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ACTION.

See JURISDICTION, C, 1.

ADMIRALTY.

In admiralty, if a libellant propounds with distinctness the substantive facts upon which he relies, and prays, either specially or generally, for appropriate relief, (even if there is some inaccuracy in his statement of subordinate facts, or of the legal effect of the facts propounded,) the court may award any relief which the law applicable to the case warrants. *The Gazelle and Cargo*, 474.

AFFIDAVIT.

See EXCEPTION, 2.

AMENDMENT.

See WRIT OF ERROR.

APPEAL.

1. An appeal from a decree of a Circuit Court is not "taken" until it is in some way presented to the court which made the decree appealed from, so as to put an end to its jurisdiction over the cause. *Credit Co.* v. *Arkansas Central Railway Co.*, 258.
2. An appeal taken in open court will not avail unless the appeal is duly prosecuted. *Ib.*
3. When the time for taking an appeal has expired, it cannot be arrested or called back by a simple order of court, such as entering an order *nunc pro tunc*. *Ib.*
4. In computing the "sixty days after the rendition of judgment," allowed by Rev. Stat. § 1007 to a party appealing from a judgment of a Circuit Court to give the security required by law, Sundays are excluded. *Danville* v. *Brown*, 503.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

See CONSTITUTIONAL LAW, 9;
ESTOPPEL, 2;
INSOLVENT DEBTOR, 1, 2.

ATTORNEY AT LAW.

The privilege of secrecy upon communications between a client and an attorney-at-law is a privilege of the client alone; and if he voluntarily waives it, it cannot be insisted upon to close the mouth of the attorney. *Hunt* v. *Blackburn*, 464.

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See LIMITATION, STATUTES OF.

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See FRAUDULENT CONVEYANCE, 3.

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3. *Mackin* v. *United States*, 117 U. S. 348. *United States* v. *De Walt*, 393.
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CASES EXPLAINED.

Lawther v. *Hamilton*, 124 U. S. 1. *Crescent Brewing Co.* v. *Gottfried*, 158.

CASES OVERRULED.

A decision of this court, not in harmony with some of its previous decisions, has the effect to overrule those with which it is in conflict, whether mentioned and commented on or not. *Asher* v. *Texas*, 129.

CHARTER-PARTY.

1. A charter-party, containing a guarantee by the owners of the vessel that she should carry not less than 10,000 quarters of grain, of 480 pounds, held to have been complied with by the owner of the vessel. *Culliford* v. *Gomila*, 135.
2. The charter-party not having contained any cancelling clause, or any provision as to any time for beginning or completing the lading, or

shipping the grain, the charterer could not have, in a suit against the owner of the vessel for a breach of the charter-party, the benefit of any clause limiting the time of the shipment of the grain, contained in a prior contract for its sale, made by the charterer, where such contract had been made known to the owner of the vessel before the charter-party was signed.

3. The vessel having been loaded with less than 10,000 quarters, and appearing to be full, as she was then stowed, the parties negotiated for a settlement, but before any was concluded, the owner of the vessel notified the charterer that the stowage would be rearranged so that the vessel would on the next day be ready to take the full 10,000 quarters. The charterer on the latter day sold the cargo at auction, on board, with privilege of the charter. The vessel afterwards took on board enough more grain to make the full 10,000 quarters and delivered it under a charter for the same voyage, made with the vendee named in the contract of sale of the grain made by the first charterer: *Held*, that the owner of the vessel was not liable to the first charterer for any losses sustained by him by the failure of such vendee to pay for the grain under such contract of sale.

4. The charter-party with the first charterer was complied with by the owner of the vessel in a reasonable time.

5. A charter-party of a vessel to a "safe, direct, Norwegian or Danish port, as ordered on signing bills of lading, or as near thereunto as she can safely get and always lay and discharge afloat," requires the charterer to order her to a port which she can safely enter with cargo, or which, at least, has a safe anchorage outside, where she can lie and discharge afloat. *The Gazelle and Cargo*, 474.

6. Findings of fact by the Circuit Court in admiralty, that a port to which charterers have ordered a vessel is one having a bar across its mouth which it was impossible for her to pass, either in ballast or with cargo, and that the only anchorage outside is not a reasonably safe anchorage, nor a place where it is reasonably safe for a vessel to lie and discharge, are not controlled or overcome by a statement in the findings that many vessels have in fact discharged their cargoes at that anchorage. *Ib.*

7. The omission of the Circuit Court in admiralty to make any findings upon a fact put in issue by the pleadings can only be availed of by bill of exceptions. *Ib.*

8. A charter-party of a vessel "to a safe, direct, Norwegian or Danish port, or as near thereunto as she can safely get and always lay and discharge afloat," cannot be controlled by evidence of a custom to consider as safe, within the meaning of such a charter-party, a particular Danish port, which in fact cannot be entered by such a vessel and has no anchorage outside where it is reasonably safe to lie and discharge. *Ib.*

9. If a charterer prevents the performance of the voyage by refusing to

order the vessel to such a port as is designated in the charter-party, and the master files successive libels for demurrage accruing under it, until the charterer files a cross-libel contending that the master had committed a breach of the charter-party, and it is found, at a hearing upon all the libels, that the time required to perform the voyage stated in the charter-party would have been about the same as elapsed before the vessel procured another charter, that another charter was procured as soon as possible, and that the expenses of the vessel in port were not less than on the voyage — the shipowner is entitled to the whole of the stipulated freight. *Ib.*

CIRCUIT COURTS OF THE UNITED STATES.

1. The practice and rules of the state court do not apply to proceedings taken in a Circuit Court of the United States for the purpose of reviewing in this court a judgment of such Circuit Court; and such rules and practice, embracing the preparation, perfection, settling and signing of a bill of exceptions, are not within the "practice, pleadings, and forms and modes of proceeding" which are required by § 914 of the Revised Statutes to conform "as near as may be" to those "existing at the time in like causes in the courts of record of the State." *Chateaugay Ore and Iron Co., Petitioner*, 544.
2. In this case the party tendering the bill to be settled and signed sufficiently complied with the rules and practice of the Circuit Court. *Ib.*
3. The decision in *Müller* v. *Ehlers*, 91 U. S. 249, held not to apply to the present case. *Ib.*

See APPEAL; JURISDICTION, B; MANDAMUS, 3; REMOVAL OF CAUSES.

CLAIMS AGAINST THE UNITED STATES.

The claim of a navy officer for his expenses when travelling under orders rests, not upon contract with the government, but upon acts of Congress; and when part of such a journey is performed when one statute is in force, and the remainder after another statute takes effect, providing a different rate of compensation, the compensation for each part is to be at the rate provided by the statute in force when the travelling was done. *United States* v. *McDonald*, 471.

CLAIM AGENT.

See STATUTE, A, 1, 2.

COMMISSIONER OF THE GENERAL LAND OFFICE.

See PUBLIC LAND, 3, 4.

COMMISSIONER OF PENSIONS.

1. The Commissioner of Pensions by receiving the application of a pensioner for an increase of his pension under the act of June 16, 1880,

21 Stat. 281, c. 236, and by considering it and the evidence in support of it, and by deciding adversely to the petitioner, performs the executive act which the law requires him to perform in such case; and the courts have no appellate power over him in this respect, and no right to review his decision. *Dunlap* v. *Black*, 40.

2. A decision of the Commissioner of Pensions adverse to the application of a pensioner for an increase of pension, under a statute granting an increase in certain cases, being overruled by the Secretary of the Interior on the ground that the applicant comes under the meaning of the law granting the increase, and the Commissioner refusing to carry out the decision of his superior, the pensioner is entitled to a rule upon the Commissioner to show cause why a writ of mandamus should not issue to compel him to obey the decision of the Secretary of the Interior. *Ib.*

CONSTITUTIONAL LAW.

A. Of the United States.

1. Following *Mugler* v. *Kansas*, 123 U. S. 623: *Held*, that a State has the right to prohibit or restrict the manufacture of intoxicating liquors within its limits; to prohibit all sale and traffic in them in the State; to inflict penalties for such manufacture and sale; and to provide regulations for the abatement, as a common nuisance, of the property used for such forbidden purposes; and that such legislation does not abridge the liberties or immunities of citizens of the United States, nor deprive any person of property without due process of law, nor contravene the provisions of the Fourteenth Amendment of the Constitution of the United States. *Kidd* v. *Pearson*, 1.

2. A statute of a State which provides (1) that foreign intoxicating liquors may be imported into the State, and there kept for sale by the importer, in the original packages, or for transportation in such packages and sale beyond the limits of the State; and (2) that intoxicating liquors may be manufactured and sold within the State for mechanical, medicinal, culinary, and sacramental purposes, but for no other, not even for the purpose of transportation beyond the limits of the State — does not conflict with Section 8, Article 1, of the Constitution of the United States by undertaking to regulate commerce among the States. *Ib.*

3. The right of a State to enact a statute prohibiting the manufacture of intoxicating liquors within its limits, is not affected by the fact that the manufacturer of such spirits intends to export them when manufactured. *Ib.*

4. The police power of a State is as broad and plenary as the taxing power (as defined in *Coe* v. *Errol*, 116 U. S. 517), and property within the State is subject to the operation of the former, so long as it is within the regulating restrictions of the latter. *Ib.*

5. A state statute which requires locomotive engineers and other persons, employed by a railroad company in a capacity which calls for the ability

to distinguish and discriminate between color signals, to be examined in this respect from time to time by a tribunal established for the purpose, and which exacts a fee from the company for the service of examination, does not deprive the company of its property without due process of law, and, so far as it affects interstate commerce, is within the competency of the State to enact, until Congress legislates on the subject. *Nashville, Chattanooga, &c., Railway* v. *Alabama*, 96.

