INDEX.

ACCORD AND SATISFACTION.

ACTION.

See PUBLIC LAND, 1.

ADMIRALTY.

See COURTS OF THE UNITED STATES, 1.

AGENT.

From the evidence in this case it is clear that the assignor of the defendants in error employed the plaintiffs in error as their agents to enter at the Custom House in New York importations of sugar imported by them, and, after protest, to commence suits to recover an excess of duty imposed upon the importations, and that the plaintiffs in error undertook to perform those services; and, it being settled in actions brought by other persons under similar circumstances and on like importations, that such duties were illegally exacted, and the plaintiffs in error having failed to commence suits within the period limited by law to recover such as were illegally exacted from the assignor of the defendants in error, *Held*, that the judgment of the court below for their recovery must be affirmed. *Bowerman* v. *Rogers*, 585.

See POWER.

ANCIENT DEED.

See EVIDENCE, 7, 8;
RES JUDICATA.

APPEAL.

An appeal, docketed here January 7, 1888, from a judgment of the Court of Claims which was entered February 4, 1884, is dismissed for want of due prosecution. *United States* v. *Burchard*, 176.

ARKANSAS.

See RAILROAD.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

See INSOLVENT DEBTOR.

ASSIGNMENT OF ERROR.

An assignment, as error, that the court below rejected certain patents of land offered in evidence by the plaintiff is fatally defective, if the record does not contain copies of the patents. *Clement* v. *Packer*, 309.

ATTORNEY GENERAL.

See PUBLIC LAND, 2.

BILL OF EXCEPTIONS.

A paper headed "Bill of Exceptions" not bearing the signature of the judge, but containing at its foot these words, "Allowed and ordered on file November 22, '83, A. B.," the trial having taken place in June, 1883, cannot be regarded as a bill of exceptions, because not signed by the judge, as required by § 953 of the Revised Statutes. *Origet* v. *United States*, 240.

BILL OF REVIEW.

On a pure bill of review nothing will avail for a reversal of the decree but errors of law apparent on the record. *Willamette Iron Bridge Co.* v. *Hatch*, 1.

BRIDGES OVER NAVIGABLE STREAMS.

See CONSTITUTIONAL LAW, A, 1, 2, 3;
JURISDICTION, A, 7;
NAVIGABLE STREAMS.

CASES AFFIRMED OR APPLIED.

Passaic Bridge Cases, 3 Wall. 782, applied. *Willamette Iron Bridge Co.* v. *Hatch*, 1.

Potts v. *United States*, *ante*, 173, affirmed and applied to the case. *Burchard* v. *United States*, 176.

United States v. *Symonds*, 120 U. S. 46, affirmed and applied. *United States* v. *Strong*, 656.

CASES DISTINGUISHED.

State of Pennsylvania v. *Wheeling & Belmont Bridge Co.*, 13 How. 518, distinguished. *Willamette Iron Bridge Co.* v. *Hatch*, 1.

Hunnicutt v. *Peyton*, 102 U. S. 333, distinguished. *Clement* v. *Packer*, 309.
Ellicott v. *Pearl*, 10 Pet. 412, distinguished. *Clement* v. *Packer*, 309.
Hall v. *Wisconsin*, 103 U. S. 5, distinguished. *Missouri ex rel. Walker* v. *Walker*, 339.
Jeffries v. *Mutual Life Ins. Co.*, 110 U. S. 305, distinguished. *Missouri ex rel. Walker* v. *Walker*, 339.

CITIZEN.

See CONSTITUTIONAL LAW, A, 9.

CLAIMS AGAINST THE UNITED STATES.

Congress enacted August 7, 1882, 22 Stat. 734, "that the Quartermaster General of the United States is hereby authorized to examine and adjust the claims of Julia A. Nutt, widow and executrix of Haller Nutt, deceased, late of Natchez, in the State of Mississippi, growing out of the occupation and use by the United States Army during the late rebellion, of the property of said Haller Nutt during his lifetime, or of his estate after his decease, including live stock, goods and moneys taken and used by the United States or the armies thereof; and he may consider the evidence heretofore taken on said claims, as far as applicable, before the Commissioners of Claims, and such other evidence as may be adduced before him on behalf of the legal representatives of Haller Nutt or on behalf of the United States, and shall report the facts to Congress to be considered with other claims reported by the Quartermaster General." The Quartermaster General made the examination and reported to Congress the aggregate value of the property taken. *Held*, that this reference of the claim did not constitute a submission to arbitration on the part of Congress, and that the finding of the Quartermaster General was neither an award, nor the equivalent of an account stated between private individuals. *Nutt* v. *United States*, 650.

Some time after this report of the Quartermaster General, Congress appropriated sundry amounts to various persons named in the bill as "an allowance of certain claims reported by the accounting officers of the United States Treasury Department," "the same being in full for, and the receipt for the same to be taken and accepted in each case as a full and final discharge of the several claims examined and allowed." Among these amounts was an appropriation to Mrs. Nutt of an amount much less than that reported by the Quartermaster General, which reduced amount she accepted. *Held*, that this did not amount to an adoption by Congress of the report of the Quartermaster General, and that there was no inference that the appropriation actually made was intended to be a recognition of a larger amount as due. *Ib.*

CONSTITUTIONAL LAW.

A. Of the United States.

1. There must be a direct statute of the United States in order to bring within the scope of its laws obstructions and nuisances in navigable streams within a State; such obstructions and nuisances being offences against the laws of the States within which the navigable waters lie, but no offence against the United States in the absence of a statute. *Willamette Iron Bridge Co.* v. *Hatch*, 1.

2. The provision in the "act for the admission of Oregon into the Union," 11 Stat. 383, c. 33, § 2, that "all the navigable waters of said State shall be common highways and forever free, as well to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll therefor," does not refer to physical obstructions of those waters, but to political regulations which would hamper the freedom of commerce. *Ib.*

3. Until Congress acts respecting navigable streams entirely within a State, the State has plenary power; but Congress is not concluded by anything that the State or individuals by its authority or acquiescence may have done, from assuming entire control, and abating any erections that may have been made, and preventing any other from being made except in conformity with such regulations as it may impose. *Ib.*

4. The appropriation by Congress of money to be expended in improving the navigation of the Willamette River was no assumption of police power over it. *Ib.*

5. Congress by conferring the privilege of a port of entry upon a municipality, does not come in conflict with the police power of a State exercised in bridging its own navigable rivers below such port. *Ib.*

6. The provision of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, is aimed at the legislative power of the State, and not at decisions of its courts, or acts of executive or administrative boards or officers, or doings of corporations or individuals. *New Orleans Water Works* v. *Louisiana Sugar Refining Co.*, 18.

7. This court has no jurisdiction of a writ of error to the highest court of a State, on the ground that the obligation of a contract has been impaired, unless some legislative act of the State is upheld by the judgment sought to be reviewed; and when the state court gives no effect to a law of the State subsequent to the contract, but holds, upon grounds independent of that law, that the right claimed was not conferred by the contract, the writ of error must be dismissed for want of jurisdiction. *Ib.*

8. The exaction of a license fee by a State to enable a corporation organized under the laws of another State to have an office within its limits for the use of the officers, stockholders, agents, or employés of the corporation, does not impinge upon the commercial clause of the

Federal Constitution (Article I, section VIII, clause 3), provided the corporation is neither engaged in carrying on foreign or interstate commerce, nor employed by the government of the United States. *Pembina Mining Co.* v. *Pennsylvania*, 181.

