division of the Land Office and at that time had charge of the matters relating to this subject, and in whose letters to the parties interested were contained all the decisions of the Commissioner relating to it, are competent evidence to show the time of the filing. *Coan* v. *Flagg*, 117.

2. In a suit by the United States to cancel a patent of public land the burden of producing the proof and establishing the fraud is on the Government, from which it is not relieved although the proposition which it is bound to establish may be of a negative nature. *Colorado Coal & Iron Co* v. *United States*, 307.

3. When a plaintiff's right of action is grounded on a negative allegation, which is an essential element in his case, or which involves a charge of criminal neglect of duty or fraud by an official, the burden is on him to prove that allegation, the legal presumption being in favor of the party charged. *Ib.*

4. In a proceeding in equity against an innocent purchaser to set aside a patent of public land for fraud in which it is charged that an officer of the United States, who was concerned in its issue, participated, the burden of establishing his title is not cast upon the defendant by raising a suspicion, however strong, of the alleged fraud and wrong-doing of the officer, if the officer could have been examined and was not. *Ib.*

5. In this case the United States sought to cancel a number of patents to preëmptors, the lands having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged preëmptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiffs introduced the evidence of many witnesses

residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver, or the solicitor through whom some of the patents were obtained from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. *Held*, that the burden was on the Government to produce so much of this further evidence as could be obtained, and that in its absence the United States had not made all the proof of which the nature of the case was susceptible, and which was apparently within their reach. *Ib.*

6. The burden of proof to establish it is on the party who sets up an oral change in a written agreement; and in determining it the reasons and motives for the alleged change may be shown. *Teal* v. *Bilby*, 572.

See CONTRACT, 6;
CUSTOMS DUTIES, 2, 3;
LOCAL LAW, 4.

EXCEPTION.

See PRACTICE, 2.

EXECUTION.

See JUDGMENT, 1.

EXECUTIVE.

See JURISDICTION, B, 1, 2.

FINDINGS OF FACT.

See ADMIRALTY, 1;
JURISDICTION, A, 14.

FLORIDA BOUNDARY.

The history of the Florida Boundary stated. *Coffee* v. *Groover*, 1.

FLORIDA LAND GRANT.

See LAND GRANT, 3–12.

FRAUD.

1. In an agreement to keep, feed, and care for a quantity of cattle, it was agreed that the cattle should be of a certain average, of which fact A was to be the judge. *Held*, that A's action in this respect was not conclusive on the defendant if it was shown that he had been deceived by the plaintiff, in not putting him in full possession of knowledge possessed by him, and necessary for the proper discharge of A's duty. *Teal* v. *Bilby*, 572.
2. In several other respects, referred to by the court in detail, it is found that there was no error in the charge of the court below. *Ib.*

See DIVISION OF OPINION, 2;
EQUITY, 6.

FRAUDULENT PREFERENCE.

A bill of sale of a stock of goods in a shop, by way of preference of a *bona fide* creditor, is not rendered conclusively fraudulent, as matter of law, against other creditors, by containing a stipulation that the purchaser shall employ the debtor at a reasonable salary to wind up the business. *Smith* v. *Craft*, 436.

See DIVISION OF OPINION, 2.

GAMBLING CONTRACT.

See CONTRACT, 1, 2, 3, 4.

GEORGIA LAND GRANT.

See LAND GRANT, 3.

GRADUATED PAY.

See SALARY, 1, 2, 3.

HABEAS CORPUS.

It is well settled in this court that, while the exercise of the power of punishment for contempt of their orders by courts of general jurisdiction is not subject to review by writ of error, or by appeal, yet, when a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the original order being void for want of jurisdiction, the order punishing for contempt is equally void; and if the proceeding for contempt result in imprisonment, this court will, by its writ of *habeas corpus*, discharge the prisoner. *In re Ayers*, 443.

HYPOTHECATION.

See PLEDGE.

INDICTMENT.

1. Each letter or packet put in or taken out from the post-office of the United States in violation of the provisions of Rev. Stat. § 5480 constitutes a separate and distinct violation of the act. *In re Henry*, 372.
2. Three separate offences (but not more) against the provisions of Rev. Stat. § 5480, when committed within the same six calendar months, may be joined, and when so joined there is to be a single sentence for all; but this does not prevent other indictments, for other and distant offences under the same statute committed within the same six calendar months. *Ib.*

INSURANCE.

1. In the absence of fraud or design, misconduct on the part of the master of a vessel covered by a policy of insurance will not defeat a recovery on the policy, when the proximate cause of the loss is a peril covered by it. *Orient Ins. Co.* v. *Adams*, 67.

2. A provision in a policy of insurance of a steam vessel that the insurer shall not be liable for losses occasioned by "the derangement or breaking of the engine or machinery or any consequences resulting therefrom" relates to losses of which the derangement or breaking is the proximate cause, and not to such as are a remote consequence of either. *Ib.*
3. The abandonment of a vessel for total loss, made in good faith at a time when it was in reasonable probability impracticable to recover and repair it, and when the damage from the perils insured against amounted in like probability to more than fifty per cent of the value, is a valid abandonment within the terms of a policy, which provides that there shall be "no abandonment as for a total loss," unless the injury sustained be equivalent to fifty per cent of the agreed value; although by a change of circumstances it afterwards became practicable to float off the vessel, and thereby the loss was reduced below fifty per cent of that value. *Ib.*
4. A policy of life insurance contained questions to the applicant with his answers, and provisions that the answers were warranted to be true, and that the policy should be void if they were in any respect false or fraudulent. Among these questions and answers were the following: "5. Q. Are the habits of the party sober and temperate? A. Yes. 6. Q. Has the party ever been addicted to the excessive or intemperate use of any alcoholic stimulants or opium, or does he use any of them often or daily? A. No." It also contained a provision that if the applicant should become so far intemperate as to impair health or induce *delirium tremens*, it should become void. After the death of the assured the insurer defended against an action on the policy by setting up (1) that the answers to these questions were false; and (2) that the deceased, after the issue of the policy, became intemperate, impaired his health thereby, and induced *delirium tremens*. *Held:*
   (1) That an instruction to the jury as to question 6 that they could not find the answer to be untrue unless the assured had, prior to the issue of the policy, been addicted to the excessive or intemperate use of alcoholic stimulants or opium, or, at the time of the application, habitually used some of them often or daily, was a correct construction of the language of question 6, as interpreted in connection with question 5.
   (2) That if the death was substantially caused by the excessive use of alcoholic stimulants, not taken for medical purposes or under medical advice, the assured's health was impaired by intemperance within the meaning of the policy, although he might not have had *delirium tremens*, and although he had not indulged in strong drink for such a long period of time or so frequently as to become habitually intemperate; and that it was for the jury to determine whether the death was so caused. *Ætna Life Ins. Co.* v. *Davey*, 739.

