INDEX.

ADMIRALTY.

See INSURANCE, 4;
JURISDICTION, A, 10.

AGENT.

See PRINCIPAL AND AGENT.

AMENDMENT.

See JURISDICTION, A, 14.

APPEAL.

See APPEAL BOND;
EQUITY, 4;
MOTION TO DISMISS;
PUBLIC LAND, 8.

APPEAL BOND.

Where the decree appealed from awarded a money decree against one defendant, and the plaintiff appealed, and the obligees named in the appeal bond included that defendant and other defendants, and that defendant and some of the others moved to dismiss the appeal, on the ground that that defendant should be the sole obligee, and that the only matter for review was as to the amount awarded against that defendant: *Held*, that the bond was in proper form, and that the motion must be denied. *Hill* v. *Chicago and Evanston Railroad Co.*, 170.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

1. The Voluntary Assignment Act of the State of Illinois of 1877, which went into effect July 1, 1877, was intended to secure equality of right among all the creditors of the debtor making the assignment, and was a remedial act, to be liberally construed. *White* v. *Cotzhausen*, 329.
2. Several written instruments executed by an insolvent debtor in Illinois, all about the same time, to his mother, his sister and his brother, who were creditors of his estate, whereby, in contemplation of insolvency, he surrendered his entire estate for their benefit, to the exclusion of all other creditors, constitute, under the Voluntary Assignment Act of the State, but one instrument; operating as an assignment of the debtor's property for the benefit of his creditors equally, the advantage of which may be claimed by any creditor not so preferred, who

will take appropriate steps in a court of equity to enforce the equality contemplated by the statute. *Ib.*

3. A creditor in Illinois who attempts to secure to himself an illegal preference of his debt by means of a conveyance to him of the property of his debtor when insolvent, to the exclusion of other creditors, is not thereby debarred, under the operation of the Voluntary Assignment Act, from participating in a distribution under that act of all the debtor's property, including that thus illegally conveyed to him. *Ib.*

BANKRUPTCY.

1. A for his own accommodation asked B to collect money for him, without compensation, and to keep it until A called for it. B collected the money, and, without actual fraud or fraudulent intent, deposited the proceeds to his own credit with his own funds. By an unexpected revulsion he was forced into bankruptcy before he had paid it over, and made a composition with his creditors: *Held*, that the debt thus incurred by B to A was not a debt created by fraud or embezzlement of the bankrupt, or while he was acting in a fiduciary capacity within the exception provided for in Rev. Stat. § 5117. *Noble* v. *Hammond*, 65.
2. The word "fraud" as used in Rev. Stat. § 5117 means positive fraud, or fraud in fact, involving moral turpitude or intentional wrong, and not merely implied fraud, or fraud in law. *Ib.*
3. A state court has jurisdiction of an action brought by an assignee in bankruptcy to set aside, as made to defraud creditors, conveyances made by the bankrupt before the bankruptcy. *McKenna* v. *Simpson*, 506.

See JURISDICTION, A, 12, 13.

BOND.

A guardian's bond executed by a surety upon condition that another surety should be obtained is valid against third parties, in a collateral proceeding, although no such surety was obtained. *Arrowsmith* v. *Gleason*, 86.

See APPEAL BOND.

CASES AFFIRMED OR FOLLOWED.

1. *Arrowsmith* v. *Harmening*, 42 Ohio St. 259, followed. *Arrowsmith* v. *Gleason*, 86.
2. *Asher* v. *Texas*, 128 U. S. 129, affirmed. *Stoutenburgh* v. *Hennick*, 141.
3. *Barbier* v. *Connolly*, 113 U. S. 703. *Minneapolis and St. Louis Railway* v. *Beckwith*, 26.
4. *Missouri Pacific Railway* v. *Humes*, 115 U. S. 512. *Minneapolis and St. Louis Railway* v. *Beckwith*, 26.
5. *Pembina Mining Co.* v. *Pennsylvania*, 125 U. S. 181. *Minneapolis and St. Louis Railway* v. *Beckwith*, 26.

6. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, affirmed. *Stoutenburgh* v. *Hennick*, 141.
7. *Santa Clara County* v. *Southern Pacific Railroad*, 118 U. S. 394. *Minneapolis and St. Louis Railway* v. *Beckwith*, 26.
8. *Seibert* v. *Lewis*, 122 U. S. 284, was very carefully and elaborately considered, and is adhered to. *Seibert* v. *Harshman*, 192.
9. *Soon Hing* v. *Crowley*, 113 U. S. 703. *Minneapolis and St. Louis Railway* v. *Beckwith*, 26.

CASES DISAPPROVED.

Newcomb v. *Almy*, 96 N. Y. 308, disapproved. *Carr* v. *Hamilton*, 252.

CASES EXPLAINED, OVERRULED OR QUALIFIED.

1. *Clement* v. *Packer*, 125 U. S. 309, explained and distinguished. *Schraeder Mining Co.* v. *Packer*, 688.
2. *Cummings* v. *Missouri*, 4 Wall. 277, and, 3, *Ex parte Garland*, 4 Wall. 333, examined and shown to differ materially from this case. *Dent* v. *West Virginia*, 114.
4. *Hartog* v. *Memory*, 116 U. S. 588, explained and qualified. *Morris* v. *Gilmer*, 315.

CERTIORARI.

See DISTRICT OF COLUMBIA, 1, 2.

COMITY.

See COMMON CARRIER, 4.

COMMON CARRIER.

1. A railway company received cotton for transportation as a common carrier giving the owner a bill of lading received and accepted by him which contained a "stipulation and agreement" that the carrier "should have the benefit of any insurance which may have been effected upon or on account of said cotton." While in the carrier's custody the cotton was destroyed by fire. The owner had open policies against loss by fire which covered this loss. These policies all provided for the transfer of the owner's claim against the carrier to the insurer on payment of the loss, and some of them contained further provisions forfeiting the insurance in case any agreement was made by the insured whereby the insurer's right to recover of the carrier was released or lost. In case of loss these open policies were to be kept good for their full amount by the insured paying to the insurers four per cent of the insured loss, on receiving the amount of it from the insurer. In the present case, instead of making these mutual payments, the insurers adjusted the loss, and reinstated the policies, charging the four per cent premium; and the parties agreed

that the owner should proceed against the carrier without prejudicing his claim against the insurers, and that the insurers should allow him interest on the claim until collected. The owner brought suit against the carrier. Negligence on the carrier's part, although denied in the pleadings, was not contested at the trial, but the defence rested on the failure to give the carrier the benefit of insurance; *Held*, (1) That, as the defendant's right to the benefit of the insurance depended upon the maintenance of the plaintiff's cause of action, it could not be set up in denial of the truth of the complaint; (2) that it could not be set up as a counter-claim because no unconditional payments of insurance had been made to the plaintiff; (3) that, as recovery could not be had against the insurers except upon condition of resort over against the carrier, any act to defeat which was to operate to cancel the insurers' liability, the policies could not be made available for the benefit of the carrier; (4) that the agreement made with the insurers subsequent to the loss did not amount to a payment; (5) that the insurers were entitled under their contract to require the insured to proceed first against the carrier, and to decline to indemnify him until the question and the measure of the carrier's liability were determined. *Inman* v. *South Carolina Railway Co.*, 128.