9. Corporations are not citizens within the meaning of the clause of the Constitution declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, Article IV, section II, clause 1. *Ib.*
10. A private corporation is included under the designation of "person" in the Fourteenth Amendment to the Constitution, section I. *Ib.*
11. The provisions in the Fourteenth Amendment to the Constitution, section 1, that "no State shall deny to any person within its jurisdiction the equal protection of the laws," do not prohibit a State from requiring for the admission within its limits of a corporation of another State such conditions as it chooses. *Ib.*
12. The only limitation upon the power of a State to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions for allowing the corporations to do business or hire offices there, arises where the corporation is in the employ of the federal government, or where its business is strictly commerce, interstate or foreign. *Ib.*
13. A judgment of the highest court of a State, sustaining the validity of an assessment upon lands under a statute of the State, which was alleged to be unconstitutional and void because it afforded to the owners no opportunity to be heard upon the whole amount of the assessment, involves a decision against a right claimed under the provision of the Fourteenth Amendment to the Constitution of the United States prohibiting the taking of property without due process of law, and may be reviewed by this court on writ of error, although the Constitution of the State contains a similar provision, and no constitutional provision is specifically mentioned in the record of the state court. *Spencer* v. *Merchant*, 345.
14. If the legislature of a State, in the exercise of its power of taxation, directs the expense of laying out, grading or repairing a street to be assessed upon the owners of lands benefited thereby; and determines the whole amount of the tax, and what lands, which might be so benefited, are in fact benefited; and provides for notice to and hearing of each owner, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed upon his land; there is no taking of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. *Ib.*
15. Pursuant to an act of the legislature of New York, the expense of grading a street was assessed by commissioners upon the lands lying within three hundred feet on either side of the street, and which would, in the judgment of commissioners, be benefited. After the sums so assessed upon some lots had been paid, the Court of Appeals

of the State adjudged the assessment to be void, because the act made no provision for notice to or hearing of the land-owners. The legislature then passed another act, directing a sum equal to so much of the first assessment as had not been paid, adding a proportional part of the expenses of making that assessment, and interest since, to be assessed upon and equitably apportioned among the lots, the former assessment on which had not been paid, first giving notice to all parties interested to appear and be heard upon the question of the apportionment of this sum among these lots, but not as to any apportionment between them and those lots, the former assessments upon which had been paid. *Held*, that an assessment laid under the latter statute was not a taking of property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. *Ib.*

16. The question whether, when Congress fails to provide a regulation by law as to any particular subject of commerce among the States is conclusive of its intention that that subject shall be free from positive regulation, or that, until Congress intervenes, it shall be left to be dealt with by the States, is one to be determined from the circumstances of each case as it arises. *Bowman* v. *Chicago & Northwestern Railway Co.*, 465.

17. So far as the will of Congress respecting commerce among the States by means of railroads can be determined from its enactment of the provisions of law found in Rev. Stat. § 5258, and Rev. Stat. c. 6, Title 48, §§ 4252–4289, they are indications of an intention that such transportation of commodities between the States shall be free except when restricted by Congress, or by a State with the express permission of Congress. *Ib.*

18. A State cannot, for the purpose of protecting its people against the evils of intemperance, enact laws which regulate commerce between its people and those of other States of the Union, unless the consent of Congress, express or implied, is first obtained. *Ib.*

19. Section 1553 of the Code of the State of Iowa, as amended by c. 143 of the acts of the 20th General Assembly in 1886, (forbidding common carriers to bring intoxicating liquors into the State from any other State or Territory, without being first furnished with a certificate, under the seal of the auditor of the county to which it is to be transported or consigned, certifying that the consignee or person to whom it is to be transported or delivered is authorized to sell intoxicating liquors in the county,) although adopted without a purpose of affecting interstate commerce, but as a part of the general system designed to protect the health and morals of the people against the evils resulting from the unrestricted manufacture and sale of intoxicating liquors within the State, is neither an inspection law, nor a quarantine law, but is essentially a regulation of commerce among the States, affecting interstate commerce in an essential and vital part; and, not being

sanctioned by the authority, express or implied, of Congress, is repugnant to the Constitution of the United States. *Ib.*

20. Whether the right of transportation of an article of commerce from one State to another includes by necessary implication the right of the consignee to sell it in unbroken packages at the place where the transportation terminates, *quære*. *Ib.*

21. A state statute which authorizes an injunction to be issued to restrain a corporation organized under the laws of another State, whose taxes are in arrear, from prosecuting its business within the State until the taxes are paid, is void so far as it assumes to confer power upon a court to so restrain a telegraph company which has accepted the provisions of Rev. Stat. § 5263 from operating its lines over military and post roads of the United States. *Western Union Telegraph Co.* v. *Massachusetts*, 530.

22. A statute of a State fixing at three cents a mile the maximum price that any railroad corporation may take for carrying a passenger within the State, is not, as applied to a corporation reorganized by the purchasers at the sale of a railroad under a decree of foreclosure, shown to be a taking of property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States, by evidence that under that restriction, and with its existing traffic, its net yearly income will pay less than one and a half per cent on the original cost of the road, and only a little more than two per cent on the amount of the bonded debt, without any proof of the cost of its bonded debt, or the amount of the capital stock of the reorganized corporation, or the price paid by this corporation for the road. *Dow* v. *Beidelman*, 680.

23. A statute of a State classifying its railroad corporations by the length of their lines, and fixing a different limit of the rate of passenger fares in each class, does not deny to any corporation the equal protection of the laws, within the Fourteenth Amendment to the Constitution of the United States. *Ib.*

See Husband and Wife, 4;
Jurisdiction, A, 1;
National Bank, 2.

B. Of a State.

Under the provision in the constitution of the State of Illinois adopted in 1870 that "private property shall not be taken or *damaged* for public use without just compensation," a recovery may be had in all cases where private property has sustained a substantial injury from the making and use of an improvement that is public in its character; whether the damage be direct, as when caused by trespass or physical invasion of the property, or consequential as in a diminution of its market value. *Chicago* v. *Taylor*, 161.

CONTRACT.

The court holds as the result of the transactions between the parties which are recited in its opinion, that, each being a holder of shares in a railroad company, they agreed that their respective interests should be joint and equal, and that the appellant should pay to the appellee the sum necessary to equalize the difference in cost between them; and that, this agreement not being carried out by the appellant, the parties substituted a new agreement, based upon the principal feature of the old one (that the appellee should sell to the appellant enough of his stock to make the holdings equal), but that each holding under the new agreement was to be in severalty and free from conditions. *Davison* v. *Davis*, 90.

See EQUITY, 3;
FRAUDULENT REPRESENTATIONS;
POWERS;
SALE.

CORPORATION.

See CONSTITUTIONAL LAW, A, 8, 9, 10, 11, 12.

COUNTER CLAIM.

In an action in the Court of Claims by an officer to recover a balance claimed to be due him on pay account, the United States can set up as a counter-claim an alleged overpayment to him on that account, and can have judgment for it if established. *United States* v. *Burchard*, 176.

COURT AND JURY.

1. A charge in an action to try title to real estate which instructed the jury that if they believe that a paper offered in evidence containing a signature of a party under whom both parties' claim was as old as its date imported, and that it had been preserved in the public archives as the initial paper in the grant, they might give to these circumstances the weight of direct testimony to the genuineness of the signature, and if the other proof did not in their judgment overbear its weight, might find the signature to be proved, neither takes from the jury the determination of the weight of evidence, nor submits to it a question that should be decided by the court. *Williams* v. *Conger*, 397.
2. In the courts of the United States it is competent for the court to give to the jury its opinion upon the weight of evidence, leaving the jury to determine upon the testimony. *Ib.*

COURT OF CLAIMS.

See APPEAL;
COUNTER-CLAIM.

COURTS OF A STATE.

See COURTS OF THE UNITED STATES, 2, 3;
JURISDICTION, A, 8.

COURTS OF THE UNITED STATES.

1 The provision in Rev. Stat. § 721 that "the laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply" is not applicable to proceedings in equity, or in admiralty, or to criminal offences against the United States. *Bucher* v. *Cheshire Railroad Co.*, 555.

2. The courts of the United States adopt and follow the decisions of the highest court of a State in questions which concern merely the constitution or laws of that State; also where a course of those decisions, whether founded on statutes or not, have become rules of property within the State; also in regard to rules of evidence in actions at law; and also in reference to the common law of the State, and its laws and customs of a local character, when established by repeated decisions. *Ib.*

3. The Supreme Judicial Court of Massachusetts having, in a cause between the same parties litigating in this action, arising out of the transaction herein litigated, and on facts herein established, *Held;* (1) that the plaintiff when injured by the negligence of the defendants' servants was not travelling "for necessity or charity" within the meaning of those terms as used in the General Statutes of Massachusetts, c. 84, § 2; (2) that the provision in those statutes, c. 84, § 2, that whoever travels on the Lord's Day except for necessity or charity shall be punished by a fine not exceeding ten dollars is a bar to recovery in an action against a railroad company by a person injured through the negligence of its servants while travelling on its railroad on Sunday, not for necessity or charity; and (3) that the act of the Massachusetts legislature of May 15, 1877, that this prohibition against travelling on the Lord's Day shall not constitute a defence to an action against a common carrier of passengers for any tort or injury suffered by the person so travelling, does not apply to a case happening before the passage of the act; *Held*, that these adjudications are sustained by a long line of numerous decisions, which establish a local rule of law within the State of Massachusetts, binding upon this court, though not meeting its approval. *Ib.*

See COURT AND JURY, 2;
JURISDICTION, A, B;
RES JUDICATA.

CRIMINAL LAW.

See JURISDICTION, A, 8.

CRIMINAL OFFENCES.

See COURTS OF THE UNITED STATES.

CUSTOMS DUTY.

