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ATTORNEY'S LIEN.

1. In this case it was held, on the facts, that the plaintiff in a suit in equity had not established his right to a decree that he is entitled to the one half of the attorney's fees in an award against Mexico by the joint United States and Mexican commission, which fees had been collected by the defendant. *Porter* v. *White*, 235.
2. The plaintiff failed to establish any equitable lien on the award, by showing a distinct appropriation of a part of it in his favor, or any agreement for his payment out of it. *Ib.*

BAIL BOND.

See INTEREST, 1;
JURISDICTION, B, 5.

BANKRUPTCY.

An assignee in bankruptcy appeared in a suit of equity which had been commenced by a bank against the bankrupt before his bankruptcy, to obtain a decree for the sale of securities pledged to the bank as col-

lateral, and defended upon the ground of usury and usurious payments of interest. More than five years after the appointment of the assignee the bank filed a supplemental bill, setting up a former adjudication between the bankrupt and the bank made after the commencement of the suit, but before the bankruptcy upon the matter so set up in defence by the assignee. *Held*, that the supplemental bill set up no new cause of action, but only matters operating as an estoppel which were not subject to the limitation prescribed by Rev. Stat. § 5057. *Jenkins* v. *International Bank*, 484.

CITATION.

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CLAIMS AGAINST THE UNITED STATES.

1. In order to make a claim against the United States one arising out of a treaty within the meaning of Rev. Stat. § 1066, excluding it from the jurisdiction of the Court of Claims, the right itself, which the petition makes to be the foundation of the claim, must derive its life and existence from some treaty stipulation. *United States* v. *Weld*, 51.
2. A claim against the United States made under the provisions of the act of June 5, 1882, 22 Stat. 98, c. 195, "reëstablishing the Court of Commissioners of Alabama Claims and for the distribution of unappropriated moneys of the Geneva Award," is not a claim growing out of the treaty of Washington within the sense of the word "treaty," as used in Rev. Stat. § 1066. *Ib.*
3. The payment of the expenses of the Geneva Arbitration has not been charged by Congress upon the fund received under the award made there. *Ib.*
4. A statute entitled "An act referring to the Court of Claims," etc., "for examination and report," and enacting that "the claims" "be, and the same are hereby, referred to the Court of Claims for adjudication according to law, on the proofs heretofore presented, and such other proofs as may be adduced, and report the same to Congress" confers upon that court full jurisdiction to proceed to final judgment, as in the exercise of its ordinary jurisdiction. *United States* v. *Irwin*, 125.
5. A statute conferring upon the Court of Claims power to consider and render judgment for claims "for property claimed to have been taken and impressed into the service of the United States in the year 1857 by orders of Colonel Albert Sidney Johnston in command of the Utah expedition, as well as for property alleged to have been sold to the government" does not authorize that court to consider and give judgment for losses consequent upon the refusal of Colonel Johnston to

permit the trains of the claimant to proceed upon their journey, arising from the mere detention and delay occasioned thereby. *Ib.*

6. It appearing from the findings of the court below that "plaintiff's animals were often used to aid in hauling government trains; and thus did extra work on insufficient food;" and this being a possible ground for recovery to some extent for property taken and impressed into the service of the United States; and it not appearing in the findings what amount is properly allowable therefor, the case is remanded for further proofs and findings in that respect. *Ib.*

7. On a petition for a writ of mandamus to the Secretary of State to compel him to pay to the petitioner the interest or income derived from the investment of a sum of money received by a predecessor of his, in office, as part of an award made by the Spanish-American Claims Commission, which sum of money had been eventually paid to the petitioner: *Held*, that the Secretary was not liable to pay such interest or income, because (1) The award was to be paid by the Spanish government to the government of the United States; (2) It was paid by the Spanish government to the Secretary of State of the United States, representing the government of the United States; (3) The money withheld was withheld by the United States, and the petitioner's claim, based on the withholding, was a claim against the United States. *Angarica* v. *Bayard*, 251.

8. Section 3737 of the Revised Statutes respecting the transfer of contracts with the United States does not embrace a lease of real estate, to be used for public purposes, under which the lessor is not required to perform any service for the government, and has nothing to do, in respect of the lease, but to receive from time to time the rent agreed to be paid. *Freedman's Saving and Trust Co.* v. *Shepherd*, 494.

9. When the government, as lessee of real estate occupied by it, recognizes through its proper officers a transfer of the property and an assignment of the lease, and an assignment of rent under it, and pays the rent, there is nothing in § 3477 Rev. Stat. respecting transfers and assignments of claims against the United States which invalidates that transaction for the benefit of a third party. *Ib.*

See INTEREST;
SALARY;
SET-OFF.

COLLECTOR OF CUSTOMS.

See PRINCIPAL AND AGENT.

COLLISION.

See COURT AND JURY, 1.

COMMON CARRIER.

See COURT AND JURY, 1;
RAILROAD, 2.

CONFLICT OF LAW.

See JURISDICTION, A, 6; B, 9; E.

CONSTITUTIONAL LAW.

A. CONSTITUTIONAL LAW OF THE UNITED STATES.

1. The State Board of Equalization of California having included in their assessment all the franchises of a railroad company, amongst which were franchises conferred by the United States, of constructing a railroad from the Pacific Ocean across the State as well as across the Territories of the United States, and of taking toll thereon; *held*, that the assessment of these franchises was repugnant to the Constitution and laws of the United States and the power given to Congress to regulate commerce among the several States. *California* v. *Central Pacific Railroad Co.*, 1.
2. Franchises conferred by Congress cannot, without its permission, be taxed by the States. *Ib.*
3. Congress has authority, in the exercise of its power to regulate commerce among the several States, to construct, or authorize individuals or corporations to construct, railroads across the States and Territories of the United States. *Ib.*
4. The Statute of Missouri which, as construed by the Supreme Court of that State, authorizes a special administrator, having charge of the estate of a testator pending a contest as to the validity of his will, to have a final settlement of his accounts, conclusive against distributees, without giving notice to them, is not repugnant to the clause of the Constitution of the United States which forbids a State to deprive any person of his property without due process of law. *RoBards* v. *Lamb*, 58.
5. The statute of Kansas of 1874, c. 93, § 1, p. 143, Comp. Laws Kansas, 1881, p. 784, which provides that "Every railroad company organized or doing business in this State shall be liable for all damages done to any employé of such company in consequence of any negligence of its agents, or by any mismanagement of its engineers, or other employés, to any person sustaining such damage," does not deprive a railroad company of its property without due process of law; and does not deny to it the equal protection of the laws; and is not in conflict with the Fourteenth Amendment to the Constitution of the United States in either of these respects. *Missouri Pacific Railway Co.* v. *Mackey*, 205.
6. This case is affirmed on the authority of *Missouri Pacific Railway Co.* v. *Mackey*, *ante*, 205. *Minneapolis & St. Louis Railway* v. *Herrick*, 210.
7. A single tax, assessed under the laws of a State upon receipts of a telegraph company which were partly derived from interstate commerce and partly from commerce within the State, and which were capable of separation but were returned and assessed in gross and without separation or apportionment, is invalid in proportion to the extent

that such receipts were derived from interstate commerce, but is otherwise valid; and while a Circuit Court of the United States should enjoin the collection of the tax upon the portion of the receipts derived from interstate commerce, it should not interfere with those derived from commerce entirely within the State. *Ratterman* v. *Western Union Telegraph Co.*, 411.

8. The decisions of this court respecting the taxation of telegraph companies reviewed. *Ib.*

9. The provision in article 3 of the Constitution of the United States that "the trial of all crimes, except in cases of impeachment, shall be by jury," is to be construed in the light of the principles which, at common law, determined whether or not a person accused of crime was entitled to be tried by a jury; and, thus construed, it embraces not only felonies punishable by confinement in the penitentiary, but also some classes of misdemeanors the punishment of which may involve the deprivation of the liberty of the citizen. *Callan* v. *Wilson*, 540.

10. The provisions in the Constitution of the United States relating to trial by jury are in force in the District of Columbia. *Ib.*

11. A person accused of a conspiracy to prevent another person from pursuing a lawful avocation, and, by intimidation and molestation, to reduce him to beggary and want, is entitled, under the provisions of the Constitution of the United States, to a trial by jury. *Ib.*

12. The Police Court of the District of Columbia is without constitutional power to try, convict, and sentence to punishment a person accused of a conspiracy to prevent another person from pursuing his calling and trade anywhere in the United States and to boycott, injure, molest, oppress, intimidate and reduce him to beggary and want, although the Revised Statutes relating to the District of Columbia provide that "any party deeming himself aggrieved by the judgment of the Police Court may appeal to the Supreme Court" of the District. *Ib.*

13. Where a telegraph company is doing the business of transmitting messages between different States, and has accepted and is acting under the telegraph law passed by Congress July 24th, 1866, no State within which it sees fit to establish an office can impose upon it a license tax, or require it to take out a license for the transaction of such business. *Leloup* v. *Port of Mobile*, 640.

14. Telegraphic communications are commerce, as well as in the nature of postal service, and, if carried on between different States, they are interstate commerce, and within the power of regulation conferred upon Congress, free from the control of state regulations, except such as are strictly of a police character; and any state regulations by way of tax on the occupation or business, or requiring a license to transact such business, are unconstitutional and void. *Ib.*

15. A general license tax on a telegraph company affects its entire business, interstate as well as domestic or internal, and is unconstitutional. *Ib.*

16. The property of a telegraph company, situated within a State, may be taxed by the State as all other property is taxed; but its business of an interstate character cannot be thus taxed. *Ib.*

17. The Western Union Telegraph Company established an office in the city of Mobile, Alabama, and was required to pay a license tax under a city ordinance, which imposed an annual license tax of $225 on all telegraph companies, and the agent of the company was fined for the non-payment of this tax: in an action to recover the fine, he pleaded the charter and nature of occupation of the company, and its acceptance of the act of Congress of July 24th, 1866, and the fact that its business consisted in transmitting messages to all parts of the United States, as well as in Alabama: *Held*, a good defence. *Ib.*

18. The Fourteenth Amendment to the Constitution was not designed to interfere with the exercise of the police power by the State for the protection of health, the prevention of fraud, and the preservation of the public morals. *Powell* v. *Pennsylvania*, 678.