6. The provision in Article III. of the Constitution of the United States which provides that the trial of all crimes "shall be held in the State where the said crimes shall have been committed," relates only to trials in Federal courts, and has no application to trials in state courts. *Ib.*

7. A state law exacting a license tax to enable a person within the State to solicit orders and make sales there for a person residing within another State, is repugnant to that clause of the Constitution of the United States which gives Congress the power to regulate commerce among the several States, and is void. *Asher* v. *Texas*, 129.

8. A general law for the punishment of offences which endeavors by retroactive operation to reach acts before committed, and also provides a like punishment for the same acts in future, is void so far as it is retrospective, and valid as to future cases within the legislative control. *Jaehne* v. *New York*, 189.

9. The act of the legislature of Minnesota of March 7, 1881, c. 148, entitled "An Act to prevent debtors from giving preference to creditors, and to secure the equal distribution of the property of debtors among their creditors, and for the release of debts against debtors," which provides that whenever the property of a debtor is seized by an attachment or execution against him, he may make an assignment of all his property and estate, not exempt by law, for the equal benefit of all his creditors who shall file releases of their debts and claims, and that his property shall be equitably distributed among such creditors, is not repugnant to the Constitution of the United States, so far as it affects citizens of States other than Minnesota. *Denny* v. *Bennett*, 489.

10. Statutes limiting the right of the creditor to enfore his claims against the property of the debtor are part of all contracts made after they take effect, and do not impair the obligation of such contracts. *Ib.*

11. The Kentucky statute of March 24, 1882, which authorizes the city government of Louisville to open and improve streets and assess the cost thereof on the owners of adjoining lots, does not deprive such owners of their property without due process of law, and does not deny them the equal protection of the laws, and is not repugnant to section 1 of the Fourteenth Amendment to the Constitution of the United States. *Walston* v. *Nevin*, 578.

See INFAMOUS PUNISHMENT.

B. OF THE STATES.

See LOCAL LAW, 1.

CONTEMPT.

1. An order committing for contempt is a nullity if the court making it was without jurisdiction of the person of the offender; and he can be discharged upon writ of *habeas corpus*, though such writ cannot be used to correct mere errors and irregularities however flagrant. *Ex parte Terry*, 289.

2. Upon original application to this court for a writ of *habeas corpus* on behalf of a person committed by order of a Circuit Court of the United States for contempt committed in its presence, the facts recited in such order as constituting the contempt must be taken as true, and would be so taken upon a return to the writ if one were awarded. *Ib.*

3. The facts in this case, as detailed in the papers before the court, and as they must be regarded in this collateral proceeding, show nothing in conflict with the fundamental principles of Magna Charta; nor do they show that the alleged offence was committed at a time preceding and separated from the commencement of the prosecution; but, on the contrary, the commission of the contempt, the retirement of the offender from the court-room to the marshal's office in the same building, and the making of the order of commitment all took place substantially on the same occasion, and constituted, in legal effect, one continuous, complete transaction, occurring on the same day, and at the same session of the court. *Ib.*

See HABEAS CORPUS;
JURISDICTION, B, 2, 3, 4.

CONTRACT.

1. Time is not of the essence of a contract for the sale of property, unless made so by express stipulation, or unless it may be implied to be so from the nature of the property, or from the character of the interest bargained, or from the avowed object of the seller or of the purchaser. *Brown* v. *Guarantee Safe and Trust Deposit Co.*, 403.

2. Applying these principles to the contract which forms the subject-matter of this suit: *Held*, that time was not of its essence. *Ib.*

3. On the proofs the court holds that the contract upon which this suit is brought never went into effect; that the condition upon which it was to become operative never occurred; and that the case is one of that class, well recognized in the law, by which an instrument, whether delivered to a third person as an escrow, or to the obligee in it, is made to depend, as to its going into operation, upon events to occur or to be ascertained thereafter. *Ware* v. *Allen*, 590.

4. Parol evidence is admissible, in an action between the parties, to show that a written instrument, executed and delivered by the party obligor to the party obligee, absolute on its face, was conditional and was not intended to take effect until another event should take place. *Ib.*

See CHARTER-PARTY;
COVENANT;
EQUITY, 5, 6, 7, 8, 14, 15;
LOCAL LAW, 12.

CONTRIBUTORY NEGLIGENCE.

See COURT and JURY, 1, 3.

COPYRIGHT.

1. Where the judge of the Supreme Court of a State prepares the opinion or decision of the court, the statement of the case and the syllabus or head-note, and the reporter of the court takes out a copyright for such matter in his name "for the State," the copyright is invalid. *Banks* v. *Manchester*, 244.

2. A copyright, as it exists in the United States, depends wholly on the legislation of Congress. *Ib.*

3. The judge who, in his judicial capacity, prepares the matter above mentioned, is not its author or proprietor, in the sense of § 4952 of the Revised Statutes, so that the State can become his assignee and take out a copyright for such matter. *Ib.*

4. Although there can be no copyright in the opinions of the judges of a court, or in the work done by them in their official capacity as judges, there is no ground of public policy on which a reporter, who prepares a volume of law reports, of the usual character, can be debarred from obtaining a copyright for the volume, which will cover the matter which is the result of his intellectual labor. *Callaghan* v. *Myers*, 617.

5. He has a right to take such copyright when there is no legislation forbidding him to do so, or directing that the proprietary right which would exist in him shall pass to the State, or that the copyright shall be taken out for or in the name of the State, as the assignee of such right, even though he is a sworn public officer, with a fixed salary. *Ib.*

6. The copyright of the volume taken by the reporter, as author, will cover the parts of the book of which he is the author, although he has no exclusive right in the judicial opinions published. *Ib.*

7. Such copyright may cover the title page, the table of cases, the head-notes or syllabuses, the statements of facts, the arguments of counsel, and the index, comprehending, also, the order of arrangement of the cases, the division of the reports into volumes, the numbering and paging of the volumes, the table of the cases cited in the opinions, and the subdivision of the index into appropriate condensed titles, involving the distribution of the subjects of the various head-notes, and cross references. *Ib.*

8. The three conditions prescribed by the copyright act of February 3, 1831, c. 16, 4 Stat. 436, namely, the deposit before publication of the printed copy of the title of the book, the giving of information of the copyright by the insertion of a notice thereof on the title page or the next page, and the depositing of a copy of the book, within three months after the publication, are conditions precedent to the perfection of the copyright. *Ib.*

9. A certified copy, under the hand and seal of the clerk of the District Court of the United States, in whose office the copy of the title of the

book was deposited, of the record of the same, the certificate bearing date, the day of such deposit, with a memorandum underneath of the fact and date of the deposit of the work, signed by the same clerk, is sufficient *primâ facie* evidence not only of the fact and date of the deposit of the title, but of the fact and date of the deposit of the work; and it will be presumed, in the absence of evidence to the contrary, that the deposit of the title was made before publication, and also that where the work purports to have been deposited within three months after the date of the deposit of the title, it was deposited within three months after publication. *Ib.*

10. Where the deposit of the title and the deposit of the work purport to have been made on the same day, it will be presumed, in the absence of evidence to the contrary, that the deposit of the title was made before publication, and that the deposit of the work was not made prior to publication. *Ib.*
11. Where the work purports to have been deposited more than three months after the deposit of the title, it will not be presumed that the deposit of the work was made within three months after publication. *Ib.*
12. The case distinguished from *Merrell* v. *Tice*, 104 U. S. 557. *Ib.*
13. The delivery by the reporter, of copies of a volume of reports to the prescribed officer of a State, under a statute, for its use, accompanied by the payment of the reporter therefor, was a publication of the book, so as to require the deposit of the work in the clerk's office within three months after such publication, to make the copyright valid. *Ib.*
14. Where the copy of the title and the work were deposited in the clerk's office on the same day the copies were delivered by the reporter to the State, it will be presumed, in the absence of evidence to the contrary, that the deposit of the title preceded the publication, and that the delivery of the copies to the State preceded the deposit of the work. *Ib.*
15. Where the title was deposited in 1867 and the notice printed in the volume purported to show that the copyright was entered in 1866, the variance was immaterial. *Ib.*
16. Where the title was deposited by "E. B. Myers & Chandler," a firm, as proprietors, and the printed notice of entry of copyright in the volume stated that the copyright was entered by "E. B. Myers," a member of such firm, the variance was immaterial. *Ib.*
17. A written transfer of the manuscript of the volume from the reporter to the person taking out the copyright as proprietor was not necessary, and parol evidence was competent to show his ownership thereof at the time of the infringement. *Ib.*
18. On the evidence, it was held that the plaintiff had not consented to or acquiesced in the infringement or abandoned his copyright, or been guilty of laches. *Ib.*

19. The question of infringement considered and decided in favor of the plaintiff. *Ib.*

20. It is proper, in an interlocutory decree for an accounting before a master in a copyright case, to direct that the defendant may be examined in regard to the subject-matter of the accounting, and may be required to produce his account books and papers. *Ib.*