1. "Goat's hair goods," composed of 80 per cent of goat's hair and 20 per cent of cotton, used chiefly for women's dresses, and which were imported into the United States between January 24, 1874, and June 25, 1874, were subject to the duty imposed by the act of July 14, 1870, 16 Stat. 264, c. 255, § 21, upon "manufactures of hair not otherwise herein provided for," as modified by the act of June 6, 1872, 17 Stat. 231, and not to the duty imposed by the act of March 2, 1867, 14 Stat. 561, c. 197, § 2, upon "women's and children's dress goods and real or imitation Italian cloths, composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other like animals"—it being found by the jury that they were not known in commerce among merchants and importers as "women's and children's dress goods." *Arthur* v. *Butterfield*, 70.
2. In the absence of a settled designation of a cloth by merchants and importers, its designation as hair, silk, cotton, or woollen for the purposes of customs revenue depends upon the predominance of such article in its composition, and not upon the absence of any other material. *Ib.*
3. The words "not otherwise herein provided for" in a section in a customs revenue act, mean not otherwise provided for in that act. *Ib.*
4. To place an article among those designated as "enumerated," so as to take it out of the operation of the similitude clause of the customs revenue laws, Rev. Stat. § 2499, it is not necessary that it should be specifically mentioned. *Ib.*
5. The words "manufactures of hair" are a sufficient designation to place such manufactures among the enumerated articles. *Ib.*
6. Velvet ribbons made of silk and cotton, silk being the material of chief value, known as "trimmings," chiefly used for making or ornamenting hats, bonnets, and hoods, but sometimes used for trimming dresses, being imported into the United States, are subject to a duty of twenty per centum *ad valorem* under Schedule M of the act of March 3, 1883, 22 Stat. 512, as "hats and so forth, materials for . . . trimmings;" and not to a duty of fifty per centum *ad valorem* under Schedule L of that act, Ib. 510, as "goods, wares, and merchandise not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value." *Hartranft* v. *Langfeld*, 128.
7. Quilts composed of cotton or silk and eider-down, eider-down being in each case the component material of chief value, are subject to a duty, on importation into the United States, of twenty per cent *ad valorem* as manufactured articles not enumerated. *Hartranft* v. *Shepard*, 337.
8. A vessel arrived at a port of the United States from a foreign port on

the 30th of June, 1883, and was entered at the custom-house on that day. A custom-house inspector took charge of it, and the vessel remained with unbroken hatches until after the following 1st of July. *Held*, that the goods on board, being in the custody and under the control of officers of the customs, were in "a public store," or "bonded warehouse," within the meaning of those terms as used in § 10 of the act of March 3, 1883, 22 Stat. 488, 525, and were subject to the duty imposed by the provisions of that act. *Hartranft* v. *Oliver*, 525.

See EVIDENCE, 1;
INFORMATION;
REVENUE LAWS.

DAMAGES.

See PATENT, 3, 4, 5, 6, 7;
REPLEVIN BOND.

DEED.

See EVIDENCE, 7, 8;
INSOLVENT DEBTOR, 1, 2, 3, 4;
RES JUDICATA.

DIVORCE.

See HUSBAND AND WIFE.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 4.

EQUITY.

1. The conclusions of a master in chancery, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside unless there clearly appears to have been error or mistake on his part. *Tilgman* v. *Proctor*, 136.
2. The general rule that when the answer of the defendant in a cause in equity is direct, positive, and unequivocal in its denial of the allegations in the bill, and an answer on oath is not waived, the complainant will not be entitled to a decree unless these denials are disproved by evidence of greater weight than the testimony of one witness, or by that of one witness with corroborating circumstances, applies when the equity of the complainant's bill is the allegation of fraud. *Southern Development Co.* v. *Silva*, 247.
3. In order to rescind a contract for the purchase of real estate on the ground of fraudulent representation by the seller, it must be established by clear and decisive proof that the alleged representation was made in regard to a material fact; that it was false; that the maker knew that it was not true; that he made it in order to have it acted on by the other party; and that it was so acted upon by the other

party to his damage, and in ignorance of its falsity and with a reasonable belief that it was true. *Ib.*

4. Whether a receiver of the property of a railroad company shall be appointed by a court of equity, is a matter within the discretion of the court, and this discretion is to be exercised sparingly, and with great caution, and with reference to the special circumstances of each case as it arises. *Sage* v. *Memphis & Little Rock Railroad*, 361.

5. A bill in equity, brought by a judgment creditor of a railroad company against the company, which alleges in substance that the property of the company is so heavily mortgaged that if the plaintiff should attempt to enforce payment of his debt by seizure and sale on execution there would be no bidders at more than a nominal amount, while, if the property were placed in the hands of a receiver by the court, and held together and carefully used in transporting passengers and freight, there would be a large surplus each year for the payment of the plaintiff's debt, contains ample averments to give a court of equity jurisdiction to appoint a receiver of the property: but this point is decided on the facts of the present case, and the court does not mean to say that one or more of the judgment creditors of a railroad company can, as a matter of right, require such a property to be put in the hands of a receiver merely because the company fails or refuses to pay its debts. *Ib.*

6. The fact that a judgment creditor filing a bill in equity to obtain the appointment of a receiver of the debtor's property did not first sue out execution and have a return of *nulla bona* is immaterial, if not objected to by the debtor, and if it appears on the admitted facts that so doing would have been an idle ceremony. *Ib.*

7. If a court of equity is induced by imposition to appoint a receiver of the property of a railroad company when one would not have been appointed had the court been aware of the exact situation, and the receiver is discharged on learning of the imposition, and during the receivership a fund has accumulated from surplus earnings, trustees, representing mortgage creditors of the corporation, who did not intervene in the suit pending the receivership and set up no claim to the fund during the receivership, and had no claim to it except as mortgage trustees out of possession, are not entitled to the fund. *Ib.*

8. It is again held that the mortgagor of a railroad is not required to account to the mortgagee for earnings, even though the mortgage covers income, while the mortgaged property remains in the mortgagor's possession, and no demand has been made for it or for surrender of its possession under the provisions of the mortgage. *Ib.*

9. Mortgage bondholders of a railroad company who obtain judgment on their bonds or coupons and intervene individually and without the appearance of their trustees in a suit brought by a judgment creditor of the company whose debt is not secured by the mortgage, in which a receiver has been appointed, do not thereby deprive the plaintiff credi-

tor of his priority of right in the accumulating income from the property in the hands of the receiver. *Ib.*

See COURTS OF THE UNITED STATES,
JUDGMENT;
LACHES;
MORTGAGE;
PATENT FOR INVENTION, 2, 3, 4;
RAILROAD, 2, 3, 4, 5.

ESTOPPEL.

1. When the plaintiff and the defendant both claim title under the same original application, and one introduces it in evidence and establishes its identity, the other is estopped from denying the genuineness of the signature to it of the party under whom both claim. *Williams* v. *Conger*, 397.
2. The plaintiff sued the defendants in a state court and recovered judgment. The highest appellate court of the State, reviewing the case, decided the points of law involved in it against the plaintiff, set aside the judgment for error in the ruling of the court below, and sent the case back for a new trial. The plaintiff then became non-suit, and brought the present suit in the Circuit Court of the United States on the same cause of action. *Held*, that he was not estopped. *Bucher* v. *Cheshire Railroad Co.*, 555.

See JUDGMENT.

EVIDENC

1. In a suit *in rem* against certain diamonds seized as forfeited for a violation of the customs revenue laws, it was competent for the United States to give in evidence the declarations of S., not the claimant, who was intrusted by the latter with the custody of the diamonds for sale, such declarations having been made to a customs officer who took the diamonds from a person with whom S. had deposited them, and in the course of an investigation by the officer to determine whether he should seize them, and having been part of the *res gestæ*. *Friedenstein* v. *United States*, 224.
2. It was also competent for the officer to testify that he did not seize the diamonds till after the declarations were made. *Ib.*
3. In an action of ejectment in the Circuit Court of the United States, sitting in the State of Pennsylvania, which involves a question concerning the location of the boundary of a private estate, that rule of evidence respecting the admission of declarations of deceased persons touching the disputed boundary which is laid down by the highest court of that State is the rule to govern the action of the Circuit Court at the trial; and it is well settled in that State that declarations of a deceased person touching the locality of a boundary which was

surveyed and located by him, which declarations were made to the witness in pointing out that locality, are admissible in evidence. *Clement* v. *Packer*, 309.