2. The owner of a general ship, carrying goods for hire on an ocean voyage, is a common carrier. *Liverpool and Great Western Steam Co.* v. *Phenix Insurance Co.*, 397.

3. A common carrier by sea cannot, by any stipulation with a shipper of goods, exempt himself from all responsibility for loss or damage by perils of the sea, arising from negligence of the officers or crew. *Ib.*

4. Upon a question of the effect of a stipulation exempting a common carrier from responsibility for negligence of his servants, the courts of the United States are not bound by decisions of the courts of the State in which the contract is made. *Ib.*

5. In a through bill of lading for carriage from an inland city in the United States, by a railroad company and its connections, and a steamship company, to an English port, signed by an agent of the companies, "severally, but not jointly," and containing two separate and distinct sets of terms and conditions, the one relating to the land carriage, and the other to the ocean transportation, a stipulation, inserted in the first set only, that in case of loss that company alone shall be answerable in whose actual custody the goods are at the time, "and the carrier so liable shall have the full benefit of any insurance effected upon the goods," gives the steamship company no right to the benefit of any insurance. *Ib.*

See CONTRACT, 5;
INSURANCE, 4.

CONGRESS.

See PUBLIC LAND, 7 (1).

CONSTITUTIONAL LAW.

A. Of the United States.

1. The provision in the Code of Iowa, § 1289, which authorizes the recovery of "double the value of the stock killed or damages caused thereto" by a railroad, when the injury took place at a point on the road where the corporation had a right to erect a fence and failed to do so, and when it was not "occasioned by the wilful act of the owner or his agent," is not in conflict with the Fourteenth Amendment to the Constitution of the United States, either as depriving the company of property without due process of law, or as denying to it the equal protection of the laws. *Minneapolis and St. Louis Railway* v. *Beckwith*, 26.
2. Corporations are persons within the meaning of the clauses in the Fourteenth Amendment to the Constitution concerning the deprivation of property, and concerning the equal protection of the laws. *Santa Clara County* v. *Southern Pacific Railroad*, 118 U. S. 394, and *Pembina Mining Co.* v. *Pennsylvania*, 125 U. S. 181, followed. *Ib.*
3. The Fourteenth Amendment to the Constitution does not limit the subjects in relation to which the police power of the State may be exercised for the protection of its citizens. *Barbier* v. *Connolly*, 113 U. S. 27, *Soqn Hing* v. *Crowley*, 113 U. S. 703, and *Missouri Pacific Railway* v. *Humes*, 115 U. S. 512, considered and followed. *Ib.*
4. The statute of West Virginia, (§§ 9 and 15, c. 93, 1882,) which requires every practitioner of medicine in the State to obtain a certificate from the State Board of Health that he is a graduate of a reputable medical college in the school of medicine to which he belongs; or that he has practised medicine in the State continuously for ten years prior to March 8, 1881; or that he has been found upon examination to be qualified to practise medicine in all its departments, and which subjects a person practising without such certificate to prosecution and punishment for a misdemeanor, does not, when enforced against a person who had been a practising physician in the State for a period of five years before 1881, without diploma of a reputable medical college in the school of medicine to which he belonged, deprive him of his estate or interest in the profession without due process of law. *Dent* v. *West Virginia*, 114.
5. The State, in the exercise of its power to provide for the general welfare of its people, may exact from parties before they can practise medicine a degree of skill and learning in that profession upon which the community employing their services may confidently rely; and, to ascertain whether they have such qualifications, require them to obtain a certificate or license from a Board or other authority competent to judge in that respect. If the qualifications required are appropriate to the profession, and attainable by reasonable study or application, their validity is not subject to objection because of their stringency or difficulty. *Ib.*

6. Legislation is not open to the charge of depriving one of his rights without due process of law, if it be general in its operation upon the subjects to which it relates, and is enforceable in the usual modes established in the administration of government with respect to kindred matters; that is, by process or proceedings adapted to the nature of the case, and such is the legislation of West Virginia in question. *Cummings* v. *Missouri*, 4 Wall. 277, and *Ex parte Garland*, 4 Wall. 333, examined and shown to differ materially from this case. *Ib.*

7. Under the authority conferred upon Congress by § 8, article 1 of the Constitution, "to make all laws which shall be necessary or proper for carrying into execution" the power "to exercise exclusive legislation in all cases whatsoever over" the District of Columbia, Congress may constitute the District "a body corporate for municipal purposes," but can only authorize it to exercise municipal powers. *Stoutenburgh* v. *Hennick*, 141.

8. The act of the Legislative Assembly of the District of Columbia of August 23, 1871, as amended June 20, 1872, relating to license taxes on persons engaging in trade, business or profession within the District, was intended to be a regulation of a purely municipal character; but nevertheless the provision in clause 3, of § 21, which required commercial agents, engaged in offering merchandise for sale by sample, to take out and pay for such a license, is a regulation of interstate commerce, so far as applicable to persons soliciting the sale of goods on behalf of individuals or firms doing business outside of the District, and it was not within the constitutional power of Congress to delegate to that body legislative authority to enact a clause with such a provision, nor did it in fact do so in a grant of power for municipal purposes. *Ib.*

9. Section 4059 of the Code of Iowa, which provides that a person having in his possession "Texas cattle," which have not been wintered north of the southern boundary of Missouri and Kansas, shall be liable for any damages which may accrue from allowing them to run at large and thereby spread the disease known as "Texas fever," is not in conflict with the commerce clause of the Constitution of the United States; nor is it a denial to citizens of other States of any rights and privileges which are accorded to citizens of Iowa, and thus in conflict with subdivision 1 of § 2 of article 4 of the Constitution, relating to the privileges and immunities of the citizens of the several States. *Kimmish* v. *Ball*, 217.

B. Of the States.

1. A constitution, or a statute, is construed to operate prospectively only, unless, on its face, the contrary intention is manifest beyond reasonable question. *Shreveport* v. *Cole*, 36.

2. A valid power to issue its bonds in aid of railroads, conferred upon a municipal corporation of Tennessee by a statute of that State enacted

while the constitution of 1834–5 was in force, not having been accepted and acted upon by the corporation at the time when the constitution of 1870 came into operation, became subject to the conditions and prohibitions of article 2, § 29, of that instrument, and could not be exercised without further legislation in conformity therewith. *Norton* v. *Brownsville*, 479.

3. A constitutional prohibition upon the legislature does not necessarily affect past legislative action; but a similar prohibition upon a municipal corporation annuls unexecuted powers previously conferred upon it. *Ib.*

4 The substitution of a new constitution for an old one abrogates the latter; and if the former contains provisions of the old constitution with changes and additions, they are not to be treated as ordinary legislation in amendment of prior statutes. *Ib.*

5. A clause in a new state constitution, designed to keep in force all laws not inconsistent with the instrument, will not perpetuate a previous law, enabling a municipality to do, under certain circumstances, that which the new constitution forbids to be done, except under other circumstances. *Ib.*

CONTRACT.