INTEREST.

See ADMIRALTY, 4;
CONTRACT, 7.

INTERNAL COMMERCE.

See CONSTITUTIONAL LAW, 7.

INTERNAL REVENUE.

See TAX AND TAXATION, 3.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 16–24.

JUDGMENT.

1. A confirmation by the court of a sale under execution will not cure an infirmity growing out of the nullity of the judgment under which it was had. *Lamaster* v. *Keeler*, 376.
2. If a cause is removed in a regular manner from a state court to a Circuit Court of the United States, on motion of one or more of several defendants who have a right to have it removed as to him or them, and the Circuit Court takes jurisdiction, and all parties defendant appear, and no objection to the jurisdiction is made, and the cause proceeds to final judgment, the judgment remains in force and of binding effect upon all the parties, until judicially vacated, although it appears on the face of the record that some of the defendants, who did not join in the petition for removal, were citizens of the same State with the plaintiff. *Des Moines Navigation Co.* v. *Iowa Homestead Co.*, 552.
3. This case is reversed because the state court failed to give due faith and credit to the decree of this court in *Homestead Company* v. *Valley Railroad*, 17 Wall. 153; *Plumb* v. *Goodnow*, 560.
4. The respondents, holding a quantity of securities hypothecated as collateral for an indebtedness due them from an insolvent bank, sold them by public auction, in the manner stated in the opinion of the court, for less than the debt, and proved the balance of the debt. When the judgment declaring a dividend was entered, it was stated in it, both parties consenting, that all the rights of both touching damages resulting from the sale of the bonds were expressly reserved. *Held*, that this could not be construed into an admission of the liability of the respondents, or that a just cause of action existed against them. *Lacombe* v. *Forstall's Sons*, 562.

See EQUITY, 7;
ESTOPPEL;
JURISDICTION, A, 1, 9, 10, 11, 12; B, 4.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. A decree in a suit in equity to foreclose a mortgage, which determines the validity of the mortgage, and, without ordering a sale, directs the cause to stand continued for further order and decree upon the coming in of a master's report, is not final for the purposes of an appeal. *Burlington, &c., Railway Co.* v. *Simmons*, 52.
2. Since the act of 1887, c. 373, took effect, this court has no power to review on appeal or in error an order of a Circuit Court remanding a cause to a state court. *Morey* v. *Lockhart*, 56.
3. When a person accused of crime voluntarily offers himself on his trial for examination as a witness in his own behalf, he must submit to a proper cross-examination under the law of the jurisdiction where he is being tried, and the question whether his cross-examination must be confined to matters pertinent to the testimony in chief, or whether it may be extended to the matters in issue, is not a Federal question. *Spies* v. *Illinois*, 131.
4. In order to give this court jurisdiction under Rev. Stat., § 709, because of the denial by a state court of any title, right, privilege or immunity claimed under the Constitution, or any treaty or statute of the United States, it must appear on the record that it was duly set up; that the decision was adverse; and that that decision was made in the highest court of the State. *Ib.*
5. Questions concerning the rights of parties under treaties of the United States with other powers cannot be raised in this court for the first time, if the record does not show that they were raised in the court below. *Ib.*
6. The proviso in § 6 of the act of March 3, 1887, 24 Stat. 552, c. 373, concerning the jurisdiction over suits which had been removed from a state court prior to the passage of the act, relates only to the jurisdiction of Circuit Courts of the United States, and does not confer upon this court jurisdiction over an appeal from a judgment remanding a cause to a state court; but such jurisdiction was expressly taken away by the last paragraph of § 2 of the act, taken in connection with the repeal of § 5 of the act of March 3, 1875, 18 Stat. 470. *Wilkinson* v. *Nebraska*, 286.
7. It appearing that the amount in controversy does not exceed five thousand dollars, the writ of error is dismissed. *Cox* v. *Western Land and Cattle Co.*, 375.
8. A sold to B shares in a national bank, and signed a transfer on the books of the company, leaving the name of the transferee blank. After it was known that the bank was embarrassed, B sold the shares to C, an irresponsible person, and filled his name in in the blank. A, being subsequently adjudged liable as shareholder under the national banking law, in a suit brought by the receiver, paid the judgment and brought suit in the Supreme Court of Louisiana against B for ne-

glect of duty in failing to insert his name in the transfer. *Held*, that the case did not arise under the National Banking Act, and that therefore no Federal question was involved. *La Sassier* v. *Kennedy*, 521.