19. The prohibition of the manufacture out of oleaginous substances, or out of any compound thereof other than that produced from unadulterated milk or cream from unadulterated milk, of an article designed to take the place of butter or cheese produced from pure unadulterated milk or cream from unadulterated milk; or the prohibition upon the manufacture of any imitation or adulterated butter or cheese, or upon the selling or offering for sale, or having in possession with intent to sell, the same, as an article of food, is a lawful exercise by the State of the power to protect, by police regulations, the public health. *Ib.*

20. Whether the manufacture of oleomargarine, or imitation butter, of the kind described in the act of the legislature of Pennsylvania of May 21, 1885, (Laws of Penn. of 1885, p. 22, No. 25,) is, or may be, conducted in such a way, or with such skill and secrecy, as to baffle ordinary inspection, or whether it involves such danger to the public health as to require, for the protection of the people, the entire suppression of the business, rather than its regulation in such manner as to permit the manufacture and sale of articles of that class that do not contain noxious ingredients, are questions of fact and of public policy, which belong to the legislative department to determine. *Ib.*

21. The Statute of Pennsylvania of May 21, 1885, "for the protection of the public health, and to prevent adulteration of dairy products and fraud in the sale thereof" neither denies to persons within the jurisdiction of the State the equal protection of the laws; nor deprives persons of their property without that compensation required by law; and is not repugnant in these respects to the Fourteenth Amendment to the Constitution of the United States. *Ib.*

22. No mode is provided by the Constitution and laws of the United States by which a person, unlawfully abducted from one State to another, and held in the latter State upon process of law for an offence against the State, can be restored to the State from which he was abducted. *Mahon* v. *Justice*, 700.

23. There is no comity between the States by which a person held upon an indictment for a criminal offence in one State can be turned over to the authorities of another State, although abducted from the latter. *Ib.*

24. A, being indicted in Kentucky for felony, escaped to West Virginia. While the governor of West Virginia was considering an application from the governor of Kentucky for his surrender as a fugitive from justice, he was forcibly abducted to Kentucky, and when there was seized by the Kentucky authorities under legal process, and put in jail and held to answer the indictment. *Held*, that he was not entitled to be discharged from custody under a writ of *habeas corpus* from the Circuit Court of the United States. *Ib.*

25. The authority of Congress to protect the poll books which contain the vote for a member of Congress, from the danger which might arise from the exposure of these papers to the chance of falsification or other tampering, is beyond question, and this danger is not removed because the purpose of the conspirators was to falsify the returns as to state officers found in the same poll books and certificates, and not those of the member of Congress. *In re Coy*, 731.

See COSTS;
INDICTMENT;
JURISDICTION, A, 4;
PUBLIC LAND, 5.

B. CONSTITUTIONAL LAW OF A STATE.

By the constitution of California two modes of assessment for taxation are prescribed: one, by a state board of equalization; the other, by county boards and local assessors. All property is directed to be assessed in the county, city, etc., in which it is situated, except that the franchise, roadway, road-bed, rails, and rolling-stock of any railroad operated in more than one county, are to be assessed by the state board, and apportioned to the several counties, etc. By an act of the legislature the state board is required to include in their assessment steamers engaged in transporting passengers and freights across waters which divide a railroad. This act was held by the Supreme Court of California, in *San Francisco* v. *Central Pacific Railroad Co.*, 63 Cal. 469, to be contrary to the constitution, and steamboats were held to be assessable by the county board, and not by the state board. This court, following that decision, and that of *Santa Clara County* v. *Southern Pacific Railroad Co.*, 118 U. S. 394, *holds* that the assessment of the steamers of a railroad company by the state board is in violation of the constitution of California, and void; and, being inseparably blended with the other property assessed, it makes the whole assessment void. *California* v. *Central Pacific Railroad Co.*, 1.

CONTRACT.

1. A contract in writing, by which a mining company agrees to sell and deliver lead ore from time to time at the smelting works of a partnership, to become its property upon delivery, and to be paid for after a subsequent assay of the ore and ascertainment of the price, cannot be assigned by the partnership, without the assent of the mining company, so far as regards future deliveries of ore. Nor is the mining company, by continuing to deliver ore to one of the partners after the partnership has been dissolved and has sold and assigned to him the contract, with its business and smelting works, estopped to deny the validity of a subsequent assignment by him to a stranger. *Arkansas Valley Smelting Co.* v. *Belden Mining Co.*, 379.

2. A proposition to pave streets in a municipality, made in writing by a contractor to the head of a board consisting of several members which by law was charged with the care and paving of the streets, although considered and agreed to by the head of the board, and although by his directions the secretary of the board wrote under it that it was "accepted by order of the board" and affixed his signature as secretary thereto, is not a "contract in writing signed by the parties making the same," if the action of the secretary was made without official acceptance of the proposition by the board, and without authority from them to write it. *Brown* v. *District of Columbia*, 579.

3. On the facts in this case the court holds: (1) that the alleged contract with the board of public works was not a valid contract; (2) that it was never ratified by the board; (3) that it was never ratified by Congress; (4) that the portion of the plaintiff's claim which was for work performed was rejected by the board of audit, and that the Court of Claims was therefore without jurisdiction to entertain it. *Ib.*

4. Analyzing the contract which is the subject of litigation, and which is set forth at length in the opinion, this court holds that the court below was in error in sustaining and allowing against Robbins, Rollins's claim for the payment of the two mortgages or deeds of trust, and subrogating him to the rights of the mortgagees Low, and the Mutual Benefit Life Insurance Company; and that the deed of subrogation from the latter company to the German-American Savings Bank was wrong and unauthorized, and should be vacated and declared void without the necessity of the intervention of a cross-bill for that purpose. *Robbins* v. *Rollins*, 622.

5. On the proof in this case the court holds that the plaintiff has failed to show such an agreement as can be made the basis of a decree in her behalf. *Nickerson* v. *Nickerson*, 668.

See ATTORNEY'S LIEN;
DISTRICT OF COLUMBIA;
RAILROAD, 1, 2.

CORPORATION.

1. A bill in equity filed in the Circuit Court of the United States in 1882 by a stockholder in a New York corporation, whose corporate term expired in 1878, to correct a deed of land in North Carolina made to the corporation in 1853, is barred by the statute of limitations in North Carolina, and by the general principles of courts of equity with regard to laches, unless a better reason for not instituting the suit earlier is given than the one given in this suit. *Taylor* v. *Holmes*, 489.
2. A stockholder in a corporation which has passed the term of its corporate existence, and has long ceased to exercise its corporate franchises, who desires to obtain equitable relief for it, must, in order to maintain an action therefor in his own name, show that he has endeavored in vain to secure action on the part of the directors, if there are any, or to have the stockholders elect a new board of directors, and must disclose when he acquired his interest in the corporation. *Ib.*
3. If a corporation by negligence cancels a person's stock, and issues certificates therefor to a third party, the true owner may proceed against the corporation to obtain the replacement of his stock, or its value, without pursuing the purchaser or those who hold under him. *St. Romes* v. *Levee Steam Cotton Press Co.*, 614.

See CONSTITUTIONAL LAW, A, 2.

COSTS.

This court has power, and it is its duty, to issue writs of attachment, for costs here against persons who intervene in this court by leave of court, and also against their sureties, in bonds for costs furnished by them by order of court on intervening. *Craig* v. *Leitensdorfer*, 764.

See JURISDICTION, B, 4.

COURT AND JURY.

1. In this case, which was an action for damages for a death caused, in a collision, by the alleged negligence of the owner of a vessel on which it was claimed the deceased was a passenger, the judgment below is reversed for error in refusing to direct a verdict for the defendant on the ground that there was no evidence that the deceased lost his life by reason of the collision, or by the negligence of the defendant, and in refusing to grant the request of the defendant to go to the jury on the question whether the deceased lost his life by reason of the collision. *Providence and Stonington Steamship Co.* v. *Clare*, 45.
2. In the courts of the United States the presiding judge may, in submitting a case to the jury, express his opinion on the facts; and when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to the jury, such expression is not reviewable on writ of error. *Rucker* v. *Wheeler*, 85.
3. In this case there was no error in the charge of the court to the jury. *Ib.*

COURT OF CLAIMS.

See CLAIMS AGAINST THE UNITED STATES, 1, 2; JURISDICTION, D.

CUSTOMS DUTIES.

1. Tissue paper, mainly if not exclusively used for making letter-press copies of letters or written matter, when imported into the United States, is not subject to duty as "printing paper," under Schedule M, § 2504 Rev. Stat., but as "other paper not otherwise provided for." *Lawrence* v. *Merritt*, 113.

2. Goods made of calf hair and cotton were imported in November, 1876. The collector assessed duties on them at 50 cents a pound, and 35 per cent ad valorem, as upon goods made of wool, hair, and cotton, under Schedule L of § 2504 of the Revised Statutes, p. 471, 2d ed. The goods contained no wool. The importer protested that the goods were liable to less duty under other provisions. In an action to recover back the alleged excess paid, the defendant, at the trial, sought to support the exaction of the duties under the first clause of § 2499, commonly called the "similitude" clause. *Held*, that this was a proper proceeding under the pleadings in the case. *Herrman* v. *Arthur*, 363.