1. In a contract by which the owner of a quarry on an island on the coast agrees to furnish and deliver at a public building in the interior the granite required for its construction, at specified prices by the cubic foot, and to furnish all the labor, tools and materials necessary to cut, dress and box the granite at the quarry, the United States, under a stipulation to pay "the full cost of the said labor, tools and materials, and insurance on the same," are not bound to pay anything for insurance, unless effected by the other party; nor are they, under a stipulation to "assume the risk of damage to cutting on said stone while being transported to the site of said building," bound to pay any part of the expense of raising granite sunk by a peril of the sea with its cutting uninjured. *Tillson* v. *United States*, 101.

2. In October, 1874, Mrs. M. owned a tract of land consisting of four acres on Kansas River in the town of Wyandotte, Kansas, called Ferry tract, and the Kansas Pacific Railway Company owned a tract of 25¼ acres lying north of Wyandotte. In that year negotiations were opened between her and the company for an exchange of $2\frac{70}{100}$ acres of the Ferry tract, valued at $2000, for the 25¼-acre tract, valued at $1500, Mrs. M. offering to take for the difference in value a quarter section of land estimated at $3 an acre. Negotiations for the exchange were had between Mrs. M. and officers of that company. On February 26, 1878, the president of the company informed its general superintendent, in substance, that the exchange would be made, and directed him to proceed with the matter. The superintendent turned the matter over to the attorney of the company, who acquainted Mrs. M. with the

conclusion. She, considering the proposition for an exchange of lands accepted, took possession of the 25¼ acre tract with her husband, and made valuable improvements upon it, and has remained in possession ever since. The railway company, who had previously been permitted to lay a track across the land for temporary use, took possession of the $2\frac{70}{100}$ acres and made improvements thereon. In June, 1878, at a meeting of the directors of the company, the president presented a form of deed to Mrs. M. of 25¼ acres in exchange for the $2\frac{70}{100}$ acres at the landing, and asked for instructions. It was then resolved that an exchange of said lands be made and the deed executed to Mrs. M. whenever the land to be conveyed by her was released from a tax claim thereon. A deed from her and her husband of the $2\frac{70}{100}$ acres had previously been executed to the company and sent to its officers. After this resolution of the board, proceedings were taken by her for the release of the tax claim mentioned in it, which was accomplished, under the advice of the attorney of the company, by purchasing in the property upon the sale made for such alleged tax. A deed was then demanded of the company for the 25¼-acre tract, and being refused, the present suit was brought for the enforcement of the contract. On the 24th of January, 1880, the Kansas Pacific Railway Company had become consolidated with the Denver Pacific Railway and Telegraph Company, and the Union Pacific Railway Company, under the name of the latter. By the articles of consolidation all the property of the constituent companies was conveyed to the new company, with a declaration that the assignment and transfer were made "subject to all liens, charges and equities pertaining thereto." Previous to this transfer and consolidation, and in May, 1879, a mortgage was made by the Kansas Pacific Company of its property, including the 25¼-acre tract, to Gould and Sage as trustees; *Held*, (1) That the resolution of the Board of Directors of June 28, 1878, was a ratification in part of the negotiations for the exchange of the two tracts, and Mrs. M. having accepted this action, it is not valid ground of objection by the Kansas Pacific Company to the enforcement of the contract that it called for less than was originally agreed upon; (2) that the taking possession of the tracts by the parties pursuant to the contract and continuing in possession and making improvements thereon constitute part performance of such contract sufficient to take it out of the Statute of Frauds and authorize a decree for full performance; (3) that the obligation of the Kansas Pacific Company to execute a conveyance to Mrs. M. passed to the defendant company upon the consolidation mentioned and the transfer to it of the property of the Kansas Pacific Company; (4) that the trustees under the mortgage of 1879 took the property with notice of the rights of Mrs. M., and subject to their enforcement. *Union Pacific Railway Co.* v. *McAlpine*, 305.

3. Prior to the expiration, June 30, 1877, of a written contract with a railroad company for carrying the mails, the Postmaster General, acting

under provisions of law, notified the company in writing that from the day of that expiration to a day which made a term of four years, the compensation would be at rates named in the notice, "unless otherwise ordered." The company transported the mails, and accepted the pay therefor at those rates, without objection. On the 1st of July, 1878, the Postmaster General reduced the rates five per cent under the provisions of an act of Congress to that effect. The company made no objections to this, and continued to transport the mails for the rest of the term of four years, and received pay therefor at the reduced rates. They then brought suit to recover the amount of the reduction made after July 1, 1878: *Held*, (1) That there was no contract to carry the mails for four years at fixed rates; (2) that the company might have refused to transport them at the reduced rates; (3) that its failure to do so and the absence of a protest constituted an assent to the rates fixed by the reduction. *Eastern Railroad Co.* v. *United States*, 391.

4. The law of a place where a contract is made governs its nature, obligation and interpretation, unless it appears that the parties, when entering into the contract, intended to be bound by the law of some other country. *Liverpool and Great Western Steam Co.* v. *Phenix Insurance Co.*, 397.

5. A contract of affreightment, made in an American port by an American shipper with an English steamship company doing business there, for the shipment of goods there and their carriage to and delivery in England, where the freight is payable in English currency, is an American contract, and governed by American law, so far as regards the effect of a stipulation exempting the company from responsibility for the negligence of its servants in the course of the voyage. *Ib.*

6. By a written agreement between two parties, one acknowledged that he was indebted to the other in the sum of $70,000, "over and above all discounts and set-offs of every name and nature;" and it was stated that the latter was to take up and satisfy certain other indebtedness of the former, and that the former had conveyed to the latter a stock of goods and store-fixtures, notes, books and accounts, and a piece of land, "with power forthwith, at such times and in such manner as" the latter should "deem best, to convert the said goods," "fixtures, notes, accounts and premises into money, and apply the proceeds to the payment of said indebtedness," with interest, and also a certain farm; and it was agreed that if the former should, within six months from date, pay said indebtedness, the latter would reconvey the farm, but, in default of such payment, might foreclose "the certain mortgage comprised in" the conveyance of the farm and the agreement. The conveyances mentioned in the agreement were made, and the title to the piece of land and the farm and the right to the indebtedness, came into the hands of the plaintiff, who sold the land, and brought this suit in equity against the original debtor for an account of the

amount due on the security of the farm, and for a foreclosure of the debtor's equity of redemption in the farm; *Held* (1) The debtor could not go behind the agreement fixing the debt at $70,000 because there was no sufficient evidence to impeach it, on the ground that his signature was obtained by fraud or duress, or without his full knowledge of its provisions and consent to its terms; (2) the debtor was entitled to be credited only with the sums realized by the creditor from the sale of the personal property and piece of land, and not with sums estimated, by testimony, as their value at the time of the agreement; (3) under the statute of Illinois, where the transaction took place, the creditor was entitled to interest on the $70,000 from the expiration of the six months, and on the amount paid by him on the other indebtedness from the time of paying it; (4) the amount of a mortgage given by the creditor on the farm was to be credited to the debtor and paid by the farm. *Goodwin* v. *Fox*, 601.

See COMMON CARRIER; DEED, 6; EQUITY, 4; STATUTE OF FRAUDS.