21. Although the bill prays for a forfeiture to the plaintiff, under the statute, of copies in the possession of the defendant of the infringing volume, and for their delivery to the plaintiff, yet, if the final decree does not award any forfeiture, the defendant is not injured by anything done under such provision of the interlocutory decree; nor can the penalties given by § 7 of the act of 1831 be enforced in a suit in equity; nor can evidence obtained from the defendant through his examination and the production by him of his books and papers be used against him in any other suit in which a forfeiture is sought. *Ib.*

22. The cost of stereotyping a volume is not a proper credit to be allowed to a defendant; nor is the amount paid to the members of a defendant firm for their services in the way of salaries, during the time of infringement, as a part of the expense of conducting its business; nor is the cost of producing copies of the volume which were not sold; nor is the amount paid for editorial work in preparing the infringing volume. *Ib.*

23. It is proper to charge the defendant with his profit on the resale by him of copies once sold by him, and then repurchased, although he is also charged with his profit on the original sale of such copies. *Ib.*

24. The lawful matter in the infringing volume being useless without the unlawful, and it being impossible to separate the profit on the latter from that on the former, and the volume being sold as a whole, the defendant is responsible for the consequences, and the plaintiff is entitled to recover the entire profit on the sale of the volume, if he so elects. *Ib.*

25. In considering exceptions to a master's report in matters of fact, questioning his conclusions in respect to the amount of the defendant's profits, those conclusions, depending on the weighing of conflicting testimony, will not be set aside or modified, unless there clearly appears to have been error or mistake on his part. *Ib.*

CORPORATION.

See MUNICIPAL BOND; RAILROAD.

COUPON.

See EQUITY, 5, 6.

COURT AND JURY.

1. In an action by an employé of a railroad company against the company to recover damages for personal injuries received by reason of the

negligence of the company, in order to determine whether the employé, by recklessly exposing himself to peril, has failed to exercise the care for his personal safety that might reasonably be expected, and has thus by his own negligence contributed to causing the accident, regard must always be had to the circumstances of the case, and the exigencies of his position; and the decision of this question ought not to be withheld from the jury unless the evidence, after giving the plaintiff the benefit of every inference to be fairly drawn from it, so conclusively establishes contributory negligence, that the court would be compelled, in the exercise of a sound judicial discretion, to set aside any verdict returned in his favor. *Kane* v. *Northern Central Railway Co.*, 91.

2. A court of the United States, in submitting a case to the jury, may at its discretion express its opinion upon the facts; and such an opinion is not reviewable on error, so long as no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to the determination of the jury. *Lovejoy* v. *United States*, 171.

3. When, in an action by an employé of a railroad company against the company to recover damages for a personal injury inflicted upon him, by reason of an engine in motion striking him, it is conceded that the defendant company was in fault on account of the manner of running its trains, and the defence is set up that the plaintiff was guilty of contributory negligence, and there is conflicting evidence on that point, the plaintiff is entitled to have that question submitted to the jury. *Jones* v. *East Tennessee, Virginia & Georgia Railroad*, 443.

See EXCEPTION.

COURT OF CLAIMS.

See JURISDICTION, D.

COURTS OF THE UNITED STATES.

See COURT AND JURY, 2;
JURISDICTION, A, B, C, D;
JURY.

CRIMES, TRIAL OF.

See CONSTITUTIONAL LAW, A, 6.

COVENANT.

Covenants are to be considered dependent or independent, according to the intention of the parties, to be deduced from the whole instrument; and in this case the covenants of the plaintiff in error, to pay money for goods sold and delivered, were independent of the covenants of the defendant in error to transfer certificates of stock in a corporation. *Pollak* v. *Electric Brush Association*, 446.

DIVISION OF OPINION.

1. Each question certified in a certificate of division of opinion: (1) Must be a distinct point or proposition of law, clearly stated, so that it can be definitely answered, without regard to other issues of law in the case; (2) Must be a question of law only, and not a question of fact, or of mixed law and fact, and hence must not involve or imply a conclusion or judgment on the weight or effect of testimony or facts adduced in the cause; and (3) Must not embrace the whole case, even when its decision turns upon matter of law only, and even though it be split up into the form of questions. *Fire Insurance Association* v. *Wickham*, 426.
2. In a certificate of division of opinion, the question whether parol evidence may or may not be introduced to explain such documents as those which were given in evidence by the defendant at the trial of this cause, and which are set forth in the statement of facts in this case, is a question of pure law, presenting but a single point for consideration, and the fact that many writings, all of the same general character, were offered to prove the same fact, does not make the case to differ. *Ib.*

See JURISDICTION, A, 8.

EJECTMENT.

1. When, under the practice prevailing in a State, an equitable defence is set up in an action for the possession of land, the grounds set forth must be sufficient to entitle the defendant to a decree that the property be transferred from the plaintiff to him, or that the plaintiff be enjoined from prosecuting the action for the possession of the property. *Cornelius* v. *Kessel*, 456.
2. In the United States courts a recovery in ejectment can be had upon the strict legal title only, and a court of law will not uphold or enforce an equitable title to land as a defence in such action. *Johnson* v. *Christian*, 374.

EQUITY.

1. It is settled law that courts of the United States lose none of their equitable jurisdiction in States where no such courts exist; but, on the contrary, are bound to administer equitable remedies in cases to which they are applicable, and which are not adapted to a common law action. *Ridings* v. *Johnson*, 212.
2. The complainant, being the owner of a tract in Louisiana, sold it to the intestate of one of the defendants, receiving a part of the purchase-money in cash, and notes for the remainder secured by a mortgage of the tract, which was not recorded. The purchaser afterwards mortgaged the tract to the other defendant, and then died insolvent. The second mortgagee then caused the tract to be sold under judicial proceedings to pay his mortgage debt, no notice being given to the com-

plainant, although he was aware of the nature of his claim upon the property. The complainant, having caused his mortgage to be recorded, filed this bill to enforce his rights by a rescission of the sale to the decedent, offering to refund the cash received by him, and to give up the unpaid mortgage notes: *Held*, that it was a proceeding in equity. *Ib.*

3. A debt contracted for "construction" is not entitled to the priority of payment, in proceedings for the foreclosure of a mortgage of the property of a railroad corporation, which is recognized in *Fosdick* v. *Schall*, 99 U. S. 235, as the equitable right in some cases of a creditor for "operating expenses." *Wood* v. *Guarantee Trust and Safe Deposit Co.*, 416.
4. The doctrine in *Fosdick* v. *Schall* has never yet been applied in any case except that of a railroad, and whether it will be applied to any other case, *quære*. *Ib.*
5. When a third party with his own money takes up maturing coupons on bonds of a corporation, without knowledge of the holders, it is a question of fact, to be determined by the proof, whether it was intended to be a payment, or a purchase which leaves the coupons outstanding. *Ib.*
6. The coupons in dispute in this case having been dishonored before they came into the hands of the appellants, were subject in their hands to all defences which existed against their assignor; and it being evident that, without the knowledge of the holders of the bonds to which those coupons were attached, he used his money to pay the coupons on bonds which had been sold solely in order to enable him to float the rest of the issue: *Held*, that it would be inequitable to allow him, either a preference over those to whom he had sold the bonds, or coequal rights with them. *Ib.*
7. Specific performance is not of absolute right, but rests entirely in judicial discretion, to be exercised according to settled principles of equity, but always with reference to the facts of the particular case. *Hennessey* v. *Woolworth*, 438.
8. A decree for specific performance should never be granted unless the terms of the agreement sought to be enforced are clearly proved, nor when it is left in doubt whether the party against whom relief is asked in fact made such an agreement as is alleged. *Ib.*
9. This court concurs with the Circuit Court in its opinion upon the effect of the proofs in this case, and affirms the decree below. *Hoyt* v. *Hanbury*, 584.
10. Relief in equity to restrain unfair trade is granted only where the defendant, by his marks, signs, labels, or in other ways, represents to the public that the goods sold by him are those manufactured or produced by the plaintiff, thus palming off his goods for those of a different manufacture, to the injury of the plaintiff. *Goodyear Glove Co.* v. *Goodyear Rubber Co.*, 598.
11. A court of equity will not enjoin a judgment at law, unless it is shown

that the complainant was prevented from resorting to a legal defence by fraud or unavoidable accident, without fault or negligence on his part; but it will do so if the matters set up in the bill, as a ground of relief, constitute equities as a defence in the action at law. *Johnson* v. *Christian*, 374.

12. On the only issue of fact raised by the pleadings, the allegations of the bill are sustained by the proof. *Ib.*

13. Specific performance cannot be decreed of an agreement to convey property which has no existence, or to which the defendant has no title; and if the want of title was known to the plaintiff at the time of beginning the suit, the bill will not be retained for assessment of damages. *Kennedy* v. *Hazleton*, 667.

14. One who agrees to assign to another any patents that he may obtain for improvements in certain machines, and who afterwards invents such an improvement, and, with intent to evade his agreement and to defraud the other party, procures a patent for his invention to be obtained upon the application of a third person, and to be issued to him as assignee of that person, and receives profits under it, cannot be compelled in equity to assign the patent or to account for the profits. *Ib.*

See COPYRIGHT, 20, 21, 22, 23, 24, 25;
EJECTMENT, 1, 2;
PATENT FOR INVENTION, 15.