9. Upon the record in this case, the question whether the lands of the plaintiffs in error were taxable is not a Federal question, but is one on which the decision of the highest court of the State of Iowa is conclusive; and it is not reviewable here. *Stryker* v. *Goodnow*, 527.
10. The Supreme Court of Iowa having given full effect to the case of *Homestead Company* v. *Valley Railroad*, 17 Wall. 153, as a bar to the recovery in this suit as it stood originally, but having held that a new cause of action had arisen out of acts of the plaintiffs in error, which were equivalent to an election by them to treat the payments of taxes made by the Homestead Company as payments by themselves, and which implied a new promise of reimbursement for the advancement made; and it appearing that that was the real ground for the decision of the Supreme Court of Iowa, and that it was not used to give color to a refusal to allow the bar of the decree in *Homestead Company* v. *Valley Railroad*, no Federal question on that point is raised by the record. *Chapman* v. *Goodnow*, 540.
11. If a Federal question is fairly presented by the record, and its decision is necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of Rev. Stat. § 709, as if it had been specifically referred to, and the right directly refused: but if a decision of such a question is rendered unnecessary by the view which the court properly takes of the rest of the case, within the scope of the pleadings, the judgment is not open to review here. *Ib.*
12. The Supreme Court of the State of Iowa, in deciding this cause, held, and so stated in its opinion, that the question of prior adjudication of the issue by this court in *Homestead Valley* v. *Railroad Company*, 17 Wall. 153, was not raised before it by counsel for defendant, and therefore was not in the case; and it decided the case without considering that point. On examining the opinion of that court, and the record and briefs, and the briefs in the court below in this case and in the case of *Litchfield* v. *Goodnow, ante*, 549, this court is of opinion that the point was raised and discussed in the Supreme Court of Iowa, and *holds* that the action of that court in respect of it was equivalent to a denial of the Federal right so set up. *Des Moines Navigation Co.* v. *Iowa Homestead Co.*, 552.
13. The value of the matter in dispute is to be determined by the amount due at the time of the judgment of the court below, which is brought here for review, including interest up to the time of the judgment of the Appellate Court, if the appeal is from an Appellate Court, and the judgment which is taken to the Appellate Court bears interest. *Zeckendorf* v. *Johnson*, 617.
14. Findings of fact in the court below are conclusive, and cannot be reëxamined here. *Ib.*

15. If the order to remand a case to a state court was made while the act of March 3, 1875, 18 Stat. 470, was in force, but the writ of error to review it was not brought until after the act of March 3, 1887, 24 Stat. 552, went into that effect, this court cannot take jurisdiction on the writ. *Sherman* v. *Grinnell*, 679.

16. On an examination of the face of the record in this case it appears that the amount due the United States is less than the penalty of the bond given by him for the faithful performance of his duties as an officer; viz.: $517.07, and possibly a small amount of interest; and as the jurisdiction of this court in an action on such a bond depends upon the amount due for the breach of the condition, the court is without jurisdiction. *United States* v. *Hill*, 681.

17. *Accident Ins. Co.* v. *Crandall*, 120 U. S. 524, affirmed to the point that the refusal of the court to instruct the jury, at the close of the plaintiff's evidence that he is not entitled to recover, cannot be assigned for error, if the defendant afterwards introduces evidence. *Northern Pacific Railroad Co.* v. *Mares*, 710.

See APPEAL; ASSIGNMENT OF ERROR; CONSTITUTIONAL LAW, 5; DIVISION OF OPINION; PRACTICE, 5; SALVAGE, 5.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. If an official act of an executive officer in the Land Office is challenged for error of law, or for fraud in a judicial proceeding between private parties, in a court of the United States, no jurisdiction attaches unless the controversy relates to rights existing in the parties, or one of them, derived from the act, and unless definite relief or redress under some known head of judicial jurisdiction is demanded. *Craig* v. *Leitensdorfer*, 189.

2. The acts of June 21, 1860, 12 Stat. 71, and February 25, 1869, 15 Stat. 275, having referred to the Land Office and the Department of the Interior the adjustment of the claims of settlers within the Las Animas grant in Colorado, and their definition by the prescribed surveys and plats, and of all questions of possession and of boundary and of conflict, the free course of that administration, within the limit of the law, cannot be interrupted or interfered with by the judicial power. *Ib.*

3. A New York corporation contracted with a partnership consisting of citizens of West Virginia, to furnish a specific quantity of coal within a fixed time at an agreed rate. After delivery of a portion of the coal, the partnership refused to receive more, whereupon the corporation sued the partners in a state court of West Virginia to recover damages for a breach of the contract. On the motion of the defendants this action was removed from the state court to the Circuit Court of the United States, on the ground that the parties were citizens of different States. The partners then, in conformity with the provisions

of a statute of West Virginia which authorizes a creditor, before obtaining judgment, to institute any suit to avoid a conveyance of the estate of his debtor which he might institute after obtaining judgment, and to have the relief in respect to said estate which he would be entitled to after judgment, filed a bill in equity in the Circuit Court of the United States to set aside an assignment of the property of the corporation as fraudulent, and to subject that property in the hands of the assignee to the payment of their debt. It was objected to this bill that the court was without jurisdiction, as the assignee, who was one of the respondents, was a citizen of West Virginia, of which the complainants also were citizens. *Held*, that the objection was not well taken, the equity suit being an exercise of jurisdiction in the Circuit Court ancillary to that which it had already acquired in the action at law, and which it might entertain according to the rule in *Krippendorf* v. *Hyde*, 110 U. S. 276, and *Pacific Railroad Co.* v. *Missouri Pacific Railway Co.*, 111 U. S. 505. *Dewey* v. *West Fairmont Gas Coal Co.*, 329.

4. The provisions of Rev. Stat. § 914 relating to the practice, pleadings, and forms and modes of proceeding in common law causes in Circuit and District Courts of the United States do not apply to remedies upon judgments; but those remedies, being governed by the provisions of § 916, are confined to such remedies as were provided by the laws of the State in force when § 916 was passed or reënacted, or by subsequent laws of the State adopted by the Federal court in the manner provided for in that section. *Lamaster* v. *Keeler*, 376.

See BANK CHECK, 1;
EQUITY, 3.

C. JURISDICTION OF THE COURT OF CLAIMS.

1. The Court of Claims has jurisdiction of an action by a State against the United States upon a demand arising under an act of Congress. *United States* v. *Louisiana*, 32.
2. It is a condition or qualification of the right to a judgment against the United States in the Court of Claims, that the claimant, when not laboring under one of the disabilities named in a statute, voluntarily put his claim in suit, or present it at the proper department for settlement, within six years after suit could be commenced thereon against the United States. *Finn* v. *United States*, 227.
3. The general rule that limitation does not operate by its own force as a bar, but is a defence which must be set up, to be availed of, does not apply to suits in the Court of Claims against the United States; and it is the duty of that court to dismiss the petition of its own motion, when it appears that the claim is barred, although the statute may not have been pleaded. *Ib.*

See LIMITATION, STATUTES OF.