CORPORATION.

1. A stockholder in an insolvent corporation, who has paid his stock subscription in full by a transfer of a tract of land, in good faith, at an agreed value, for the use of the company's business, is not liable in equity to a creditor of the corporation who had knowledge of and assented to the transaction at the time when it took place, solely upon the ground that the land turned out to be of less value than was agreed upon. *Bank of Fort Madison* v. *Alden*, 372.
2. The doctrine that the distribution of a trust fund of a corporation to the individual stockholders upon their resolution does not deprive a creditor, not consenting thereto, of his right to compel the application of the fund to the payment of the debts of the corporation, cannot be invoked by a creditor who is a stockholder consenting to the distribution and participating in the appropriation. *Ib.*
3. An indorsement of the note of a third party by one member of a partnership in the firm's name, by way of security to a bank, without the knowledge or consent of the other partner, cannot be enforced as a liability against the estate of the latter after his decease. *Ib.*

See FRAUD, 3, 4, 5.

COSTS.

When the judgment below is reversed in this court for want of jurisdiction in the Circuit Court, the plaintiff in error is entitled to his costs in this court. *Chapman* v. *Barney*, 677.

COUNTER-CLAIM.

See COMMON CARRIER, 1 (2).

COURT AND JURY.

In ejectment, the question whether the tract in dispute is within the boundaries of a grant of public land is to be determined by the jury on the evidence as explained by the court. *Pinkerton* v. *Ledoux*, 346.

COURTS OF THE UNITED STATES.

See COMMON CARRIER, 4;
JURISDICTION.

CUSTOMS DUTY.

1. The crop ends of Bessemer steel rails are liable to a duty of 45 per cent *ad valorem*, as "steel," under Schedule C of § 2502 of the Revised Statutes, as amended by § 6 of the act of March 3, 1883, c. 121, 22 Stat. 500, and are not liable to a duty of only 20 per cent *ad valorem* as "metal unwrought," under the same schedule. *Robertson* v. *Perkins*, 233.
2. Under the practice in New York, allegations in the complaint, that the plaintiff "duly" protested in writing against the exaction of duty, and "duly" appealed to the Secretary of the Treasury, and that ninety days had not elapsed, at the commencement of the suit, since the decision of the Secretary, if not denied by the answer, are to be taken as true, and are sufficient to prevent the defendant from taking the ground, at the trial, that the protest was premature, or that the plaintiff must give proof of an appeal, or of a decision thereon, or of its date. *Ib.*

DAMAGES.

1. The propriety and legality of the imposition of punitive damages for a violation of duty have been recognized by repeated judicial decisions for more than a century. *Minneapolis and St. Louis Railway* v. *Beckwith*, 26.
2. This court holds that in stock transactions between a stockbroker and his principal, in which the principal suffers from the neglect of the broker to execute orders, either for the sale of stock which he holds for the principal, or for the purchase of stock which the principal orders, is, not the highest intermediate value up to the time of trial, but the highest intermediate value between the time of the conversion and a reasonable time after the owner has received notice of it; in this respect disregarding the rule adopted in England and in several of the States in this country, and following the more recent rulings in the Court of Appeals of the State of New York. *Galigher* v. *Jones*, 193.

DEED.

1. When the proof is conflicting upon the point of undue influence exerted upon one making provision by deed in favor of the person alleged to have exerted the influence, and it appears that the contestant, hav-

ing full knowledge of all the circumstances, made no averment in his original bill of the incapacity of the grantor, and did not raise that issue until an amended bill was filed a year later, that fact is entitled to weight in determining the case. *Ib.*

2. When incapacity caused by drunkenness is alleged as a cause for annulling a deed, the vital inquiry is as to the capacity of the grantor when the deeds were executed, and not as to his capacity when drunk. *Ralston* v. *Turpin*, 663.
3. Section 2666 of the Code of Georgia, relating to gifts made to a guardian by a minor just after arriving at majority does not apply to the case of a deed or will in favor of his guardian made by a person some years after arriving at his majority; but even if it did apply, such a deed would be good if made with a full knowledge of the facts, and without any misrepresentation or suppression of material facts by the guardian. *Ib.*
4. As the record in this case discloses nothing impeaching the final settlement made between the guardian and his ward, § 1847 of the Code of Georgia does not apply to it. *Ib.*
5. Section 3177 of the Code of Georgia, relating to gifts from one party to another where there are confidential relations arising from nature, or created by law, or resulting from contracts where one party is so situated as to exercise a controlling influence over the other, is only a statement of a general rule, governing all courts of equity. *Ib.*

DISTRICT OF COLUMBIA.

1. A judgment of the Supreme Court of the District of Columbia, quashing a writ of *certiorari*, after a justice of the peace, in obedience to the writ, has returned the record of his proceedings and judgment in a landlord and tenant process, is reviewable by this court on writ of error, if the right to the possession of the premises is worth more than $5000. *Harris* v. *Barker*, 666.
2. A judgment of a justice of the peace, which is subject to appeal, cannot be quashed by writ of *certiorari*, except for want of jurisdiction, appearing on the face of his record. *Ib.*
3. Under the Landlord and Tenant Act of the District of Columbia, requiring a "written complaint on oath of the person entitled to the possession of the premises to a justice of the peace," the oath may be taken before a notary public outside of the District. *Ib.*
4. Under the Landlord and Tenant Act of the District of Columbia, a complaint which alleges that the complainant is entitled to the possession of the premises, and that they are detained from him and held without right by the defendant, his tenant at sufferance, and whose tenancy and estate therein have been determined by a thirty days' notice in writing to quit, is sufficient to support the jurisdiction of the justice of the peace. *Ib.*

See CONSTITUTIONAL LAW, 7, 8;
STATUTE, A.

EJECTMENT.

An entry into land without right or title, followed by continuous uninterrupted possession under claim of right for the period of time named in a Statute of Limitations, constitutes a statutory bar, in an action of ejectment, against one who otherwise has the better right of possession. *Probst* v. *Presbyterian Church*, 182.

See COURT AND JURY.

EQUITY.

1. When the decree of a court of equity, for the sale of a tract of land, requires the sale to be made "upon the terms, cash in hand upon the day of sale," and a person bidding for it at the sale is the highest bidder, and as such is duly declared to be the purchaser, no confirmation of the sale by the court is necessary in order to fix liability upon him for the deficiency arising upon a resale, in case he refuses, without cause, to fulfil his contract; and, if the purchaser refuses to pay the amount bid, the court, without confirming the sale, may order the tract to be resold, and that the purchaser shall pay the expenses arising from the non-completion of the purchase, the application and resale, and also any deficiency in price in the resale. *Camden* v. *Mayhew*, 73.

