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ACKNOWLEDGMENT OF DEEDS.

See LOCAL LAW, 8.

ABANDONED AND CAPTURED PROPERTY ACT.

1. The entire administration of the system devised by Congress for the collection of abandoned and captured property during the war was committed by the acts regulating it to the Secretary of the Treasury, subject to the President's approval of the rules and regulations relating thereto prescribed by him, and with no other restriction than that the expenses charged upon the proceeds of sales be proper and necessary and be approved by him; and his approval of an account of expenses incurred on account of any particular lot of such property made before the passage of the joint resolution of March 31, 1868, 15 Stat. 251, is conclusive evidence that they were proper and necessary, unless it appear that their allowance was procured by fraud, or that they were incurred in violation of an act of Congress or of public policy. *United States* v. *Johnston*, 236.
2. The joint resolution of Congress of March 31, 1868, 15 Stat. 251, affords evidence that the practice of the Secretary of the Treasury prior to that date not to cover into the Treasury the sums received from the sale of abandoned and captured property, but to retain them in the hands of the Treasurer in order to pay them out from time to time on the order of the Secretary, was known to Congress, and was acquiesced in by it, as to what had been previously done; and all this brings the practice within the well-settled rule that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous. *Ib.*

ALABAMA.

See CONSTITUTIONAL LAW, 2.

ANTE-NUPTIAL SETTLEMENT.

See LOCAL LAW, 8.

APPEAL.

1. An appeal can be taken from a decree of a Circuit Court of the United States, entered under the supervision and by the direction of the district judge of the district sitting in the Circuit Court, although he may, under the provisions of Rev. Stat. § 614, have had no right to a vote in the cause. *Baker* v. *Power*, 167.
2. The signing of a citation returnable to the proper term of this court, but without the acceptance of security, nevertheless constitutes an allowance of appeal which enables this court to take jurisdiction, and to afford the appellants an opportunity to furnish the requisite security here, before peremptorily dismissing the case. *Brown* v. *McConnell*, 489.
3. The signing of a citation after the expiration of the term to which an appeal taken with security was returnable, and after the commencement of the following term, and without taking new security, is in effect the granting of a new appeal returnable at the next term of court thereafter. *Stewart* v. *Masterson*, 493.
4. An appeal docketed in this court after a term ends and before the next following term begins, is docketed as of the next following term. *Ib.*
5. An appeal bond having become inoperative by reason of failure to docket the appeal at the next term of this court, and a new appeal having been granted without the filing of a new bond, on motion to dismiss for want of filing an appeal bond; *Held*, that the motion should be granted unless appellant, before a day fixed by the order, should file a bond with the clerk of this court, with sureties to the satisfaction of the Justice allotted to the Circuit. *Ib.*
6. This appeal having become inoperative through failure to docket the case here at the return term, and the excuse presented not being sufficient to give the appellants the benefit of the exceptions recognized in *Grigsby* v. *Purcell*, 99 U. S. 505, the court dismisses it. *Fayolle* v. *Texas & Pacific Railroad*, 519.

See JUDGMENT, 4, 5;
LOCAL LAW, 2.

ATTACHMENT.

1. A marshal holding property under color of a writ of attachment, even if found to be invalid, issued from a court of the United States in an action at law, can be made to hold also under a writ from a state court subsequently served by the garnishment process; and if the creditor in the process from the State intervenes in the cause in the Federal Court, and invokes its equitable powers, it is the duty of the Federal Court to take jurisdiction, and to give such relief as justice may require, and such priority of lien as the laws of the State respecting attachments permit, without regard to citizenship. *Gumbel* v. *Pitkin*, 131.

2. A and B were citizens of the same State. A sued out a writ of attachment against B from a court of the State on a Saturday. On the following Monday the sheriff attempted to levy the attachment, and found the property of the debtor in the custody of the United States marshal for the district, who had seized it by virtue of writs of attachment issued and levied on the intervening Sunday from the Circuit Court of the United States, in favor of other creditors. Being unable to obtain possession of the property from the marshal, he placed keepers about the building (who remained there until the sale) and served notice of seizure upon the marshal, and also process of garnishment. Subsequently, on the same Monday, the same and other creditors levied on the same property under other writs of attachment issued from the Circuit Court of the United States on that day, and the property, which remained all the time in the custody of the marshal, was finally sold by him under the Monday writs, the Sunday writs having been abandoned. *Held*, that it was the duty of the court, having in its custody the fund arising from the sale of the property, all the parties interested in the fund being before it, to do complete justice between them, and to give to A priority, as if he had been permitted to make an actual levy under his writ. *Ib.*

See JURISDICTION, B, 1, 2;
NATIONAL BANK.

ARBITRATION.

See WASHINGTON AQUEDUCT.

ASSUMPSIT.

A promissory note, upon which the defendant is shown to have admitted his indebtedness to the plaintiff, may be given in evidence under a count for money had and received. *Hopkins* v. *Orr*, 510.

See JUDGMENT, 3, 4, 5.

AWARD.

See EQUITY, 2;
WASHINGTON AQUEDUCT.

BANKRUPT.

A member of a bankrupt partnership, purchasing of the assignee in bankruptcy a debt due the firm, takes only such rights as the assignee has, under the bankrupt laws, to contest the validity of a transfer of the debt as in violation of those laws. *Crawford* v. *Halsey*, 648.

See BANK;
FRAUDULENT CONVEYANCE.

BANK.

1. A District Court of the United States deposited in a national bank bankruptcy moneys, which were entered by the bank to the credit of the court, in an account with the court. Each entry of a deposit in the books of the bank, and in the deposit book of the court, had opposite to it a number, consisting of four figures, which the bank understood to indicate a particular case in bankruptcy — in the present instance, No. 2105. A check was drawn on the bank by the court, to pay a dividend in case No. 2105. Payment of it was refused by the bank, on the ground that it had no money on deposit to the credit of the court, it having paid out all money deposited by the court. Some of such money deposited with the number 2105 had been paid out by the bank on checks drawn bearing another number than 2105. There was enough money deposited with the number 2105, and not paid out on checks bearing the number 2105, to pay the check in question. In a suit against the bank by the payee in such check to recover the amount of the dividend: *Held*, that the bank was not liable. *State Bank* v. *Dodge*, 333.
2. A check upon a bank in the usual form, not accepted or certified by its cashier to be good, does not constitute an equitable assignment of money to the credit of the holder, but is simply an order which may be countermanded, and whose payment may be forbidden by the drawer at any time before it is actually cashed. *Florence Mining Co.* v. *Brown*, 385.

BANK CHECK.

See BANK, 2.

BILL OF EXCHANGE AND PROMISSORY NOTE.

See ASSUMPSIT.

BOND.

See NATIONAL BANK.

CASES AFFIRMED.

1. *Brown* v. *McConnell*, *ante*, 489, followed. *Stewart* v. *Masterson*, 493.
2. *Galveston Railroad* v. *Cowdrey*, 11 Wall. 459, affirmed. *Dow* v. *Memphis and Little Rock Railroad*, 652.
3. *Metropolitan Railroad Co.* v. *Moore*, 121 U. S. 558, affirmed. *Inland and Seaboard Coasting Co.* v. *Hall*, 121.

CASES DISTINGUISHED.

1. *Boogher* v. *Insurance Co.*, 103 U. S. 90, distinguished from this case. *Dundee Mortgage Co.* v. *Hughes*, 157.
2. *Castro* v. *United States*, 3 Wall. 46, distinguished. *Brown* v. *McConnell*, 489.

3. *Cromwell* v. *County of Sac*, 94 U. S. 351, distinguished. *Bissell* v. *Spring Valley Township*, 225.
4. *Hall* v. *Russell*, 101 U. S. 503, distinguished. *Brazee* v. *Schofield*, 495.
5. *United States* v. *Curry*, 6 How. 106, distinguished. *Brown* v. *McConnell*, 489.

CHINESE.

A Chinese laborer, who resided in the United States on November 17th, 1880, continued to reside there till October 24th, 1883, when he left San Francisco for China, taking with him a certificate of identification issued to him by the collector of that port, in the form required by the 4th section of the act of May 6, 1882, c. 126, 22 Stat. 58, which was stolen from him in China, and remained outstanding and uncancelled. Returning from China to San Francisco by a vessel, he was not allowed by the collector to land, for want of the certificate, and was detained in custody in the port, by the master of the vessel, by direction of the customs authorities. On a writ of *habeas corpus*, issued by the District Court of the United States, it appeared that he corresponded, in all respects, with the description contained in the registration books of the custom-house of the person to whom the certificate was issued. He was discharged from custody, and the order of discharge was affirmed by the Circuit Court. On appeal to this court, by the United States, *Held:* (1) He was in custody under or by color of authority of the United States, and the District Court had jurisdiction to issue the writ; (2) the jurisdiction of the court was not affected by the fact that the collector had passed upon the question of allowing the person to land, or by the fact that the treaty provides for diplomatic action in case of hardships; (3) the case of the petitioner was not to be adjudicated under the provisions of the act of July 5, 1884, c. 220, 23 Stat. 115, where they differed from the act of 1882; (4) in view of the provisions of § 4 of the act of 1882, in regard to a Chinese laborer arriving by sea, as distinguished from those of § 12 of the same act in regard to one arriving by land, the District Court was authorized to receive the evidence it did, in regard to the identity of the petitioner, and, on the facts it found, to discharge him from custody. *United States* v. *Jung Ah Lung*, 621.

CHOSE IN ACTION.

See JURISDICTION, B, 4.

CIRCUIT COURTS OF THE UNITED STATES.

See APPEAL;
JURISDICTION, B.

CLERK OF COLLECTOR OF CUSTOMS.

1. Section 3639 of the Revised Statutes does not apply to clerks of a collector of customs. *United States* v. *Smith*, 524.

2. Clerks of a collector of customs are not appointed by the head of a department, and are not officers of the United States in the sense of the Constitution. *Ib.*

COLORADO.

See REMOVAL OF CAUSES, 2.

CONFISCATION.

Under the provisions of Spanish law in force in Mexico in 1814–1817, confiscation of property as a punishment for the crime of treason could only be effected by regular judicial proceedings; and, it being once declared, the property remained subject to the exclusive jurisdiction of the intendants, both in ordering sale and in taking cognizance of controversies raised concerning it. *Sabariego* v. *Maverick*, 261.