JUROR.

See CONSTITUTIONAL LAW, 2, 3, 4.

LAND GRANT.

1. Grant of land made by a government, in territory over which it exercises political jurisdiction *de facto*, but which does not rightfully belong to it, are invalid as against the government to which the territory rightfully belongs. *Coffee* v. *Grover*, 1.
2. Where a disputed boundary between two States is adjusted and settled, grants previously made by either State, of lands claimed by it, and over which it exercised political jurisdiction, but which on the adjustment of the boundary, are found to be within the territory of the other State, are void, unless confirmed by the latter State; and such confirmation cannot affect the titles of the same lands previously granted by the latter State itself. *Ib.*
3. The boundary between Georgia and Florida was long in dispute; Georgia claiming to a line called Watson's line, and exercising political jurisdiction, and making grants of land to that line; whilst Florida claimed to a line called McNeil's line, further north than Watson's. Upon running the true line, as finally agreed upon by the two States, it was found to be further north than McNeil's line. *Held*, 1, That the grant made by Georgia of the land in dispute, which was south of McNeil's line, though made whilst Georgia exercised the powers of government *de facto* over the territory there, was nevertheless void; 2, That the confirmation by Florida of the grants made by Georgia, did not invalidate or disturb the grant of the land in dispute previously made by itself. *Ib.*
4. The testimonio granted to Cerilo de Morant, September 22, 1817, was full and particular, and both that and the testimonio to Quina, dated May 1, 1818, made complete titles under Spanish laws. *United States* v. *Morant*, 335.
5. The objection to the claimant's title that no evidence was given of cultivation, as required by the Spanish grant, is not well founded, as the proof is conclusive that the grantees built houses and resided on the granted land shortly after the date of the grants. *Ib.*
6. Whatever may be the proper construction of the 8th article of the Treaty of 1819 with Spain as to the necessity of a survey prior to the date when the obligation to recognize Spanish grants ceased in order to validate a Spanish grant, the act of June 22, 1860, 12 Stat. 85, under authority of which this suit was commenced, makes the date of the transfer of possession to the United States, viz., July, 1822, the point from which to test the validity of the grants. *Ib.*
7. The act of June 22, 1860, 12 Stat. 85, was passed to give relief to a large class of grantees of former Spanish governments, whose claims had been rejected by the different boards of commissioners, and by the courts, under the strict construction of the treaties which prior laws had required. *Ib.*

8. This case does not come within the proviso in § 3 of the act of June 22, 1860, excluding claims from the jurisdiction of the commission. *Ib.*
9. There is no reason why a part owner of lands in Florida under a Spanish grant should not have the benefit of the proceedings authorized by the act of June 22, 1860, 12 Stat. 85. *Ib.*
10. The failure to annex a sworn copy of the government surveys to a petition for confirmation of title filed under the act of June 22, 1860, 12 Stat. 85, is not a question of jurisdiction, but a matter relating merely to the form of procedure, which should be objected to when the pleadings are *in fieri*, and when the petitioners can apply for leave to amend. *Ib.*
11. The evidence in this case shows that the grants were genuine, and that the land was surveyed, mapped, and segregated from the public domain in the spring of 1818. *Ib.*
12. In affirming the decree below this court merely confirms the validity of the grant, but does not give a decision which entitles the party to possession if the government has sold the lands in whole or in part, or if the surveyor general shall ascertain that they cannot be surveyed and located. *Ib.*

See DES MOINES RIVER LAND GRANT;
EQUITY, 2, 3.

LIMITATION, STATUTES OF.

The action of a State in the Court of Claims to recover moneys received by the United States from sales of swamp lands granted to the State by the act of September 28, 1850, is not barred by the statute of limitations until six years after the amount is ascertained from proofs of the sales before the Commissioner of the General Land Office. *United States* v. *Louisiana*, 32.

See JURISDICTION, C, 2, 3.

LOCAL LAW.

1. Under the practice in Louisiana, the Circuit Court of the United States, after ordering a petition to be dismissed as showing no cause of action, but with leave to file an amended petition, may, at the hearing on the amended petition, amend the order allowing it to be filed, by providing that it shall be treated as a mere amendment to the original petition, and thus preclude the plaintiff from contesting a material fact, within his own knowledge, averred in that petition. *Henderson* v. *Louisville & Nashville Railroad*, 61.
2. Real estate in the District of Columbia, belonging to a married woman before the act of April 10, 1869, c. 23, may be conveyed, by deed, voluntarily executed and duly acknowledged by her husband and herself, to secure the payment of a debt of his. *Hitz* v. *Jenks*, 297.
3. Under §§ 450–452 of the Revised Statutes of the District of Columbia, a certificate of the separate examination and acknowledgment of a

married woman, made in the prescribed form, and recorded with the deed executed by her, cannot be controlled or avoided, except for fraud, by extrinsic evidence of the manner in which the magistrate performed his duty. *Ib.*

4. In Florida a sheriff's deed given in evidence without production of the judgment or execution, and read without objection, is sufficient evidence of sale by sheriff. *United States* v. *Morant*, 335.

See EQUITY, 6 (5).

MALT LIQUORS.

See CONSTITUTIONAL LAW, 16–24.

MANDAMUS.

See EQUITY, 2.

MARRIED WOMAN.

See LOCAL LAW, 2, 3.

MASTER AND SERVANT.

See CONTRIBUTORY NEGLIGENCE.

MORTGAGE.

Accruing rents, collected and paid into court by a receiver appointed on a bill in equity against the mortgagor and a second mortgagee to enforce a first mortgage, which appears to have been satisfied and discharged, belong to the second mortgagee, so far as the land is sufficient to pay his debt. *Hitz* v. *Jenks*, 297.