2. When a purchaser at a sale of real estate, under a decree of a court of equity, refuses, without cause, to make his bid good, he may be compelled to do so by rule or attachment issuing out of the court under whose decree the sale was had; or he may be proceeded against in the same suit by rule, (or in any other mode devised by the court, which will enable him to meet the issue as to his liability,) in order to make him liable for a deficiency resulting from a resale caused by his refusal to make his bid good. *Ib.*

3. B executed and delivered to C his bond in 1855 or 1856 to convey to him a tract of land for a consideration named. C entered into possession, borrowed money of R, paid the consideration money in full, and made valuable improvements on the place. At C's request the conveyance was made to R, in 1858, to secure him. Four years later R, having in the meanwhile been paid in full by C, conveyed the property to a woman without consideration, and then married her. After some time the married couple separated. The wife then brought ejectment to recover possession from C, (who during the whole time had remained in possession,) and obtained a verdict and judgment on the verdict for possession. Thereupon C took a new trial as of right, under the laws of Illinois, and in 1883 filed his bill in equity against the wife to compel a conveyance of the land to him; *Held* (1) That C's remedy was in equity; (2) that he had not been guilty of such laches as would close the doors of a court of equity against him; (3) that the evidence in the record was sufficient to support a decree in complainant's favor. *Ruckman* v. *Corry*, 387.

4. On the proofs which are reviewed at length in the case stated by the court; *Held*, that the agreements between the parties of March 20, 1880, were so far consummated that neither party to this suit can insist upon superiority of lien as between themselves; that no case of misrepresentation of facts as distinguished from matters of opinion is made out to warrant declaring the agreements null and void; that the execution and delivery of his note by Dawson and the delivery of the cattle to him, and O'Neal's bill of sale consummated the written agreement so far as he was concerned; that the action of appellants in commencing suit against Dawson and O'Neal, and in taking possession of the cattle was unjustifiable, and that Dawson may recover his damages thereby suffered by way of reconvention in this suit; that the original bill for foreclosure having been amended so as to be in the alternative, seeking the ascertainment of the indebtedness of O'Neal to the complainants, and the payment of their share of the proceeds of the cattle, the bill should be retained and go to decree; that the *pro rata* proportions of indebtedness were incorrect; that the appellant is not so situated as to be entitled to set up an estoppel in this respect; that the proportions in which the fund should be divided between the parties should be determined as of the date that Dawson paid the money into the bank; that the laws of Illinois govern as to the rate of interest; and that, as the decree was severable in fact and in law, and as O'Neal's estate (he having deceased) had no concern with the matters complained of by the bank and by Dawson, they were entitled to prosecute their appeal without joining O'Neal's administratrix, who did not think proper to question the judgment. *City Bank* v. *Hunter*, 557.

See CONTRACT, 2, 6; ESTOPPEL; JURISDICTION, B, 2. LOCAL LAW, 2; MASTER IN CHANCERY.

ESTOPPEL.

A consent of coterminous proprietors of real estate to mark a boundary line supposed to run, according to the marking between undisputed tracts, given by both in ignorance of the real facts and of the existence of a conflict, does not estop either from claiming his rights when the mistake is discovered; nor can it be construed as a license from the injured party to the other, to cut timber on the disputed tract up to the mistaken boundary line. *Schraeder Mining Co.* v. *Packer*, 688.

See MANDAMUS, 2, 3.

EVIDENCE.

1. A ruling, in the trial court, that the showing that an original deed of a tract of land to a party in a suit pending in New Mexico is in the office of that party in New York lays a foundation for the admission

of a copy, by that party, under § 2768 of the Compiled Laws of that Territory, is not good practice, nor an exercise of the discretion of the court to be commended; though it is possible that if there were no other objection to the proceedings at the trial, the judgment would not be reversed on that account. *Probst* v. *Presbyterian Church*, 182.

2. In an action against the sureties on a contractor's bond to the United States to recover damages suffered by reason of the nonfulfilment of the contract, the burden of proof is on the United States to show a demand upon the contractor for performance, and his failure and refusal to perform; and a statement of such nonperformance, demand, failure and refusal, made by an officer of the government in the line of his official duty in reporting them to his official superior, is not legal evidence of any of those facts. *United States* v. *Corwin*, 381.
3. A grantee in a deed is not affected by declarations of a grantor, made after the execution and delivery of the deed, unless, with full knowledge of them, he acquiesces in or sanctions them. *Ruckman* v. *Corry*, 387.
4. When a letter is mailed, addressed to a person at his post-office address, the presumption is that he receives it. *Kimberly* v. *Arms*, 512.
5. Letters of a shipping agent to his principal are incompetent evidence, either in themselves, or in corroboration of the agent's testimony, of the quantity of goods shipped, against third persons. *Ins. Co. of North America* v. *Guardiola*, 642.

See COURT AND JURY; DEED, 2; FRAUD, 1; JURISDICTION, A, 2; LOCAL LAW, 3; PATENT FOR INVENTION, 30; WITNESS.

EXCEPTION.

Where, at the close of the plaintiff's evidence, on a trial before a jury, the defendant moves the court to direct a verdict for him, on the ground that the plaintiff has not shown sufficient facts to warrant a recovery, and the motion is denied, and the defendant excepts, the exception fails, if the defendant afterwards introduces evidence. *Robertson* v. *Perkins*, 233.

FIDUCIARY RELATION.

See FRAUD, 5.

FOREIGN LAW.

1. The general maritime law is in force in this country so far only as it has been adopted by the laws or usages thereof. *Liverpool and Great Western Steam Co.* v. *Phenix Insurance Co.*, 397.
2. The law of Great Britain since the Declaration of Independence is a foreign law, of which a court of the United States cannot take notice, unless it is pleaded and proved. *Ib.*

FRAUD.

1. In a suit in equity, brought by a judgment creditor, to set aside, as fraudulent, another judgment against the debtor, and the sale thereunder to the plaintiff in the latter, of land of the debtor, it was held, that the burden of proof was on the plaintiff, and that the latter judgment had not been successfully impeached. *Allen* v. *Smith*, 465.
2. The plaintiff could not avail himself of the objection that the debtor did not plead the Statute of Limitations to a part of the claim, in the suit which resulted in the latter judgment; the debtor was at liberty to waive the plea; and there was sufficient in the relations of the parties and in the circumstances of the case to warrant him in doing so. *Ib.*
3. The Richmond and Danville Extension Company contracted with the Georgia Pacific Railway Company to construct that company's road by the nearest, cheapest and most suitable route from Atlanta to Columbus, for a consideration of $20,000 a mile. J, who was a director in and vice-president of the Extension Company, and also a director in the Railway Company, negotiated and concluded on behalf of the Extension Company a contract with an Iron Company that had a large plant and extensive mines at Anniston, by which the Railway Company agreed to deflect its road to Anniston, thereby lengthening it about five miles, and the Iron Company agreed to give a right of way through its property, and to convey to the Extension Company certain tracts of land, valued at $20,000, and to pay to it $30,000 in money. Among the motives for making the contract, urged upon the Iron Company by the Extension Company, was the statement that if it was not entered into, the railroad would be constructed by way of a rival establishment at Oxford, about three miles distant. The Extension Company fully complied with the terms of its contract. The Iron Company failed to comply in part with its undertakings, whereupon the suit was brought; *Held*, (1) That the contract was void as immoral in conception and corrupting in tendency; it being nothing less than a bribe offered by the Iron Company to the Extension Company to disregard its agreement with the Railway Company to construct the road by the shortest, cheapest and most suitable route; (2) that the threat to construct the road by the rival town of Oxford did not excuse, much less justify it. *Woodstock Iron Co.* v. *Richmond and Danville Extension Co.*, 643.
4. It is the duty of a railroad company towards the public not to impose a burden upon it by unnecessarily lengthening its road; and any agreement by which directors, stockholders or other persons may acquire gain by inducing a company to disregard this duty is illegal, and will not be enforced by the courts. *Ib.*
5. Agreements upon pecuniary considerations, or the promise of them, to influence the conduct of officers charged with duties affecting the public interest, or with duties of a fiduciary capacity to private

parties, are against the policy of the State to secure fidelity in the discharge of all such duties, and are void. *Ib.*

See BANKRUPT, 1, 2;
DEED.