See PRESUMPTION, 2.

CONFISCATION ACT.

The confiscation act of July 17, 1862, 12 Stat. 589, c. 195, construed in connection with the joint resolution of the same day explanatory of it, 12 Stat. 627, makes no disposition of the confiscated property after the death of the owner, but leaves it to devolve to his heirs according to the *lex rei sitæ*, and those heirs take *qua* heirs, and not by donation from the government. *Shields* v. *Schiff*, 351.

See LOCAL LAW, 3, 4, 5.

CONFLICT OF LAW.

See ATTACHMENT, 1, 2.

CONSTITUTIONAL LAW.

1. Applying to this case the rules stated in *Spies* v. *Illinois*, 123 U. S. 131, that "to give this court jurisdiction under § 709 Rev. Stat. 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 such title, right, privilege or immunity was 'specially set up or claimed' at the proper time and in the proper way;" that "to be reviewable here the decision must be against the right so set up or claimed;" and that "as the Supreme Court of the State was reviewing the decision of the trial court, it must appear that the claim was made in that court," it appears that at the trial of the plaintiff in error, no title, right, privilege or immunity under the Constitution, laws or treaties of the United States was specially set up or claimed in the trial court. *Brooks* v. *Missouri*, 394.
2. The legislature of Alabama enacted a law entitled "An act to require locomotive engineers in this State to be examined and licensed by a board to be appointed for that purpose," in which it was provided that it should be "unlawful for the engineer of any railroad train in this State to drive or operate or engineer any train of cars or engine upon the main line or roadbed of any railroad in this State which is used

for the transportation of persons, passengers or freight, without first undergoing an examination and obtaining a license as hereinafter provided." The statute then provided for the creation of a board of examiners and prescribed their duties, and authorized them to issue licenses and imposed a license fee, and then enacted "that any engineer violating the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than five hundred dollars, and may also be sentenced to hard labor for the county for not more than six months." Plaintiff in error was an engineer in the service of the Mobile and Ohio Railroad Company. His duty was to "drive, operate, and engineer" a locomotive engine drawing a passenger train on that road, regularly plying in one continuous trip between Mobile in Alabama and Corinth in Mississippi, and *vice versa*, 60 miles of which trip was in Alabama, and 265 in Mississippi. He never "drove, operated, or engineered" a locomotive engine hauling cars from one point to another point exclusively within the State of Alabama. After the statute of Alabama took effect, he continued to perform such regular duties without taking out the license required by that act. He was proceeded against for a violation of the statute, and was committed to jail to answer the charge. He petitioned a state court for a writ of *habeas corpus* upon the ground that he was employed in interstate commerce, and that the statute, so far as it applied to him, was a regulation of commerce among the States, and repugnant to the Constitution of the United States. The writ was refused, and the Supreme Court of the State of Alabama on appeal affirmed that judgment. *Held:* (1) That the statute of Alabama was not, in its nature, a regulation of commerce, even when applied to such a case as this; (2) That it was an act of legislation within the scope of the powers reserved to the States, to regulate the relative rights and duties of persons within their respective territorial jurisdictions, being intended to operate so as to secure safety of persons and property for the public; (3) That so far as it affected transactions of commerce among the States, it did so only indirectly, incidentally and remotely, and not so as to burden or impede them, and that, in the particulars in which it touched those transactions at all, it was not in conflict with any express enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence; (4) That so far as it was alleged to contravene the Constitution of the United States, the statute was a valid law. *Smith* v. *Alabama*, 465.

See TREATY, 2;
WASHINGTON AQUEDUCT.

CONTRACT.

1. The defendant agreed to make for the plaintiff 400 tons of iron, and to ship it about September 1st, or as soon as he could manufacture it, for

$19.50 per ton. He did not deliver any of it at or about that date, nor as soon as he had manufactured the required amount. The referee found that the defendant "postponed the execution of the contract from time to time," and that, on November 7th, he insisted, as conditions of delivering the iron, on certain provisions not contained in the original agreement. The plaintiff did not comply with those conditions, and the iron was not delivered. The referee found that the market value of such iron, on November 7th, was $34 per ton, and did not find what the market value of such iron was at any other time. In a suit by the plaintiff against the defendant to recover damages for a breach of the contract, he was allowed $14.50 per ton. On a writ of error: *Held*, (1) The postponement of the execution of the contract must be inferred, from the findings, to have been with the assent of the plaintiff; (2) The rule of damages applied was proper. *Roberts* v. *Benjamin*, 64.

2. In 1857 F. and L. entered into an agreement whereby F. was to convey to L. two tracts of land at an assumed value of $26,000, on which was an indebtedness estimated at about $18,000. L. was to assume and pay that indebtedness, and was to convey to F. "five town lots" and "about 1000 acres of land," "being all the lands owned by said L." at that place, all valued at $10,000; and F. was to pay to L. what might be found due on these assumed values after adjusting the indebtedness. Each party took possession of the lands acquired by the exchange. F. conveyed to L. and L. assumed and paid the indebtedness. L. retained title of the lands to be conveyed to F. until F. should pay the difference. In 1871, the amount being unpaid, L. brought suit against F. and J. to whom F. had conveyed a portion of the land. This suit was compromised by a further agreement in which the tract was described as land "sold by said L. to said F. estimated to contain 1000 acres." On a survey had after that compromise it was found that the tract in question fell much short of 1000 acres. F. filed this bill in 1877, seeking, among other things, to prevent the collection of the difference found due to L. in the original exchange, on the ground that the contract was for a conveyance of 1000 acres, and that the representations of L. in this respect had been false and fraudulent. *Held:* (1) That, taken in connection with all the facts proved, L.'s representation could not be regarded as fraudulently made; (2) That, the governing element in the transaction being that it was an exchange of several tracts of land between the parties, the contract was not to be construed by the strict rule which might govern its interpretation if it were an independent purchase to be paid for in money; (3) That, thus construed, it was not an agreement by L. that the tract contained 1000 acres, which bound him to make good the difference between 1000 acres and the quantity found within the boundaries by actual survey. *Lawson* v. *Floyd*, 108.

3. The insolvency of the vendee in a contract for the sale and future

delivery of personal property in instalments, payment to be made in notes of the vendee as each instalment is delivered, is sufficient to justify the vendor for refusing to continue the delivery, unless payment be made in cash; but it does not absolve him from offering to deliver the property in performance of the contract if he intends to hold the purchasing party to it: he cannot insist upon damages for non-performance by the insolvent without showing performance on his own part, or an offer to perform, with ability to make the offer good. *Florence Mining Co.* v. *Brown*, 385.

4. When, in the performance of a written contract, both parties put a practical construction upon it which is at variance with its literal meaning, that construction will prevail over the language of the contract. *District of Columbia* v. *Gallaher*, 505.
5. In this case the defendant in error having under a written contract with the agents of the plaintiff in error constructed a sewer which in the course of construction was, by mutual consent, and for reasons assented to by both parties, made to vary in some respects from the plans which formed part of the contract, but without any agreement as to a change in the contract price: *Held*, for the reasons given by the Court of Claims, that the judgment of that court awarding the contract price for the work is affirmed. *Ib.*

See DAMAGES;
EQUITY, 2, 3.

COPYRIGHT.

1. An employé of a business house, who, having a principal place in the establishment, is entrusted by his employers under their direction and on their behalf, in their building, and subject to their control and use, with the custody and possession of printed copies of a copyrighted photograph printed in violation of the provisions of Rev. Stat. § 4965 has no such possession of them as will entitle the proprietor of the copyright to proceed against him for a forfeiture of one dollar for every sheet under that section. *Thornton* v. *Schreiber*, 612.
2. The words "found in his possession" in § 4965 of the Revised Statutes do not relate to the finding of the jury that the articles in question were in the defendant's possession, but require that there should be a time before the cause of action accrues, at which they are found in his possession. *Ib.*
3. Whether the provision in Rev. Stat. § 4965 that one-half of the profit shall go "to the proprietor, and the other half to the use of the United States" does not relate solely to the "case of a painting, statue, or statuary," *quære*. *Ib.*

COUNTERCLAIM.

A counterclaim set up by the defendant was, on the facts, properly disallowed. *Roberts* v. *Benjamin*, 64.

COURT AND JURY.

1. In its opinion this court reviews the evidence offered by the plaintiff on the trial of the case in the court below, none being offered there by the defendants, and finds it sufficient to entitle the plaintiff to have the issue submitted to the jury; and as the court below directed the jury to find a verdict for the defendants, which was done, and a judgment was entered on the verdict, this court reverses the judgment and remands the case, with directions to grant a new trial. *Humiston* v. *Wood*, 12.

2. In general it is for the jury to determine whether, under all the circumstances, the acts which a buyer does or forbears to do amount to a receipt and acceptance within the terms of the statute of frauds. *Hinchman* v. *Lincoln*, 38.

3. Where the facts in relation to a contract of sale alleged to be within the statute of frauds are not in dispute, it belongs to the court to determine their legal effect. *Ib.*

4. A court may withhold from the jury facts relating to a contract of sale alleged to be within the statute of frauds, when they are not such as can in law warrant the finding of an acceptance, and this rule extends to cases where, though there may be a scintilla of evidence tending to show an acceptance, the court would still feel bound to set aside a verdict which finds an acceptance on that evidence. *Ib.*

5. A motion by the defendant, at the close of the plaintiff's testimony, to take the case from the jury, was properly refused, because it was a motion for a peremptory nonsuit, against the will of the plaintiff; and it was waived by the introduction by the defendant of testimony in the further progress of the case. *Union Ins. Co.* v. *Smith*, 405.

COURT OF CLAIMS.

On appeal by the United States from a judgment of the Court of Claims against them for less than three thousand dollars, rendered *pro forma*, against the opinion of that court, and for the purpose of an appeal, this court, upon objection taken in behalf of the United States to the irregularity of the actions of the court below, reverses the judgment, and remands the case for further proceedings according to law. *United States* v. *Gleeson*, 255.

See WASHINGTON AQUEDUCT.

CRIMINAL PROCEEDINGS.