3. The court below having directed a verdict for the defendant, this court reversed the judgment, on the ground that the question of similitude was one of fact, which should have been submitted to the jury, as it appeared that the imported goods were of inferior value and material as compared with the goods to which it was claimed they bore similitude. *Ib.*

4. The case of *Arthur* v. *Fox*, 108 U. S. 125, commented on. *Ib.*

5. Hosiery, composed of wool and cotton, was imported in 1873. The collector assessed the duties at 35 per cent ad valorem, and 50 cents a pound, less 10 per cent, under § 2 of the act of March 2d, 1867, c. 197, 14 Stat. 561, as manufactures made in part of wool, "not herein otherwise provided for." The importer claimed that the goods were dutiable under § 22 of the act of March 2, 1861, c. 68, 12 Stat. 191, and § 13 of the act of July 14, 1862, c. 163, 12 Stat. 556, as stockings made on frames, worn by men, women, and children, at 35 per cent ad valorem, less 10 per cent. In a suit to recover back the excess of duties, the court directed a verdict for the importer: *Held*, that this was error, because the hosiery was not otherwise provided for in the act of 1867, and was a manufacture made in part of wool. *Arthur* v. *Vietor*, 572.

6. The case of *Vietor* v. *Arthur*, 104 U. S. 498, commented on, and explained, and distinguished. *Ib.*

7. Under Rev. Stat. § 2907, and the act of June 22, 1874, c. 391, 18 Stat. 186, § 14, p. 189, as construed by the Treasury Department for many years without any attempt to change it or until now to question its

correctness, goods imported into the United States from one country which, in transportation to the port of shipment pass through another country, are not subject to have the transportation charges in passing through that other country added to their original cost in order to determine their dutiable value. *Robertson* v. *Downing*, 607.

8. When after duties have been liquidated a reliquidation takes place, the date of the reliquidation is the final liquidation for the purpose of protest. *Ib.*

9. The Treasury Department not having objected that an appeal was too early, this court must assume that there was good reason for its action. *Ib.*

See EVIDENCE, 4.

DEED.

Under the statutes of Virginia, which were in force in September, 1837, and equally under the statutes of Ohio, which were in force at that time, a deed by husband and wife conveying land of the wife, was inoperative to pass her title, unless the husband, she having duly acknowledged the deed, signified his assent to the conveyance in her lifetime by an acknowledgment in the form prescribed by law. *Sewall* v. *Haymaker*, 719.

See EVIDENCE, 1, 2.

DISTRICT OF COLUMBIA.

Plaintiff and the Board of Public Works of the defendant entered into a contract by which plaintiff was to do certain work on a street in the city of Washington and receive payment therefor at the rate of 30 cents per cubic yard for grading, and 40 cents per cubic yard for excavation and refilling, to be measured by excavation only. The Board had before then entered in its record and notified its engineer, auditor and contract-clerk that for rock excavation contractors should be paid $1.50 per cubic yard in ditches and sewers, and $1.00 per cubic yard in street grading, etc. Plaintiff did his work, was paid at the contract price, and brought this action to recover for rock excavation, claiming that it was outside of the contract. *Held:* (1) That it was not outside of the contract. (2) That the act of February 21, 1871, 16 Stat. 419, c. 62, forbade the Board to contract except in writing, and forbade the allowance of extra compensation for work done under a written contract. (3) That the entry in the journal of the Board could not affect plaintiff's contract. *Barnard* v. *District of Columbia*, 409.

See CONSTITUTIONAL LAW, A, 10, 12;
CONTRACT, 2, 3;
LACHES.

EJECTMENT.

1. In an action of ejectment the description of the land claimed was as follows: "commencing at the base of said mountain east of Bear

Creek and running southeast and parallel with Coley tunnel through said mountain five thousand feet from the mouth or starting point of said tunnel at a stake marked and in or at the mouth of said Silver Gate tunnel and two hundred and fifty feet northeast and two hundred and fifty feet southwest from said stake or tunnel to its termination." *Held*, that it was a sufficient description. *Glacier Mountain Silver Mining Co.* v. *Willis*, 471.

2. In ejectment for the possession of a mine in Colorado, the complaint, after describing the land and a tunnel claim therein, averred that "the said tunnel claim so located embraces many valuable lodes or veins which have been discovered, worked, and mined by the plaintiff and its grantors." *Held*, that this was a sufficient description of the lodes for which recovery was asked. *Ib.*

3. A complaint in ejectment in Colorado, for a mine, which alleges a valid and legal location by those under whom the plaintiff claims, and possession and occupation by the plaintiff for more than five consecutive years prior to the ouster, and payment of taxes by him during that time, sets up a sufficient claim to title as against everybody except the United States. *Ib.*

See JUDGMENT, 1;
LOCAL LAW, 1, 5.

ELECTION OF MEMBERS OF CONGRESS.

See CONSTITUTIONAL LAW, A, 25.

EQUITY.

1. The complainant's bill alleged that he was a judgment creditor of a railroad company; that the Board of Commissioners of Bourbon County had subscribed to the stock of the railroad company, and had voted upon it at the meetings of the corporation, and had thereby become bound to the company to issue to it bonds of the county equal to the par value of the stock; that the bonds had not been issued; and that the obligation was still outstanding. The remedies sought for were, (1) that the company should be ordered to assign to the complainant its claim against the county; and (2) a decree against the county ordering it to issue the bonds, and to deliver them to the complainant, to be credited upon his judgment at their face value. *Held*, (1) That the right to proceed against the county and its officers to compel the issue of the bonds was a purely legal right, to be prosecuted at law, in mandamus, whether the proceeding was in the name of the railroad company or of its privy by assignment; (2) that the equitable nature of the complainant's rights against the company furnished no ground for the support of such a bill in equity against the county; and (3) that the bill should be dismissed as to the county without prejudice to the complainant's right to proceed at law to ob-

tain the issue of the bonds, after acquiring the rights of the railroad. *Smith* v. *Bourbon County*, 105.

See ATTORNEY'S LIEN;
CORPORATION, 1, 2;
JURISDICTION, A, 1;
LACHES;
LIMITATION, STATUTES OF;
RAILROAD, 3.

ESTOPPEL.

See BANKRUPTCY.

EVIDENCE.

1. The statutes of Michigan require the attestation of two witnesses to the grantor's signature. A deed of husband and wife was offered in evidence, the attestation to which was: "Signed, sealed, and delivered in presence of S. W. for" the husband; "W. H. R., G. H. for" the wife; and there was a certificate that "the word 'half' in the twelfth line was interlined before signing. S. W., E. W." E. W. signing this certificate with S. W. was the justice of the peace who took the acknowledgment, and his certificate of acknowledgment stated that he knew the person who made the acknowledgment to be the person who executed the instrument. *Held*, that the execution of the deed was proved, and it was properly admitted in evidence. *Culbertson* v. *The H. Witbeck Co.*, 326.
2. A certificate by a master in chancery and notary public in New Jersey, taking an acknowledgment there of a deed of land in Michigan that he is "satisfied that the parties making the acknowledgment are the grantors in the within deed of conveyance," is a sufficient certificate that they were the same persons as those named as grantors in the deed; but if defective in this respect, the defect is cured under the laws of Michigan by a certificate from the proper official that the person taking the acknowledgment was "a master in chancery and notary public," and that "the annexed instrument is executed and the proof of acknowledgment thereto taken in accordance with the laws of the State of New Jersey." *Ib.*
3. An objection as to the sufficiency of a certificate of a register of deeds to an instrument offered in evidence which was not made at the trial cannot be taken here. *Ib.*
4. Letters from the Secretary of the Treasury to a collector of customs, affirming an assessment of duty, and to an importer acknowledging the receipt of his appeal from the collector's assessment, are admissible in evidence to show that an appeal was taken. *Robertson* v. *Downing*, 607.

See LOCAL LAW, 5.

EXECUTIVE.

See CLAIMS AGAINST THE UNITED STATES, 7;
SECRETARY OF STATE.

EXECUTOR AND ADMINISTRATOR.

See CONSTITUTIONAL LAW, A, 4.

EXTRADITION.

1. On the hearing of an appeal from a judgment of a Circuit Court, discharging a writ of *habeas corpus* which had been issued on the petition of a person arrested for a crime committed in a foreign country, and held for extradition under treaty provisions, the jurisdiction of the commissioner and the sufficiency of the legal ground for his action are the main questions to be decided; and this court declines to consider questions respecting the introduction of evidence, or the sufficiency of the authentication of documentary proof. *Benson* v. *McMahon*, 457.
2. When a person is held for examination before a commissioner, to determine whether he shall be surrendered to the Mexican authorities, to be extradited for a crime committed in Mexico, the question to be determined is, whether the commission of the crime alleged is so established as to justify the prisoner's apprehension and commitment for trial if the offence had been committed in the United States; and the proceeding resembles in its character preliminary examinations before a magistrate for the purpose of determining whether a case is made out to justify the holding of a person accused, to answer to an indictment. *Ib.*
3. The crime of "forgery," as enumerated in article 3 of the Treaty of Extradition with Mexico of June 20, 1862, is not confined to the English common law offence of forgery; but it includes the making, forging, uttering, and selling to the public, fraudulent printed tickets of admission to an operatic performance, bearing on their face in print the name of the manager of the operatic company, and also stamped with his name and seal. *It seems* that such an offence is also included in the crime of forgery as defined by the English common law. *Ib.*

FORGERY.

See EXTRADITION, 3.

GENEVA AWARD.

See CLAIMS AGAINST THE UNITED STATES, 2, 3.

HABEAS CORPUS.

The writ of *habeas corpus*, in case of a person held a prisoner by sentence of court, can only release the prisoner when it is shown that the court

had no jurisdiction to try and punish him for the offence. The inquiry in such case is not whether there is in the indictment such specific allegation of the details of the charge as would make it good on demurrer, but whether the indictment describes a class of offences of which the court has jurisdiction, and alleges the defendant to be guilty. If the record of the case in which judgment of imprisonment is pronounced contains no charge of such offence, he should be discharged. *In re Coy*, 731.