FRAUDULENT PREFERENCE OF CREDITORS.

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS;
NATIONAL BANK, 1, 2, 3.

GENERAL MARITIME LAW.

See FOREIGN LAW, 1.

GREAT BRITAIN.

See FOREIGN LAW, 2.

GUARDIAN AND WARD.

See BOND;
DEED, 4, 5;
JURISDICTION, B, 2.

INCAPACITY.

See DEED, 2, 3.

INSOLVENT DEBTOR.

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

INSURANCE.

1. When a life insurance company becomes insolvent and goes into liquidation, the amount due on an endowment policy, payable in any event at a fixed time, and sooner if the party dies before that time, should, in settling the company's affairs, be set off against the amount due on a mortgage debt from the holder of the policy to the company, by way of compensation or reconvention. *Carr* v. *Hamilton*, 252.
2. When a life insurance company becomes insolvent before the time fixed for the termination of an endowment policy, payable to the holder in case of survival until that time, or to his children in case of his death before it, the contingent interest of each party is fixed by the insolvency, to be determined by the tables ordinarily used for that purpose. *Ib.*
3. Where a holder of a life policy borrows money of his insurer, it will be presumed *prima facie*, that he does so on the faith of the insurance, and in expectation of possibly meeting his own obligation to the company by that of the company in him. *Ib.*
4. An insurer of goods, upon paying to the assured the amount of a loss, total or partial, becomes, without any formal assignment, or any express stipulation to that effect in the policy, subrogated in a corre-

sponding amount to the assured's right of action against the carrier, and may assert that right in his own name in a court of admiralty. *Liverpool and Great Western Steam Co.* v. *Phenix Insurance Co.*, 397.

See COMMON CARRIER, 1, 5;
CONTRACT, 1.

JUDGMENT.

See MANDAMUS, 2, 3.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. An intervention by third opposition, under §§ 395 to 400 of the Code of Practice of Louisiana, by a person claiming that property seized on execution is exempt from seizure and sale, is a proceeding at law, and as such, is reviewable upon writ of error. *New Orleans* v. *Louisiana Construction Company*, 45.
2. The plaintiff in error was convicted of murder in a state court in Kansas. The Supreme Court of that State affirmed the judgment. On a writ of error from this court, it was assigned for error that the jurors were not sworn according to the form of oath prescribed by the statute of Kansas, and that, therefore, the jury was not a legally constituted tribunal, and so the defendant would be deprived of his life without due process of law, and be denied the equal protection of the law. The statute did not give in words the form of the oath, but required that the jury should be sworn "to well and truly try the matters submitted to them in the case in hearing, and a true verdict give, according to the law and the evidence." The record did not state the form of the oath administered, but the journal entry stated that the jurors were "duly" sworn "well and truly to try the issue joined herein," and the bill of exceptions stated that the jury was sworn "to well and truly try the issues joined herein." The verdict also recited that the jury was "duly sworn" in the action. The record did not show that at the trial before the jury, any title, right, privilege, or immunity under the Constitution of the United States was specially set up or claimed. No objection was taken to the form of the oath at the trial, nor at the making of motions for a new trial and for an arrest of judgment before the trial court. The point was first suggested in the Supreme Court of the State; *Held*, (1) The recitals in the record, as to the swearing of the jury, were not to be regarded as an attempt to set out the oath actually administered, but rather as a statement of the fact that the jury had been sworn and acted under oath; (2) the objection could not be considered, because it was taken at the trial. *Baldwin* v. *Kansas*, 52.
3. The question whether the evidence in the case was sufficient to justify the verdict, and the question whether the constitution of Kansas was complied with or not in certain proceedings on the trial, were not

Federal questions which this court could review. The writ of error was dismissed for want of jurisdiction. *Ib.*

4. A writ of error does not lie from this court to the Supreme Court of the Territory of Montana to review a judgment of that court, affirming the judgment of a District Court in that Territory, finding the plaintiff in error guilty of the crime of misdemeanor, and sentencing him to pay a fine. The act of March 3, 1885, (23 Stat. 443,) held not to apply to a criminal case. *Farnsworth* v. *Montana*, 104.

5. This court has no jurisdiction of an appeal unless the transcript of the record is filed here at the next term after the taking of the appeal. *Hill* v. *Chicago & Evanston Railway Co.*, 170.

6. This writ of error is dismissed, the value of the matter in dispute being insufficient to give jurisdiction, and the case not being one brought on account of the deprivation or a 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. *Hanover Fire Ins. Co.* v. *Kinneard*, 176.

7. It being plain that the decision in the court below, adverse to the plaintiffs in error, was made upon the principles of laches and estoppel, and that there was no decision against a right, title, privilege or immunity, claimed under the Constitution, or any statute of, or authority exercised under, the United States, no Federal question is involved, and this court is without jurisdiction. *Marrow* v. *Brinkley*, 178.

8. If the highest court of a State, proceeding upon the principles of general law only, errs in the rendition of a judgment or decree affecting property, this does not deprive the party to the suit of his property without due process of law. *Ib.*

9. An order of a Circuit Court of the United States, in a suit in equity for the foreclosure of a mortgage upon the property of a railroad company, that the receiver of the mortgaged property may borrow money and issue certificates therefor to be a first lien upon it, made after final decree of foreclosure, and after appeal therefrom to this court, and after the filing of a supersedeas bond, establishes, if unreversed, the right of the holders of the certificates to priority of payment over the mortgage bondholders, and is a final decree from which an appeal may be taken to this court. *Farmers' Loan & Trust Co., Petitioner*, 206.

10. A decree of the Circuit Court in admiralty on the instance side, finding negligence in the stranding of a ship, can be reviewed by this court so far only as it involves a question of law. *Liverpool and Great Western Steam Co.* v. *Phenix Insurance Co.*, 397.

11. The writ of error being brought December 28th, 1886, to review a judgment rendered November 29, 1886, the citation being returnable October Term, 1887, and the record being filed in this court December 20, 1888; *Held*, that the court was without jurisdiction. *Norton* v. *Brownsville*, 505.

12. When an assignee in bankruptcy resorts to a state court to set aside

a conveyance by the bankrupt as made to defraud creditors, and no question is raised there as to his power under the acts of Congress, or as to the rights vested in him as assignee, the judgment of the state court is subject to review here in the same manner and to the same extent as proceedings of a similar character by a creditor to set aside conveyances in fraud of his rights by a debtor. *McKenna* v. *Simpson*, 506.