See EQUITY, 8, 9; RAILROAD, 3; JURISDICTION, A, 1; TRUST, 1, 2, 3.

MULTIFARIOUSNESS.

See EQUITY, 7.

MUNICIPAL BOND.

As it appears on the face of the bonds sued on in this action that they were issued under the special act of February 18, 1857, which was held void in *Post* v. *Supervisors*, 105 U. S. 667, and not under the general law of March 6, 1867, the judgment dismissing the action is affirmed. *Gilson* v. *Dayton*, 59.

MUNICIPAL CORPORATION.

1. A statute of Missouri authorized county collectors to collect county taxes, and required them to receive in payment thereof warrants issued by the county when presented by the legal holder. A, a holder of two county warrants, presented them to the treasurer for payment, and payment was refused, because there was no money in the treasury. A brought suit against the collector and his official bondsmen, to collect

the amount due on these warrants, alleging that the collector was authorized by law to receive warrants in payment of taxes only from the holder in payment of his own taxes; that this provision had been disregarded by the collector in receiving warrants from persons who were not legal holders, entitled to use them; that all the tax-payers had thus made payments of taxes and received acquittances without the actual payment of money from 1879 to 1881; and that the collector had once in each month during that period settled with the County Court, and his course in this respect had been ratified and approved. The defendants demurred. The demurrer is sustained by this court, (1) because it appeared that there was no contract relation between A and the collector on which he had a right to bring the suit; and (2) because it appeared that the proper county officials had settled with the collector, and ratified his acts, and discharged him from any liability which might have existed by reason of them. *Harshman* v. *Winterbottom*, 215.

NATIONAL BANK.

A receiver of a national bank, appointed by the comptroller of the currency, is not accountable in equity to the owner of real estate for rents thereof received by him as such receiver, and paid by him into the treasury of the United States, subject to the disposition of the comptroller of the currency, under § 5234 of the Revised Statutes. *Hitz* v. *Jenks*, 297.

See JURISDICTION, A, 8;
TAX, 2.

NAVY.

See SALARY.

NEGLIGENCE.

See CONTRIBUTORY NEGLIGENCE.

OFFICER.

See MUNICIPAL CORPORATION;
SALARY.

ORDINANCE OF 1787.

See CONSTITUTIONAL LAW, 8.

PARTNERSHIP.

A decree dismissing a bill for a partnership accounting affirmed, on the ground that the plaintiff had regarded the partnership agreement as never having gone into effect or as having been cancelled; and that part of the matters in dispute had been settled by a subsequent agreement between the parties. *Davis* v. *Key*, 79.

PATENT FOR INVENTION.

1. The first eight claims of reissued letters-patent No. 10,062, granted March 14, 1882, to Arthur E. Hotchkiss, for improvements in clock movements, on an application for a reissue filed July 19, 1881, (the original patent, No. 221,310, having been granted to Hotchkiss, November 4, 1879, on an application filed July 29, 1879, and a prior reissue, No. 9656, having been granted April 12, 1881,) are invalid, because not for the same invention as that of the original patent. *Parker & Whipple Co.* v. *Yale Clock Co.*, 87.

2. The statutes, and the decisions of this court, on the question of the necessity that a reissued patent should be granted only for the same invention as the original patent, reviewed. *Ib.*

3. What was suggested or indicated in the original specifications, drawings, or patent-office model is not to be considered as a part of the invention intended to have been covered by the original patent, unless it can be seen, from a comparison of the two patents, that the invention which the original patent was intended to cover embraced the things thus suggested or indicated in the original specification, drawings, or patent-office model, and unless the original specification indicated that those things were embraced in the invention intended to have been secured by the original patent. *Ib.*

4. In this case, the original patent was amended so as to cover improvements not covered by it, and which came into use by others than the patentee free from the protection of the patent; and there is no evidence of any attempt to secure by the original patent the inventions covered by the first eight claims of the reissue; and those inventions must be regarded as having been abandoned or waived, so far as the reissue is concerned. *Ib.*

5. The use of his own invention by an inventor, for the purpose of testing the machine, in order by experiment to devise additional means for perfecting the success of its operation, is not a public use under Rev. Stat. § 4886, and if a profit is derived from the sale of the product of its operation, merely as incident to such use, the character of the use is not thereby changed; but if the use is mainly for the purpose of trade and profit, the experimenting being incidental only, and it is public, and is continued for a period of more than two years prior to the application for a patent for the invention, it comes within the prohibition of that statute. *Smith & Griggs Mfg. Co.* v. *Sprague*, 249.

6. When it is clearly established that there was a public use of an invention by the inventor for more than two years prior to his application for a patent for it, the burden is on him to show by convincing proof that the use was not a public use, in the sense of the statute, because it was for the purpose of perfecting an incomplete invention by tests and experiments. *Ib.*

7. Claims 1, 2, 3, 4, and 6 in letters-patent No. 228,136, dated May 25, 1880, and claims 2, 3, and 5 in letters-patent No. 231,199, dated

August 17, 1880, both granted to Leonard A. Sprague for improvements in machines for making buckle-levers, are void by reason of a public use of the invention by the patentee for a period of more than two years prior to his application for patent No. 231,199; as to claim 5 in letters-patent No. 228,136, and claims 1 and 4 in letters-patent No. 231,199, this court agrees with the Circuit Court, for the reasons stated in the opinion of the latter. *Ib.*

8. Reissued letters-patent No. 4372, granted to Nelson W. Green, May 9th, 1871, for an "improvement in the method of constructing artesian wells," the original patent, No. 73,425, having been granted to said Green, as inventor, January 14th, 1868, on an application filed March 17th, 1866, are invalid, because the invention was in public use by others than Green more than two years prior to his application for the patent. *Andrews* v. *Hovey*, 267.