See EXTRADITION, 1.

HUSBAND AND WIFE.

See DEED;
WRIT OF ERROR, 2.

INDIAN-TRUST BONDS.

See SET-OFF.

INDICTMENT.

In an indictment in a court of the United States for a conspiracy to induce officers named in the opinion to omit their duty, in order that documents therein mentioned might come to the hands of improper persons who tampered with and falsified the returns, it is not necessary to allege or prove that it was the intention of these conspirators to affect the election of the member of Congress who was voted for at that place, the returns of which were in the same poll books, tally sheets, and certificates with those for state officers. *In re Coy*, 731.

See CONSTITUTIONAL LAW A. 25;
JURISDICTION C

INSURANCE.

1. A provision in a policy of fire insurance, that if the interest of the assured in the property is "any other than the entire, unconditional and sole ownership for the use and benefit of the assured," or is "incumbered by any lien, whether by deed of trust, mortgage or otherwise," it must be so represented in the policy, does not, if it is stated that the property is incumbered, require a statement of the nature or amount of the incumbrances. *Hosford* v. *Germania Fire Ins. Co.*, 399.
2. An application for fire insurance, expressly made a part of the policy and a warranty by the assured, contained these questions and answers: "Is there any incumbrance on the property? Yes. If mortgaged, state the amount. $3000." *Held*, that an omission to state that the property was incumbered otherwise than by mortgage was no breach of the warranty. *Ib.*

3. A warranty, in a contract of fire insurance, that "smoking is not allowed on the premises," is not, if smoking is then forbidden on the premises, broken by the assured or others afterwards smoking there. *Ib.*

4. An application for fire insurance, warranted to be "a just, full and true exposition of all the facts and circumstances in regard to the condition, situation, value, ownership, title, incumbrances of all kinds, insurance and hazard of the property to be insured," contained these questions: "Is there a mortgage, deed of trust, lien, or incumbrance of any kind on property? Amount, and in whose favor?" *Held*, that the questions related only to incumbrances created by the act or with the consent of the applicant, and that an omission to disclose an existing lien created by statute for unpaid taxes was no breach of the warranty. *Hosford* v. *Hartford Fire Ins. Co.*, 404.

5. In an action upon a policy of insurance by which the insurer agreed to pay the sum insured to the beneficiary within ninety days after sufficient proof that the insured within the continuance of the policy had sustained bodily injuries, effected through external, violent and accidental means, and that such injuries alone occasioned death within ninety days from their happening, but that no claim should be made when the death or injury was the result of suicide (felonious or otherwise, sane or insane) the burden of proof is on the plaintiff, (subject to the limitation that it is not to be presumed as matter of law that the deceased took his own life or was murdered,) to show that the death was caused by external violence, and by accidental means; and no valid claim can be made under the policy if the insured, either intentionally, or when insane, inflicted upon himself the injuries which caused his death, or if his death was caused by intentional injuries inflicted upon him by some other person. *Travellers' Ins. Co.* v. *McConkey*, 661.

INTEREST.

1. No interest can be recovered in an action by the United States upon a bail bond conditioned for the appearance of a person to answer to an indictment for forgery. *United States* v. *Broadhead*, 212.

2. This case falls within the well-settled principle that interest is not allowed on claims against the United States, unless the government has stipulated to pay interest, or it is given by express statutory provision. *Angarica* v. *Bayard*, 251.

3. No claim for the allowance of interest can be predicated on the language of any notification, or circular or letter which issues from the Department of State, during the administration of a predecessor of the Secretary; no binding contract for the payment of interest is thereby created; and the existing Secretary is at liberty to act on his own judgment, irrespective of anything contained in any such notification, circular or letter. *Ib.*

INTERVENOR.

See RAILROAD, 3.

JUDGMENT.

1. Plaintiffs' complaint in ejectment sought to recover "all the north part of lot 2, in section 36, township 38 N. of range 10 W. of the second principal meridian, which lies west of the track of the Lake Shore and Michigan Southern Railroad, and north of a line parallel with the north line of said lot 2, and 753 feet south therefrom." Defendant denied every allegation. The record showed that after the parties had submitted the cause to the court, "the court, having heard the evidence, and being fully advised, finds for the plaintiffs, and orders and adjudges that they are entitled to and shall have and recover of the defendant the possession of so much of said lot 2 as lies south of the south line of lot number 1, as indicated by a fence constructed and maintained by the defendant as and on said south line . . . which the plaintiffs shall recover of the defendant." *Held*, (1) That though the order embraced both a finding and a judgment, it was not for that reason a nullity; (2) That it was not a general finding for the plaintiffs, but a finding for them as to the part of the land described in the order, and that the judgment for the possession of this part of the premises was in accordance with the local law of the district in which the cause was tried, Rev. Stat. Indiana, 1881, § 1060; (3) That this court is bound to assume from the record that the tract described in the order was a part of the premises described in the complaint. *Morgan* v. *Eggers*, 63.
2. If, after transfer by the plaintiff of the subject of controversy in a litigation in Louisiana, the court, on being informed of the transfer, refuses to permit the suit to be discontinued by the plaintiff, a judgment does not make it *res judicata* as to the assignee. *St. Romes* v. *Levee Steam Cotton Press Co.*, 614.
3. Dismissal of a suit for want of parties does not make the subject of it *res judicata*. *Ib.*

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. A brought ejectment against B. B thereupon filed a bill in equity, (which was subsequently amended,) to remove a cloud from the title, setting up that the deed under which A claimed was a mortgage, with a written contract of defeasance. A demurred. Upon hearing on the demurrer it was ordered that if B should, within fifteen days, bring into court the amount due on the mortgage, and interest, and all taxes paid by A., etc., A should be restrained from further persecution of the ejectment suit; but if he should fail to do so within that time, the bill should be dismissed and the defendant allowed to proceed with the suit. *Held*, (1) That this order, made upon hearing of a de-

murrer to a bill in chancery, was wholly irregular; but (2) That this court was without jurisdiction as the order was not a final decree. *Jones* v. *Craig*, 213.

2. It appearing that, before reaching and deciding the federal question discussed here, the Supreme Court of South Carolina had already decided that the plaintiff's action could not be sustained according to the meaning of the provisions of the statute of that State under which it was brought, this court dismisses the writ of error for want of jurisdiction, under the well settled rule that, to give this court jurisdiction of a writ of error to a state court it must appear affirmatively not only that a federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it. *De Saussure* v. *Gaillard*, 216.
3. When a State grants a right of remedy against itself, or against its officers in a case in which the proceeding is in fact against the State, it may attach whatever limitations and conditions it chooses to the remedy; and its own interpretation and application of its statutes on that subject, given by its own judicial tribunals, are conclusive upon the parties seeking the benefits of them. *Ib.*
4. This court has not original jurisdiction of an action by a State upon a judgment recovered by it in one of its own courts against a citizen or a corporation of another State for a pecuniary penalty for a violation of its municipal law. *Wisconsin* v. *Pelican Insurance Co.*, 265.
5. An action in the Circuit Court by a patentee for breach of an agreement of a licensee to make and sell the patented article and to pay royalties, in which the validity and the infringement of the patent are controverted, is a "case touching patent rights," of which this court has appellate jurisdiction, under § 699 of the Revised Statutes, without regard to the sum or value in dispute. *St. Paul Plow Works* v. *Starling*, 376.
6. The copies of orders made in this cause by the Circuit Court of the State after the entry of the final judgment to which the writ of error from the Supreme Court of the State was directed, although annexed to the petition for that writ, were too late in the cause to constitute a ground for importing a federal question into it. *Calhoun* v. *Lanaux*, 634.

See COSTS; MANDAMUS; PRACTICE, 1; WRIT OF ERROR, 2.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Two plaintiffs, citizens of Georgia, brought a suit in equity, in the Circuit Court of the United States for the District of South Carolina, against S., a citizen of South Carolina, and H., a sister of the plaintiffs, also a citizen of South Carolina, to set aside the alleged payment by

S. to R., another defendant, of a bond and mortgage given by him to B., the father of the plaintiffs and of H., and to have the satisfaction of the mortgage annulled, and the bond and mortgage delivered up by S., and the bond paid, and the mortgaged premises sold. Before the alleged payment to R., B. had assigned the bond to R., in trust for the three children. When the suit was brought, B. was a citizen of South Carolina: *Held*, that, as B. could not have brought the suit, the Circuit Court was forbidden to take cognizance of it, by § 1 of the act of March 3, 1875, c. 137, 18 Stat. 470. *Blacklock* v. *Small*, 96.

2. This suit was a suit founded on contract, in favor of an assignee, and was not a suit founded on the wrongful detention by S. of the bond and mortgage. *Ib.*

3. The defendant H., by answer, joined in the prayer of the bill, and asked to have the bond and mortgage declared valid in the hands of R., as trustee, for the benefit of H. and the plaintiffs, and for a decree that S. pay to H. and the plaintiffs the amount secured by the bond and mortgage: *Held*, that as H. and S. were, when the suit was brought, both of them citizens of South Carolina, the Circuit Court had no jurisdiction. *Ib.*

4. As that court had dismissed the bill on its merits, with costs, and the plaintiffs and H. had appealed to this court, the decree was reversed, with costs, in this court against the appellants, and the case was remanded, with a direction to dismiss the bill for want of jurisdiction, without costs of that court. *Ib.*

5. On the authority of *United States* v. *Hill*, 123 U. S. 681, it is *held*, that an action against sureties to recover on a bail bond conditioned for the appearance of the principal to answer to an indictment for making and forging checks against an assistant treasurer is not a case for the enforcement of a revenue law, within the intent of Rev. Stat. § 699. *United States* v. *Broadhead*, 212.