13. The decision of the state court in this case, as to what should be deemed a fraudulent conveyance and as to the application of the evidence in reaching that decision, presents no Federal question. *Ib.*
14. Amendments are discretionary with the court below and are not reviewable by this court: this rule applies to an amendment substituting a new sole plaintiff for the sole original plaintiff. *Chapman* v. *Barney*, 677.
15. An allegation that a joint stock company plaintiff is a citizen of a State different from that of the defendant, will not give this court jurisdiction on the ground of citizenship. *Ib.*
16. It is again decided that this court will of its own motion take notice of questions of jurisdiction presented by the record, although not raised by the parties, and that when the jurisdiction of a Federal court is sought on the ground of diversity of citizenship, the facts conferring the jurisdiction must either be distinctly averred in the pleadings or must clearly appear in the record. *Ib.*

See JURISDICTION, B, 3.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Two "residents of Shreveport, Louisiana," sued in the Circuit Court of the United States for the Western District of Louisiana on a contract of that municipality, made in 1878, alleging, as the ground of Federal jurisdiction, that the constitution of Louisiana of 1879 had impaired the obligation of their contract. The municipality answered that it had been held by all the state courts that the provision of the constitution referred to did "not apply to contracts entered into prior to the adoption of the constitution of 1879." The Supreme Court of Louisiana prior to the commencement of this suit had in fact so decided; *Held*, that this suit was an attempt to evade the discrimination between suits between citizens of the same State and citizens of different States, established by the Constitution and laws of the United States, and that the Circuit Court was without jurisdiction. *Shreveport* v. *Cole*, 36.
2. The other conditions of jurisdiction being satisfied, a Circuit Court of the United States has jurisdiction in equity to set aside a sale of an infant's lands, fraudulently made by his guardian, under authority derived from a Probate Court, and may give such relief therein as is consistent with equity. *Arrowsmith* v. *Gleason*, 86.
3. When the record discloses a controversy of which a Circuit Court can-

not properly take cognizance, its duty is to proceed no further, and to dismiss the suit; and its failure or refusal to do so is an error which this court will correct of its own motion, when the case is brought before it for review. *Morris* v. *Gilmer*, 315.

4. It appearing from the evidence in this record that the sole object of the plaintiff in removing to the State of Tennessee was to place himself in a situation to invoke the jurisdiction of the Circuit Court of the United States, and that he had no purpose to acquire a domicil or settled home there, and no question of a Federal nature being presented to give jurisdiction independently of the citizenship of the parties, the court below should have dismissed the case. *Ib.*

See PUBLIC LAND, 7.

C. JURISDICTION OF STATE COURTS.

See BANKRUPTCY, 3.

LACHES.

Laches cannot be imputed to one in the peaceable possession of land under an equitable title, for delay in resorting to a court of equity for protection against the legal title; since possession is notice of his equitable rights and he need assert them only when he finds occasion to do so. *Ruckman* v. *Corry*, 387.

See EQUITY, 3 (2);
PUBLIC LAND, 10;
STATUTE OF FRAUDS.

LETTER.

See EVIDENCE, 4.

LEX LOCI.

See CONTRACT, 4.

LIEN.

The lien upon a crop of cotton, created by a statute of Arkansas which gives a lien to a landlord upon the crop grown on demised premises to secure accruing rent, is, when the cotton comes into the hands of a broker in New Orleans, under consignment from the lessee, and without knowledge of the lien on the consignee's part, subordinated to the consignee's lien for advances, arising under the laws of Louisiana. *Walworth* v. *Harris*, 355.

LIMITATION, STATUTES OF.

See FRAUD, 2.

LOCAL LAW.

1. In the State of Ohio one freehold surety to a guardian's bond for the faithful discharge of his duties is sufficient, if he has enough property to make the bond required by the statute good. *Arrowsmith* v. *Har-*

mening, 42 Ohio St. 259, followed as to the validity of the sales attacked in these proceedings. *Arrowsmith* v. *Gleason*, 86.

2. Under the statutes of the Territory of Arizona, a complaint in a civil action, alleging that the plaintiff is the owner in fee of a parcel of land, particularly described, and that the defendant claims an adverse estate or interest therein, and praying for a determination of the plaintiff's claim and of the plaintiff's title, and for an injunction and other equitable relief, is good on demurrer. *Ely* v. *New Mexico and Arizona Railroad Co.*, 291.
3. In Pennsylvania, after a survey of a tract of public land, whether a chamber survey or an actual one, has been returned more than twenty-one years, the presumption that it was actually and legally made is conclusive, and cannot be controverted by a party claiming under a junior survey. *Schraeder Mining Co.* v. *Packer*, 688.
4. The plaintiff below was entitled to recover for the cutting and carrying away up to the time that he sold. *Ib.*

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS (Illinois);
CONSTITUTIONAL LAW, B, 2 (Tennessee);
DEED, 4, 5, 6 (Georgia);
CONTRACT, 6 (3), (Illinois);
CUSTOMS DUTY, 2 (New York);
DISTRICT OF COLUMBIA;
JURISDICTION, A, 1 (Louisiana); B, 1 (Louisiana);
MOTION TO DISMISS OR AFFIRM (Louisiana);
TAX AND TAXATION (Ohio).

LONGEVITY PAY.

The act of March 3, 1883, c. 97, 22 Stat. 473, relating to longevity pay, deals with credit for length of service and the additional pay which arises therefrom, and not with the matter of regular salary; and it has no reference to benefits derived from promotions to different grades, but is confined to the lowest grade having graduated pay. *Barton* v. *United States*, 249.

MAILS.

See CONTRACT, 3;
EVIDENCE, 4.

MANDAMUS.

1. Mandamus lies to compel a party to do that which it is his duty to do; but it confers no new authority, and the party to be compelled must have the power to perform the act. *Brownsville* v. *Loague*, 493.
2. If the petitioner for a writ of mandamus to compel the levy of a tax to pay a debt evidenced by a judgment recovered on coupons of bonds of a municipal corporation, is obliged to go behind the judgment in order to obtain his remedy, and it appears that the bonds were void, and that

the municipality was without power to tax to pay them, the principle of *res judicata* does not apply upon the question of issuing the writ. *Ib.*

3. When application is made to collect judgments by process not contained in themselves, and requiring, in order to be sustained, reference to the alleged cause of action on which they are founded, the aid of the court should not be granted when upon the face of the record it appears, not that mere error supervened in the rendition of such judgments, but that they rest upon no cause of action whatever. *Ib.*

MARITIME LAW.

See FOREIGN LAW, 1.

MASTER IN CHANCERY.

1. It is not within the general province of a master in chancery to pass upon all the issues in a cause in equity; nor is it competent for the court to refer the entire decision of a case to him without consent of the parties. *Kimberly* v. *Arms*, 512.
2. When the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, both of fact and of law, and such reference is entered as a rule of court, it is a submission of the controversy to a special tribunal, selected by the parties, to be governed in its conduct by the ordinary rules applicable to the administration of justice in tribunals established by law; and its determinations are not subject to be set aside and disregarded at the discretion of the court. *Ib.*
3. In practice it is not usual for the court to reject the report of a master, with his findings upon the matters referred to him, unless exceptions are taken to them, and brought to its attention, and unless, upon examination, the findings are found unsupported or essentially defective. *Ib.*

MORTGAGE.