9. The proper construction of § 7 of the act of March 3, 1839, (5 Stat. 354,) is, that if, more than two years before the application for a patent, the invention covered by it was in public use, whether with or without the consent of the subsequent patentee, the patent was rendered invalid. *Ib.*

10. The English letters-patent dated January 22, 1861, and sealed July 19, 1861, issued to Charles William Siemens and Frederick Siemens for "improvements in furnaces," and the American letters-patent No. 41,788, dated March 1, 1864, issued to C. W. and F. Siemens for "improved regenerator furnaces" describe the same furnace, in all essential particulars, and are substantially for the same invention. *Siemens* v. *Sellers*, 276.

11. When American letters-patent are issued covering the same invention described in foreign letters-patent of an earlier date, the life of the American patent is not prolonged by the fact that it also covers improvements upon the invention as patented in the foreign country. *Ib.*

12. The condition imposed by the act of July 4, 1836, 5 Stat. 117, that the term of a patent for an invention which has been patented in a foreign country shall commence to run from the time of publication of the foreign patent, was not repealed or abrogated by the act of March 2, 1861, 12 Stat. 246. *Ib.*

13. Under the patent laws a disclaimer cannot be used to materially alter the character of the patented invention, or to effect such a change in it as calls for further description or specification in order to make it intelligible: but its proper office is in the surrender either of a separate claim, or of some distinct and separable matter, which can be exscinded without mutilating or changing what is left. *Hailes* v. *Albany Stove Co.*, 582.

14. The drawings cannot be used on a disclaimer to show that the patent, as changed by the disclaimer, embraces a different invention from that described in the specification. *Ib.*

15. Sections 4917 and 4922 of the Revised Statutes are parts of one law, having one general purpose, and both relate to the case in which a

patentee, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, has included in his claims and in his patent inventions to which he is not entitled, and which are clearly distinguishable from those to which he is entitled; the purpose of § 4917 being to authorize him in such case to file a disclaimer of the part to which he is not entitled, and the purpose of § 4922 being to legalize the suits on the patent mentioned in that section, and to the extent to which the patentee can rightfully claim the patented invention. *Ib.*

16. Assuming that claims 1 and 2 of re-issued letters-patent No. 9803, granted July 12, 1881, to George W. Heyl, assignee of Henry R. Heyl, the inventor, for an "improvement in devices for inserting metallic staples," are valid, they are not infringed by the "Victor tool," made under and in accordance with letters-patent No. 218,227, granted to William J. Brown, Jr., August 5, 1879, and a second patent, No. 260,365, granted to the same person, July 4, 1882. *Crawford* v. *Heisinger*, 589.

17. As to claims 1 and 2 of that reissue, namely, "1. The combination of the stationary staple-support or anvil A′, and the sliding staple-guide B, with the reciprocating slotted or recessed hammer, operating to insert a staple through layers of stock to be united, and simultaneously bend over its projecting ends, substantially as and for the purpose set forth. 2. In a device for inserting metallic staples, the combination of the staple-guide B, anvil A′, spring D, and reciprocating driver, provided with the knob G, the whole arranged to operate substantially as and for the purpose set forth," it must, in view of the language of the claims, and of the state of the art, and of the limitations imposed by the Patent Office, in allowing those claims, be held, that the staple-support or anvil is required to be stationary, and the slotted or recessed hammer or driver to be reciprocating. *Ib.*

18. In the "Victor tool" the anvil is movable and the hammer or driver is stationary. *Ib.*

PLEDGE.

The respondents, holding a quantity of securities hypothecated as collateral for an indebtedness due them from an insolvent bank, sold them by public auction, in the manner stated in the opinion of the court, for less than the debt and proved the balance of the debt. When the judgment declaring a dividend was entered, it was stated in it, both parties consenting, that all the rights of both touching damages resulting from the sale of the bonds were expressly reserved. On these and other facts stated at length in the opinion of the court: *Held*, (1) that this could not be construed into an admission of the liability of the respondents, or that a just cause of action existed against them; (2) that the complainants, in endorsing the bonds which are the subject of controversy as payable to bearer after the sale which is objected to, and in delivering them in that condition to the respondents,

with the knowledge that they had been or were to be sold again by them, and for the purpose of enabling the respondents to transfer the bonds with a good title, must be considered to have waived any right to sue on the first sale; (3) that, conceding the first sale to have been invalid, it was nevertheless the respondents' duty to sell the bonds at as early a time as possible, and to place the proceeds in the hands of their principals in payment of the debt for which the bonds were pledged, and that they had done this with the consent and aid of the complainants; and (4) that, on the complainant's theory of the relief to which they were entitled, their remedy was at law, and not in equity. *Lacombe* v. *Forstall's Sons*, 562.

PRACTICE.

1. The mandate in *Sun Insurance Co.* v. *Kountz Line*, 122 U. S. 583, is modified in manner as shown in the order herein announced. *Sun Insurance Co.* v. *Kountz Line*, 65.
2. Rulings of the court below on questions of law will not be considered here on a writ of error, unless it appears from the bill of exceptions, or otherwise in the record, that the facts were such as to make them material to the issue which was tried. *New York, Lake Erie, &c., Railroad Co.* v. *Madison*, 524.
3. The court below acted properly in ordering the consolidation and trial together of an action of replevin and an action in contract, the parties being the same in both, their rights depending upon the same contract, and the testimony in each being pertinent in the other. *Teal* v. *Bilby*, 572.
4. On the stipulation of such of the parties as are before this court, the decree of the court below is reversed without costs, and the cause is remanded with instructions to proceed in accordance with the stipulation, but without prejudice to the rights of other parties to the suit who were not before this court on the appeal. *Bond* v. *Davenport*, 619.
5. When the value of the property in dispute is one of the questions in the case and was necessarily involved in its determination in the court below, this court will not, on a motion to dismiss for want of jurisdiction, consider affidavits tending to contradict the finding of that court in respect of its value. *Talkington* v. *Dumbleton*, 745.

See APPEAL; ASSIGNMENT OF ERROR; CONSTITUTIONAL LAW, 5; COURT AND JURY, 1, 2; DIVISION OF OPINION, 1; EQUITY, 6; JURISDICTION, B, 4; LOCAL LAW, 1

PROHIBITORY LAW.