See EQUITY, 6.

CUSTOMS DUTIES.

1. Merchandise was delivered to its importer, after he had paid the duties on it as first liquidated or estimated on its entry. Subsequently, the collector recalled the invoice, the local appraiser increased the valua-

tion, there was a reappraisement by the general appraiser and a merchant appraiser, and a new liquidation, which increased the amount of duties. The importer paid that amount under protest, and appealed to the Secretary of the Treasury, (who affirmed the action of the collector,) and then brought a suit against the collector to recover the amount: *Held*, that under § 3011 of the Revised Statutes, the action would not lie, because the payment was not made to obtain possession of the merchandise. *Porter* v. *Beard*, 429.

2. Rolled iron, in straight flat pieces, about twelve feet long, three-eighths of an inch wide, and three-sixteenths of an inch thick, slightly curved on their edges, made for the special purpose of making nails, known in commerce as nail-rods, not bought or sold as bar iron, and not known in a commercial sense as bar iron, was not dutiable at one and one-half cents a pound, as "bar iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide," under § 2504 of the Revised Statutes, (p. 464, 2d ed.,) but was dutiable at one and one-fourth cents a pound, as "all other descriptions of rolled or hammered iron not otherwise provided for, under the same section" (p. 465). *Worthington* v. *Abbott*, 434.

3. Merchandise was delivered to its importer after he had paid the duties on it as first liquidated. Within a year after the entry, the local appraiser made a reappraisal and a second report, from which the importer appealed, within such year. The board of reappraisement met after the year; the importer was present; the merchandise was not reappraised because it could not be found, and it was not examined; and the fees of the merchant appraiser were paid by the importer. The second report of the local appraiser increased the values of the goods from the invoice values, disallowed a discount which appeared on the invoice, and changed the rate of duty on some of the merchandise. The collector, after the expiration of the year, made a new liquidation, by disallowing the discount and changing the rate of duty, as suggested by the local appraiser: *Held*, That, under § 21 of the act of June 22, 1874, 18 Stat. 190, the first liquidation of duties was final and conclusive against the United States, as it did not appear that the second liquidation was based on any increase of the value of the merchandise, or that the disallowance of the discount and the change of the rate of duty depended on such increase, or were involved in any proper action of the local appraiser in appraising the merchandise, or were matters which could not have been finally acted upon by the collector at any time within a year from the entry as well as at any other time, and without any reference to any increase in the appraised values of the goods. *Beard* v. *Porter*, 437.

4. Whether the taking of steps by the collector for a reappraisement by a local appraiser, within a year from the time of the entry, in a case where the question of reliquidation depends strictly upon a reappraise-

ment of the value of the merchandise will have the effect to make the reliquidation valid, under § 21, although that is made after the expiration of the year, *quære*. *Ib.*

5. The "protest" referred to in § 21 is a protest against the prior "settlement of duties" which the section proposes to declare to be final after the expiration of the year. *Ib.*
6. It is not necessary that the plaintiff should show by his declaration that he has brought the suit within the time limited by § 2931 of the Revised Statutes, although that must appear, as a condition precedent to his recovery. *Ib.*

DAMAGES.

1. The damages to be recovered in an action against a telegraph company for negligent delay in transmitting a message respecting a contract for the purchase or sale of property are, by analogy with the settled rules in actions between parties to such contracts, only such as the parties must or would have contemplated in making the contract, and such as naturally flow from the breach of its performance, and are ordinarily measured by actual losses based upon changes in the market values of the property. *Western Union Telegraph Co.* v. *Hall*, 444.
2. And, accordingly, where such an action was brought to recover damages caused by a delay in the transmission of a message directing the person to whom it was addressed to purchase property in the open market on behalf of the sender, by means of which delay that person was prevented from making the purchase on the day on which it was sent, and it appearing that he did not make the purchase on the following day in consequence of an immediate large advance in price, nor at any subsequent day; and it not appearing, further, either that the order to purchase was given by the sender in the expectation of profits by an immediate resale, or that he could have sold at a profit on any subsequent day if he had bought: *Held*, that the only damage for which he was entitled to recover was the cost of transmitting the delayed message. *Ib.*

See CONTRACT, 1.

DEDICATION.

See SAN FRANCISCO.

DEED.

When a government officer, acting under authority of law and in accordance with its forms, conveys to an individual a tract of land as land of the government, the deed will pass only such title as the government has therein; and there is no presumption of law that it is a valid title. *Sabariego* v. *Maverick*, 261.

DEMURRER.

See JUDGMENT, 1, 2.

DEPOSIT.

See BANK, 1.

DESCRIPTION.

See CONTRACT, 2.

DISTRICT COURTS OF THE UNITED STATES.

See BANK, 1.

DISTRICT OF COLUMBIA.

See EQUITY, 8;
LOCAL LAW, 2.

DOMINICAN REPUBLIC.

See TREATY, 1.

EJECTMENT.

1. An action of ejectment cannot be maintained in the courts of the United States for the possession of land within the State of Nebraska on an entry made with a register and receiver, notwithstanding the provision in § 411 of the Code of Civil Procedure of that State, that "the usual duplicate receipt of the receiver of any land office . . . is proof of title equivalent to a patent, against all but the holder of an actual patent." *Langdon* v. *Sherwood*, 74.
2. To entitle a plaintiff to recover lands by virtue of prior possession, in an action brought against an intruder, a wrongdoer, or a person subsequently entering without right, it must appear that the possession was in the first instance under color of right, and that it has been continuous and without abandonment; or, if lost, that there was an *animus revertendi*. *Sabariego* v. *Maverick*, 261.

EMINENT DOMAIN.

See REMOVAL OF CAUSES, 2;
WASHINGTON AQUEDUCT.

EQUITY.

1. In a suit in equity the court, in determining the facts from the pleadings and proofs, the answer being under oath, applies the rule stated in *Vigel* v. *Hopp*, 104 U. S. 441. *Union Railroad* v. *Dull*, 173.
2. The fact alone that after a contract was entered into by a railroad company for the construction of a tunnel, one of its employés who neither represented it in making the contract, nor had supervision and control of the work done under it, or in the ascertainment of the amount due the contractors, was, without the knowledge of the company, admitted by the contractors to a share in the profits, affords no ground in equity for setting aside an award between the contractors and the company settling the sum due from the company under the contract after its

complete execution and judgment upon the award; nor does the fact that the employé was a material witness before the arbitrators in determining the sum awarded furnish such ground, when there is nothing in the case to show that he stated what he did not believe to be true and when the weight of the evidence shows that what he said was true. *Ib.*

3. Under the circumstances of this case the court applies the rule stated in *Atlantic Delaine Co.* v. *James*, 94 U. S. 207, that the power to cancel an executed contract "ought not to be exercised except in a clear case, and never for an alleged fraud unless the fraud be made clearly to appear; never for alleged false representations, unless their falsity is certainly proved, and unless the complainant has been deceived and injured by them." *Ib.*
4. When a complainant in a bill in equity has been guilty of apparent laches in commencing his suit his bill should set forth the impediments to an earlier prosecution, the cause of his ignorance of his rights, and when the knowledge of them came to him; and if it appears at the hearing that the case is liable to the objection of laches on his part, relief will be refused on that ground. *Richards* v. *Mackall*, 183.
5. In this case the court holds that the complainant was guilty of laches, and refuses relief on that ground alone. *Ib.*
6. A court of equity has no jurisdiction of a bill to stay criminal proceedings. *In re Sawyer*, 200.
7. A court of equity has no jurisdiction of a bill to restrain the removal of a public officer. *Ib.*
8. Under the act of August 18, 1856, 11 Stat. 118, c. 163, the *cestuis que trust* under a will devising real estate in the District of Columbia to trustees, with limitation over, filed a bill in equity in the Supreme Court of the District praying for a sale of a portion of the lands held in trust, in order that the sums received from the sale might be applied to the improvement of the remainder. Such proceedings were had therein that a trustee was appointed by the court to make the sale as prayed for, and a sale was made by him to J. M., husband of one of the *cestuis que trust*, for the sum of $24,521.50. He gave his promissory notes to the trustee so appointed for this sum, and the sale was ratified and confirmed by the court. J. M. then sold the tract thus sold to him, to the District of Columbia as a site for a market, and received in payment thereof market bonds of the District, of the nominal value of $27,350, from which he realized $22,700. Instead of paying the sum derived from the sale of these bonds to the trustee in part payment of his note, and to be applied to the improvement of the remainder as prayed for in the bill, J. M. applied it directly to such improvement. The District of Columbia then filed its petition in the cause, setting forth the facts, and praying that, as the proceeds of the bonds had in fact been applied, although irregularly, to the improvement as contemplated, an account might be taken of the amount so expended, and

J. M.'s notes be cancelled as paid, and the trustee ordered to convey directly to the District. *Held*, that the District had an equity which entitled it to have the $22,700 credited on J. M.'s notes in the hands of the trustee, and a further equity on payment to the trustee of the balance of the agreed price, to have those notes cancelled, and to have a conveyance of title from the trustee, discharged of all lien on account of unpaid purchase money, and that no resale would be ordered until there should be a default by the District in making the additional payment within some reasonable time to be fixed by the court. *District of Columbia* v. *McBlair*, 320.

See JURISDICTION, B, 1;
NATIONAL BANK, 2;
PUBLIC LAND, 2.

ESTOPPEL.

1. On the proof in this case the court holds that Coddington, from whom appellant bought the bonds which form the subject matter of the suit, took them with knowledge of such facts as would prevent him from acquiring any title by purchase which he could enforce, as a *bona fide* holder, against the Florida Central Railroad Company, one of the appellees herein; and that appellant as purchaser of the bonds occupies no better position than Coddington. *Trask* v. *Jacksonville &c. Railroad Co.*, 515.

2. An estoppel cannot apply in this case to the State or to its successor in title. *Hoboken* v. *Pennsylvania Railroad Co.*, 656.

See JUDGMENT, 1, 2; PUBLIC LAND, 3 (3), (6);
LOCAL LAW, 6; WASHINGTON AQUEDUCT.

EXCEPTION.

A general exception to a refusal to charge a series of propositions, as a whole, is bad, if any one of the series is objectionable. *Union Ins. Co.* v. *Smith*, 405.