4. If the removal of a public record from its place of deposit is not prohibited by reason of public policy, it constitutes, when legitimately removed, the best evidence of its contents and of its authenticity. *Williams* v. *Conger*, 397.
5. An original muniment of title produced from the public archives in which it is required by law to be deposited, certified by the public officer who has custody of it, and identified by him as a witness, sufficiently authenticated to authorize it to be offered in evidence.
6. Papers not otherwise competent cannot be introduced in evidence for the mere purpose of enabling a jury to institute a comparison of handwriting; but where other writings, admitted or proved to be genuine, are properly in evidence for other purposes, the handwriting of such instruments may be compared by the jury with that of the instrument or signature in question, and its genuineness inferred from such comparison. *Ib.*
7. One claiming under a deed forty years old, through several mesne conveyances, may offer the deed in evidence as an ancient deed, though never seen by any but the first grantee to whom it was given. *Ib.*
8. A copy made in 1837 of a lost certified copy of a power of attorney is admissible in evidence to show that the original power, found and produced in court, was an ancient instrument. *Ib.*
9. A recital in an ancient power of attorney that the donor is a citizen raises a presumption of the truth of that fact which can be overthrown only by positive proof. *Ib.*
10. Want of power in an officer of the Land Office to issue a land-patent may be shown in an action at law by extrinsic evidence, although the patent may be issued with all the forms of law required for a patent of public land. *Doolan* v. *Carr*, 618.
11. Official documentary evidence of a Mexican grant, which has been confirmed by the proper authorities of the United States, is admissible in the trial of an action of ejectment, to show a want of power in the Land Office to issue a patent for the same land as "public land" under the statute granting "public land" to aid in the construction of the Pacific Railroad. *Ib.*
12. It would seem that parol testimony is admissible to identify the land as coming within the terms of the grant. *Ib.*

See COURT AND JURY;
ESTOPPEL;
RES JUDICATA.

EXCEPTION.

See BILL OF EXCEPTIONS.

EXECUTOR AND ADMINISTRATOR.

See LOCAL LAW, 5.

FRAUDULENT REPRESENTATION.

1. Statements made by the seller of a speculative property like a mine, at the time of the contract of sale, concerning his opinion or judgment as to the probable amount of mineral which it contains, or as to the character of the bottom of the ore chamber, or as to the value of the mine, if they turn out to be untrue, are not necessarily such fraudulent representations as will authorize a court of equity to rescind the contract of sale. *Southern Development Co.* v. *Silva*, 247.
2. The fact that a representation made by a seller was false raises no presumption that he knew that it was false. *Ib.*
3. When the purchaser of a property undertakes to make investigations of his own respecting it before concluding the contract of purchase, and the vendor does nothing to prevent his investigation from being as full as he chooses, the purchaser cannot afterwards allege that the vendor made representations respecting the subject investigated which were false. *Ib.*

See EQUITY, 3.

FORGERY.

In this case this court reversed the decree of the general term of the Supreme Court of the District of Columbia, on a question of fact as to whether a deed of trust and a promissory note secured thereby were forgeries. *Cissel* v. *Dutch*, 171.

GRADUATED PAY.

See SALARY, 2.

HUSBAND AND WIFE.

1. A territorial statute of Oregon, passed in 1852, dissolving the bonds of matrimony between husband and wife, the husband being at the time a resident of the Territory, was an exercise of "the legislative power of the Territory upon a rightful subject of legislation," according to the prevailing judicial opinion of the country and the understanding of the legal profession at the time when the act of Congress establishing the territorial government was passed, August 14, 1848, 9 Stat. 323. *Maynard* v. *Hill*, 190.
2. The general practice in this country of legislative bodies to grant divorces stated. *Ib.*
3. The granting of divorces being within the competency of the legislature of the Territory, its motives in passing the act in question cannot be inquired into. Having jurisdiction to legislate upon the status of the husband, he being a resident of the Territory at the time, the validity

of the act is not affected by the fact that it was passed upon his application, without notice to or knowledge by his wife; who, with their children, had been left by him two years before in Ohio, under promise that he would return or send for them within two years. *Ib.*

4. Marriage is something more than a mere contract, though founded upon the agreement of the parties. When once formed, a relation is created between the parties which they cannot change; and the rights and obligations of which depend not upon their agreement, but upon the law, statutory or common. It is an institution of society, regulated and controlled by public authority. Legislation, therefore, affecting this institution and annulling the relation between the parties is not within the prohibition of the Constitution of the United States against the impairment of contracts by state legislation. *Ib.*
5. Nor is such legislation prohibited by the last clause of Article 2 of the Ordinance of the Northwest Territory, declaring that "no law ought ever to be made or have force in said Territory that shall in any manner whatever interfere with or affect private contracts or engagements *bona fide* and without fraud, previously formed;" which clause was, by the organic act of Oregon, enacted and made applicable to the inhabitants of that Territory. *Ib.*
6. Under the Oregon Donation Act, 9 Stat. 496, c. 76, the statutory grant took effect as a complete grant only on the termination of the four years' term of residence and cultivation; and the wife of a resident settling under the act as a married man, who was divorced from him after the commencement of his settlement, but before its completion, took no interest under the act in the title subsequently acquired by him. He had, previous to that time, no vested interest in the land, only a possessory right, — a right to remain on the land so as to enable him to comply with the conditions upon which the title was to pass to him. *Ib.*

INFORMATION.

1. The jury having found, in compliance with § 16 of the act of June 22, 1874, c. 391, 18 Stat. 189, that the acts complained of in an information *in rem* were done with intent to defraud the United States, and no motion to dismiss the cause for any defect in the information, and no motion in arrest of judgment having been made, any such defect which could have been availed of by demurrer, or exception, or motion in arrest of judgment, must be regarded as having been waived or as having been cured by the verdict. *Friedenstein* v. *United States*, 224.
2. An information under the revenue laws for the forfeiture of goods, which seeks no judgment of fine or imprisonment against any person, is a civil action. *Ib.*
3. Yet it is so far in the nature of a criminal proceeding that a general verdict on several counts in the information is upheld if one count is good. *Ib.*

4. Where the sections of the Revised Statutes on which the counts of the information are founded do not prescribe any intent to defraud as an element of the forfeitures they denounce, said § 16 does not make it necessary, in an information filed since its enactment, to aver that the alleged acts were done with an actual intention to defraud the United States. *Ib.*

5. It is not necessary that the judgment should recite the finding by the jury that the acts complained of in the information were done with intent to defraud the United States. *Ib.*

6. An information in a suit *in rem* against certain imported goods seized as forfeited for a violation of the customs revenue laws, alleged an entry of the goods, which were subject to duties, with intent to defraud the revenue by false and fraudulent invoices, by means whereof the United States were deprived of the lawful duties accruing upon the goods embraced in the invoices. The answer of the claimant denied that the goods became "forfeited in manner and form as in said information is alleged." At the trial the jury rendered "a verdict for the informants, and against the claimant for the condemnation of the goods mentioned in the information, and that the goods were brought in with intent to defraud the United States." The decree set forth that the jury having "by their verdict found for the United States, condemning the said goods," they were "accordingly condemned as forfeited to the United States"; *Held*,

   (1) The verdict was a sufficient compliance with the requirement of § 16 of the act of June 22, 1874, c. 391, (18 Stat. 189,) that, in order to a forfeiture the jury should find that "the alleged acts were done with an actual intention to defraud the United States";

   (2) The judgment was sufficient without reciting any special finding by the jury as to an intent to defraud. *Origet* v. *United States*, 240.

ILLINOIS.

See CONSTITUTIONAL LAW, B.

INDIANA.

See LOCAL LAW, 5.

INSOLVENT DEBTOR.

1. Whether, in a deed of assignment by a debtor for the benefit of creditors made under a state statute, a disregard of and departure from some directions of the statute shall invalidate the assignment or only make the varying provision in it void, will depend upon the general policy of the statute — whether it is intended to restrain or to favor such assignments. *Cunningham* v. *Norton*, 77.

2. A provision in an assignment by a debtor for the benefit of his creditors

under the statute of the State of Texas of March 24, 1879, Rev. Stat. Texas, 1879, App. 5, that any surplus shall be paid to the debtor, made in violation of the direction in § 16 of the statute that such surplus shall be paid into court, does not affect the validity of the assignment, but only invalidates the violating provision. *Ib.*

3. The words "all his lands, tenements, hereditaments, goods, chattels, property, and choses in action of every name, nature, and description, wheresoever the same may be, except such property as may be by the constitution and laws of the State exempt from forced sale," are a sufficient description to convey all the debtor's estate, under the Texas statute of March 24, 1879, regulating assignments by insolvent debtors. *Ib.*

4. A statement in a deed of assignment by a debtor for the benefit of his creditors, that he "is indebted to divers persons in considerable sums of money which he is at present unable to pay in full" is a declaration of the insolvency of the grantor. *Ib.*

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, A, 16–20

JUDGMENT.

A final decree in a suit in equity that "the cause being submitted to the court upon bill, answer, and replication, and having been duly considered, the court finds, adjudges, and decrees that the equities are with the defendant," and dismissing the bill, is an adjudication upon the merits of the controversy, and constitutes a bar to further litigation upon the same subject between the parties; and it is not open to the complainant to show, in a subsequent suit in equity between the same parties, on the same cause of action, that the decree was made in his absence and default, and that no proof had been filed in the cause on either side. *Lyon* v. *Perin and Gaff Manufacturing Co.*, 698.