See CONSTITUTIONAL LAW, 16-24.

PUBLIC LAND.

1. In order to constitute the exemption of coal lands contemplated by the preëmption act under the head of "known mines," there must be

ascertained coal deposits upon the land, of such an extent and value as to make the land more valuable to be worked as a coal mine, under the conditions existing at the time, than for merely agricultural purposes. *Colorado Coal and Iron Co.* v. *United States*, 307.

2. The mere fact that there are surface indications of coal on public land will not of itself prevent the acquisition of title to the land under the preemption laws; nor will the fact alone that after acquisition of such a title the surface indications prove to be veins which are, by a change of circumstances, profitably worked, invalidate such a title. *Ib.*

See EQUITY, 2, 3, 4; LAND GRANT;
EVIDENCE, 1, 2, 3, 4, 5; VIRGINIA MILITARY DISTRICT.

PUBLIC LAW.

See LAND GRANT, 1, 2.

RAILROAD.

1. The relief prayed for in this case was the construction and maintenance of a piece of railway in specific performance of a contract attached to the bill as an exhibit; but upon examination it appeared that the contract did not call for its construction and maintenance. *Hoard* v. *Chesapeake & Ohio Railway*, 222.
2. If a railway company abandons part of its line and ceases to maintain a piece of track which it had contracted to maintain, it has the right to do so, subject to the payment of damages for the violation of the contract; to be recovered, if necessary, in an action at law. *Ib.*
3. A railway company organized to receive, hold, and operate a railroad sold under foreclosure of a mortgage, in the absence of a statute or contract, is not obliged to pay the debts and perform the obligations of the corporation whose property the purchasers buy. *Ib.*

See COMMON CARRIER;
CONTRACT, 7;
COURT AND JURY, 2.

RECEIVER.

See NATIONAL BANK;
MORTGAGE.

REMOVAL OF CAUSES.

See JUDGMENT, 2;
JURISDICTION, A, 15; B, 3.

REVENUE LAW.

1. The term "revenue law," when used in connection with the jurisdiction of the courts of the United States, means a law imposing duties on imports or tonnage, or a law providing in terms for revenue; that is to say, a law which is directly traceable to the power granted to Con-

gress "to lay and collect taxes, duties, imposts, and excises." *United States* v. *Hill*, 681.

2. Section 844 Rev. Stat., requiring the clerk of a court of the United States to pay into the Treasury any surplus of fees and emoluments which his return shows to exist over and above the compensation and allowances authorized by law to be retained by him is not a revenue law within the meaning of that clause of § 699 Rev. Stat. which provides for a writ of error without regard to the sum or value in dispute, "upon any final judgment of a Circuit Court . . . in any civil action brought by the United States for the enforcement of any revenue law thereof."

RULES.

For AMENDMENT TO RULE 20, *see* page 759.

SALE ON EXECUTION.

See JUDGMENT.

SALVAGE.

1. In this case the services rendered by a corporation whose business was that of a wrecker and salvor to a vessel in distress were held to be salvage services of a meritorious character. *The Excelsior*, 40.
2. No agreement having been made for a fixed sum to be paid, nor any binding engagement to pay at all events, although there was an agreement to submit to arbitration the amount received for the service, in case the two principals could not agree upon a sum, it was held that there was no bar to the claim for salvage. *Ib.*
3. Comments upon the effect of a conversation at the time between the masters of the two vessels. *Ib.*
4. The effect of the agreement to submit to arbitration considered.
5. A salvage of $5600 having been awarded by the Circuit Court on the basis of 3½ per cent on $160,000 of value saved, this court, not being able to say, as a question of law, that the allowance was excessive, affirmed the decree. *Ib.*

SALARY.

1. An officer in the regular Navy, whose service therein was continuous in various grades from 1860 to 1868, and who held the rank of lieutenant-commander when the act of July 15th, 1870, c. 295, § 3, 16 Stat. 330, now § 1556 of the Revised Statutes, was passed, giving graduated pay for various ranks, is entitled to the benefit of the act of March 3d, 1883, c. 97, 22 Stat. 473. *United States* v. *Mullan*, 186.
2. It is not necessary that he should have entered the service more than once. *Ib.*
3. The percentage allowed to officers of the Navy under General Order No. 75 of May 23, 1866, in lieu of all allowances except for mileage or travelling expenses, is to be calculated on the amount statedly received by the officer as statutory pay at the time the order was in force, and is not to be increased by the additional compensation allowed by

the act of March 3, 1883, 22 Stat. 473. *United States* v. *Philbrick*, 120 U. S. 52, explained. *United States* v. *Allen*, 345.

See STATUTE, B.

SPIRITUOUS LIQUORS.

See CONSTITUTIONAL LAW, 16–24.

STATES.

The direct tax laid by the act of August 5, 1861, did not create any liability on the part of the States, in which the lands taxed were situated, to pay the tax. *United States* v. *Louisiana*, 32.

See CONSTITUTIONAL LAW, 9–15; LAND GRANT, 2; JURISDICTION, C, 1; LIMITATION, STATUTES OF.

STATUTE.

See TABLE OF STATUTES CITED IN OPINIONS.

A. CONSTRUCTION OF STATUTES.

1. A diplomatic and consular appropriation act which transfers a consulate from the class in which it had previously stood to a lower class, with a smaller salary, operates to repeal so much of previous legislation as placed the consulate in the grade from which it was removed. *United States* v. *Langston*, 118 U. S. 389, distinguished. *Mathews* v. *United States*, 182.
2. In the construction of a statute, although the words of the act are generally to have a controlling effect, yet the interpretation of those words must often be sought from the surrounding circumstances and previous history. *Siemens* v. *Sellers*, 276.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 1, 2; BANK CHECK, 1; CUSTOMS DUTIES, 1, 4; EQUITY, 3; INDICTMENT, 1, 2; JURISDICTION, A, 2, 4, 6, 11, 15; B, 2, 4; LAND GRANT, 6, 7, 8, 9, 10; LOCAL LAW, 2, 3; NATIONAL BANK; PATENT FOR INVENTION, 5, 9, 12, 15; REVENUE LAW, 1, 2; SALARY, 1, 3; STATES; SUPERSEDEAS; TAX AND TAXATION, 1, 3; VIRGINIA MILITARY DISTRICT; WRIT OF ERROR.