EXECUTOR AND ADMINISTRATOR.

On a consideration of all the proof in this case the court *holds* (1) That Boyd was a party to the proceedings which resulted in his removal from his office as executor; and (2) that there is no reason to reverse the decree of the court below on the merits. *Boyd* v. *Wyly*, 98.

EVIDENCE.

1. Expert testimony as to whether, under the circumstances, it was the exercise of good seamanship and prudence to attempt to have the vessel towed to Cleveland, was competent. *Union Ins. Co.* v. *Smith*, 405.

2. The question of the competency of the particular witnesses to testify as experts, considered. *Ib.*

3. The weight of the evidence of each witness was a question for the jury, in view of the testimony of each as to his experience. *Ib.*

4. It was not improper to refuse to allow the defendant to ask a witness what talk he had with the master of the tug, after she was taken in tow, in regard to the leak, or what should be done, it not being stated what it was proposed to prove, and it not appearing that the statement of the master ought to be regarded as part of the *res gestae*. *Ib.*

See ASSUMPSIT;
PRESUMPTION.

FEME COVERT.

See LOCAL LAW, 8.

FLORIDA LAND GRANT.

See PRACTICE, 3.

FRAUD.

See CONTRACT, 2 (1);
EQUITY, 2, 3.

FRAUDULENT CONVEYANCE.

1. In a suit in equity by an assignee in bankruptcy to set aside transfers of land by the bankrupt, alleged to have been made in fraud of his creditors, this court held that the allegations of the bill were not established. *Norton* v. *Hood*, 20.

2. In a suit in equity by an assignee in bankruptcy to set aside a fraudulent transfer of the bankrupt's assets, this court agrees with the court below that the evidence shows that the transferee had no valuable pecuniary interest in the transferred property, and that the transfer was made to prevent it from coming into the hands of the assignee in bankruptcy. *Vetterlein* v. *Barnes*, 169.

FRAUDS, STATUTE OF.

1. In order to take an alleged contract of sale out of the operation of the statute of frauds there must be acts of such a character as to place the property unequivocally within the power and under the exclusive dominion of the buyer, as absolute owner, discharged of all lien for the price. *Hinchman* v. *Lincoln*, 38.

2. Where, by the terms of the contract, a sale is to be for cash, or any other condition precedent to the buyer's acquiring title in the goods be imposed, or the goods be at the time of the alleged receipt not fitted for delivery according to the contract, or anything remain to be done by the seller to perfect the delivery, such fact will be generally conclusive that there was no receipt by the buyer. *Ib.*

3. The receipt and acceptance by the vendee under a verbal agreement, otherwise void by the statute of frauds, may be complete, although the terms of the contract are in dispute. *Ib.*

4. In this case, on the facts recited in the opinion of the court, the court *held*, (1) that there was sufficient evidence of a verbal agreement between the parties for the sale of the securities at the price named; (2) that the delivery of the property by the plaintiff was not such a delivery of it to the defendant as to amount to a receipt and acceptance of it by him, satisfying the statute of frauds; and (3) that that inchoate and complete delivery was not made perfect by the subsequent acts of the parties. *Ib.*

See COURT AND JURY, 2, 3, 4.

GARNISHMENT.

See ATTACHMENT.

GOVERNMENT ACCOUNTS.

See TREASURY SETTLEMENTS.

HABEAS CORPUS.

See CHINESE.

HAWAIIAN ISLANDS.

See TREATY.

HOMESTEAD.

See LOCAL LAW, 8.

ILLINOIS.

See LOCAL LAW, 8.

INDICTMENT.

1. In an indictment for committing an offence against a statute, the offence may be described in the general language of the act, but the description must be accompanied by a statement of all the particulars essential to constitute the offence or crime, and to acquaint the accused with what he must meet on trial. *United States* v. *Hess*, 483.
2. A count in an indictment under Rev. Stat. § 5480, which charges that the defendant, "having devised a scheme to defraud divers other persons to the jurors unknown, which scheme he" "intended to effect by inciting such other persons to open communication with him" "by means of the post-office establishment of the United States, and did unlawfully, in attempting to execute said scheme, receive from the post-office" "a certain letter" (setting it forth), "addressed and directed" (setting it forth), "against the peace," &c., does not sufficiently describe an offence within that section, because it does not state the particulars of the alleged scheme to defraud; such particulars being matters of substance, and not of form, and their omission not being cured by a verdict of guilty. *Ib.*

INSOLVENCY.

See CONTRACT, 3.

INSURANCE.

1. A time policy of marine insurance on a steam tug to be employed on the Lakes, insured her against the perils of the Lakes, excepting perils "consequent upon and arising from or caused by" "incompetency of the master" "or want of ordinary care and skill in navigating said vessel, rottenness, inherent defects," " and all other unseaworthiness." While towing vessels in Lake Huron, in July, her shaft was broken, causing a leak at her stern. The leak was so far stopped that by moderate pumping she was kept free from water. She was taken in tow and carried by Port Huron and Detroit and into Lake Erie on a destination to Cleveland, where she belonged and her owner lived. She sprang a leak in Lake Erie, and sank, and was abandoned to the insurer. On the trial of a suit on the policy, it was claimed by the defendant that the accident made the vessel unseaworthy, and the failure to repair her at Port Huron or Detroit avoided the policy. The court charged the jury that if an ordinarily prudent master would have deemed it necessary to repair her before proceeding, and if her loss was occasioned by the omission to do so, the plaintiff was not entitled to recover; but if, from the character of the injury and the leak, a master of competent judgment might reasonably have supposed, in the exercise of ordinary care, that she was seaworthy to be towed to Cleveland, and therefore omitted to repair her, such omission was no bar to a recovery. *Held*, that there was no error in the charge. *Union Ins. Co.* v. *Smith*, 405.
2. The defendant having set up, in its answer, that the loss was occasioned by want of ordinary care in managing the tug at the time she sprang a leak in Lake Erie, and having attempted to prove such defence, it was not error to charge the jury that such want of ordinary care must be shown by a fair preponderance of proof on the part of the defendant. *Ib.*

See EVIDENCE, 1, 4.

INTERNAL REVENUE.

Under § 3220 of the Revised Statutes, the Commissioner of Internal Revenue is authorized to pay to the plaintiff in a judgment recovered against a collector of internal revenue, for damages for a seizure of property for an alleged violation of the internal revenue laws, made by the collector under the direction of a revenue agent connected with the office of the supervisor of internal revenue, the amount of such judgment, and is not restricted to the payment of such amount to the collector. *United States* v. *Frerichs*, 315.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 2.

JUDGMENT.

1. The entry of final judgment on demurrer concludes the parties to it, by way of estoppel, in a subsequent action between the same parties on a different claim, so far as the new controversy relates to the matters litigated and determined in the prior action. *Bissell* v. *Spring Valley Township*, 225.
2. A final judgment for defendant in an action against a municipal corporation to recover on coupons attached to bonds purporting to have been issued by the corporation, entered on demurrer to an answer setting up facts showing that the bonds were never executed by the municipality, concludes the plaintiff in a subsequent action against the municipality to recover on other coupons cut from the same bonds. *Ib.*
3. The omission of the word "dollars," in a verdict for the plaintiff in an action of assumpsit, does not affect the validity of a judgment thereon. *Hopkins* v. *Orr*, 510.
4. Under a statute authorizing an appellate court "to examine the record, and, on the facts therein contained alone, award a new trial, reverse or affirm the judgment, or give such other judgment as to it shall seem agreeable to law," a judgment on a general verdict may be affirmed, if the evidence in the record supports any count in the declaration. *Ib.*
5. Under a statute requiring an appellant to give bond, with sureties, to prosecute his appeal to a decision in the appellate court, and to perform the judgment appealed from, if affirmed; and enacting that if the judgment of the appellate court be against the appellant, it shall be rendered against him and his sureties; a judgment of the appellate court, affirming a judgment below for a sum of money and interest, upon the appellee's remitting part of the interest, may be rendered against the sureties, as well as against the appellant. *Ib.*

See COURT OF CLAIMS;
LOCAL LAW, 1.

JURISDICTION.

See PRESUMPTION, 1.

A. JURISDICTION OF THE SUPREME COURT.

1. In an action at law in a Circuit Court of the United States in New York an order was made, referring the action to a referee "to determine the issues therein." He filed his report finding facts and conclusions of law, and directing that there be a money judgment for the plaintiff. The defendant applied to the court for a new trial on a "case and exceptions," in which he excepted to three of the conclusions of law. The court denied the application and directed that judgment be entered "pursuant to the report of the referee," which was done. On a writ of error from this court: *Held*, that the only questions open to review here were, whether there was any error of law in the judgment, on the facts found by the referee; and that, as

the case had not been tried by the Circuit Court on a filing of a waiver in writing of a trial by jury, this court could not review any exceptions to the admission or exclusion of evidence, or any exceptions to findings of fact by the referee, or to his refusal to find facts as requested. *Roberts* v. *Benjamin*, 64.

2. Rulings of a Circuit Court at the trial of an action at law without a jury where there had been no waiver of a jury by stipulation in writing signed by the parties or their attorneys, and filed with the clerk, as required by § 649 Rev. Stat., are not reviewable here. *Dundee Mortgage Co.* v. *Hughes*, 157.
3. If a Circuit Court of the United States, in granting a motion to remand a cause to the state court, has not before it, by mistake, the complaint in the action, it is within the discretion of that court, upon a showing to that effect, to grant a rehearing; but this court has no power to require that court by mandamus to do so. *In re Sherman*, 364.
4. An injunction restraining the prosecution of an action of replevin in a court established under the authority of the United States involves of itself no question of the validity of an authority exercised under the United States. *In re Craft*, 370.
5. When the highest appellate court of a State disposes of a question supposed to arise under the Constitution of the United States without a direct decision, and in a way that is decisive of it, and which is not repugnant to the Constitution of the United States, and upon a ground which was not evasive, but real, then the decision of the alleged federal question was not necessary to the judgment rendered, and consequently this court has no jurisdiction over the judgment. *Brooks* v. *Missouri*, 394.
6. The case is dismissed for want of jurisdiction as the record fails to show, expressly or by implication, that any right, title, privilege, or immunity under the Constitution or laws of the United States was specially set up or claimed in either of the courts below. *French* v. *Hopkins*, 523.
7. The jurisdiction of this court under Rev. Stat. § 709, for the review of the decision of the highest court of a State is not dependent upon the citizenship of the parties. *Ib.*
8. An adjudication by the highest court of a State that certain proceedings before a Mexican tribunal prior to the treaty of Guadalupe Hidalgo were insufficient to effect a partition of a tract of land before that time granted by the Mexican Government to three persons who were partners, which grant was confirmed by commissioners appointed under the provisions of the act of March 3, 1851, 9 Stat. 631, "to ascertain and settle the private land claims in the State of California," presents no federal question which is subject to review here. *Phillips* v. *Mound City Association*, 605.
9. When a cause is brought here by writ of error to a state court, on the ground that the obligation of a contract has been impaired and prop-

erty taken for public use without due compensation, in violation of the provisions of the Constitution of the United States, the first duty of this court is to inquire whether the alleged contract or taking of property exists; and the facts in this record disclose no trace of the alleged contract or the alleged taking of property. *Hoadley* v. *San Francisco*, 639.