6. A petition by defendant for removal of a cause from a state court, on the ground of citizenship, which alleges that he is a citizen of another named State of which none of the complainants are citizens, is insufficient unless the record discloses that they are citizens of other named States of which the defendant is not a citizen, or are aliens. *Cameron* v. *Hodges*, 322.

7. This court of its own motion uniformly takes the objection of want of jurisdiction in the Circuit Court, especially as regards citizenship. *Ib.*

8. A want of jurisdiction of a Circuit Court arising out of a defect in the allegations of citizenship in a cause removed from a state court, on the ground of citizenship, cannot be cured by affidavits here. *Ib.*

9. This court questions the opinion of the Supreme Court of Louisiana that the Circuit Court of the United States would have no authority to order the erasure of an incumbrance from a mortgage book within the State. *Calhoun* v. *Lanaux*, 634.

See PRACTICE, 2.

C. Jurisdiction of District Courts of the United States.

The acts of Congress and the statutes of Indiana make it a criminal offence for an inspector of elections, or other election officer, at which an election for a member of Congress is held, to whom is committed the safe keeping and delivery to the board of canvassers of the poll books, the tally sheets, and the certificates of the votes, to fail or omit to perform this duty of safe-keeping and delivery. The prisoners in the present case are specifically charged with an offence against the election laws of Indiana and of the United States, by a conspiracy to violate those laws; and this court holds that the District Court of the United States for Indiana had jurisdiction to try and punish them for that offence, and the judgment of the Circuit Court refusing the writ of *habeas corpus* is accordingly affirmed. *In re Coy*, 731.

See Constitutional Law, A, 25;
Indictment.

D. Jurisdiction of the Court of Claims.

Under § 1069 of the Revised Statutes, the Court of Claims had no jurisdiction of so much of the claim to the 5 per cent fund, belonging to the State of Louisiana under the provision of the Swamp Land Acts, as was credited to the State on the books of the Treasury Department more than six years before the bringing of the suit. *United States* v. *Louisiana*, 182.

See Claims against the United States, 1, 2, 4, 5, 6.

E. Jurisdiction of State Courts.

The appointment by a Circuit Court of the United States of a receiver of a corporation organized under the laws of a State does not deprive a court of the State of jurisdiction to hear and determine an application for a mandamus directing a recorder of mortgages in the State to cancel and erase from the books of his office an inscription against property of the petitioner in favor of the corporation, the petition describing it as a mortgage on real estate, and setting forth the interest of the corporation. *Calhoun* v. *Lanaux*, 634.

LACHES.

G. performed work for the District of Columbia, and received therefor in January, 1874, certificates of indebtedness of the Board of Public Works of the District. He pledged these certificates as collateral for a 60-days note for an amount much less than their face, and made a general transfer of them to the pledgee. Before the maturity of the note his creditor absconded. He then notified the President and the Treasurer of the Board verbally of the transfer, and verbally protested to the Board against payment of the certificates to the persons who

had become holders of them. In June, 1874, the Board was abolished, and a Board of Audit was created to examine and audit for settlement the outstanding certificates of indebtedness issued by it. In October, 1874, G. filed a bill in equity for the purpose, among other things, of restraining the Board of Audit from allowing these certificates to their holders. On demurrer a restraining order, which had been made under this bill, was dissolved. The Board of Audit then allowed the certificates to their holders, and 3.65 bonds of the District were issued for them. G. then commenced this action against the District. *Held*, that he had been guilty of gross negligence in the matter, which prevented him from recovering against the District. *Gleason* v. *District of Columbia*, 133.

See CORPORATION, 1;
LIMITATION, STATUTES OF.

LEASE.

See CLAIMS AGAINST THE UNITED STATES, 8, 9.

LIEN.

See ATTORNEY'S LIEN.

LIMITATION, STATUTES OF.

The United States are not bound by any statute of limitations, nor barred by laches of their officers in a suit brought by them, as sovereign, to enforce a public right, or to assert a public interest; but where they are formal parties to the suit, and the real remedy sought in their name is the enforcement of a private right for the benefit of a private party, and no interest of the United States is involved, a court of equity will not be restrained from administering the equities between the real parties by any exemption of the government, designed for the protection of the rights of the United States alone. *United States* v. *Beebe*, 338.

See BANKRUPTCY;
CORPORATION, 1;
LOCAL LAW, 6.

LOCAL LAW.

1. Under the Code of Civil Procedure of California a plaintiff asserting title to lands, though out of possession, may maintain an action to determine an adverse claim, estate, or interest in the premises. *More* v. *Steinbach*, 70.
2. While it is quite competent for the State of Virginia to impose upon the movable personal property of the Baltimore and Ohio Railroad Company, (a corporation organized under the laws of Maryland,)

which is brought within its territory and there habitually used and employed, the same rate of taxation which is imposed upon similar property used in like way by its own citizens, it has not done so in the taxing laws of the State which were in force when the tax in controversy was imposed. *Marye* v. *Baltimore and Ohio Railroad*, 117.

3. The statutes of Virginia relied upon by the plaintiff in error are not applicable to the Baltimore and Ohio Railroad Company, but are confined to corporations which derive their authority from the laws of Virginia. *Ib.*
4. In Michigan a declaration of trust which declares that the parties executing it hold the property in trust for themselves and two other persons is an express trust, and under the laws of that State the whole estate in law and in equity is vested in the trustees. *Culbertson* v. *The H. Witbeck Co.*, 326.
5. When a party to an action of ejectment in Michigan sets up a tax title, several years old, it is competent for the other party, after showing by the official records that an illegal expenditure of public money was ordered, sufficient under the laws of the State to vitiate the whole tax if paid from it, to prove by parol evidence that the sum so ordered to be paid was paid out of the moneys raised by the tax in question. *Ib.*
6. In a suit in Louisiana against a corporation for damages for refusal to permit a transfer of shares on its books, the prescription of ten years applies: but that prescription is not available in this case. *St. Romes* v. *Levee Steam Cotton Press Co.*, 614.

See CONSTITUTIONAL LAW, A, 4; CORPORATION, 1; DEED; EVIDENCE, 1, 2; JUDGMENT, 2; NATIONAL BANK; TRUST, 3; WILL, 6.

MAILS.

See STATUTE, A, 1.

MANDAMUS.

When the amount in controversy in a case decided in the Circuit Court is too small to come here by writ of error, this court is without power by writ of mandamus to compel the judge of the Circuit Court to reverse his own judgment. *In re Burdett*, 771.

See CLAIMS AGAINST THE UNITED STATES, 7; EQUITY; SECRETARY OF STATE.

MARRIED WOMAN.

See DEED.

MEXICAN GRANT.

See PUBLIC LAND, 1, 2, 3, 8–13.

MINERAL LAND.

See EJECTMENT;
PUBLIC LAND, 6, 7, 14.

MORTGAGE.

1. When a mortgage contains no provision for the payment of rents and profits to the mortgagee while the mortgagor remains in possession, the mortgagee is not entitled, — as against the owner of the equity of redemption, — to the rents and profits of the mortgaged premises until he takes actual possession, or until possession is taken in his behalf; even though the income may be expressly pledged as security for the mortgage debt, with the right in the mortgagee to take possession upon failure by the mortgagor to perform the conditions of the mortgage. *Freedman's Saving and Trust Co.* v. *Shepherd*, 494.
2. When a decree of foreclosure and sale of mortgaged property grants to the purchaser a credit for part of the purchase money, reserving a lien upon the property to enforce its payment, the court may, if the purchaser make default, and no rights of innocent third parties have intervened, order a resale of the property upon a rule to the purchaser to show cause why it should not be done. *Stuart* v. *Gay*, 518.
3. The decree of foreclosure in this case conferred upon the purchaser at the foreclosure sale no such right of acquiring the securities of the lower classes to be paid from the fund realized from the sale, as would authorize him, as such purchaser, to dispute in a proceeding in the original suit for foreclosure to compel payment of the amount remaining due of the purchase money, the computations by the master, confirmed by the decree of the court, of the amounts which the creditors of the higher classes were to receive from the fund. *Ib.*
4. In marshalling the classes of debts entitled to be paid out of a fund arising from a sale of mortgaged property under a decree of foreclosure, it is immaterial whether the master calculates the interest to a day prior to the date of the decree of sale, or up to that day, for the purpose of determining the principal sum that is to bear interest thereafter. *Ib.*

See RAILROAD, 3;
TRUST, 1.

MUNICIPAL BOND.

See MUNICIPAL CORPORATION.

MUNICIPAL CORPORATION.

1. In this case certain negotiable bonds, issued by the town of Milan, Tennessee, were held to have been issued without lawful authority. *Kelley* v. *Milan*, 139.

2. A municipal corporation, in order to exercise the power of becoming a stockholder in a railroad corporation, must have such power expressly conferred by a grant from the legislature; and even such power does not carry with it the power to issue negotiable bonds in payment of the subscription, unless the latter power is expressly, or by reasonable implication, conferred by statute. *Ib.*
3. Certain provisions of the statutes of Tennessee considered and held not to confer power on the town of Milan to issue the bonds in question. *Ib.*
4. In a suit in chancery, brought by the town authorities to have the bonds declared invalid, a decree had been entered declaring them valid, on a consent to that effect signed by the mayor of the town: *Held*, that the consent of the mayor could give no greater validity to the bonds than they before had, and that the decree was not an adjudication of the question of such validity. *Ib.*
5. In this case, certain negotiable bonds issued by the town of Dyersburg, Tennessee, were held to have been issued without lawful authority. *Norton* v. *Dyersburg*, 160.
6. Certain provisions of the statutes of Tennessee considered and held not to confer power on the town of Dyersburg to issue the bonds in question. *Ib.*
7. The grant to a municipal corporation of the power to subscribe for stock in a railroad company does not carry with it the implied authority to issue negotiable bonds therefor; and such is the view of the Supreme Court of Tennessee. *Ib.*
8. In a suit at law against the town to recover on the bonds, no question growing out of the liability of the town for the subscription to the stock can be inquired into. *Ib.*

See CONTRACT, 2;
DISTRICT OF COLUMBIA;
EQUITY.