EQUITY PLEADING.

1. A bill in equity, filed in Kentucky, by the receiver of a national bank located in Arkansas, against a married woman and her husband, alleged to be citizens of Kentucky, to enforce against the separate property of the wife the collection of an assessment by the comptroller of the currency of 50 per cent of the par value of the stock, as an individual liability of the shareholders, averred that when the bank suspended, the wife was the owner of 100 shares of the stock, and that it still stood in her name on the books of the bank, and that she possessed property in her own right sufficient to pay such assessment: *Held*, on demurrer to the bill, that, so far as appeared, the remedy was in equity, and the bill was sufficient on its face. *Bundy* v. *Cocke*, 185.

2. In a hearing on bill and answer, allegations of new matter in the answer are to be taken as true. *Banks* v. *Manchester*, 244.

3. It is not indispensable that all the parties to a suit in equity should have an interest in all the matters contained in the suit; it will be sufficient, in order to avoid the objection of multifariousness, if each party has an interest in some material matters in the suit, and they are connected with the others. *Brown* v. *Guarantee Trust and Safe Deposit Co.*, 403.

4. To support the objection of multifariousness to a bill in equity, because the bill contains different causes of suit against the same person, two

things must concur: first, the grounds of suit must be different; second, each ground must be sufficient, as stated, to sustain a bill. *Ib.*

5. Testing the bill in this case by these principles, it is *Held* not to be multifarious. *Ib.*

See PATENT FOR INVENTION, 4.

ESTOPPEL.

1. The Supreme Court of Arkansas and the Circuit Court of Desha County having both adjudged that the appellee and her husband held the tract of land which is the subject of controversy in moieties, and that those through whom the appellant claims became the owners in fee, successively, of the husband's undivided half, these decrees, standing unreversed, are binding adjudications in favor of the complainant's title, and justified him in advancing money upon the strength of it. *Hunt* v. *Blackburn*, 464.

2. An application by the assignee of an insolvent debtor, under a state statute, to be admitted as a party in a suit pending in a Circuit Court of the United States against the insolvent, in which his property was attached by the marshal on mesne process, and for a dissolution of the attachment, and an order of the Circuit Court allowing him to become a party, but refusing to dissolve the attachment, do not make the assignee a party to that suit without further action on his part, and do not estop him from setting up a claim to the property in the hands of the marshal under the attachment. *Denny* v. *Bennett*, 489.

See MUNICIPAL BOND, 5.

EVIDENCE.

1. When a letter is found in the record as part of the evidence taken before a master, and it is certified by the clerk as filed on the same day as other exhibits specifically referred to in a deposition, and the record shows no objection taken to its admission at the hearing before the court, it must, in this court, be deemed to have been admitted by consent. *Hoyt* v. *Hanbury*, 584.

See COPYRIGHT, 17;
CONTRACT, 4;
LOCAL LAW, 11, 12.

EXCEPTION.

1. Instructions given to a jury upon their coming into court after they have retired to consider their verdict, and not excepted to at the time, cannot be reviewed on error, although counsel were absent when they were given. *Stewart* v. *Wyoming Cattle Ranche Co.*, 383.

2. Affidavits filed in support of a motion for a new trial are no part of the record on error, unless made so by bill of exceptions. *Ib.*

See CIRCUIT COURTS OF THE UNITED STATES, 1;
COPYRIGHT, 25;
MANDAMUS, 3.

EXECUTIVE.

See COMMISSIONER OF PENSIONS;
MANDAMUS;
PUBLIC LAND, 3, 4.

EX POST FACTO LAW.

See CONSTITUTIONAL LAW, A, 8.

FALSE REPRESENTATIONS.

1. Although silence as to a material fact is not necessarily, as matter of law, equivalent to a false representation, yet concealment or suppression by either party to a contract of sale, with intent to deceive, of a material fact which he is in good faith bound to disclose, is evidence of, and equivalent to, a false representation. *Stewart* v. *Wyoming Ranche Co.*, 383.
2. The evidence fails to satisfy the court that there was any deceit practised towards the appellee, or any misapprehension on her part of the transactions recited in the record, or any advice given to her in fraud, or in mistake of fact or law. *Hunt* v. *Blackburn*, 464.

FEME COVERT.

See EQUITY PLEADING, 1;
HUSBAND AND WIFE;
INSURANCE, 2, 3, 4;
LOCAL LAW, 7, 8, 9.

FORFEITURE.

See STATUTE, A, 1.

FORGED CHEQUE.

See LIMITATION, STATUTES OF.

FRAUDULENT CONVEYANCE.

1. An insolvent debtor, making an assignment for the benefit of his creditors, cannot reserve to himself a beneficial interest in the property assigned, or interpose any delay, or make provisions which would hinder and delay creditors from their lawful modes of prosecuting their claims. *Means* v. *Dowd*, 273.
2. In this case the deed of assignment, which forms the subject of controversy, has the obvious purpose of enabling the insolvent debtors who made it to continue in their business unmolested by judicial process, and to withdraw everything they had from the effect of a judgment against them. *Ib.*
3. Though this bill is not sustainable under the provisions of the bankrupt act against a preference of creditors in fraud of the act, because the proceedings were not commenced within the time prescribed by that act as necessary to avoid a preference, yet a right is shown to

relief on the ground that the instrument was made to hinder and delay creditors. *Ib.*

See INSOLVENT DEBTOR, 1;
INSURANCE, 2, 3, 4.

GENERAL LAND OFFICE.

See PUBLIC LAND, 3, 4.

GOOD-WILL.

See PARTNERSHIP;
TRADE-MARK, 4, 5.

HABEAS CORPUS.

1. This court is not required to exercise the power conferred upon it by Rev. Stat. §§ 751–753, to inquire upon writ of *habeas corpus* into the cause of the restraint of the liberty of any person who is in jail under or by color of the authority of the United States, or who is in custody in violation of the Constitution of the United States, if it appears, upon the petitioner's own showing, that, if brought into court, and the cause of his commitment inquired into, he would be remanded to prison. *Ex parte Terry*, 289.
2. Upon original application to this court for a writ of *habeas corpus* on behalf of a person committed by order of a Circuit Court of the United States for contempt committed in its presence, the facts recited in such order as constituting the contempt must be taken as true, and would be so taken upon a return to the writ if one were awarded. *Ib.*

See CONTEMPT, 1, 2.

HUSBAND AND WIFE.

At common law, when lands are granted to husband and wife as tenants in common, they hold by moieties as other distinct and individual persons do. *Hunt* v. *Blackburn*, 464.

See EQUITY PLEADING, 1;
INSURANCE, 2, 3, 4;
LOCAL LAW, 7, 8, 9.

INFAMOUS PUNISHMENT.

On the authority of *Mackin* v. *United States*, 117 U. S. 348, it is again held that imprisonment in a state prison or penitentiary, with or without hard labor, is an infamous punishment. *United States* v. *DeWalt*, 393.

INSOLVENT DEBTOR.

1. A clause in an assignment for the benefit of creditors under the Minnesota statute of March 7, 1881, directing the payment to the assignor of any surplus remaining after payment in full to creditors proving their debts, does not invalidate the assignment. *Denny* v. *Bennett*, 489.

2. A state statute providing for the distribution of the property of a debtor among his creditors, and his discharge from his debts, does not release a debt due to a citizen of another State, who does not prove his debt, nor become subject to the jurisdiction of the court. *Ib.*

See CONSTITUTIONAL LAW, A, 9;
ESTOPPEL, 2;
FRAUDULENT CONVEYANCE.

INSURANCE.

1. It is a general rule that a life-insurance policy, and the money to become due under it, belong the moment it is issued to the person named in it as beneficiary, and that there is no power in the person procuring the insurance, by any act of his, by deed or will, to transfer to any other person the interest of the person named. *Central Bank of Washington* v. *Hume*, 195.
2. A married man may rightfully devote a moderate portion of his earnings to insure his life, and thus make reasonable provision for his family after his decease, without being thereby held to intend to hinder, delay, or defraud his creditors, provided no such fraudulent intent is shown to exist, or must be necessarily inferred from the surrounding circumstances. *Ib.*
3. The payment of premiums to a life insurance company by a married man residing in the District of Columbia, who is insolvent at the times of the payments, in order to effect and keep alive a policy of insurance upon his own life, made by his wife for the benefit of herself and their children, is not necessarily a fraudulent transfer of his property with intent to hinder, delay and defraud creditors within the meaning of 13 Eliz. c. 5; and in the absence of specific circumstances showing a fraudulent intent, his creditors, after his decease, will have no interest in the policy. *Ib.*
4. In order to maintain an action on behalf of creditors of a deceased person against a life insurance company, to recover back premiums alleged to have been fraudulently paid by the decedent while insolvent to the company in order to make provision for his wife and children, it must be alleged and proved that the company participated in the fraud. *Ib.*

INTERSTATE COMMERCE.

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

INTOXICATING LIQUORS.

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

JUDGMENT.

A remittitur, in a judgment on a verdict, of all sums in excess of $5000, made on the day following the entry of the judgment, on motion of

plaintiff's counsel, in the absence of defendant or his counsel, is no abuse of the discretion of the court. *Pacific Postal Tel. Co.* v. *O'Connor*, 394.