See APPEAL, 2, 3, 4, 5;
CONSTITUTIONAL LAW, 1;
COURT OF CLAIMS.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. A court of the United States, sitting as a court of law, has an equitable power over its own process to prevent abuse, oppression, and injustice; which power may be invoked by a stranger to the litigation as incident to the jurisdiction already vested, and without regard to his own citizenship. *Gumbel* v. *Pitkin*, 131.
2. The exercise of the jurisdiction conferred upon Circuit Courts of the United States by Rev. Stat. § 915 to administer the attachment laws of the State in which the court is held, necessarily draws to itself everything properly incidental, even though it may bring into the court, for the adjudication of their rights, parties not otherwise subject to its jurisdiction; and is ample to sanction the practice of permitting the constructive levy, by attaching creditors under state process, upon property in possession of a United States marshal by virtue of an attachment made under a process from a Circuit Court of the United States for the same district, and their intervention in proceedings in the latter court where, as between state courts of concurrent jurisdiction, a similar method of acquiring and adjusting conflicting rights is prescribed. *Ib.*
3. The Circuit Court of the United States has no jurisdiction or authority to entertain a bill in equity to restrain the mayor and committee of a city in Nebraska from removing a city officer upon charges filed against him for malfeasance in office; and an injunction issued upon such a bill, as well as an order committing the defendants for contempt in disregarding the injunction, is absolutely void, and they are entitled to be discharged on *habeas corpus*. *In re Sawyer*, 200.
4. A suit to enforce the performance of a contract is a suit to recover the contents of a chose in action, within the meaning of § 629 of the Revised Statutes. *Shoecraft* v. *Bloxham*, 730.
5. A deed of trust, in the nature of a mortgage, set out in full a contract between the mortgagor and certain parties for the conveyance of several parcels of land to him, and then conveyed to the mortgagee all the right, title, and interest which he, the mortgagor, had, or might thereafter acquire, "in and to" the lands embraced by the contract: *Held*, that the conveyance was in legal effect an assignment of the contract; and that the assignee could not maintain a suit for the

enforcement of this contract in the Circuit Court of the United States, under § 629 of the Revised Statutes, if the assignor could not have maintained the suit in such Circuit Court if no assignment had been made. *Ib.*

See EQUITY, 6, 7.

C. JURISDICTION OF THE COURT OF CLAIMS.

See COURT OF CLAIMS.

LACHES.

See EQUITY, 4, 5.

LIEN.

See SHIP.

LIMITATION, STATUTES OF

See LOCAL LAW, 6, 7;
TREASURY SETTLEMENTS.

LOCAL LAW.

1. Section 429 of the Code of Nebraska, which provides that when a judgment or decree shall be rendered in any court of that State for a conveyance of real estate, and the party against whom it is rendered does not comply therewith within the time therein named, the judgment or decree "shall have the same operation and effect, and be as available, as if the conveyance" "had been executed conformably to such judgment or decree" is a valid act; and such a decree or judgment, rendered in the Circuit Court of the United States respecting real estate in Nebraska operates to transfer title to the real estate which is the subject of the judgment or decree, upon the failure of the party ordered to convey to comply with the order. *Langdon* v. *Sherwood*, 74.
2. An appeal lies to the general term of the Supreme Court of the District of Columbia from a denial by that court in special term of a motion for a new trial, made on the ground that the verdict was against the weight of evidence. *Inland and Seaboard Coasting Co.* v. *Hall*, 121.
3. A mortgagee, in Louisiana, under an act containing the pact *de non alienando*, can proceed against the mortgagor after the latter's expropriation through confiscation proceedings, as though he had never been divested of his title. *Shields* v. *Schiff*, 351.
4. The holder of a mortgage upon real estate in Louisiana ordered to be sold under a decree of confiscation may acquire the life interest of the mortgagor at the sale, and may possess and enjoy that title during the lifetime of the mortgagor without extinguishing either the debt or the security, by reason of confusion as provided by the code of that State. *Ib.*

5. The heirs of a person, whose property in Louisiana was sold under a decree of confiscation, succeed after his death by inheritance from him, and, being in privity with him, are bound equally with him by proceedings against him on a mortgage containing the pact *de non alienando*. *Ib.*

6. If a mortgage debtor in Louisiana, in a suit to foreclose a mortgage containing the pact *de non alienando*, waives the benefit of prescription, those who take from him are estopped from pressing it as effectually as he is estopped. *Ib.*

7. In Nebraska the cause of action upon a county warrant issued by a board of county commissioners does not accrue when the warrant is presented for payment and indorsed "not paid for want of funds," but at a later date when the money for its payment is collected or when sufficient time has elapsed for the collection of the money; and as matter of law it cannot be said that about two years is such a "sufficient time," so as to cause the statute of limitations to begin to run. *King Bridge Co.* v. *Otoe County*, 459.

8. An ante-nuptial settlement was executed prior to 1867, by which J. M. conveyed to his brother T. M., land in Illinois, in trust for his intended wife, for her life, and in case of her death leaving a child or children, to such child or children, and in case of her death without a child, then to S. M. and O. L. for life, with remainder to J. M. and his heirs. In May, 1867, J. M., S. M., and O. L. joined in conveying the premises to the wife for the purpose of determining the trust and vesting their respective rights under the settlement in her absolutely. In 1872 J. M. and the wife joined in a trust deed of the premises, in the nature of a mortgage, to secure the payment of a debt of the husband. The trust deed purported to be acknowledged by the husband and wife; but after foreclosure and sale, the husband and wife, being in possession of the premises, set up as against the purchaser, that the wife had never acknowledged it, and that by reason thereof she had never parted with the homestead right in the premises secured to her by the law of Illinois. The purchaser filed this bill in equity, to have the wife's homestead right set off to her on a division, or, if the property was incapable of division, to have it discharged of it on the payment into court of $1000. *Held:* (1) That, without deciding the effect of the birth of a child, after the deed of May, 1867, as a restraint upon the alienation of the fee, the trust deed of 1872, under the Illinois statute of March 27, 1869, respecting deeds of *femes covert*, operated to convey the life estate of the wife to the grantee, and that no acknowledgment was necessary to its validity; (2) That, the master having reported that the property could not be divided, the complainant was entitled to the possession of the whole premises, under the laws of Illinois, upon payment into court of $1000. *Knight* v. *Paxton*, 552.

See CONSTITUTIONAL LAW, 2;
RIPARIAN RIGHTS.

LONGEVITY PAY.
See PAYMASTER'S CLERK, 2; SALARY, 3.

LOUISIANA.
See LOCAL LAW, 3, 4, 5, 6.

MANDAMUS.
See JURISDICTION, A, 3.

MARINE CORPS.
See SALARY, 2.

MARSHAL.
See ATTACHMENT; APPENDIX II.

MEXICO.
See PRESUMPTION, 2.

MINERAL LAND.

1. Plaintiff's complaint alleged that he was owner and in possession of a tract of mining land described by metes and bounds and known as the Wells and Moyer placer claim, and that while he was thus owner and possessor defendant entered upon a portion of it and wrongfully ousted him therefrom. Defendant denied these allegations and set up that at the times named he was owner and in possession of two lode mining claims known as the Crown Point and the Pinnacle lodes, and that in working and following them he entered underneath the exterior surface lines of the placer claim, and had not otherwise ousted plaintiff, and that these two lodes were known to exist at the time of the application for plaintiff's patent, and were not included in it. Plaintiff's replication traversed these defences, and further set up that at the times named he was owner, and in possession, of two claims known as the Rock lode and the Dome lode, immediately adjoining the Crown Point and Pinnacle lodes, and that within their boundaries there was a mineral vein or lode, which, in its dip, entered the ground covered by those claims, and that any portion of any vein or lode, developed underneath the surface of the Crown Point and Pinnacle lodes, was part of the Rock and Dome lodes. On these pleadings plaintiff at the trial, in addition to the patent of the placer claim, which was admitted without objection, offered in evidence a patent for the Rock and Dome lodes, and a deed of them to him, to show that the lode which, since the issue of the patent for the placer claim, had been ascertained to dip into the boundaries of that claim, had its apex within the boundaries of those lode claims. The court refused to admit this evidence. *Held*, that this was error, as the facts thus offered to be proved, if established, would force defendant from his position of intruder without title, and compel him to show prior title

to the premises in himself, or to surrender them to plaintiff. *Iron Silver Mining Co.* v. *Reynolds*, 374.

2. On the trial of an issue whether the applicant for a patent of a placer claim knew at the time of the application that there was also a vein or lode included within the boundaries, within the meaning of Rev. Stat. § 2322, an instruction to the jury that "if it appear that an application for a patent was made with *intent* to acquire a lode or vein which *may* exist in the ground beneath the surface of a placer claim, a patent issued upon such application cannot operate to convey such lode or vein," and that "that intention could be formed only upon investigation as to the character of the ground and the belief as to the existence of a valuable lode therein, which would amount to knowledge under the statute," is erroneous. *Ib.*

MORTGAGE.