See ESTOPPEL, 2.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. The legislature of Louisiana in 1877 having granted to a corporation the exclusive right of constructing waterworks to supply the city of New Orleans and its inhabitants with water, provided that nothing in this charter should prevent the city council from granting to any person, contiguous to the Mississippi River, permission to lay water pipes exclusively for its own use, an ordinance of the city council in 1883, granting such permission to a corporation whose property is separated from the river by a street and a broad quay or levee owned by the city, is but a license from the city council exercising an administra-

tive power, and not a law of the State; and if the highest court of the State, in a suit between the waterworks company and the licensee, gives judgment for the latter, upon the construction and effect of the charter and the license, and not because of the provision of the state constitution of 1879 abolishing monopolies, this court has no jurisdiction on writ of error, although the question whether the licensee's property was contiguous to the river was in controversy. *New Orleans Waterworks* v. *Louisiana Sugar Refining Co.*, 18.

2. Upon a writ of error to the highest court of a State, under Rev. Stat. § 709, the opinion of that court, recorded as required by the statutes of the State, may be examined by this court to ascertain the ground of the judgment. *Kreiger* v. *Shelby Railroad Co.*, 39.
3. Statutes of a State authorized a district in a county, defined by exact boundaries, to determine by the vote of its inhabitants to subscribe for stock in a railroad company, and required bonds to be executed in its name by the county judge to the railroad company for the amount of stock so subscribed for. By later statutes, it was enacted that this district should be entitled to vote on the amount of its stock, and in so doing be represented by certain magistrates of the county; and that it should have a certain corporate name, and by that name might sue and be sued. The highest court of the State held that by the earlier statutes the district was made a corporation, and entitled to vote and to receive dividends on its stock in the railroad company, and that the later statutes made no change in the contract created by the earlier statutes. *Held*, that this court had no jurisdiction on writ of error. *Ib.*
4. An action upon an agreement in writing, by which, in consideration of a license from the patentee to make and sell the invention, the licensee acknowledges the validity of the patent, stipulates that the patentee may obtain reissues thereof, and promises to pay certain royalties so long as the patent shall not have been adjudged invalid, is not a case arising under the patent laws of the United States, and is within the jurisdiction of the state courts; and the correctness of a decision of the highest court of a State upon the merits of the case, based upon the effect of the agreement, without passing upon the validity of a reissue, or any other question under those laws, cannot be reviewed by this court on writ of error. *Dale Tile Mfg. Co.* v. *Hyatt*, 46.
5. At the time of an action in a state court upon an agreement to pay royalties for making and selling a patented machine, evidence that the plaintiff afterwards made improvements in the machine, and that machines made and sold by the defendant upon a later model furnished by a third person were substantially like that mentioned in the agreement, was admitted, notwithstanding the defendant objected to it as going to show that the plaintiff invented the new machine, and as collaterally attacking a patent to the third person. No patent had then been introduced; and no ruling was requested or made upon the

validity or construction of any patent, or upon the legal effect of the evidence. The jury were instructed that the plaintiff was entitled to recover royalties only upon machines substantially like that mentioned in the agreement. A verdict was returned for the plaintiff, and judgment recorded thereon, which was affirmed by the highest court of the State. *Held*, that the record presented no federal question within the jurisdiction of this court on writ of error. *Felix* v. *Scharnweber*, 54.

6. A federal question, within the jurisdiction of this court on writ of error to the highest court of a State, cannot be originated by a certificate of the chief justice of that court, if no such question appears by the record to have been involved in the judgment. *Ib.*

7. A decision by the highest court of a State upon the question whether the mere fact that a bridge, constructed under authority derived from the act of Congress of July 25, 1866, 14 Stat. 244, had not been constructed as required by the statute rendered the owner liable for injuries happening by reason of its existence to a steamboat navigating the river, irrespective of the question whether the accident was the result of the improper construction, presents no federal question for the decision of this court. *Hannibal & St. Jo. Railroad* v. *Missouri River Packet Co.*, 260.

8. A person convicted of crime in the court below having sued out a writ of error which was docketed here, and having escaped from the jurisdiction of the court below, this court declines to hear the case, and orders it removed from the docket unless the plaintiff in error comes within the jurisdiction of the court below on or before the last day of this term. *Bonahan* v. *Nebraska*, 692.

9. The court denies a motion to take action to cause the judgment of a state court to be reversed in obedience to the mandate of this court on the ground that it did not appear that the petitioner had applied to the highest court of the State to carry the mandate of this court into effect. *In re Royall*, 696.

See COURTS OF THE UNITED STATES.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. The proper Circuit Court of the United States has jurisdiction, irrespective of the citizenship of the parties, of an action of ejectment in which the controversy turns upon the validity of a patent of land from the United States. *Doolan* v. *Carr*, 618.

2. In a suit in equity in a Circuit Court of the United States to obtain a release of land from liability under a deed of trust, the plaintiff had a decree. On an appeal to this court by the defendant, no evidence on the ground of citizenship was found in the record. This court reversed the decree with costs, and remanded the case for further proceedings; but, as a further examination of the record showed that the suit was brought to restrain the enforcement of a judgment in

ejectment recovered in the same Circuit Court, this court vacated its decree reversing the decree of the court below. *Johnson* v. *Christian*, 642.

See COURTS OF THE UNITED STATES.

C. JURISDICTION OF THE COURT OF CLAIMS.

See APPEAL;
COUNTERCLAIM;
COURTS OF THE UNITED STATES.

LACHES.

The remedy by bill in equity to compel a specific performance of a contract to sell personal property upon the payment of a promissory note given by the other party, payable at a date after the making of the contract, is lost through the laches of the complainant, if he wait five years after the maturity of the note before filing his bill, and the property meanwhile greatly increases in value. *Davison* v. *Davis*, 90.

LICENSE FEE.

See CONSTITUTIONAL LAW, A, 8, 9, 10, 11, 12.

LIEN.

See RAILROAD, 1.

LOCAL LAW.

1. In Pennsylvania, original marks and living monuments are the highest proof of the location of a survey; the calls for adjoining surveys are the next most important evidence of it; and it is only in the absence of both that corners and distances returned by the surveyor to the land office determine it. *Clement* v. *Packer*, 309.
2. Surveys constituting a block are not treated in Pennsylvania as separate and individual surveys, but are to be located together as a block on one large tract; and if the lines and corners of the block can be found, this fixes its location, as they belong to each and every tract of the block as much as they do to the particular tract which they adjoin. *Ib.*
3. When the location of a survey in Pennsylvania can be determined by its own marks upon the ground, or by its own calls, courses, and distances, it cannot be changed or controlled by the marks or lines of an adjoining junior survey; but when, by reason of the disappearance of these original landmarks from the senior survey, the location of a line or the identity of a corner is uncertain and is drawn in controversy, then original and well established marks found upon a later survey, made by the same surveyor about the same time, and adjoining the one in dispute, are admissible — not to contest or control the

matter — but to elucidate it and thus aid the jury in discovering the location of the senior survey. *Ib.*

4. After the lapse of twenty-one years from the return of a survey in Pennsylvania, the presumption is that the warrant was located as returned by the surveyor to the land office, and in the absence of rebutting facts, the official courses and distances determine the location of the tract; but this presumption is not conclusive, and may be rebutted by proof of the existence of marked lines and monuments, and other facts tending to show that the actual location on the ground was different from the official courses and distances. *Ib.*

5. *It seems*, that under the statutes of Indiana an executor named in a will, who has never qualified, or been appointed by the Court of Probate, or taken out letters testamentary, has no power to redeem a mortgage of real estate, either as an executor, or as trustee under the will. *Wall* v. *Bissell*, 382.

6. In Texas in the year 1833, a power of attorney to take possession of and convey real estate which was not acknowledged, witnessed, certified to, written on sealed paper, nor proved before a notary, was nevertheless a valid instrument, those formalities merely affecting the mode of authenticating it. *Williams* v. *Conger*, 397.

7. The English rule as to the requisites of a power to execute sealed instruments was not in force in Texas when the transactions here in controversy took place. *Ib.*

See CONSTITUTIONAL LAW, B;
COURTS OF THE UNITED STATES;
EVIDENCE, 3;
INSOLVENT DEBTOR;
JURISDICTION, A, 1, 3;
PRACTICE, 1;
RAILROAD, 1;
REPLEVIN BOND;
RES JUDICATA.

LONGEVITY PAY.

See SALARY, 2.

LORD'S DAY.

See COURTS OF THE UNITED STATES, 3.

LOUISIANA.

See JURISDICTION, A, 1;
PRACTICE, 1.