See ESTOPPEL.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. To give this court jurisdiction to review the judgment of a state court under § 709, Rev. Stat. because of the denial by the state court of any title, right, privilege or immunity, claimed under the Constitution or any treaty or statute of the United States, it must appear on the record that such title, right, privilege or immunity was "specially set up or claimed" at the proper time, in the proper way. *Chappell* v. *Bradshaw*, 132.
2. An action upon a bond given to supersede a judgment or decree of a court of the United States is not a "case brought on account of the deprivation of any right, privilege or immunity secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States," so as to give this court jurisdiction of it in error or on appeal under the fourth subdivision of Rev. Stat., § 699, "without regard to the sum or value in dispute." *Cogswell* v. *Fordyce*, 391.
3. As the matter in dispute in this case, exclusive of costs, does not exceed the sum or value of $5000, the writ of error is dismissed. *Ib.*
4. The petition for a writ of error forms no part of the record of the court below. *Clark* v. *Pennsylvania*, 395.
5. In error to a state court, to review one of its judgments, this court acts only upon the record of the court below, and, in order to give this court jurisdiction it is essential that the record should disclose, not only that the alleged right, privilege or immunity, was set up and claimed in the court below, but that the decision of that court was against the right so set up or claimed. *Ib.*
6. These records do not disclose whether the refusal of the court below to give the instructions requested amounted to a denial of the claim of the plaintiff in error to immunity, and the writs of error are therefore dismissed. *Ib.*
7. In error to a state court, a Federal question not raised in the court below will not support this court's jurisdiction. *Quimby* v. *Boyd*, 488.
8. This court has no jurisdiction of a writ of error to the Circuit Court by reason of a certificate of division of opinion upon questions arising on demurrers to several defences in the answer, each of which questions, instead of clearly and precisely stating a distinct point of law, requires this court to find out the point intended to be presented, by searching through the allegations of the answer and the provisions of a statute, and by also examining either the whole constitution of the State, or

else reports or records of decisions of its courts, made part of the answer. *Dublin Township* v. *Milford Savings Institution*, 510.

See DIVISION OF OPINION;
WRIT OF ERROR, 1, 2.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. A Circuit Court of the United States has no jurisdiction to set aside a decree of partition in a state Probate Court authorized by law to make it; nor can it refuse to give full effect to the decree unless the Probate Court was without jurisdiction in the case. *Robinson* v. *Fair*, 53.
2. The power of Circuit Courts of the United States to punish contempts of their authority is incidental to their general power to exercise judicial functions, and the cases in which it may be employed are defined by acts of Congress. *Ex parte Terry*, 289.
3. A Circuit Court of the United States, upon the commission of a contempt in its presence, may, upon its own knowledge of the facts, without further proof, without issue or trial, (and without hearing an explanation of the motives of the offender,) immediately proceed to determine whether the facts justify punishment, and to inflict such punishment therefor as the law allows. *Ib.*
4. The jurisdiction of a Circuit Court to immediately inflict punishment for a contempt committed in its presence is not defeated by the voluntary retirement of the offender from the court-room to a neighboring room in the same building after committing the offence; but it is within the discretion of the court either to at once make an order of commitment, founded on its own knowledge of the facts, or to postpone action until the offender can be arrested on process, brought back into its presence, and given an opportunity to make formal defence against the charge of contempt; and any abuse of that discretion is at most an irregularity or error, not affecting the jurisdiction of the court. *Ib.*
5. A Circuit Court of the United States has no jurisdiction over suits for the violation of a trade-mark if the plaintiff and defendant are citizens of the same State, and the bill fails to allege that the trade-mark in controversy was used on goods intended to be transported to a foreign country. *Ryder* v. *Holt*, 525.
6. The assignee of a judgment founded on a contract suing in a Circuit or District Court of the United States, on the ground of citizenship, to recover on the judgment, cannot maintain the action unless it appears affirmatively in the record that both the plaintiff and his assignor were not citizens of the same State with the defendant. *Metcalf* v. *Watertown*, 586.
7. The fact that a suit is brought to recover the amount of a judgment of a court of the United States, does not, of itself, make it a suit arising under the Constitution and laws of the United States. *Ib.*
8. Where the original jurisdiction of a Circuit Court of the United States

is invoked upon the sole ground that the determination of the suit depends upon some question of a Federal nature, it must appear at the outset, in order to give the court jurisdiction, that the suit is one of which the court, at the time its jurisdiction is invoked, can properly take cognizance. *Ib.*

See CIRCUIT COURTS OF THE UNITED STATES;
JUDGMENT.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

An action of trespass on the case for damages by fire to the plaintiff's vessel in a port of the United States, alleged to have resulted from the negligence of the defendant's servants in cutting a burning scow or lighter loose from a wharf, and allowing it to drift against the vessel, is "a common law remedy" which the common law "is competent to give," and which is saved to suitors by the provisions of § 563, Rev. Stat., conferring admiralty and maritime jurisdiction upon District Courts of the United States. *Chappell* v. *Bradshaw*, 132.

D. JURISDICTION OF THE COURT OF CLAIMS.

1. The Court of Claims has jurisdiction to hear and determine a claim of a commissioner of a Circuit Court of the United States for keeping a docket and making entries therein in regard to parties charged with violations of the laws of the United States, which has been duly presented to the Circuit or District Court of the United States through the district attorney, and which the court has refused to act upon, although it may not have been presented at the Treasury Department and disallowed there; and the claimant is not obliged to resort to mandamus upon the Circuit Court for his remedy. *United States* v. *Knox*, 230.
2. The Court of Claims has jurisdiction over claims and demands of patentees of inventions for the use of their inventions by the United States with the consent of the patentees. *United States* v. *Palmer*, 262.
3. No opinion is expressed upon the question whether a patentee may waive an infringement of his patent by the government, and sue upon an implied contract. *Ib.*

JURY.

The act of June 30, 1879, c. 52, § 2, prescribing the mode of drawing jurors, does not repeal § 804 of the Revised Statutes, or touch the power of the court, whenever for any reason the panel of jurors previously summoned according to law is exhausted, to call in talesmen from the bystanders. *Lovejoy* v. *United States*, 171.

LIABILITY.

See STATUTE, A, 1.

LIMITATION, STATUTES OF.

If a bank, upon which a check is drawn payable to a particular person or order, pays the amount of the check to one presenting it with a forged indorsement of the payee's name, both parties supposing the indorsement to be genuine, a right of action to recover back the money accrues at the date of the payment, and the statute of limitations begins to run from that date. *Leather Manufacturers' Bank* v. *Merchants' Bank*, 26.

LOCAL LAW.

1. The state constitution in force in California prior to 1880 authorized the legislature to confer upon Probate Courts jurisdiction of proceedings for the partition of real estate, as ancillary or supplementary to the settlement and distribution of the estates of deceased persons coming within the cognizance of such courts. *Robinson* v. *Fair*, 53.
2. The legislature of California, under the constitution in force prior to 1880, conferred upon the Probate Courts of the state power, after final settlement of the accounts of a personal representative, and after a decree of distribution, defining the undivided interests of heirs in real estate in the hands of such representative, (neither the title of the decedent nor the fact of heirship being disputed,) to make partition of such estate among the heirs, so as to invest each separately with the exclusive possession and ownership of distinct parcels of such realty, as against coheirs; and such a grant of power does not appear to be foreign to the jurisdiction usually pertaining to such tribunals in this country. *Ib.*
3. The decisions of the Supreme Court of California examined and shown to be in harmony with the two points above stated. *Ib.*
4. The record in this case does not support the contention that proper notice of the proceedings in the Probate Court for the partition of the real estate was not given to the minor children. *Ib.*
5. At the time when the proceedings took place, which form the subject of controversy in this suit, there being no provision of law in force in California, requiring the appointment of guardians *ad litem* of infants, in probate proceedings, it was sufficient for them to be represented in such proceedings by an attorney, appointed by the court for that purpose. *Ib.*
6. Since the passage of the act of 1855, p. 335, codified in the Revised Statutes of Louisiana of 1870, p. 617, an unrecorded mortgage has no effect as to third persons, not parties to the act of mortgage or judgment, even though they had full knowledge of it. *Ridings* v. *Johnson*, 212.
7. The provision in § 1783 of the Code of Georgia, (ed. 1882,) that "the wife is a *feme sole* as to her separate estate, unless controlled by the settlement," and that "while the wife may contract she cannot bind her separate estate by . . . any assumption of the debts of her

husband, and any sale of her separate estate made to a creditor of her husband in extinguishment of his debt shall also be void," does not apply to a settlement made upon her by the husband, by deed of trust conveying the property to a trustee free from the debts and liabilities of the husband, and providing that whenever the husband and the wife shall by written request so direct, the trustee shall execute mortgages of the property; and does not invalidate an otherwise valid mortgage, executed by the trustee, on such written request, in order to secure a debt due from the husband. *Brodnax* v. *Ætna Ins. Co.*, 236.