NATIONAL BANK.

1. The auditor of Cuyahoga County, Ohio, fixed the taxable value of shares in a national bank at 60 per cent of their true value in money, in accordance with the practice adopted for the valuation of other moneyed capital of individuals in the counties and State, and transmitted the same to the State Board of Equalization for incorporated banks. That board increased the valuation to 65 per cent, and this value, being certified back to the auditor, was placed by him on the tax list without a corresponding change being made in the valuation of other moneyed capital of individuals. *Held*, that this was such a discrimination as is forbidden by § 5219 of the Revised Statutes of the United States. *Whitbeck* v. *Mercantile Bank*, 193.
2. The statutes of Ohio regulating assessments for taxation allow an

owner of moneyed capital other than shares in a national bank to have a deduction equal to his *bona fide* indebtedness made from the amount of the assessment of the value of such moneyed capital; but they make no provision for a similar deduction from the assessed value of shares in a national bank, and provide no means by which such a deduction may be obtained. *Held:* (1) That the owners of such shares are entitled to have a deduction of their indebtedness made from its assessed value as in the case of other moneyed capital; and (2) that the right to it is not lost by not making a demand for it until the entire process of the appraisement and equalization of the value of the shares for taxation is completed, and the tax duplicate is delivered to the treasurer for collection. *Ib.*

3. The laws of Ohio regulating the taxation of shares in national banks considered. *Ib.*

NEGLIGENCE.

See COURT AND JURY, 1.

PARTIES.

See CORPORATION, 3;
WRIT OF ERROR, 2.

PATENT FOR INVENTION.

1. Letters-patent No. 243,674, granted to James Forncrook, June 28, 1881, for an "improvement in sectional honey-frames," on an application filed May 13, 1879, are invalid, for want of novelty. *Forncrook* v. *Root*, 176.
2. The claim of the patent, namely, "As a new article of manufacture, a blank for honey-frames formed of a single piece of wood, having transverse angular grooves *c*, longitudinal groove *d*, and recesses *b*, all arranged in the manner shown and described," is not infringed by a blank which does not contain the longitudinal groove, or any substitute or equivalent for it. *Ib.*
3. A patent for a bushing, or tapering ring of metal, for the bungs of casks, with a screw-thread on its outer surface, and with a notched flange at the edge, so as to enable the bushing to be forced into place by a wrench having a projection to fit the notch, was reissued, nearly seven years afterwards, for a bushing without any notch. *Held*, that the reissue was void. *Cornell* v. *Weidner*, 261.
4. Claims 1 and 2 of letters-patent No. 281,640, granted to Moses Mosler, July 17, 1883, for an improvement in fire-proof safes, namely, "1. An angle bar for safe-frames, consisting substantially as before set forth, of a right-angled iron bar, one of the sides of which is cut away, leaving a curve facing the uncut side, whereby said uncut side may be bent to bear upon said curve to form a rounded corner. 2. An angle

bar for safe-frames, consisting, substantially as before set forth, of a right-angled iron bar, one of the sides of which is cut away, with curved cuts meeting a right-angled cut, whereby the uncut side may be bent to form rounded corners," and the claim of letters-patent No. 283,136 granted to Moses Mosler, August 14, 1883, for an improvement in bending angle irons, namely, "The herein described process of bending angle irons, which consists in cutting away a portion of one web by a cut which severs the two webs at their junction, for a distance equal to the arc of the corner to be bent, and removes sufficient of metal in front of the single part of the uncut web to permit the same to bend to the desired angle and to insure the edges of the opening meeting to form a close joint as the bar is bent, substantially as shown and described," are invalid. *Mosler Safe and Lock Co.* v. *Mosler*, 354.

5. After a patent is granted for an article described as made by causing it to pass through a certain method of operation to produce it, the inventor cannot afterwards, on an independent application, secure a patent for the method or process of producing the identical article covered by the previous patent, which article was described in that patent as produced by the method or process sought to be covered by taking out the second patent. *Ib.*

6. The claim of letters-patent No. 273,585 granted to Moses Mosler, March 6, 1883, for an improvement in fire-proof safes, being for the combination, in a fire-proof safe, of the frames, the sheet metal cover, bent around the top sides and lower corners, with projecting metal bars, and removable bottom plate, substantially as described, and claim 3 of letters-patent No. 281,640, granted to Moses Mosler, July 17, 1883, for an improvement in fire-proof safes, namely, "3. In a safe, the combination of the front and back frames, formed of single bent angle bars, having one side cut away to leave curved ends, upon which the uncut side is bent to form rounded corners, and a metal sheet, E, bent around and secured to said frames to form the top end sides of the safe, substantially as described," are invalid. *Ib.*

7. Claim 1 of letters-patent No. 140,250 granted to James D. Cusenbary and James A. Mars, June 24, 1873, for an "improvement in ore-stamp feeders," namely, "The feeding cylinder I, mounted upon the movable timber H H, substantially as and for the purpose above described," is a claim only for making the timbers movable, by mounting them upon rollers, and does not involve a patentable invention. *Hendy* v. *Golden State and Miners Iron Works*, 370.

8. The defence of non-patentability can be availed of without setting it up in an answer. *Ib.*

9. There is no patentable combination, but merely an aggregation of the rollers and the feeding cylinder. *Ib.*

10. The specification requires the feeding cylinder to have chambers or depressions, and claim 1 does not cover a cylinder with a smooth surface not formed into chambers. *Ib.*

11. A patent for a lead-holding tube of a pencil, having at the lower end two or more longitudinal slots, a screw-thread inside, and a clamping-sleeve outside, each part of which, as well as the combination of two or more slots with the sleeve, or of a single slot with the screw-thread, has been previously used in such tubes, is void for want of invention. *Holland* v. *Shipley*, 396.

12. Claim 1 of letters-patent No. 154,989, granted to Jacob O. Joyce, September 15, 1874, for an improvement in lifting-jacks, namely, "A pawl for lever-jack with two or more teeth, and adapted to move in inclined slots, grooves, or guides formed in the frame, substantially as described," must be construed as limited to a pawl which acts wholly by gravity, and not at all by a spring, to press it against the teeth of the ratchet-bar. *Joyce* v. *Chillicothe Foundry*, 557.

13. Such claim is not infringed by a jack in which a spring is used to press the pawl against the teeth of the ratchet-bar, and in which there are no slots, guides or grooves formed in the frame, to guide the pawl. *Ib.*

14. Claim 1 of reissued letters-patent No. 6990, granted March 14, 1876, to Thomas R. Bailey, Jr., for an "improvement in hydrants," namely, "In combination with a hydrant or fire-plug, a detached and surrounding casing C, said casing adapted to have an independent up and down motion sufficient to receive the entire movement imparted by the upheaval of the surrounding earth by freezing, without derangement or disturbance of the hydrant or plug proper, substantially as shown," is invalid, as being an unlawful expansion of the original patent. *Flower* v. *Detroit*, 563.

15. The drawing of the original patent was materially altered, and new matter was introduced into the specification of the reissue. *Ib.*

16. The decision in *Parker & Whipple Co.* v. *Yale Clock Co.*, 123 U. S. 87, applied to this case. *Ib.*

17. In the present case the reissue was not applied for until nearly eight years after the original patent was granted, and the reissue was taken with the manifest intention of covering, by an enlarged claim, structures which in the meantime had gone into extensive public use, and which were not covered by any claim of the original patent. *Ib.*

18. Claim 3 of the reissue, namely, "The combination of the hydrant or fire-plug pipe A, supply pipe B, valve D, casing C, and stuffing-box H, substantially as and for the purpose shown," is either an unlawful expansion, in regard to the casing, of what is found in the original patent, or, if construed narrowly, in regard to the casing, is anticipated, on the question of novelty. *Ib.*

See JURISDICTION, A, 5.

POLICE COURT.

See CONSTITUTIONAL LAW, A, 12.

PRACTICE.

1. After hearing counsel the court of its own motion dismisses a case for want of jurisdiction. Plaintiff in error moves to reinstate it, supporting the motion by affidavits as to the value of the property in dispute. The court orders service on the other party, and on return vacates the judgment of dismissal. *Glacier Mountain Silver Mining Co.* v. *Willis*, 471.

2. There being nothing in the record to show that the Circuit Court had jurisdiction of the case, this court of its own motion reverses the judgment and remands the cause for further proceedings. *Hegler* v. *Faulkner*, 482.

3. A cause under submission having been dismissed by the court of its own motion for want of jurisdictional amount, the appellant moves to reinstate and submits affidavits. The court orders the motion continued, with leave to each party to file further affidavits. *Hunt* v. *Blackburn*, 774.

4. The court, for reasons stated in its opinion, denies a motion to vacate a supersedeas or to make an order that the appeal bond filed in the case does not operate as a supersedeas. *Western Air Line Construction Co.* v. *McGillis*, 776.

See CLAIMS AGAINST THE UNITED STATES, 6;
EQUITY;
JUDGMENT, 1;
JURISDICTION, B, 4, 7.

PRECATORY TRUST.

See WILL, 3, 4, 5.

PRINCIPAL AND AGENT.

A collector of customs is not personally liable for a tort committed by his subordinates, in negligently keeping the trunk of an arriving passenger on a pier, instead of sending it to the public store, so that it was destroyed by fire; where there is no evidence to connect the collector personally with the wrong, or that the subordinates were not competent, or were not properly selected for their positions. *Robertson* v. *Sichel*, 507.

PROMISSORY NOTE.