MAINE.

See REPLEVIN BOND.

MANDATE.

See JURISDICTION, A, 9.

MARRIAGE.

See HUSBAND AND WIFE.

MASSACHUSETTS.

See COURTS OF THE UNITED STATES;
NATIONAL BANK;
TAX AND TAXATION.

MEXICAN GRANT.

See EVIDENCE, 11;
PUBLIC LAND, 10.

MISSOURI RIVER.

See NAVIGABLE STREAMS.

MORTGAGE.

In equity, a mortgage of real estate, made to one of two creditors to secure the payment of a debt due to them jointly, is incident to the debt, and may be released, after the death of the mortgagee, by the surviving creditor; and a release, made in good faith by the survivor, of part of the land from any and all lien by reason of the mortgage, is valid against himself and the representatives of the deceased, although he is in fact executor of the latter, and describes himself as such in the last clause and the signature of the release, and has by law no authority to enter the release as executor, for want of letters testamentary. *Wall* v. *Bissell*, 382.

See EQUITY, 8, 9;
LOCAL LAW, 5;
RAILROAD, 2, 3, 4, 5.

NATIONAL BANK.

The question of exemption from taxation of deposits in savings banks, as affecting the rule for the state taxation of national bank shares, was very deliberately considered by this court in *Mercantile Bank* v. *New York*, 121 U. S. 138; and the conclusion reached in that case was reaffirmed in *Davenport Bank* v. *Davenport Board of Equalization*, 123 U. S. 83; and it is impossible to distinguish this case from those cases. *Bank of Redemption* v. *Boston*, 60.

The laws for the taxation of national banks in Massachusetts, Mass. Pub. Stats. c. 13, §§ 8, 9, 10, do not deny to the banks as taxpayers the equal protection of the laws, in violation of the Fourteenth Amendment to the

Constitution of the United States; and do not impose a disproportionate and unequal tax upon them in violation of the provisions of the constitution of that State. *Ib.*

It is the manifest intent of Rev. Stat. § 5219, to permit the State in which a national bank is located to tax all the shares in its capital stock without regard to ownership, subject only to the limitations prescribed in that section; and in this case the law permits the taxation of the shares in the bank of the plaintiff in error which are owned by other national banks, on the same footing with all other shares. *Ib.*

NAVIGABLE STREAMS.

The act of Congress of July 25, 1866, 14 Stat. 244, § 10 of which authorized a bridge to be constructed across the Missouri River at the city of Kansas, required that the distance of one hundred and sixty feet between the piers of the bridge, which were called for by the act, should be obtained by measuring along a line between said piers drawn perpendicularly to the faces of the piers and the current of the river; and as such a line drawn between the piers of the bridge of the plaintiff in error measures only one hundred and fifty-three feet and a fraction of a foot, instead of the required one hundred and sixty feet, it is not a lawful structure within the meaning of that act. *Hannibal & St. Joseph Railroad* v. *Missouri River Packet Co.*, 260.

See CONSTITUTIONAL LAW, 1, 2, 3, 4.

NONSUIT.

See ESTOPPEL, 2.

OFFICER IN THE NAVY.

See SALARY, 1, 2, 3;
STATUTE, A, 1.

OREGON.

See CONSTITUTIONAL LAW, 2;
HUSBAND AND WIFE.

PARTIES.

See PATENT FOR INVENTION, 2.

PARTNERSHIP.

See MORTGAGE.

PATENT FOR INVENTION.

1. The second claim in reissued letters-patent No. 8914, dated September 30, 1879, to Frederick W. Weir, for an improvement in railroad frogs,

(the original patent being No. 215,548, dated May 20, 1879,) whether construed by itself, or with reference to the state of the art at the time of the alleged invention, is a claim for a combination of parts, viz.: (1) two centre rails B B joined to form the V-shaped point; (2) the outside diverging or wing rails; (3) the channel irons of a U shape uniting the centre rails together, and also to the outside or wing rails, so that the whole shall constitute a frog with the characteristics imparted by the features of this combination: and no invention was required to divide the U iron, shown in patent No. 173,804, issued to William J. Morden, February 22, 1876, so as to connect the centre rails with the outer rail. *Weir* v. *Morden*, 98.

2. One having an interest in all fees and other sums to be recovered under a patent, but not shown to have any interest, legal or equitable, in the patent itself, need not be made a party to a bill in equity for its infringement. *Tilghman* v. *Proctor*, 136.
3. Upon a bill in equity by the owner against infringers of a patent, the plaintiff, although he has established license fees, is not limited to the amount of such fees, as damages; but may, instead of damages, recover the amount of gains and profits that the defendants have made by the use of his invention, over what they would have had in using other means then open to the public and inadequate to enable them to obtain an equally beneficial result. *Ib.*
4. Upon a bill in equity for infringing a patent, if the defendants have gained an advantage by using the plaintiff's invention, that advantage is the measure of the profits to be accounted for, even if from other causes the business in which the invention was employed by the defendants did not result in profits; and if the use of a patented process produced a definite saving in the cost of manufacture, they must account to the patentee for the amount so saved. *Ib.*
5. The liability of infringers of a patent to account to the patentee for all the profits, gains and savings, which they have made by the use of his invention during the whole period of their infringement, is not affected by the fact that in the midst of that period an erroneous decision was made in favor of a distinct infringer, in no way connected with these defendants. *Ib.*
6. In determining the amount of gains and profits derived by infringers of a patent from the use of the invention, over what they would have made in using an old process open to the public, the expense of using the new process is to be ascertained by the manner in which they have conducted their business, and not by the manner in which they might have conducted it; but the cost at which they used the old process is not conclusive against them, if other manufacturers used that process at less cost. *Ib.*
7. As a general rule, in taking an account of profits against an infringer of a patent, interest is not to be allowed before the date of the submission of the master's report, but only after that date and upon the amount shown to be due by his report and the accompanying evidence. *Ib.*

8. The other questions decided were questions of fact. *Ib.*

9. Claims 2 and 3 of reissued letters patent No. 8876, granted to Frank H. Fisher September 2, 1879, on an application filed March 29, 1879, for an "improvement in hydraulic mining apparatus," the original patent No. 110,222, having been granted to Fisher December 20, 1870, namely, "2. A ball-and-socket joint for connecting the discharge pipe of a hydraulic mining apparatus with the end of a swivel section, B, substantially as above described. 3. The discharge pipe, E, having a semi-cylindrical or ball-shaped enlargement at its base, in combination with a corresponding cup-shaped socket, D, on the end of the horizontally swivelling section, B, substantially as, and for the purpose described," are invalid. *Hoskin* v. *Fisher*, 217.

10. A copy of the original patent being found in the record under a proper certificate from the clerk of the court below, and there being a stipulation under which it might have been introduced in evidence from the proceedings in another case, it is to be considered, although there is no separate memorandum of its introduction in evidence. *Ib.*

11. There was a first reissue of the patent, granted as No. 5193, December 17, 1872, but no copy of it being found in the record, it cannot be presumed that claims 2 and 3 of the second reissue were found in the first reissue. *Ib.*

12. The plaintiffs having stated in their bill that the first reissue or a copy of it was ready in court to be produced, it was for them to put it in evidence, if they desired to excuse the delay of more than eight years and three months in applying for the second reissue by showing that the first reissue, granted a little less than two years after the date of the original patent, contained claims 2 and 3 of the second reissue. *Ib.*

13. The question of such delay is to be considered as if there never had been any first reissue. *Ib.*

14. Claims 2 and 3 of the second reissue being claims to sub-combinations less than the whole combination covered by the single claim of the original patent, and the descriptive parts and drawings of the two specifications being alike, and it not being indicated in the original that the invention consisted in anything less than a combination of all the elements embraced in such single claim, and the delay not being explained, such claims were unlawful expansions of the original patent. *Ib.*

15. A patent granted in 1871, for an improvement in post-office boxes was reissued in 1872, and again in 1877, and again in 1879. The original patent limited the invention to a metallic frontage made continuous by connecting the adjoining frames to each other, and not merely to the woodwork. There was no mistake, and the original patent was not defective or insufficient, in either the descriptive portion or the claims. In the progress of the first reissue through the Patent Office, the applicant, on its requirement, struck out of the proposed specifica-

tion everything which suggested any other mode of fastening than one by which the frames were to be fastened to each other: *Held*, that the first reissue could not have been construed as claiming any other mode of fastening; that therefore the third reissue could not be construed as claiming any other mode of fastening; and that, as the defendant's structures would not have infringed any claim of the original patent, they could not be held to infringe any claim of the third reissue. *Yale Lock Manufacturing Co.* v. *James*, 447.

See JURISDICTION, A, 4, 5, 6.

PENNSYLVANIA.

See LOCAL LAW, 1, 2, 3, 4.