8. The assent of the husband of a married woman to the terms of an agreement made by an agent for the sale and conveyance of lands of the wife situated in Minnesota is not sufficient to bind the wife. *Hennessey* v. *Woolworth*, 438.
9. In this case, it not being clearly established that the wife assented to the agreement for the sale of her real estate of which a specific performance is sought to be enforced, though the assent of the husband is shown, the decree is refused. *Ib.*
10. In Alabama, when a defendant pleads specially and generally, and the special plea contains nothing of which the defendant cannot avail himself under the general issue, an error in sustaining a demurrer to the special plea, as it works no injury, constitutes no ground for reversal. *Pollak* v. *Brush Electric Association*, 446.
11. In Alabama a written agreement between the parties may be read in evidence without proof of its execution, unless the execution is denied by plea, verified by affidavit. *Ib.*
12. The agreement which formed the subject of controversy in this action related to a renewal of the existing contract of the plaintiff in error for lighting certain streets in Montgomery, and not to an enlargement of that contract so as to include other streets; and being so construed, the requisite renewal was effected by the acts of the parties referred to in the opinion of the court, without a written contract, covering a fixed period of time. *Ib.*
13. In Wisconsin an equitable defence may be set up in an action at law; but it must be separately stated, in order that it may be considered on its distinctive merits, and in order that, if established, the appropriate relief may be administered. *Cornelius* v. *Kessel*, 456.

See EQUITY, 2.

LONGEVITY PAY.

1. A cadet-midshipman at the naval academy is an officer of the navy within the meaning of the provision in the act of March 3, 1883, 22 Stat. 473, c. 97, respecting the longevity pay of officers and enlisted men in the army or navy. *United States* v. *Cook*, 254.
2. The longevity acts of 1882, 1883, 22 Stat. 284, 287, c. 391; 473, c. 97, do not authorize a restatement of the pay accounts of an officer of the

navy who served in the regular or volunteer army or navy, so as to give him credit in the grade held by him, prior to their passage, for the time he served in the army or navy before reaching that grade. *United States* v. *Foster*, 435.

MAGNA CHARTA.

See CONTEMPT, 3.

MANDAMUS.

1. The courts will not interfere by mandamus with the executive officers of the government in the exercise of their ordinary official duties, even where those duties require an interpretation of the law; no appellate power being given them for that purpose. *Dunlap* v. *Black, Commissioner*, 40.
2. When an executive officer of the government refuses to act at all in a case in which the law requires him to act, or when, by special statute, or otherwise, a mere ministerial duty is imposed upon him, that is, a service which he is bound to perform without further question, if he refuses, mandamus lies to compel him to do his duty. *Ib.*
3. In this case a mandamus was issued, commanding the judge of a Circuit Court of the United States to settle a bill of exceptions according to the truth of the matters which took place before him on the trial of an action before the court, held by him and a jury, and to sign it, when settled, he having refused to settle and sign it on the ground that the term of the court at which the action was tried had expired, and the time allowed for signing the bill had expired. *Chateaugay Ore and Iron Co., Petitioner*, 544.

See COMMISSIONER OF PENSIONS, 2;
JURISDICTION, D, 1.

MANDATE.

See PRACTICE, 3.

MASTER AND SERVANT.

See COURT AND JURY, 1, 3.

MASTER'S REPORT.

See COPYRIGHT, 25.

MINERAL LAND.

See PUBLIC LAND, 7, 8, 9, 10, 11.

MISSOURI.

See MUNICIPAL BOND, 1, 5;
PUBLIC LAND, 5, 6.

MORTGAGE.

See EQUITY, 3, 4, 5, 6;
LOCAL LAW, 6, 7.

MOTION TO DISMISS OR AFFIRM.

1. On motion to dismiss or affirm it is only necessary to print so much of the record as will enable the court to act understandingly, without referring to the transcript. *Walston* v. *Nevin*, 578.
2. The party objecting that enough of the record is not printed to enable the court to act understandingly, on a motion to dismiss should make specific reference to the parts which he thinks should be supplied. *Ib.*
3. When on a motion to dismiss a writ of error or an appeal for want of jurisdiction or affirm the judgment below, it appears that there was color for the motion to dismiss, and that the contention of the plaintiff in error or the appellant has been often pressed upon the court and as often determined adversely, the motion to affirm will be granted. *Ib.*

MULTIFARIOUSNESS.

See EQUITY PLEADING, 3, 4, 5;
PATENT FOR INVENTION, 4.

MUNICIPAL BOND.

1. In this case bonds issued by Livingston County in Missouri, on behalf of Chillicothe township, in payment of a subscription to the stock of the Saint Louis, Council Bluffs and Omaha Railroad Company were held valid. *Livingston County* v. *First National Bank of Portsmouth*, 102.
2. The vote of the township, given in May, 1870, was in favor of the issue of the bonds to the Chillicothe and Omaha Railroad Company, a Missouri corporation. Afterwards, under a statute existing at the time of the vote, that company was consolidated with an Iowa corporation, under the name of the corporation to which the bonds were subsequently issued: *Held*, that the consolidation was authorized and that the privilege of receiving the subscription passed to the consolidated company. *Ib.*
3. The vote having contemplated the construction of the railroad which the consolidated company built, there was no diversion from the purpose contemplated by the vote, in the fact that the stock was subscribed, and the bonds issued, to the consolidated company. *Ib.*
4. The doctrine of *Harshman* v. *Bates County*, 92 U. S. 569, and *County of Bates* v. *Winters*, 97 U. S. 83, that a County Court in Missouri could not, on a vote by a township to issue bonds to a corporation named, issue the bonds to a corporation formed by the consolidation of that corporation with another corporation, would not be, if applied here, a sound doctrine. *Ib.*
5. On the recitals in the bonds, and the other facts in this case, the county was estopped from urging, as against a *bona fide* holder of the bonds,

the existence of any mere irregularity in the making of the subscription or the issuing of the bonds. *Ib.*

6. Bonds issued by Franklin County, Illinois, to the Belleville and Eldorado Railroad Company, in November, 1877, held invalid. *German Savings Bank* v. *Franklin County*, 526.
7. The vote of the people of the county in favor of subscribing to the stock of the company was taken in September, 1869, the subscription to be payable in bonds, which were to be issued only on compliance with a specified condition, as to the time of completing the road through the county. At the time of the vote, the act of April 16, 1869, was in force authorizing the county to prescribe the conditions on which the subscription should be made, and declaring that it should not be valid until such condition precedent should have been complied with. The bonds were issued without a compliance with the condition: *Held*, that, under the constitution of Illinois, which took effect July 2, 1870, the issuing of the bonds was unlawful, because it had not been authorized by a vote of the people of the county taken prior to the adoption of the constitution. *Ib.*
8. Before the bonds were issued the Supreme Court of Illinois, in *Town of Eagle* v. *Kohn*, 84 Ill. 292, had decided the meaning of the act of April 16, 1869, to be that bonds issued without a compliance with such condition precedent were invalid, even in the hands of innocent holders without notice. *Ib.*
9. The fact that the bonds were registered by the state auditor, under the act of April 16, 1869, did not make them valid. *Ib.*
10. The bonds of the town of Lansing in the State of New York, issued to aid in the construction of the New York and Oswego Midland Railroad, having been put out without a previous designation by the company of all the counties through which the extension authorized by the New York act of 1871, c. 298, would pass, were issued without authority of law, and are invalid. *Purdy* v. *Lansing*, 557.

MUNICIPAL CORPORATION.

See CONSTITUTIONAL LAW, 11;
MUNICIPAL BOND.

NATIONAL BANK.

See EQUITY PLEADING, 1.

NEGLIGENCE.

See COURT AND JURY, 1, 3.

NEW TRIAL.

See EXCEPTION, 2.

OFFICER OF THE NAVY.

See CLAIMS AGAINST THE UNITED STATES; LONGEVITY PAY.

PARTIES.

See ESTOPPEL, 2.

PARTITION.

1. The difference between distribution and partition of real estate among heirs pointed out. *Robinson* v. *Fair*, 53.
2. The jurisdiction of a Probate Court to make partition of real estate of a decedent among his heirs is not defeated by the fact that the proceedings for it were originated by a petition of the administratrix, who was also an heir-at-law, asking for a settlement of her accounts as administratrix, and for the adjudication of her rights as heir-at-law, by partition of the real estate; the record showing that the court made the decree for the final settlement and distribution of the estate before it entered upon the question of partition. *Ib.*

See JURISDICTION, B, 1.

PARTNERSHIP.

When a partner retires from a firm, assenting to or acquiescing in the retention by the other partners of the old place of business and the future conduct of the business by them under the old name, the goodwill remains with the latter of course. *Menendez* v. *Holt*, 514.

See TRADE-MARK, 4, 5.

PATENT FOR INVENTION.