C. STATUTES OF STATES AND TERRITORIES.

Georgia. *See* EQUITY, 6 (5);
Illinois. *See* CONSTITUTIONAL LAW, 4; CONTRACT, 1, 2, 3; MUNICIPAL BOND;
Kansas. *See* CONSTITUTIONAL LAW, 17, 22, 23;
Missouri. *See* MUNICIPAL CORPORATION;
Virginia. *See* CONSTITUTIONAL LAW, 13, 14.

SUPERSEDEAS.

A supersedeas obtained by a plaintiff in error under the provisions of Rev. Stat. § 1007 does not operate to enjoin the defendant in error from bringing a new suit on a new cause of action, but arising out of the same general matter, and involving the same questions of law which are brought here for review. *Natal* v. *Louisiana*, 516.

TAX AND TAXATION.

1. Section 5219, Rev. Stat., respecting the taxation of national banks, does not require perfect equality between state and national banks, but only that the system of taxation in a State shall not work a discrimination favorable to its own citizens and corporations and unfavorable to holders of shares in national banks. *Davenport Bank* v. *Davenport*, 83.
2. If a state statute creating a system of taxation does not on its face discriminate against national banks, and there is neither evidence of a legislative intent to make such discrimination, nor proof that the statute works an actual and material discrimination, there is no case for holding it to be unconstitutional. *Ib.*
3. Construing the clause in the internal revenue act of July 14, 1870, which imposed a tax for the year 1871 of 2½ per cent on all undivided profits of corporations accrued and earned and added to a surplus, contingent, or other fund, in connection with the previous internal revenue statutes, it is plain that it was the intention of Congress not to subject to that tax profits of a railroad corporation during that year, which were not divided, but were used for construction. *Marquette, &c., Railroad Co.* v. *United States*, 722.

See COURT AND JURY, 2; MUNICIPAL CORPORATION; EQUITY, 8, 9; STATES.

TREATY.

See JURISDICTION, A, 5; LAND GRANT, 6.

TRUST.

1. If the trustee in a deed of trust in the nature of a mortgage acts in good faith in foreclosing it, and obtains a decree of foreclosure and sale, whatever binds the trustee in the proceedings which are begun and carried on to enforce the trust, binds the *cestuis que trust* as if they were actual parties to the suit. *Richter* v. *Jerome*, 233.
2. If, in a suit in equity by the trustee in a deed of trust in the nature of a mortgage to foreclose the mortgage the decree or the sale is obtained in fraud of the rights of the *cestuis que trust*, their remedy is a direct proceeding to set aside the sale or the decree and proceed anew with another foreclosure; and not an attempt to reforeclose what had been fully foreclosed before, under a decree which remains in force. *Ib.*

3. On the facts alleged in the complainant's bill and set forth in the opinion of the court: *Held*, that the complainant is not entitled to the relief prayed for in his bill, and that the decree of foreclosure obtained by the corporation trustee, under the mortgage of which he is a *cestui que trust*, binds him. *Ib.*

See EQUITY, 6.

VIRGINIA MILITARY DISTRICT IN OHIO.

1. The entry and survey of lands in the Virginia military district in Ohio, under which the plaintiff claims title, did not invest the owners of the warrant, or their assignee, with an equitable interest in the lands surveyed, as against the United States, for the reason that the excess of the land surveyed beyond that covered by the warrant was so great as to make the survey fraudulent and void; and, consequently, Congress could, by the act of February 18, 1871, 16 Stat. 416, grant the lands at its pleasure. *Coan* v. *Flagg*, 117.
2. It was the purpose of the act of February 18, 1871, to grant to the State of Ohio all the lands in the Virginia military district in that State which had not at that time been legally surveyed and sold by the United States, in that sense of the word "sold" which conveys the idea of having parted with the beneficial title; and the lands in controversy, having been surveyed by a survey invalid against the United States, were within that description. *Ib.*
3. The fourth section of the act of May 27, 1880, 21 Stat. 142, recognized and ratified the title of the defendant in error to the lands in controversy as a purchaser from the Ohio Agricultural and Mechanical College for a valuable consideration. *Ib.*

See EVIDENCE, 1.

WAGERING CONTRACT.

See CONTRACT, 1, 2, 3, 4.

WILL.

1. In construing doubtful clauses in a will, the court will endeavor to ascertain the testator's intention through their meaning as reasonably interpreted in the particular case, rather than resort to formal rules, or to a consideration of judicial determination in other cases, apparently similar.
2. The testator in this case provided in his will that his widow should have the income of all his estate, she having the right to spend it, but not to have it accumulate for her heirs; that his two sisters if living at the time of the death of himself and his wife, or the one that might then be living, should "have the income of all my estate as long as they may live, and at their death to be divided in three parts, one-third of the income to go to" a charitable institution, one-third to another institution, and one-third to another. Both sisters died before the testator. *Held*, that the limitations in the two subdivisions of the will

were to be taken, in connection with each other, as a complete disposition in the mind of the testator of his estate, giving to the widow an estate for life, with an estate over for life to the sisters contingent upon one or the other of them surviving the widow, and with the ultimate remainder to the charitable institutions. *Ib.*

WITNESS.

See CUSTOMS DUTIES, 3;
JURISDICTION, A, 3.

WOODS, MR. JUSTICE.

For PROCEEDINGS IN MEMORY OF, *see* page 761.

WRIT OF ERROR.

When application to this court, for the allowance of a writ of error to the highest court of a State under Rev. Stat. § 709, the writ will not be allowed if it appear from the face of the record that the decision of the Federal question which is complained of was so plainly right as not to require argument; especially if it accords with well considered judgments of this court. *Spies* v. *Illinois*, 131.