When a railroad mortgage covers income, the mortgagor is not bound to account to the mortgagee for earnings while the property is in his possession until a demand is made therefor, or for a surrender of possession under the mortgage; but the commencement of a suit in equity to enforce a surrender of possession to the trustees under the mortgage in accordance with its terms is a demand for possession, and if the trustees are then entitled to possession the company must account from that time. *Dow* v. *Memphis & Little Rock Railroad Co.*, 652.

See LOCAL LAWS, 3, 4, 5, 6.

MUNICIPAL BOND.

See JUDGMENT, 2;
SUBROGATION, 2.

MUNICIPAL CORPORATION.

See JUDGMENT, 2;
SUBROGATION, 2.

NATIONAL BANK.

1. No attachment can issue from a Circuit Court of the United States, in an action against a national bank, before final judgment in the cause; and if such an attachment is made and is then dissolved by means of a bond with sureties, conditioned to pay to plaintiff the judgment which he may recover, given in accordance with provisions of the law of the State in which the action is brought, the bond is void, and the sureties are under no liability to plaintiff. *Pacific National Bank* v. *Mixter*, 721.

2. The assets of a national bank having been illegally seized under a writ of attachment in mesne process, and a bond with sureties having been given to dissolve the attachment, which bond was invalid by reason of the illegality of the attachment, and the sureties having received into their possession assets of the bank to indemnify them against loss,

and the bank having passed into the hands of a receiver appointed by the comptroller of the currency, a bill in equity may be maintained by the receiver to discharge the sureties, and to compel them to transfer their collateral to him. *Ib.*

NAVY, OFFICER OF.

See PAYMASTER'S CLERK.

NEBRASKA.

See EJECTMENT;
JURISDICTION, B, 3;
LOCAL LAW, 1, 6.

NULLUM TEMPUS OCCURRIT REGI.

See TREASURY SETTLEMENTS.

OFFICER.

See CLERK OF COLLECTOR OF CUSTOMS.

OREGON DONATION ACT.

See PUBLIC LAND, 3.

PACT DE NON ALIENANDO.

See LOCAL LAW, 3, 5, 6.

PARTIES.

See TRUST.

PARTNERSHIP.

See TAX AND TAXATION, 2.

PASSENGERS.

See SHIP.

PATENT FOR INVENTION.

1. Letters-patent No. 168,164, issued September 28, 1875, to Alfred B. Lawther for a new and improved process for treating oleaginous seeds was a patent for a process consisting of a series of acts to be done to the flaxseed and, construed in the light of that knowledge which existed in the art at the time of its date, it sufficiently describes the process to be followed; but it is limited by the terms of the specification, at least so far as the crushing of the seed is concerned, to the use of the kind of instrumentality therein described, namely, in the first part of the process, to the use of powerful revolving rollers for crushing the seed between them under pressure. *Lawther* v. *Hamilton*, 1.
2. Moistening the flaxseed by a shower of spray in the mixing-machine, produced by directing a jet of steam against a small stream of water,

does in fact "moisten the seeds by direct subjection to steam," and thus comes within the clause of Lawther's patent. *Ib.*

3. A license from the plaintiff in error to the defendants in error cannot be implied from the facts proved in this case. *Ib.*

4. Claim 2 of reissued letters-patent No. 9097, granted to Louis Dryfoos, assignee of August Beck, February 24, 1880, for an "improvement in quilting machines," namely, "2. The combination, with a series of vertically reciprocating needles mounted in a laterally reciprocating sewing-frame, of conical feed-rolls, and mechanism for causing them to act intermittingly during the intervals between the formation of stitches, substantially as herein showed and described," is not infringed by a machine which has no conical rollers, but has short cylindrical feed-rollers at each edge of the goods, which they feed in a circular direction by moving at different rates of speed constantly, the needles having a forward movement corresponding to that of the cloth while the needles are in it, nor by a machine which has the well-known sewing-machine four-motion feed, which is capable of feeding in a circular direction by lengthening the feed at the longest edge of the goods. *Dryfoos* v. *Wiese*, 32.

5. The claim of letters-patent No. 48,728, granted to John Searle, July 11, 1865, for an "improved process of imparting age to wines," namely, "The introducing the heat by steam, or otherwise, to the wine itself, by means of metallic pipes or chambers passing through the casks or vessel, substantially as set forth," is not valid for a process, because no different effect on the wine is produced from that resulting from the old method of applying heat to the wine, and is not valid for the apparatus, because that had before been used in the same way for heating a liquid. *Dreyfus* v. *Searle*, 60.

6. A patent for a soda-water fountain, with a specification describing a fountain consisting of a tin lining, with an outer shell of steel, having end caps fastened on, "without flanges or projections, by tin joints, made by soldering with pure tin, which, being a ringing metal, unites closely with the steel exterior to make a firm and durable joint, as other solders having lead in them will not do," and a claim for "the tin vessel, incased by a steel cylinder, and ends soldered to the latter, in the manner substantially as described," was reissued seven years afterwards, with a similar specification and claim, except in omitting from the claim the words "steel" and "soldered to the latter." *Held*, that the original patent was limited to a fountain whose outer cylinder and end caps were united by a solder of pure tin, without rivets or flanges; that if the reissue was equally limited, it was not infringed by a fountain with end caps fastened to the outer shell by a solder of half tin and half lead, as well as by rivets, and with vertical flanges at one end, through which the rivets passed; and that if the reissue was not so limited, it was void. *Matthews* v. *Ironclad M'f'g Co.*, 347.

7. A blank book, with pages numbered and ruled into spaces, in which

bonds and their coupons, on being presented and paid, may be pasted in the order of their numbers — the bonds on successive pages, and each bond and its coupons on the same page — or, when any bond or coupon is paid without being surrendered, memoranda concerning it may be made, if under any circumstances a patentable invention, is not so if similar books have been in use before, differing only in grouping the coupons according to their dates of payment, and in having no spaces for the bonds. *Munson* v. *New York*, 601.

8. The decision of this court in *Andrews* v. *Hovey*, 123 U. S. 267, adjudging reissued letters-patent No. 4372, granted to Nelson W. Green, May 9, 1871, for an "improvement in the method of constructing artesian wells" to be invalid, confirmed, on an application for a rehearing. The case of *Kendall* v. *Winsor*, 21 How. 322, and other cases, examined. *Andrews* v. *Hovey*, 694; *Andrews* v. *Cone*, 720.
9. The question of the proper construction of the second clause of § 7 of the patent act of March 3, 1839, 5 Stat. 354, as affecting the validity of a patent, considered. *Ib.*

PAYMASTER'S CLERK.

1. A paymaster's clerk, appointed by a paymaster in the navy with the approval of the Secretary of the Navy, is not an officer of the navy within the meaning of the act of June 30, 1876, 19 Stat. 65, c. 159, so as to be entitled to the benefit of the mileage allowed by that act. *United States* v. *Mouat*, 303.
2. A paymaster's clerk in the navy is an officer of the navy within the meaning of the provision in the act of March 3, 1883, 22 Stat. 473, c. 97, respecting the longevity pay of officers and enlisted men in the army or navy. *United States* v. *Hendee*, 309.

PHOTOGRAPH.

See COPYRIGHT.

POSTMASTER.

See SALARY, 1.

PRACTICE.

1. Upon the application of a party interested to vacate the entry of an order dismissing a cause made in vacation pursuant to Rule 28, and after hearing both parties, the court amends the entry by adding "without prejudice to the right of" the petitioner "to proceed as he may be advised in the court below for the protection of his interest." *Woodman* v. *Missionary Society*, 161.
2. In accordance with a stipulation of the parties the judgment of the court below is reversed and a mandate issued. *Union Mutual Life Insurance Co.* v. *Waters*, 369.
3. The court, on motion, amends the judgment and decree in this case

heretofore announced, and reported 123 U. S. 335. *United States* v. *Morant*, 647.

See APPEAL 2, 3, 4, 5;
JURISDICTION, A, 1; B, 1;
SUBMISSION OF A CAUSE.

PRESUMPTION.

1. There is no legal presumption in favor of jurisdiction in proceedings not according to the common course of justice; but the policy of the law requires the facts conferring it to be proved by direct evidence of a formal character. *Sabariego* v. *Maverick*, 261.
2. The facts that Spanish public officers seized a tract of land in Mexico as confiscated for the treason of its owner, and that after taking regular and appropriate steps for its sale they proceeded to sell it and to make conveyance of it by instruments reciting these facts and accompanied by certificates of the officers who took part in the transaction that the property had been so confiscated, raise no presumption, under the law of any civilized State, that any judicial proceedings were taken against the owner to find him guilty of treason or to confiscate his property for that offence. *Ib.*

PRINCIPAL AND SURETY.

See JUDGMENT, 5;
NATIONAL BANK.

PROCESS.

See JURISDICTION, B, 1.

PRO FORMA JUDGMENT.

See COURT OF CLAIMS.

PUBLIC LAND.

1. Under the provision of the act of July 31, 1876, c. 246, 19 Stat. 121, "that before any land granted to any railroad company by the United States shall be conveyed to such company, or any person entitled thereto under any of the acts incorporating or relating to such company, unless such company is exempted by law from the payment of such cost, there shall first be paid into the Treasury of the United States, the cost of surveying, selecting and conveying the same by the said company or persons in interest," the New Orleans Pacific Railway Company, as the owner, by conveyance from the New Orleans, Baton Rouge and Vicksburg Railroad Company, of its interest in the land grant made to the latter company by § 22 of the act of March 3, 1871, c. 122, 16 Stat. 579, was bound to pay the cost of surveying the land, before receiving a patent for it, although such cost had been incurred and expended by the United States before March 3, 1871, the construction of no part of the road having been commenced before the expiration of the five

years limited for the completion of the whole of it. *New Orleans Pacific Railway Co.* v. *United States*, 124.

2. A applied at a public land office for a S.E. ¼ section of land. By mistake the register in the application described it as the S.W. ¼, and A signed the application so written, but the entry in the plat and tract books showed that he had bought and paid for the S.E. ¼. He immediately went into possession of the S.E. ¼, and he and those under him remained in undisputed possession of it for more than 35 years. About 22 years after his entry some person without authority of law changed the entry on the plat and tract books, and made it to show that his purchase was of the S.W. ¼ instead of the S.E. ¼, thus showing two entries of the S.W. ¼. W., then, with full knowledge of all these facts, located agricultural scrip on this S.E. ¼. S., or those claiming under him, did not discover the mistake until after W. had got his patent. *Held*, that W. was a purchaser in bad faith, and that his legal title, though good as against the United States, was subject to the superior equities of S. and of those claiming under him. *Widdicombe* v. *Childers*, 400.