1. A promissory note which reads: "Four months after date we promise to pay to the order of George Moebs, Sec. & Treas., ten hundred sixty-one & $\frac{24}{100}$ dollars, at Merchants' & Manufacturers' National Bank, value received," signed: "Peninsular Cigar Co., Geo. Moebs, Sec. & Treas.," and indorsed: "Geo. Moebs, Sec. & Treas.," is a note drawn by, payable to, and indorsed by the corporation, and without ambi-

guity in the indorsement; and evidence is not admissible to show that it was the intention of the indorser in making the indorsement to bind himself personally. *Falk* v. *Moebs*, 597.

PUBLIC LAND.

1. The act of Congress of March 3, 1851, "to ascertain and settle the private land claims in the State of California," 9 Stat. 631, c. 41, created a board of commissioners to which all persons, claiming land by virtue of any right or title derived from the Spanish or Mexican government, were required to present their claims for examination and determination within two years from its date, with such documentary evidence and testimony of witnesses as they relied upon to support their claims, and provided, in substance, that if upon examination they were found by the board, and by the courts of the United States, to which an appeal could be taken, to be valid, the claims should be confirmed and surveyed, and patents issued therefor to the claimants; but that all lands, the claims to which were not presented to the board within that period, should be considered as a part of the public domain of the United States. *Held*, (1) That this provision requiring the presentation of their claims was obligatory on claimants, and that they were bound by the judgment of the board, if confirmed by the courts of the United States on appeal, and by the survey and location of the claim by the officers of the Land Department, following the final decree of confirmation; (2) That the patent of the United States, issued after the claim was surveyed and located, is conclusive, both as to the validity of the title of the claimant and the extent and boundaries of his claim, as against all parties not claiming by superior title, such as would enable them to contest the action of the government respecting the property. *More* v. *Steinbach*, 70.

2. In order that a perfect title to land might vest under a grant from the Mexican government a delivery of possession by its officers was necessary. The proceeding was termed a judicial delivery of possession. *Ib.*

3. The authority and jurisdiction of Mexican officials in California terminated on the 7th of July, 1846. No alcalde appointed or elected subsequent to that date was empowered to give judicial possession of land granted by the previous government. *Ib.*

4. The doctrine that the laws of a conquered or ceded country, except so far as affected by the political institutions of the new government, remain in force after conquest or cession until changed by it, does not apply to laws authorizing the alienation of any portions of the public domain, or to officers charged under the former government with that power. No proceedings affecting the rights of the new government over public property could be taken, except in pursuance of its authority on the subject. *Ib.*

5. The Attorney General has authority, under the Constitution, to file a bill in equity in the name of the United States to set aside a patent

of public land alleged to have been obtained by fraud or mistake, when the government has a direct interest in the tract patented, or is under an obligation respecting the relief invoked by the bill. *United States* v. *Beebe*, 338.

6. When the location of a mineral lode or vein, properly made, is perfected under the law, the lode or vein becomes the property of the locators or their assigns, and the government holds the title in trust for them. *Noyes* v. *Mantle*, 348.

7. Where a location of a vein or lode of mineral or other deposits has been made under the law, and its boundaries have been specifically marked on the surface, so as to be readily traced, and notice of the location has been recorded in the usual books of record within the district, that vein or lode is "known to exist" within the meaning of that phrase as used in Rev. Stat. § 2333, although personal knowledge of the fact may not be possessed by the applicant for a patent for a placer claim. *Ib.*

8. The boundaries of the Mexican grant, called the Moquelamos grant, considered, — the same being described as "bounded on the east by the adjacent sierra:" *held*, as the result of the evidence adduced, that its eastern limit was at the point where the foot hills of the sierra begin to rise above the plain, near the range line between ranges 7 and 8. *United States* v. *McLaughlin*, 428.

9. Mexican grants were of three kinds: 1, grants by specific boundaries, where the donee is entitled to the entire tract; 2, grants of quantity within a larger tract described by outside boundaries, where the donee is entitled to the quantity specified and no more; 3, grants of a certain place or rancho by name, where the donee is entitled to the whole place or rancho. The second kind, grants of quantity in a larger tract, are, properly, floats, and do not attach to any specific land until located by authority of the government. The Moquelamos grant was of this kind. *Ib.*

10. In the case of floating grants, as above described, it was only the quantity actually granted which was reserved during the examination of the validity of the grant; the remainder was at the disposal of the government as part of the public domain. If within the boundaries of a land-grant made in aid of a railroad, such land-grant would take effect, except as to the quantity of land, or float, actually granted in the Mexican grant. If that quantity lying together was left to satisfy the grant, the railroad company would be entitled to patents for the odd sections of the remainder. *Ib.*

11. In the case of a floating Mexican grant the government retained the right of locating the quantity granted in such part of the larger tract described as it saw fit; and the government of the United States succeeded to the same right: hence, the government might dispose of any specific tracts within the exterior limits of the grant, leaving a sufficient quantity to satisfy the float. *Ib.*

12. Patents issued to the Central Pacific Railroad Company under its land-grant, for any sections lying easterly of range 6 east within the outside boundaries of the Moquelamos grant, are valid, — there being enough land lying west of range 7 to satisfy the floating grant of eleven square leagues. *Ib.*

13. The bill in this case was filed by the Attorney General on behalf of the United States to vacate a patent granted to the Central Pacific Railroad Company for lands lying east of range 6 within the claimed limits of the Moquelamos grant — the ground of relief being, that all the lands within the exterior limits of that grant were reserved lands: *held*, that the lands in question were not reserved lands, and that the bill should be dismissed. *Ib.*

14. Mineral locations on public lands, made prior to the passage of any mineral law by Congress, are governed by local rules and customs then in force; but their effect cannot be determined on the demurrer in this action. *Glacier Mountain Silver Mining Co.* v. *Willis*, 471.

PUBLIC LAW.

See PUBLIC LAND, 4.

RAILROAD.

1. A railroad company, all whose stock was owned by four other companies, whose roads connected, having obtained a lease of another connecting railroad, and improved the terminal facilities, made a contract with the four companies, by which they should have the use of its tracks and terminal facilities for fifty years, each paying the same fixed rent and certain terminal charges, and any other company with the same terminus might, by entering into a similar contract, acquire like privileges upon paying the same rent and similar charges; and demanded the making of such a contract by the receiver of another company, who previously had the use of the road now leased, and of its terminal facilities, upon terms agreed on between him and the company owning that road. The receiver objected that the terms demanded were exorbitant and oppressive, and could not be assented to by him without an order of the court which appointed him; and it was thereupon agreed that his company should enjoy like privileges, paying the like terminal charges as the four companies, and such rent as the judge should award, and meantime should pay at the same rate as before. The judge declining to act as an arbitrator, the receiver was excluded from the use of the tracks. *Held*, that he had not assented, and was not liable, to pay the same rent as the four companies, during the time that he used the tracks and terminal facilities of the first company. *Peoria &c. Railway* v. *Chicago &c. Railroad*, 200.

2. The S. company, owning a railroad extending from S. to M., and there connecting with the railroad of the H. company from M. to

H., sold a ticket, at a reduced rate of fare, for a passage from S. to H. and return, containing a contract signed by the purchaser, by which he agreed "with the several companies" upon the following conditions: That "in selling this ticket the S. company acts only as agent and is not responsible beyond its own line;" that the ticket "is not good for return passage unless the holder identifies himself as the original purchaser to the satisfaction of the authorized agent of the H. railroad at H. within eighty-five days from date of sale, and, when officially signed and dated in ink and duly stamped by said agent," shall be good for five days from that time; that the original purchaser shall sign his name and otherwise identify himself, whenever called upon to do so by any conductor or agent of either line; and that no agent or employé of either line has any power to alter, modify or waive any condition of the contract. The original purchaser was carried from S. to H., and within eighty-five days, and a reasonable time before the departure of a return train, presented himself with the ticket at the office of the agent of the H. railroad at H., for the purpose of identifying himself and of having the ticket stamped, and, no agent being at that office, took the return train on the H. railroad from H. to M. and a connecting train on the S. railroad for S., and, upon the conductor of the latter train demanding his fare, presented the unstamped ticket, informed him of what he had done at H., offered to sign his name and otherwise identify himself to the conductor, and demanded to be carried to S. by virtue of the ticket; but the conductor refused, and put him off the train. *Held*, that he could not maintain an action against the S. company. *Mosher* v. *St. Louis Iron Mountain and Southern Railway Co.*, 390.

3. The receiver in a suit for the foreclosure of a railroad mortgage, being directed by the court to settle and adjust outstanding claims prior to the mortgage debt, and to purchase in outstanding adverse liens or titles, agreed with the holder of a debt, which constituted a paramount lien on a portion of the railroad, for the purchase of his lien and the payment of his debt out of any money coming into the receiver's hands from the part of the railroad covered by the lien, or from the sale of the receiver's certificates, or from the earnings of that portion of the road, or from the sale of it under the decree of the court; and this agreement was carried out on the part of the vendor. When it was made, a decree for a sale had already been made in the foreclosure suit; and afterwards the road was sold as an entirety, with nothing to show the price paid for the portion covered by the lien, and payment was made in mortgage bonds without any money passing. The vendor of the prior lien then intervened in the suit, asking the court to enforce his agreement with the receiver. Subsequently the court confirmed the sale, reserving to itself the power to make further orders respecting claims, rights, or interests in or liens on the property. At a subsequent term of court the court found that there was

justly due the intervenor the sum claimed, and ordered the sale set aside unless the claim should be paid within ninety days. *Held*, that the intervenor was entitled to the protection of the court, but that the proper remedy was, not the annulling of the sale, and confirmation, and master's deed, if the court had the power to do it, but an order for a resale of the entire property in satisfaction of the claim of the intervenor. *Farmers' Loan and Trust Company* v. *Newman*, 649.