PERSON.

See CONSTITUTIONAL LAW, 10.

PETITION FOR REHEARING.

A petition for a rehearing of a case decided by a divided court is denied on the ground that no important constitutional question is involved. *Shreveport* v. *Holmes*, 694.

POLICE POWER.

See CONSTITUTIONAL LAW, 4, 5.

POWER.

A contract, made under authority of a statute, by a State with an individual to prosecute at his own expense before Congress and the Departments certain specified claims of the State against the United States, and to receive as full compensation for his services a certain rate of commission on the amounts collected by him, does not confer upon the agent a power, coupled with an interest in the subject of the contract, which will make the contract of agency irrevocable. *Missouri ex rel. Walker* v. *Walker*, 339.

POWER OF ATTORNEY.

A power of attorney authorized the donee to take possession of real estate by himself or by a person in his confidence, to cultivate it, to sell it, to exchange it or to alienate it. He indorsed it to A by a writing stating: "I transfer all my powers in favor of A, in order that in my name and as my attorney he may take possession," &c. *Held*, that the indorsement only gave it power to take possession, but no power to sell. *Williams* v. *Conger*, 397.

See EVIDENCE, 8, 9;
LOCAL LAW, 6, 7.

PRACTICE.

1. The opinion of the Supreme Court of Louisiana is strictly part of the record, and is so considered on writ of error from this court. *New Orleans Waterworks* v. *Louisiana Sugar Refining Co.*, 18.
2. The parties having compromised the suit, and stipulated that the plaintiff in error shall dismiss it, the court makes an order to enforce the stipulation, unless cause to the contrary be shown. *Addington* v. *Burke*, 693.
3. It being made to appear that one party to this suit had sold out to the other, and that the suit was prosecuted by the purchasing party for his own benefit, the court of its own motion, after notice and hearing, dismissed the case. *East Tennessee, Virginia & Georgia Railroad Co.* v. *Southern Telegraph Co.*, 695.

See APPEAL;
BILL OF EXCEPTIONS;
BILL OF REVIEW;
JURISDICTION, A, 2, 6, 8, 9;
PETITION FOR REHEARING.

PRESUMPTION.

See EVIDENCE, 9.

PUBLIC LAND.

1. A suit may be brought by the United States in any court of competent jurisdiction to set aside, cancel, or annul a patent for land issued in its name, on the ground that it was obtained by fraud or mistake. *United States* v. *San Jacinto Tin Co.*, 273.
2. The initiation and control of such a suit lies with the Attorney General as the head of one of the Executive Departments. *Ib.*
3. But the right to bring such a suit exists only when the government has an interest in the remedy sought by reason of its interest in the land, or the fraud has been practised on the government and operates to its prejudice, or it is under obligation to some individual to make his title good by setting aside the fraudulent patent, or the duty of the government to the public requires such action. *Ib.*
4. When it is apparent that the only purpose of bringing the suit is to benefit one of the two claimants to the land, and the government has no interest in the matter, the suit must fail. *Ib.*
5. In the case before us the alleged fraud, for which it is sought to annul the patent, is in the survey of a confirmed Mexican grant, on which the patent was issued; and it is charged that at the time the survey was made the Commissioner of the General Land Office, the Surveyor General for California, the chief clerk of the latter's office, and the deputy who made the survey, were interested in the ownership of the

grant, and by fraud made a false location of the land to make it contain valuable ores of tin not within its limits if fairly surveyed. *Ib.*

6. Of all the officers here charged, only Conway, the chief clerk, had any real interest in the claim, and he notified the Surveyor General of his interest, and refused to have anything to do with the survey; it is nowhere shown that he in any manner influenced the location of the survey, and it is denied under oath by all who took part in making it. *Ib.*

7. The fact is much relied on that some of these officers, after the patent was issued, took shares in a joint stock corporation organized to work the mine, but there is no proof that the shares were a voluntary gift or were for services rendered in locating the survey, and the fairness of the purchase of these shares after the patent issued is sustained by affirmative testimony. *Ib.*

8. The fact that this survey was contested at every step by interested parties, and was returned to the surveyor's office for correction, was twice before that office and twice before the Commissioner in Washington, and finally decided after six months' consideration by the Secretary of the Interior, confirming the decision of the Land Office, affords very strong evidence of the correctness and honesty of the survey. *Ib.*

9. In the *Maxwell Land Grant Case*, 121 U. S. 325, we expressed ourselves fully in regard to the testimony necessary to enable a court of chancery to set aside such a solemn instrument as a patent of the United States. It was there said, "that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt." There is no such convincing evidence of fraud in the present case. *Ib.*

10. Land within the limits of a valid Mexican grant (which grant was *sub judice* when the grant of public land in aid of the Pacific Railroads was made by the act of July 1, 1862, as amended July 2, 1864, and March 3, 1865), if found after the location of the railroads to be within the prescribed limits on either side of them, did not pass to the corporations as "public land," if it was described by specific boundaries; or if it was known or described by a name by which it could be identified; but if it was described as a specific quantity, within designated outboundaries containing a greater area, only so much land within the outboundaries as is necessary to cover the specific quantity granted is excluded from the grant to the railroad companies. *Doolan* v. *Carr*, 618.

See ASSIGNMENT OF ERROR;
EVIDENCE, 10, 11, 12.

PUBLIC RECORD.

See EVIDENCE, 4, 5.

RAILROAD.

1. The statute of the State of Arkansas of July 21, 1868, to aid in the construction of railroads, and the statute of that State of April 10, 1869, to provide for payment of interest upon the bonds of the State issued in aid of such construction, created no lien upon the property of a railroad company for whose benefit such state bonds were issued, in favor of the holder of the bonds, which, after a sale under foreclosure of a mortgage upon the property remained a lien upon it in the hands of the purchaser at the foreclosure sale. *Tompkins* v. *Little Rock & Fort Smith Railway*, 109.

2. The entire rolling stock of a railway company in Illinois was covered, as well as all its other property, by a mortgage to trustees to secure an issue of outstanding bonds. A judgment creditor of the company being about to levy upon some of the rolling stock, the company filed a bill in equity to restrain the levy and to set aside the judgment as obtained by fraud, and an injunction issued restraining the creditor from making the levy, a bond with surety being first filed, conditioned to pay the judgment debt if the injunction should be dissolved. The surety in that bond took as security a chattel mortgage of four locomotives. Proceedings were then taken for the foreclosure of the mortgage, and a receiver of all the property covered by the mortgage was appointed. Several suits against the company were then pending in which appeal had been taken and appeal bonds given, in order to protect the rolling stock. The receiver then suggested, making special mention of the above recited case, that the sureties should be protected in the event of adverse decisions, and the court authorized him in his discretion to protect such sureties as ought to be protected, by reason of the protection afforded to the property and assets of the company, by the giving of their bonds; and an order was made that all persons having claims or liens against the property or its proceeds should file intervening petitions on or before a day named. The surety in the injunction bond intervened within the time fixed, setting forth the facts, and that judgment had been recorded against him, and asking to be protected from the consequences of signing the bond, as the receiver had not been able to pay the debt of the judgment creditor. The property covered by the mortgage was then sold, and purchased by persons representing the bondholders, and it was referred to a master to report upon the intervening claims. The trustee and the receiver objected to the allowance of the claims of the surety on the injunction bond, on the ground that the execution in the original suit could not become a lien upon the property as against the mortgage bondholders, and on the further ground that the surety

had not paid the judgment debt. The surety then paid the judgment debt, and filed a supplemental petition, setting that fact forth and repeating this original application, but the master rejected the claim on the ground that the payment was not made when he filed his original claim, nor until the time had expired for claims to be presented. *Held:* (1) That the claim was presented in time; and that although the surety had not paid the judgment when the claim was presented, he was entitled in equity to be protected from making the payment; (2) That the purchaser at the foreclosure sale, having been represented in the foreclosure proceedings by the trustees of the mortgage were bound by whatever bound the trustees, including the orders of the court respecting the paramount liens of the intervening claimants; (3) That as, until the mortgage was enforced by entry or judicial claim, the personal property of the company was subject to its disposal in the ordinary course of its business, and to be seized and taken on execution for its debts, subject, however, to the contentions of the mortgage trustees, the act of the surety on the injunction bond had operated to keep the property together, and to keep up the railroad as a going concern; (4) That the taking of the chattel mortgage by him showed that he intended to look to the property, and not alone to the personal security of the company; (5) That the evidence referred to in the opinion showed that the receiver received moneys from which he might have paid the judgment debt; (6) That the purchasers of the property accepted a deed, executed under order of court, in which they recognized the right of the surety as an intervenor. *Union Trust Company* v. *Morrison*, 591.