3. In March, 1848, A S and E S, his wife, settled upon a tract of public land in what was then the Territory of Oregon, and is now Washington Territory, and from thenceforward continued to reside upon it, and cultivated it for four years as required by the act of September 27, 1850, 9 Stat. 496, c. 76. After completing the required term of cultivation, A S died intestate in January, 1853. In October, 1853, E S, assuming to act under the amendatory act of February 14, 1853, filed with the Surveyor General of the Territory, proof of the required residence and cultivation by her deceased husband. In 1855 or 1856 the heirs and the widow agreed upon a partition, she taking the east half and they the west half. In 1856 the Probate Court made partition of the west half among the heirs, and, one of them being a minor, appointed a guardian to represent him, and directed the guardian to sell, by public auction, the tract allotted to his ward in the partition. In accordance therewith the guardian made such sale, and executed and delivered a deed of the property to N S, the purchaser, who entered into possession of the tract, and made valuable improvements on it, and from that time on paid the taxes upon it. In May, 1860, the map of the public survey, showing this donation claim, was approved, and in June, 1860, final proof of the settlement and cultivation by A S was made. In June, 1862, E S died. In July, 1874, the donation certificate was issued, assigning the west half to A S, and the east half to E S, and in 1877, under the provisions of Rev. Stat. § 2448 a patent was issued accordingly, notwithstanding the deaths of the parties. Some years afterwards the heirs of A S and E S sold and conveyed to J B their interest in the land so sold to N S. J B thereupon brought this action against N S for possession of it. *Held:* (1) That before the act of February 14, 1853, the settler not being required to give notice in

advance of the public survey, A S was not in fault for not having given such notice during his lifetime; (2) That, as the law contemplated that when a joint settlement had been made by two, the benefit of the donation, in case of the death of either, should be secured to the heirs, the notice given by the widow in October, 1853, was sufficient to secure the donation claim in its entirety; (3) That the heirs of A S and their privies in estate were estopped, as against N S, to deny that A S resided on the tract and cultivated it, and that his widow and children were at the date of his death entitled, under the statute, to the donation land claim; (4) That the widow and the heirs having agreed to a division among themselves, other persons could not complain of the arrangement if the Surveyor General afterwards conformed to their wishes in this respect; (5) That the proceedings in the Probate Court were warranted by the laws of Oregon in force at that time; (6) That the minor having made no objection to those proceedings for eleven years after coming of age, and not having indicated an intention to disavow the sale until the property had greatly increased in value, his course was equivalent to an express affirmance of the proceedings, even if they were affected with such irregularities as, upon his prompt application after coming of age, would have justified the court in setting them aside. *Brazee* v. *Schofield*, 495.

See EJECTMENT;
MINERAL LAND;
SAN FRANCISCO.

RAILROAD.

See MORTGAGE.

REFEREE.

See JURISDICTION, A, 1.

REMOVAL OF CAUSES.

1. In this case the court holds that the petition for the removal of the cause to the Circuit Court of the United States was presented too late. *Baltimore and Ohio Railroad Co.* v. *Burns*, 165.
2. The proceeding, authorized by the statutes of Colorado, for condemning land to public use for school purposes, is a suit at law, within the meaning of the Constitution of the United States, and the acts of Congress conferring jurisdiction upon the courts of the United States, which may be removed into a Circuit Court of the United States from a state court. *Searl* v. *School District No.* 2, 197.

See JURISDICTION, A, 3.

REMOVAL OF PUBLIC OFFICERS.

See EQUITY, 7;
JURISDICTION, B, 3.

REPLEVIN.

See JURISDICTION, A, 4.

RIPARIAN RIGHTS.

1. The title of the Pennsylvania Railroad Company to its lands in controversy, derived by grant from the Hoboken Land and Improvement Company, was confirmed and enlarged by the act of the legislature of New Jersey of March 31, 1869, "to enable the United Companies to improve lands under water at Kill von Kull and other places," and the title of the other defendants to their lands in controversy, also derived by grant from said Hoboken Company, was enlarged and confirmed by grants from the State, under the riparian acts of the legislature of the same 31st March; and thus all these titles are materially distinguished from the title of the Hoboken Land and Improvement Company, (derived only through § 4 of its charter,) which was the subject of the decision of the highest court of the State of New Jersey in *Hoboken Land and Improvement Co.* v. *Hoboken*, 7 Vroom, (36 N. J. Law,) 540. *Hoboken* v. *Pennsylvania Railroad Co.*, 656.
2. The act of the legislature of New Jersey of March 31, 1869, "to enable the United Companies to improve lands under water at Kill von Kull and other places" embraced but one object, and sufficiently indicated that object in its title, viz.: that it was intended to apply to the lands of the Pennsylvania Railroad Company in controversy in these actions; and thus it complied with the requirements of the constitution of New Jersey respecting titles to statutes. *Ib.*
3. By the laws of New Jersey lands below high-water mark on navigable waters are the absolute property of the State, subject only to the power conferred upon Congress to regulate foreign commerce and commerce among the States, and they may be granted by the State, either to the riparian proprietor, or to a stranger, as the State sees fit. *Ib.*
4. The grant by the State of New Jersey to the United Companies by the act of March 31, 1869, under which the Pennsylvania Railroad Company claims, and the grants under the general riparian act of the same date under which the other defendants claim, were intended to secure, and do secure, to the respective grantees the whole beneficial interest in their respective properties, for their exclusive use for the purposes expressed in the grants. *Ib.*
5. Any easement which the public may have in New Jersey to pass over lands redeemed by filling in below high-water mark in order to reach navigable waters, is subordinate to the right of the State to grant the lands discharged of the supposed easement. *Ib.*
6. A riparian proprietor in New Jersey has no power to create an easement for the public over lands below high-water mark, as against the State and those claiming under it; and if he attempts to do it, and then conveys to another person all his right to reclaim the land under water

fronting his property, his grantee may acquire from the State the title to such land discharged of the supposed easement. *Ib.*

7. The title of a grantee under the riparian acts of New Jersey differs in every respect from that of a riparian owner to the alluvial accretions made by the changes in a shifting stream which constitutes the boundary of his possessions. *Ib.*
8. The defendants in error hold the exclusive possession of the premises in controversy against the adverse claim of the plaintiff to any easement by virtue of the original dedication of the streets to high-water mark on the Loss map. *Ib.*

RULES.

See PRACTICE, 1;
SUBMISSION OF A CAUSE.

SALARY.

1. Upon the statutes of the United States which are considered at length in the opinion of the court, *Held:* That no obligation rests upon the Postmaster General to readjust the salaries of postmasters oftener than once in two years; that such readjustment, when it takes place, establishes the amount of the salary prospectively for two years; but that a discretion rests with the Postmaster General to make a more frequent readjustment, when cases of hardship seem to require it. *McLean* v. *Vilas*, 86.
2. Claimant was a private in the Marine Corps, and one of the marines who composed the organization known as the Marine Band. He performed on the Capitol grounds and on the President's grounds under proper order. *Held*, that he was entitled to the additional pay provided for by Rev. Stat. § 1613. *United States* v. *Bond*, 301.
3. Seventy-five per cent of forty-five hundred dollars is the maximum pay to which an officer of the Army of the United States placed on the retired list as a colonel is entitled. *Marshall* v. *United States*, 391.

See PAYMASTER'S CLERK.

SAN FRANCISCO.

1. The act of Congress of July 1, 1864, 13 Stat. 332, c. 194, taken in connection with the ordinances of the city of San Francisco and the act of the legislature of California which it refers to, operated to convey to the city the land occupied by the squares known as "Alta Plaza" and "Hamilton Square" for the uses and purposes specified in the ordinances, and to dedicate the tracts to public use as squares, and made it unlawful for the city to convey the same to any private parties; and the conveyance did not in any way inure to the benefit of the plaintiff in error. *Hoadley* v. *San Francisco*, 639.

SHIP.

1. The fine imposed upon the master of a vessel, by Rev. Stat. § 4253, for a violation of that and the preceding section, is, by § 4270, made a lien upon the vessel itself, which may be recovered by a proceeding *in rem;* but it is the same penalty which is to be adjudged against the master himself, in the criminal prosecution for misdemeanor, and payment by either is satisfaction of the whole liability. *The Strathairly,* 558.
2. Section 4264 of the Revised Statutes, as amended by the act of February 27, 1877, 19 Stat. 240, 250, subjects vessels propelled in whole or in part by steam, and navigating from and to, and between the ports therein named, to the provisions, requisitions, penalties and liens included within Rev. Stat. § 4255, as one of the several sections of the chapter relating to the space in vessels appropriated to the use of passengers. *Ib.*
3. A penalty imposed upon a master of a vessel arriving at a port of the United States, for a violation of the provisions of Rev. Stat. § 4266, is not charged as a lien upon the vessel by the operation of Rev. Stat. § 4264, as amended by the act of February 27, 1877, 19 Stat. 240, 250. *Ib.*

SPAIN, LAWS OF, IN MEXICO.

See CONFISCATION;
PRESUMPTION.

STATUTE.

See TABLE OF STATUTES CITED IN OPINIONS.

A. CONSTRUCTION OF STATUTES.

See ABANDONED AND CAPTURED PROPERTY ACT, 2.

B. STATUTES OF THE UNITED STATES.

See ABANDONED AND CAPTURED PROPERTY ACT, 1, 2;
APPEAL, 1;
CLERK OF COLLECTOR OF CUSTOMS;
CHINESE;
CONFISCATION ACT;
CONSTITUTIONAL LAW;
COPYRIGHT;
CUSTOMS DUTIES;
EQUITY, 8;
INDICTMENT, 2;
INTERNAL REVENUE;
JURISDICTION, A, 2, 7, 8; B, 2, 4, 5;
MINERAL LAW, 2;
PATENT FOR INVENTION, 9;
PAYMASTER'S CLERK;
PUBLIC LAND, 1, 3;
SALARY, 2;
SAN FRANCISCO;
SHIP;
WASHINGTON AQUEDUCT.