1. Claim 1 of letters patent No. 42,580, granted May 3d, 1864, to J. F. T. Holbeck and Matthew Gottfried, for an "improved mode of pitching barrels," namely, "The application of heated air under blast to the interior of casks by means substantially as described, and for the purposes set forth," is a claim to an apparatus, and is void for want of novelty. The process carried on by means of the apparatus was not new, as a process. *Crescent Brewing Co.* v. *Gottfried*, 158.
2. In respect to the apparatus, the patentees, at most, merely applied an old apparatus to a new use. *Ib.*
3. Claim 2 of the patent held not to have been infringed. *Ib.*
4. A bill in equity which assails two patents, issued nearly a year apart, but to the same party, and relating to the same subject, both held by the same corporation defendant, and used by it in the same operations, is not multifarious. *United States* v. *American Bell Telephone Co.*, 315.
5. Where a patent for a grant of any kind, issued by the United States, has been obtained by fraud, by mistake, or by accident, or where there

is any error in the patent itself capable of correction, a suit by the United States against the patentee is the appropriate remedy for relief. This proposition is supported by precedents in the High Court of Chancery of England, and in other courts of that country. *Ib.*

6. The more usual remedy, under the English law, to repeal or revoke a patent, obtained by fraud from the king, was a writ of *scire facias*, returnable either into the Court of King's Bench or of Chancery; though it has been said that the jurisdiction of the Court of Chancery arises, not from its general jurisdiction to give relief for fraud, but because the patents issuing from the king were kept as records in the petty bag office of that court. The case, however, of *The Attorney General* v. *Vernon*, 1 Vernon, 277, and other cases seem to indicate that, by virtue of its general equity powers, the Court of Chancery had jurisdiction to give relief against fraud in obtaining patents. *Ib.*

7. In England grants and charters for special privileges were supposed to issue from the king, as prerogatives of the crown; and the power to annul them was long exercised by the king by his own order or decree. This mode of vacating charters and patents gradually fell into disuse; and the same object was obtained by *scire facias*, returnable into the Court of King's Bench, or of Chancery. *Ib.*

8. In this country, where there is no kingly prerogative, but where patents for lands and inventions are issued by the authority of the government, and by officers appointed for that purpose, who may have been imposed upon by fraud or deceit, or may have erred as to their power, or made mistakes in the instrument itself, the remedy for such evils is by proceedings before the judicial department of the government. *Ib.*

9. Both the Constitution and the acts of Congress organizing the courts of the United States have, in express terms, provided that the United States may bring suits in those courts; and they are all very largely engaged in the business of affording a remedy where the United States has a legal right to relief. *Ib.*

10. The present suit — a bill in Chancery in the Circuit Court of the United States for the District of Massachusetts, wherein the United States are plaintiffs, brought against the defendant to set aside patents for inventions on the ground that they were obtained by fraud — is a proper subject of the jurisdiction of that court, as defined in § 1, c. 37, act of March 3, 1875, 18 Stat. 470; and is well brought under the direction of the Solicitor General on account of the disability of the Attorney General to take part in the case; and its allegations of fraud and deception on the part of the patentee in procuring the patents are sufficient, if sustained, to authorize a decree setting aside and vacating the patents as null and void. *Ib.*

11. Section 4920 of the Revised Statutes, which enumerates five grounds of defence to a patent for an invention that may be set up by any one charged with an infringement of the rights of the patentee, was not intended to supersede, nor does it operate as a repeal or withdrawal of

the right of the government to institute an action to vacate a patent for fraud. *Ib.*

12. In a patent for an improvement in corn-planters, having the rear main frame mounted on supporting wheels and a front runner-frame hinged or pivoted to the main frame, the claim was for a slotted lever connected with the runner-frame by a bolt passing through the slot, in combination with a shaft journaled at one end to the main frame and at the other to the seat-standard, with a lifting hand-lever rigidly attached to that shaft, for elevating, depressing, and controlling the runners. Twenty-three months afterwards, a reissue was obtained, containing claims for any form of foot-lever and hand-lever used in combination for the purpose of elevating and depressing the runners, and other claims, differing only in being restricted to a hand lock-lever used in connection with the foot-lever, or in requiring the two levers to be rigidly connected together. Before the plaintiff's invention, a foot-lever and hand-lever had been used in combination, rigidly connected together, and with a lock on the hand-lever: *Held*, that the reissue was void. *Farmers' Friend Manufacturing Co.* v. *Challenge Corn Planter Co.*, 506.

14. Letters patent for an invention, issued without the signature of the Secretary of the Interior, have no validity, although in every other respect the requirements of law may be complied with, and although the issue without the Secretary's signature was unintentional, accidental and unknown to the Department of the Interior or to the patentee; but this omission may be supplied by the Secretary or Acting Secretary of the Interior at the time when the correction is made, and from that time forward the letters operate as a patent for the invention claimed. *Marsh* v. *Nichols*, 605.

15. An accounting for profits in a suit in equity to restrain an infringement of letters patent can only be had when the infringement complained of took place before the suit was commenced and continued afterwards. *Ib.*

16. The act of February 3, 1887, c. 93, "for the relief of Elon A. Marsh and Minard Lefever," 24 Stat. 378, has no retroactive effect. *Ib.*

See CASES EXPLAINED;
EQUITY, 14;
JURISDICTION, D, 2, 3.

PAYMENT.

See EQUITY, 5, 6.

PENALTY.

See STATUTE, A, 1, 2.

PENSION.

See COMMISSIONER OF PENSIONS.

PENSION AGENT.

See STATUTE, A, 1, 2.

PLEADING.

See ADMIRALTY;
EJECTMENT;
LOCAL LAW, 10, 13.

POLICE POWER.

See CONSTITUTIONAL LAW, A, 4.

PRACTICE.

1. When a bill in equity is dismissed by the court below on a general demurrer, without an opinion, it is an imposition on this court to throw upon it the labor of finding out for itself the questions involved, and the arguments in support of the decree of dismissal. *Ridings* v. *Johnson*, 212.
2. In the state of the record it is impossible to determine whether the complainant is entitled to all, or to a part, or to any of the relief which he seeks, and, the court below having erred in dismissing his bill for want of jurisdiction, the case is remanded for further proceedings. *Ib.*
3. The court denies a motion for an order for a mandate, no notice of it having been given to the other party. *Means* v. *Dowd*, 583.

See CASES OVERRULED;
CIRCUIT COURTS OF THE UNITED STATES;
DIVISION OF OPINION;
MANDAMUS;
MOTION TO DISMISS OR AFFIRM.
REMOVAL OF CAUSES.

PRINCIPAL AND AGENT.

When a person, who has been in the habit of dealing with an agent, has no knowledge of the revocation of his authority, he is justified in acting upon the presumption of its continuance. *Johnson* v. *Christian*, 374.

PRIORITY OF PAYMENT.

See EQUITY, 3, 4, 5, 6.

PROBATE COURT.

See JURISDICTION, B, 1;
LOCAL LAW, 1, 2, 3, 4, 5;
PARTITION, 2.

PUBLIC LAND.

1. When an entry is made of two or more tracts, one of which is not at the disposal of the United States by reason of being within a swamp-

land grant to a State, the validity of the entry of the remainder is not affected thereby. *Cornelius* v. *Kessel*, 456.

2. When an entry is made upon public land subject to entry, and the purchase money for it is paid, the United States then holds the legal title for the benefit of the purchaser, and is bound, on proper application, to issue to him a patent therefor; and if they afterwards convey that title to another, the purchaser, with notice, takes subject to the equitable claim of the first purchaser, who can compel its transfer to him. *Ib.*
3. The power of supervision possessed by the Commissioner of the General Land Office over the acts of the register and receiver of the local land offices is not unlimited or arbitrary, but can only be exerted when an entry is made upon false testimony, or without authority of law; and cannot be exercised so as to deprive a person of land lawfully entered and paid for. *Ib.*
4. When the Commissioner of the General Land Office, without authority of law, makes an order for the cancellation of an entry of public land made in accordance with law, and accompanied by the payment of the purchase money, the person making the entry and those claiming under him can stand upon it, and are not obliged to invoke the subsequent reinstatement of the entry by the Commissioner. *Ib.*
5. The act of June 13, 1812, 2 Stat. 748, c. 99, "making further provisions for settling the claims to land in the Territory of Missouri," was a grant *in præsenti* of all the title of the United States to all lands in the Grand Prairie Common Field of St. Louis which had been inhabited, cultivated, or possessed, prior to the treaty with France of April 30, 1803, leaving in them no title to such lands which could pass to the State of Missouri by the act of March 6, 1820, c. 22, 3 Stat. 545, authorizing the people of Missouri Territory to form a constitution and state government, etc. *Glasgow* v. *Baker*, 560.
6. In ejectment in Missouri, to recover a part of the Grand Prairie Common Field of St. Louis, the plaintiff claiming under the act of Congress of March 6, 1820, c. 22, § 6, subdivision 1, and the defendant claiming under a possession, occupation and cultivation under French law prior to the cession of Louisiana to the United States, it being proved that the land in controversy was either part of that Common Field or had been inhabited, cultivated, or possessed prior to the cession, the defendant is not required to prove with certainty and precision the time when, and the person by whom, the cultivation or occupation was made, but it is sufficient if there is satisfactory proof that according to the terms of the statute, the tract in dispute and all the land within the Grand Prairie Common Field had been inhabited, cultivated, or possessed prior to the year 1803. *Ib.*
7. Misrepresentations, knowingly made by an applicant for a mineral patent, as to discovery of mineral, or as to the form in which the mineral appears, whether in placers, or in veins, lodes or ledges, will

justify the government in moving to set aside the patent. *United States* v. *Iron Silver Mining Co.*, 673.