See CONSTITUTIONAL LAW, A, 1, 3, 5; B;
PUBLIC LAND, 12;
STATUTE, A, 1.

RECEIVER.

See RAILROAD, 1.

REMOVAL OF CAUSES.

See JURISDICTION, B, 6, 8.

REPRESENTATIVE IN CONGRESS.

See CONSTITUTIONAL LAW, A, 25; INDICTMENT; JURISDICTION, C; SALARY.

SALARY.

Under § 51 of the Revised Statutes, a person elected a representative in Congress to fill a vacancy, caused by a resolution of the House that the sitting member was not elected and that the seat was vacant, the sitting member having received the proper credentials, and been placed on the roll, and been sworn in, and taken his seat, and voted, and served on committees and drawn his salary and mileage, is entitled to compensation only from the time the compensation of such sitting member ceased. *Page* v. *United States*, 67.

SECRETARY OF STATE.

1. In answer to a petition for a writ of mandamus to be issued to the Secretary of State to compel him to pay to the petitioner part of an award made by the Mexican claims commission, the Secretary set up that he could not recognize the claim of the petitioner without ignoring the conflicting claim of another person, between whom and the petitioner litigation in respect to the award was then, and had for a long time, been pending. On demurrer to the answer: *Held*, that it was sufficient. *Bayard* v. *White*, 246.
2. The Secretary, in view of the litigation, was not bound to decide between the conflicting claims. *Ib.*
3. Whether it was a good answer to the petition, that the Secretary was not invested with authority over the money independently of the

President, and that it was the opinion of the President that the public interest forbade the making of payments to the petitioner, in the condition of things set forth in the answer, *quære*. *Ib.*

SET-OFF.

A claim by the State of Louisiana to 5 per cent of the net proceeds of the sales of the lands of the United States, under § 5 of the act of February 20, 1811, c. 21, 2 Stat. 641, and a claim by the same State to the proceeds of the sale by the United States of swamp lands, growing out of the provisions of the acts of September 28, 1850, c. 84, 9 Stat. 519, and March 2, 1855, c. 147, 10 Stat. 634, are claims against which the United States can set off the amount due to them by the State on matured coupons on bonds known as the Indian Trust bonds, issued by the State. *United States* v. *Louisiana*, 182.

SPANISH-AMERICAN CLAIMS COMMISSION.

See CLAIMS AGAINST THE UNITED STATES, 7.

SPANISH GRANT.

See PUBLIC LAND, 1, 2, 3.

STATE.

See JURISDICTION A, 3, 4.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. Section 5 of the act of March 3, 1879, 20 Stat. c. 180, 355, 358, did not operate to repeal § 3962 Rev. Stat.; and when it was itself repealed by the act of June 11, 1880, 21 Stat. c. 206, 177, 178, § 3962 of the Revised Statutes remained in force against railroad companies contracting to carry the mails. *Chicago, Milwaukee &c. Railway Co.* v. *United States*, 406.
2. When there are two provisions of law in the Statutes relating to the same subject, effect is to be given to both, if practicable. *Ib.*
3. A statute will not operate to repeal a prior statute merely because it repeats some of the provisions of the prior act, and omits others, or adds new provisions; but in such cases the latter act operates as a repeal of the former one only when it plainly appears that it was intended as a substitute for the first act. *Ib.*
4. When there has been a long acquiescence in a Department Regulation, and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded, in construing the statute to which it relates, without the most cogent and persuasive reasons. *Robertson* v. *Downing*, 607.

B. Statutes of the United States.

See Bankruptcy;
Claims against the United States, 1, 2, 8, 9;
Constitutional Law, A, 13, 17;
Customs Duties, 1, 2, 5, 7;
District of Columbia;
Jurisdiction, A, 5; B, 1, 5; C; D;
National Bank, 1;
Public Land, 1, 7;
Salary;
Set-off.

C. Statutes of the States and Territories.

California. *See* Constitutional Law, B.
Indiana. *See* Judgment, 1.
Kansas. *See* Constitutional Law, A, 5.
Michigan. *See* Evidence, 1, 2.
Missouri. *See* Constitutional Law, A, 4.
North Carolina. *See* Corporation, 1.
Ohio. *See* Deed;
National Bank, 2, 3.
Pennsylvania. *See* Constitutional Law, A, 20, 21.
Tennessee. *See* Municipal Corporation, 3, 6.
Virginia. *See* Deed.

SUPERSEDEAS.

See Practice, 4.

TAX AND TAXATION.

See Constitutional Law, A, 1, 2, 7, 8, 13–17; B;
Local Law, 2, 3, 5;
National Bank, 1, 2, 3.

TELEGRAPH COMPANIES.

See Constitutional Law, A, 7, 8, 13–17.

TREATY WITH MEXICO.

See Extradition, 2, 3.

TRIAL BY JURY.

See Constitutional Law, A, 9, 10, 11.

TRUST.

1. A creditor whose debt is secured by a deed of trust of real estate to a third party as trustee, may purchase the property at a sale by the trustee under the terms of the trust; and if he credits the debtor on the mortgage debt with the amount of the purchase money, it is in fact and in law a money payment to the use and benefit of the debtor. *Easton* v. *German-American Bank*, 532.

2. The plaintiff in error acquired by the purchase from the assignee in bankruptcy no interest either in the debt of the bankrupt to the defendant in error, or in the real estate conveyed in trust to secure it. *Ib.*

3. The principle that a trustee may purchase the trust property at a judicial sale, brought about by a third party, which he had no part in procuring, and over which he could not have had control, is upheld by numerous decisions of this court, and of other courts of this country, and prevails in Texas. *Allen* v. *Gillette*, 589.

See LOCAL LAW, 4;
WILL, 2, 3, 4, 5.

UNITED STATES.

See CLAIMS AGAINST THE UNITED STATES;
INTEREST;
LIMITATION, STATUTES OF.

WILL.

1. The intention of a testator, as expressed in his will, is to prevail when not inconsistent with rules of law. *Colton* v. *Colton*, 300.

2. No technical language is necessary for the creation of a trust in a will, and no general rule can be formulated for determining whether a devise or bequest carries with it the whole beneficial interest, or whether it is to be construed as creating a trust. *Ib.*

3. If a trust be sufficiently expressed and capable of enforcement, it is not invalidated by being called "precatory." *Ib.*

4. When property is given by will absolutely and without restriction, a trust is not to be lightly imposed, upon mere words of recommendation and confidence; but if the objects of the supposed trust are definite and the property clearly pointed out, if the relations between the testator and the supposed beneficiary are such as to indicate a motive on the part of the one to provide for the other, and if the precatory clause, expressing a wish, entreaty, or recommendation that the donee shall apply the property to the benefit of the supposed *cestui que trust* warrants the inference that it is peremptory, then it may be held that an obligatory trust is created, which may be enforced in a court of equity. *Ib.*

5. C, a citizen of California, died there, leaving a will which contained the following provisions: "I give and bequeath to my said wife E. M. C. all of the estate, real and personal, of which I shall die seized, possessed, or entitled to. I recommend to her the care and protection of my mother and sister, and request her to make such gift and provision for them as in her judgment will be best. . . . I hereby appoint my said wife to be the executrix of this my last will and testament, and desire that no bonds be required of her for the performance of

any of her duties as such executrix." This will was duly proved in the Probate Court of San Francisco. The widow having failed to make suitable provision for the mother and sister, each filed a bill in equity against her, setting up that the provision in their favor in the will was a trust. The bills alleged that the property received by the widow under the will amounted to $1,000,000; that the sister was dependent upon the mother for support; that the mother was in feeble health and required constant care, and was without means of support except the sum of $15,000 loaned at interest, which loan was well known to the testator when he made his will and at the time of his death; that no suitable provision had been made for either mother or sister by the widow, but that they had been left in "very straitened circumstances." The remedy sought in each bill was that the widow should be required to make a suitable provision for the complainant. To each bill a demurrer was filed on the ground that the will created no trust; that the court had no jurisdiction; that the claim was stale, having accrued more than four years before the commencement of the suit; and that the matter had been adjudicated by the probate court of San Francisco in the probate of the will. *Held*, (1) That the claim being against the defendant as devisee and legatee, and not as executrix, and there being no allegation in the pleadings that any jurisdiction was exercised by the probate court in the construction of the will in this respect, the adjudications in that court were no bar to the prosecution of this suit; (2) That the complainants took under the will a beneficial interest in the estate given to the wife to the extent of a permanent provision for them during their respective lives, suitable and sufficient for their care and protection, having regard to their condition and necessities, and the amount and value of the fund from which it must come; (3) That it was the duty of the court to ascertain, determine, and declare what provision would be suitable and best under the circumstances, and all particulars and details for securing and paying it. *Ib.*

6. The will of a citizen of New York, dying in the city of New York, was admitted to probate there. A duly authenticated copy being presented for probate in Michigan, notice to all parties interested by publication was ordered, and on proof of such publication, and after hearing and proof, the instrument was admitted to probate in Michigan, and ancillary letters were issued. *Held*, that the parties were properly brought before the court by publication, and that the will was properly admitted to probate. *Culbertson* v. *The H. Whitbeck Co.*, 326.

WRIT OF ERROR.

1. It is not sufficient cause for dismissing a writ of error that the citation was served and made returnable less than thirty days after the writ was granted. *Seagrist* v. *Crabtree*, 773.

2. A *feme covert* was sued in Louisiana to recover upon notes said to have

been executed by her with the authority and consent of her husband. The husband was made a party to the suit under the Code, although without interest in the suit. Judgment being given for defendant, the plaintiff sued out a writ of error against the wife only, but serving it on the husband also. On motion by defendant in error to dismiss the writ: *Held*, that the motion should be denied. *Marchand* v. *Livandais*, 775.