C. STATUTES OF STATES AND TERRITORIES.

Alabama. *See* CONSTITUTIONAL LAW, 2.
Colorado. *See* REMOVAL OF CAUSES, 2.
Illinois. *See* LOCAL LAW, 8.
Nebraska. *See* EJECTMENT, 1;
LOCAL LAW, 1, 7.
Oregon. *See* PUBLIC LAND, 3.

STATUTE OF FRAUDS.

See FRAUDS, STATUTE OF.

STATUTE OF LIMITATIONS.

See LIMITATIONS, STATUTES OF.

STEAM-VESSELS.

See SHIP.

STIPULATION.

See SUBMISSION OF A CAUSE.

SUBMISSION OF A CAUSE.

A stipulation, made before judgment in the court below, that "in the Supreme Court of the United States this cause shall be submitted to the court without any oral argument, either side, however, having the right to file a printed brief or briefs," is not a submission under the 20th Rule; and, under such a stipulation, this court will not apply that rule to the case on the suggestion of one of the parties against the protest of the other. *Glen* v. *Fant*, 123.

SUBROGATION.

1. The doctrine of subrogation in equity requires, 1, that the person seeking its benefit must have paid a debt due to a third party before he can be substituted to that party's rights; and, 2, that in doing this he must not act as a mere volunteer, but on compulsion, to save himself from loss by reason of a superior lien or claim on the part of the person to whom he pays the debt, as in cases of sureties, prior mortgages, &c. The right is never accorded in equity to one who is a mere volunteer in paying a debt of one person to another. *Ætna Life Insurance Co.* v. *Middleport*, 534.

2. The town of Middleport having, in pursuance of a statute of Illinois, voted an appropriation to the Chicago, Danville and Vincennes Railroad Company, to be raised by a tax on the property of the inhabitants of the town, issued bonds, payable with interest to bearer, for a sum large enough to include interest and the discount for which they could be sold, and delivered them to the railroad company, and they were accepted by that company, and sold and delivered to plaintiff. *Held:* (1) That the purchase of these bonds by plaintiff was no payment of the appropriation voted by the town to the railroad company.

(2) That, the bonds having been held to be void in a suit between the plaintiff and the town, this did not operate as a subrogation of the plaintiff to the right of the company, if any such existed, to enforce the collection of the appropriation voted by the town. *Ib.*

SUPREME COURT.

See JURISDICTION, A.

SURETY.

See JUDGMENT, 4, 5;
NATIONAL BANK.

TAX AND TAXATION.

1. The owner of an undivided half interest in personal property in possession of the whole of it, is liable for the entire tax upon it, and is not released from that liability by the payment of one-half of the tax upon the whole. *Chapin* v. *Streeter*, 360.
2. A and B were joint owners of the furniture of a hotel. A carried on the hotel, and leased of B his half interest in the furniture at an agreed rent, which was not paid as it became due. The taxes on the furniture being unpaid, A paid one-half of the amount due for taxes, and the officer distrained, advertised and sold to C the undivided half of B therein for the other half. A then hired this undivided half of C at an agreed rental, and the rent was paid. B brought suit against A to recover the rent due under the lease from him. *Held*, that A was liable for the whole tax, and being in exclusive possession of the property under his contract with B, it was his duty to pay it, and that the officer was as much bound to satisfy the tax out of A's interest in the property as out of B's, and that the facts above stated constituted no defence against B's action for the rent; nor the further fact that B notified A that if he paid his half of the taxes, he would not allow it in settlement. *Ib.*

TAX SALE.

In an action to set aside and have declared void a tax deed, made upon a sale for taxes of the plaintiff's land, upon the ground of a discrimination in the assessment against the plaintiff as a non-resident, it appearing that the laws under which it was made did not require the assessment to be more favorable to resident owners than to non-residents, and that the question to be decided related only to the action of a single assessor, or to the action of a board of equalization, and there being no sufficient evidence of such a discrimination against the owner of the lands; *Held*, that mere errors in assessment should be corrected by proceedings which the law allows before such sale, or before the deed was finally made. *Beeson* v. *Johnson*, 56.

TELEGRAPH COMPANIES.

See DAMAGES.

TREASURY DEPARTMENT.

See TREASURY SETTLEMENTS.

TREASURY SETTLEMENTS.

Settled accounts in the Treasury Department, where the United States have acted on the settlement, and paid the balance therein found due, cannot be opened or set aside years afterwards merely because some of the prescribed steps in the accounting, which it was the duty of a head of a department to see had been taken, had been in fact omitted; or on account of technical irregularities, when the remedy of the party against the United States is barred by the statute of limitation, and the remedies of the United States are intact, owing to its not being subject to an act of limitation. *United States* v. *Johnston*, 236.

TREATY.

1. The treaty of February 8, 1867, with the Dominican Republic (art. 9) provides that "no higher or other duty shall be imposed on the importation into the United States of any article the growth, produce, or manufacture of the Dominican Republic or of her fisheries, than are or shall be payable on the like articles the growth, produce, or manufacture of any other foreign country or of its fisheries." The convention of January 30, 1875, with the king of the Hawaiian Islands provides for the importation into the United States, free of duty, of various articles, the produce and manufacture of those islands (among which were sugars), in consideration of certain concessions made by the king of the Hawaiian Islands to the United States. *Held*, that this provision in the treaty with the Dominican Republic did not authorize the admission into the United States, duty free, of similar sugars, the growth, produce, or manufacture of that republic, as a consequence of the agreement made with the king of the Hawaiian Islands, and that there was no distinction in principle between this case and *Bartram* v. *Robertson*, 122 U. S. 116. *Whitney* v. *Robertson*, 190.
2. By the Constitution of the United States a treaty and a statute are placed on the same footing, and if the two are inconsistent, the one last in date will control, provided the stipulation of the treaty on the subject is self-executing. *Ib.*
3. The distinction between this case and *Whitney* v. *Robertson*, *ante*, 190, does not warrant a different disposition of it. *Kelley* v. *Hedden*, 196.

TRUST.

1. In a suit by a stranger against a trustee, to defeat the trust altogether, the *cestui que trust* is not a necessary party, if the powers or duties of the trustee with respect to the execution of the trust are such that those for whom he holds will be bound by what is done against him as well as by what is done by him. *Vetterlein* v. *Barnes*, 169.

See EQUITY, 8;
LOCAL LAW, 8.

UNITED STATES.

See TREASURY SETTLEMENTS.

WASHINGTON AQUEDUCT.

An arbitration was had in 1863 between the Great Falls Manufacturing Company and the Secretary of the Interior (on behalf of the United States) in regard to the amount of compensation to be paid to the company for its land, water rights and other property to be taken for the Washington aqueduct. The arbitrators reported four alternative plans for the construction of the proposed work, and decided that if Plan 4 should be adopted, involving only a dam from the Maryland shore to Conn's Island, the United States should pay as damages the sum of $15,692; but that if Plan 1 should be adopted, involving the construction of a dam from the Maryland shore across the Maryland Channel and Conn's Island to the Virginia shore, the company should receive as damages the sum of $63,766, and should also have the right to build and maintain a dam and bulkhead across the land of the United States in Virginia, and to use the water, subject to the superior right of the United States to its use for the purposes of the aqueduct. The United States constructed the aqueduct, adopting substantially Plan 4. The company sued in the Court of Claims for compensation, and recovered a judgment for $15,692, which was affirmed here, 112 U. S. 645. By an act of Congress passed in 1882, for increasing the water supply, provision was made for the acquisition of further property and further rights, and for the extension of the dam across Conn's Island to and upon the Virginia shore. This statute provided for a survey and for the making and filing of a map of the property to be taken and acquired under it, and also for notice of the filing to the parties interested, for appraisements of property taken, for awards of damages, and for payment of the awards on receiving conveyances of the lands, &c., taken. A right was also given to each owner dissatisfied with the award in his case, to proceed for damages in the Court of Claims against the United States within one year from the publication of the notice. Under this act of 1882 a dam was constructed substantially in accordance with Plan 1, and other property and other rights of the Great Falls Company were taken in the construction, but no provision was made for a canal and bulkhead, whereby the company could use the surplus water. On the last day of the year after the filing of the notice under the statute, the company filed its petition in the Court of Claims to recover damages for the taking of its property, and then filed this bill in the Circuit Court, alleging that that petition had been filed from fear that the company might lose any benefit of the act by limitation, and to save its rights, and for no other purpose; that the survey and map were defective inasmuch as land had been taken from the company which was not included in them; that the notice of the filing of the map had not

been given as required by the statute, but was materially defective; and that the act requiring the company to submit its rights to the judgment of the Court of Claims was unconstitutional in that, among other things, it made no provision for ascertaining the amount of compensation by a jury. For relief the bill prayed that the structures commenced might be removed, or, if it should appear that the property had been legally condemned, that an issue be framed, triable by jury, to ascertain the amount of plaintiff's damage, and that judgment be given for the sum found. Defendant demurred and, the demurrer being sustained, the bill was dismissed. *Held:* (1) That the United States having adopted and executed Plan 4, neither party was bound by the award as to Plan 1; and as no reservation had been made by the act of 1882 as to the bulkhead or canal for the use of the surplus water, that the officers charged with the construction of the dam were not bound to concede such rights to the company, though the United States were bound to make compensation for whatever rights or property of the company were taken and appropriated to public use; (2) That, as the survey and map had been made in good faith and undoubtedly embraced most of the property taken if it happened that any tract taken was not included in them, the proceedings were not invalidated by the omission, but the United States were bound to make compensation for the omitted tract as if it had been included in the map; (3) That defects in the notice were waived by filing the petition in the Court of Claims; (4) That the commencement of that proceeding was a waiver of any constitutional objection against the taking of the company's property or of the settlement of the amount of the damage therefor by the Court of Claims; but this was decided without intending to express a doubt as to the constitutionality of the act of 1882; (5) That the purpose with which the plaintiff invoked the jurisdiction of the Court of Claims was immaterial. *Great Falls Manufacturing Co.* v. *The Attorney General*, 581.