8. In such cases the burden of proof is upon the government, and the presumption that the patent was correctly issued can be overcome only by clear and convincing proof of the fraud alleged. The doctrine of the *Maxwell Land Grant Case*, 121 U. S. 325, and of *Colorado Coal and Iron Company* v. *United States*, 123 U. S. 307, on this point affirmed. *Ib.*
9. Exceptions made by the statute cannot be enlarged by the language of a patent. The statute only excepts from placer patents, veins or lodes known to exist at the date of the application for patent. *Ib.*
10. To establish the statutory exception from a placer patent the lodes or veins must be clearly ascertained, and be of such extent as to render the land more valuable on that account and justify their exploitation. *Ib.*
11. The certificate of the surveyor general is made by statute evidence of the sufficiency of work performed and improvement made on a mining claim. In the absence of fraudulent representations respecting them to him by the patentee, his determination as to their sufficiency, unless corrected by the Land Department, before patent, must be taken as conclusive. His estimate is open to examination by the Department before patent, and any alleged error in it cannot afterwards be made ground for impeaching the validity of the patent. *Ib.*
12. When lands are granted according to an official plat of their survey, the plat, with its notes, lines, descriptions and landmarks, becomes as much a part of the grant or deed by which they are conveyed, and, so far as limits are concerned, control as much as if such descriptive features were written out on the face of the deed or grant. *Cragin* v. *Powell*, 691.
13. It is not within the province of a Circuit Court of the United States or of this court to consider and determine whether an official survey duly made with a plat thereof filed in the District Land Office is erroneous; but, with an exception referred to in the opinion, the correction of errors in such surveys have devolved from the earliest days upon the commissioner of the General Land Office, under the supervision of the Secretary of the Executive Department to whom he is subordinate, whose decisions are unassailable by the courts, except by a direct proceeding. *Ib.*
14. When the General Land Office has once made and approved a governmental survey of public lands, the plats, maps, field notes and certificates, having been filed in the proper office, and has sold or disposed of such lands, the courts have power to protect the private rights of a party, who has purchased in good faith from the government, against the interferences or appropriations of subsequent corrective surveys made by the Land Office. *Ib.*
15. One who acquires land knowing that it covers a portion of a tract

claimed by another will be held either not to mean to acquire the tract of the other, or will be considered to be watching for the accidental mistake of another, and preparing to take advantage of them, and as such not entitled to receive aid from a court of equity. *Ib.*

See COMMISSIONER OF THE GENERAL LAND OFFICE.

RAILROAD.

1. The incorporation of a railroad company by a State, the granting to it of special privileges to carry out the object of its incorporation, particularly the authority to exercise the State's right of eminent domain to appropriate private property to its uses, and the obligation, assumed by the acceptance of the charter, to transport all persons and merchandise upon like conditions and for reasonable rates, affect the property and employment with a public use, and thus subject the business of the company to a legislative control which may extend to the prevention of extortion by unreasonable charges, and favoritism by discriminations. *Georgia Railroad and Banking Co.* v. *Smith*, 174.
2. In order to exempt a railroad corporation from legislative interference with its rates of charges within a designated limit, it must appear that the exemption was made in its charter by clear and unmistakable language, inconsistent with any reservation of power by the State to that effect. *Ib.*
3. Although the general purpose of a proviso in a statute is to qualify the operation of the statute, or of some part of it, it is often used in other senses, and is so used in the act of the legislature of Georgia of December 21, 1833, incorporating the Georgia Railroad Company; and that act does not exempt the corporation created by it, or its successors, from the duty of submitting to reasonable requirements concerning transportation rates made by a railroad commission created by the State. *Ib.*

See CONSTITUTIONAL LAW, A, 5; EQUITY, 3; COURT AND JURY, 1, 3; MUNICIPAL BOND.

RECORD.

See JURISDICTION, A, 4, 5, 6.

REMITTITUR.

See JUDGMENT.

REMOVAL OF CAUSES.

1. The manner or the time of taking proceedings, as the foundation for the removal of a case by a writ of error from one Federal court to another, is a matter to be regulated exclusively by acts of Congress, or, when they are silent, by methods derived from the common law, from ancient English statutes, or from the rules and practice of the courts of the United States. *Chateaugay Ore Co., Petitioner*, 544.

REPORTER.

See COPYRIGHT, 4, 5, 6, 7, 17.

ST. LOUIS.

See PUBLIC LAND, 5, 6.

SCIRE FACIAS.

See PATENT FOR INVENTION, 6, 7.

SHIP.

See CHARTER PARTY.

SPECIFIC PERFORMANCE.

See EQUITY, 7, 8, 13.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. Section 13 of the Revised Statutes, which enacts that "the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability," clearly excepts from the operation of c. 181, § 1 of the act of July 4, 1884, 23 Stat. 98, 99, repealing the act of June 20, 1878, "relating to claim agents and attorneys in pension cases," 20 Stat. 243, c. 367, all offences committed before the passage of that repealing act. *United States* v. *Reisinger*, 398.
2. The words "penalty," "liability" and "forfeiture," as used in Rev. Stat. § 13, are synonymous with the word "punishment," in connection with crimes of the highest grade, and apply to offences against the act of June 20, 1878, 20 Stat. 243, c. 367, relating to claim agents and attorneys in pension cases. *Ib.*

See RAILROAD, 3.

B. STATUTES OF THE UNITED STATES.

See APPEAL, 4;
CIRCUIT COURTS OF THE UNITED STATES, 1;
COMMISSIONER OF PENSIONS, 1;
COPYRIGHT, 3, 8, 21;
HABEAS CORPUS, 1;
JURISDICTION A, 1, 2;
JURY;
LONGEVITY PAY;
PATENT FOR INVENTION, 10, 11, 16;
PUBLIC LAND, 5, 6.

C. Statutes of the States and Territories.

Alabama.	*See* Constitutional Law, A, 5.
California.	*See* Local Law, 1, 2.
Georgia.	*See* Local Law, 7; Railroad, 3.
Illinois.	*See* Municipal Bond, 7, 8, 9.
Iowa.	*See* Constitutional Law, A, 1, 2.
Kentucky.	*See* Constitutional Law, A, 11.
Minnesota.	*See* Constitutional Law, A, 9; Insolvent Debtor, 1, 2.
Missouri.	*See* Municipal Bond, 2.
New York.	*See* Constitutional Law, A, 8; Municipal Bond, 10.
Texas.	*See* Constitutional Law, A, 7.

STATUTE OF LIMITATIONS.

See Limitation, Statutes of.

SUNDAY.

See Appeal, 4.

SUPREME COURT OF THE UNITED STATES.

See Cases overruled; Division of Opinion; Jurisdiction, A; Writ of Error.

TAX AND TAXATION.

See Constitutional Law, A, 7.

TENANTS IN COMMON.

See Husband and Wife.

TIME.

See Appeal, 4; Contract, 1.

TRADE-MARK.

1. On the proofs the court *holds:* (1) That the complainant was not the first person to use the design of a star on plug tobacco; (2) that there is no resemblance between the design of a star as used by the appellee and that used by the appellant. *Liggett and Myers Tobacco Co.* v. *Finzer*, 182.
2. A combination of words, made by a firm engaged in mercantile business, from a foreign language, in order to designate merchandise selected by them in the exercise of their best judgment as being of a certain standard and of uniformity of quality, may be protected to them and for their use as a trade-mark, and does not fall within the

rule in *Manufacturing Co.* v. *Trainer*, 101 U. S. 51. *Menendez* v. *Holt*, 514.

3. The addition of the infringer's name to a trade-mark in the place of the owner's does not render the unauthorized use of it any less an infringement. *Ib.*
4. A trade-mark may be part of the good-will of a firm, and in this case it was part of the good-will of the appellee's firm. *Ib.*
5. A person who comes into an existing firm as a partner, and, after remaining there a few years, goes out, leaving the firm to carry on the old line of business under the same title in which it did business both before he came in and during the time he was a partner, does not take with him the right to use the trade-marks of the firm, in the absence of an agreement to that effect. *Ib.*
6. The intentional use of another's trade-mark is a fraud; and when the excuse is that the owner permitted such use, that excuse is disposed of by affirmative action to put a stop to it and no estoppel arises. *Ib.*
7. The name of "Goodyear Rubber Company," being a name descriptive of well-known classes of goods produced by the process known as Goodyear's invention, is not one capable of exclusive appropriation; and the addition of the word "Company" only indicates that parties have formed an association to deal in such goods, either to produce or to sell them. *Goodyear India Rubber Glove Co.* v. *Goodyear Rubber Co.*, 596.
8. On the proofs the court held, that the complainant's right to the exclusive use of his alleged trade-mark was not established; and that he was not entitled to the equitable relief which he asked for in this suit. *Stachelberg* v. *Ponce*, 686.

See EQUITY, 10;
JURISDICTION, B, 5;
PARTNERSHIP.

TRAVELLING EXPENSES.

See CLAIMS AGAINST THE UNITED STATES.

TRESPASS ON THE CASE.

See JURISDICTION, C.

WRIT OF ERROR.

1. A writ of error, in which both the plaintiffs in error and the defendants in error are designated merely by the name of a firm, containing the expression "& Co." is not sufficient to give this court jurisdiction, but, as the record discloses the names of the persons composing the firms, the writ is, under § 1005 of the Revised Statutes, amendable by this court, and will not be dismissed. *Estis* v. *Trabue*, 225.
2. Where the judgment below is a money judgment against the "claim-

ants " and their two sureties in a bond, naming them, jointly, and the sureties do not join in the writ of error, and there is no proper summons and severance, the defect is a substantial one, which this court cannot amend, and by reason of which it has no jurisdiction to try the case, and it will, of its own motion, dismiss the case, without awaiting the action of a party. *Ib.*

See JURISDICTION, A, 4.