3. The court does not intend, in this case, to decide anything in conflict with *Burnham* v. *Bowen*, 111 U. S. 776, and only decides that this claim, being based upon a *bona fide* effort by the intervenor to preserve the fund from spoliation after the mortgage debt was in arrear, and the right to reduce to possession had accrued, the claimant can pursue earnings which had been appropriated to the purchase of property that had been added to the fund. *Ib.*

4. The action of the intervenor not being taken for the purpose of being subrogated to the questionable rights of a judgment creditor, the court expresses no opinion upon the rights of an execution creditor, levying on the personal property of a railroad company in Illinois, as against those of a mortgagee. *Ib.*

5. The rule charging operating expenses of a railroad, debts due from it to connecting lines growing out of an interchange of business, debts due for the occupation of leased lines, and, generally, debts created under special circumstances which make an equity in favor of the unsecured debtor upon the gross income of the road before a fund arises for the payment of mortgage interest is not applicable to a fund realized from a sale of the road under foreclosure of a mortgage; and, as a general rule, unsecured debts of the company cannot, in such case, take prece-

dence over debts secured by prior and express liens in the distribution of the proceeds of the sale of the mortgaged property. *St. Louis, Alton &c. Railroad* v. *Cleveland, Columbus &c. Railway*, 658.

6. The court holds on the proof in this case: (1) that no gross earnings which should have been applied to the payment of the rent due the appellant were diverted to the payment of interest upon bonds of mortgage bondholders represented in this suit and interested in the distribution of the fund; and (2) that the appellant has no equitable right, as against the appellees, to priority of payment out of the fund. *Ib.*

See CONSTITUTIONAL LAW, 22, 23;
EQUITY, 7, 8, 9.

RECEIVER.

See EQUITY, 4, 5, 6, 7,
RAILROAD, 2.

REPLEVIN BOND.

In Maine, the plaintiff in a replevin suit for ice, gave a bond, with sureties, to the defendant, in the penalty of $30,000, conditioned to prosecute the suit to final judgments, and pay such damages and costs as the defendant should recover against them, "and also return and restore the same goods and chattels in like good order and condition as when taken, in case such shall be the final judgment." The ice was stated in the bond to be of the value of $15,000. In the suit there was a judgment for the return of the ice to the defendant, and for an amount of damages ascertained by the jury by allowing interest from the time the ice was taken, on a sum found to have been its value where and when it was taken, and also allowing the expenses of the defendant in preparing to remove the ice. The damages were paid but the ice was not returned. In a suit on the bond, *Held*, (1) The plaintiff in that suit was entitled to recover what the jury in the replevin suit had found to have been the value of the ice where and when it was taken, with interest thereon from the date of the verdict in the replevin suit; (2) It was not competent for the obligors in the bond to show that the ice was of less value than the amount stated in the suit of replevin and the bond; but it was competent for the obligee to show that such value was greater; (3) The finding of the jury in the replevin suits as to the value of the ice where and when it was taken, was competent and conclusive evidence, as against the obligors, of such value. *Washington Ice Co.* v. *Webster*, 426.

RES JUDICATA.

A cause was tried before a jury in a state court, and being taken to the highest court of the State, that court ordered a new trial, deciding that a certain document was admissible in evidence as an ancient deed.

After the cause was remanded to the trial court it was removed to the Circuit Court of the United States. *Held*, that its decision on that question was binding on the courts of the United States. *Williams* v. *Conger*, 397.

RETIRED PAY LIST.

See SALARY, 1;
STATUTE, A, 1.

RETIRING BOARDS OF THE NAVY.

See STATUTE, A, 1.

REVENUE LAWS.

Under § 12 of the act of June 22, 1874, c. 391, (18 Stat. 188,) merchandise can be forfeited independently of the imposition of the fine mentioned in that section. *Origet* v. *United States*, 240.

See EVIDENCE, 1, 2;
INFORMATION.

REVIEW.

See BILL OF REVIEW.

SALARY.

1. A naval officer being retired on furlough pay, under Rev. Stat. § 1454, for incapacity not the result of any incident of the service, and being subsequently transferred by the President, by and with the consent of the Senate, from the furlough to the retired pay list under Rev. Stat. § 1594, is entitled thereafter, under the second clause of Rev. Stat. § 1588, when not on active duty, to one-half the sea pay provided for the grade or rank held by him at the time of his retirement. *Potts* v. *United States*, 173.
2. A person who was appointed a midshipman in the navy in September, 1867, and an ensign in July, 1872, and as to whom the lowest grade having graduated pay held by him since last entering the service was, under the act of July 15, 1870, c. 295, 16 Stat. 330, § 3, that of ensign, is entitled to be credited, under the act of March 3, 1883, c. 97, 22 Stat. 473, with the time he so served as a midshipman, on the ground that service as a midshipman, at the naval academy, was service as an officer of the navy. *United States* v. *Baker*, 646.
3. Service by order of the Secretary of the Navy by an officer in the navy as executive officer on a recruiting ship at anchor in port at a navy-yard, and not in commission for sea service entitles him to receive pay for sea service. *United States* v. *Strong*, 656.

SALE.

The payee of a promissory note gave to the promisor a receipt acknowledging it as given for the purchase of personal property to be delivered

to the promisor on payment of his note. The note not being paid at maturity, the payee notified the promisor that he should not recognize his further claim to the property, and, after a further lapse of time without hearing from him, destroyed the note. *Held*, that the sale was conditional, not to be completed until payment of the note. *Davison* v. *Davis*, 90.

STATE.

See POWER.

STATUTE.

See TABLE OF STATUTES, CITED IN OPINIONS.

A. CONSTRUCTION OF STATUTES.

1. Section 1594, Rev. Stat. authorizing the transfer of a retired officer of the navy from the furlough to the retired pay list being intended to afford relief from the consequences of the findings of retiring boards, should be construed liberally: and being so construed, it is held that the President has power under it, with the advice and consent of the Senate, to make the transfer relate back to a time when, in his judgment, it ought to have been granted. *United States* v. *Burchard*, 176.
2. When there is any doubt as to the proper construction of a statute granting a privilege, that construction should be adopted which is most advantageous to the interests of the government, the grantor. *Hannibal & St. Jo. Railroad* v. *Missouri River Packet Co.*, 260.

See CLAIMS AGAINST THE UNITED STATES, 1;
COURTS OF THE UNITED STATES, 1, 2, 3;
CUSTOMS DUTY, 2, 3, 4, 5;
INSOLVENT DEBTOR, 1;
REVENUE LAWS.

B. STATUTES OF THE UNITED STATES.

See BILL OF EXCEPTIONS;
CONSTITUTIONAL LAW, A, 2, 17, 21;
COURTS OF THE UNITED STATES;
CUSTOMS DUTY, 1, 4, 6, 8;
HUSBAND AND WIFE, 6;
INFORMATION, 1, 4, 6;
JURISDICTION, A, 2, 7;
NATIONAL BANK, 2, 3;
NAVIGABLE STREAMS;
REVENUE LAWS;
SALARY;
STATUTE, A, 1;
TAX AND TAXATION, 1, 2.

C. STATUTES OF STATES AND TERRITORIES.

Arkansas. *See* RAILROAD, 1.
Iowa. *See* CONSTITUTIONAL LAW, 19.
Massachusetts. *See* COURTS OF THE UNITED STATES, 3;
NATIONAL BANK;
TAX AND TAXATION, 2, 3.
Texas. *See* INSOLVENT DEBTOR, 2, 3.

SUNDAY.

See COURTS OF THE UNITED STATES, 3.

TAX AND TAXATION.

1. The privilege conferred upon telegraph companies by Rev. Stat. § 5263 carries with it no exemption from the ordinary burdens of taxation in a State within which they may own or operate lines of telegraph. *Western Union Telegraph Co.* v. *Massachusetts*, 530.
2. The laws of Massachusetts impose a tax upon the Western Union Telegraph Company on account of the property owned and used by it within that State, the value of which is to be ascertained by comparing the length of its lines in that State with the length of its entire lines; and such a tax is essentially an excise tax, and is not forbidden by the fact of the acceptance on the part of the company of the rights conferred on telegraph companies by Rev. Stat. § 5263, nor by the commerce clause of the Constitution. *Ib.*
3. The principles established by the statutes of Massachusetts for regulating the taxation of corporations doing business within its limits, whether domestic or foreign, do not appear to be unfair or unjust. *Ib.*

See CONSTITUTIONAL LAW, 13, 14, 15, 21;
NATIONAL BANK.

TELEGRAPH COMPANIES.

See TAX AND TAXATION.

TEXAS.

See INSOLVENT DEBTOR;
LOCAL LAW, 6, 7.

WILLAMETTE RIVER.

See CONSTITUTIONAL LAW, 4.

UNITED STATES.

See PUBLIC LAND.