1. A deed of lands, absolute in form, with general warranty of title, and an agreement by the vendee to reconvey the property to the vendor, or to a third person, upon his payment of a fixed sum within a specified time, do not of themselves constitute a mortgage; nor will they be held to operate as a mortgage unless it is clearly shown, either by parol evidence or by the attendant circumstances, such as the condition and relation of the parties, or gross inadequacy of price, to have been intended by the parties as a security for a loan or an existing debt. *Wallace* v. *Johnstone*, 58.
2. The fact of a collateral agreement by the grantee in a deed of real estate to reconvey to the grantor on the payment of a sum of money at a future day is not inconsistent with the idea of a sale. *Ib.*
3. Whether the transaction in dispute was a sale or a mortgage is a ques-

tion of fact, to be determined from the proof, and here the proof shows it to have been a sale. *Ib.*

See EQUITY, 1, 2;
JURISDICTION, A. 9.

MOTION TO DISMISS.

It is not proper, on a motion to dismiss an appeal from a decree, to decide whether a prior decree was a final decree, or what orders and decrees made by the court below in the cause prior to the making of the decree appealed from can be reviewed here on the appeal. *Hill* v. *Chicago & Evanston Railroad Co.*, 170.

See PUBLIC LAND, 8.

MOTION TO DISMISS OR AFFIRM.

The objection that third opposition cannot be availed of by a defendant in execution in regard to property situated as is the property in contention cannot be disposed of on a motion to dismiss or affirm. *New Orleans* v. *Louisiana Construction Co.*, 45.

MUNICIPAL BONDS.

See CONSTITUTIONAL LAW, B. 2;
MANDAMUS.

MUNICIPAL CORPORATION.

See CONSTITUTIONAL LAW, B. 2;
MANDAMUS.

NATIONAL BANK.

1. From the facts of this case, it was held, that the intent of a national bank, after it was insolvent, to prefer a creditor, by a transfer of assets, in violation of § 5242 of the Revised Statutes, was a necessary conclusion; that, if any other verdict than one for the plaintiff, in a suit at law by the receiver of the bank to recover the value of the assets from the creditor, had been rendered by the jury, it would have been the duty of the court to set it aside; and that it was proper to direct a verdict for the plaintiff. *National Security Bank* v. *Butler*, 223.
2. The meaning of § 5242 is not different from the meaning of § 52 of the act of June 3, 1864, c. 106, 13 Stat. 115. *Ib.*
3. It is sufficient, under § 5242, to invalidate such a transfer, that it is made in contemplation of insolvency, and either with a view on the part of the bank to prevent the application of its assets in the manner prescribed by chapter 4 of title 62 of the Revised Statutes, or with a view on its part to the preference of one creditor to another; and it is not necessary to such invalidity that there should be such view on the part of the creditor in receiving the transfer, or any knowledge or

suspicion on his part at the time, that the debtor is insolvent or contemplates insolvency. *Ib.*

PARTNERSHIP.

1. The law exacts good faith and fair dealing between partners, to the exclusion of all arrangements which can possibly affect injuriously the profits of the concern. *Kimberly* v. *Arms*, 512.
2. If one partner is the active agent of the firm, and as such receives a salary beyond what comes to him from his interest as partner, he is clothed with a double trust in his relations with the other partner which imposes upon him the utmost good faith in his dealings; and if he obtains anything to his own benefit in disregard of that trust, a court of equity will subject it to the benefit of the partnership. *Ib.*

PATENT FOR INVENTION.

1. Claims 1 and 2 of letters patent No. 74,342, granted to Alvaro B. Graham, February 11, 1868, for an improvement in harvesters, namely, "1. The combination, as set forth, in a harvester, of the finger-beam with the gearing-carriage, by means of the vibratable link, the draft-rod, and the two swivel-joints, M and M′, so that the finger-beam may both rise and fall at either end, and rock forward and backward. 2. The combination, as set forth, in a harvester, of the finger-beam, gearing-carriage, vibratable link, draft-rod, swivel-joints, and arm, by which the rocking of the finger-beam is controlled," are not infringed by a machine constructed under letters patent No. 193,770, granted July 31, 1877, to Leander J. McCormick, William R. Baker and Lambert Erpelding, assignors to C. H. & L. J. McCormick. *McCormick* v. *Graham*, 1.
2. It is apparent from the proceedings in the Patent Office on the application for Graham's patent, and from the terms of his specification and of claims 1 and 2 as granted, that the intention was to limit the modification which Graham made, to the particular location of the swivel-joint, M′, on which the crosswise rocking movement takes place, and to the rigid arm by which the positive rocking of the finger-beam in both directions is affected and controlled. *Ib.*
3. In the defendants' machine there is no such rocking of the finger-beam as in Graham's patent, but only a swinging movement as in prior patents, on a pivot in the rear of the finger-beam; and there is no arm which can depress the finger-beam, but only a loose connection to it, the same as existed before; and there is no swivel-joint, M′, located and operating as in the Graham patent; and it does not infringe claim 1 or claim 2. *Ib.*
4. Claim 3 of letters patent No. 223,338, granted to John M. Gorham, January 6th, 1880, for an improvement in wash-board frames, namely, "3. In combination with a wash-board, a protector located below the crown-piece and between the side-pieces of the wash-board frame, and

constructed to fold down into or upon said wash-board even with or below the general plane of said wash-board frame, substantially as and for the purpose shown," cannot, in view of the state of the art, and of the course of proceeding in the Patent Office on the application for the patent, be so construed as to cover a protector which does not have the yielding, elastic or resilient function described in the specification. *Sargent* v. *Burgess*, 19.

5. The defendant's protector, constructed in accordance with letters patent No. 255,555, granted to Charles H. Williams, March 28th, 1882, and having no yielding or resilient function, and not being pivoted, or folding down, after the manner of the Gorham protector, does not infringe claim 3. *Ib.*
6. The improvement in percolators, for which letters patent were granted April 1882, to Nathan Rosenwasser, was anticipated by an apparatus described in Geiger's Handbuch der Pharmacie, published at Stuttgart in 1830. *Rosenwasser* v. *Spieth*, 47.
7. On the proofs the court holds that there has been no infringement of the appellant's patent by the appellees. *Anderson* v. *Miller*, 70.
8. A United States patent was granted November 20, 1877, for seventeen years, on an application filed December 1, 1876. A patent for the same invention had been granted in Canada, January 9, 1877, to the same patentee, for five years from that day, on an application made December 19, 1876. On a petition filed in Canada by the patentee, December 5, 1881, the Canada patent was, on December 12, 1881, extended for five years from January 9, 1882, and on December 13, 1881, for five years from January 9, 1887, under § 17 of the Canada act assented to June 14, 1872 (35 Victoria, c. 26): *Held*, under § 4887 of the Rev. Stat., that, as the Canada act was in force when the United States patent was applied for and issued, and the Canada extension was a matter of right, at the option of the patentee, on his payment of a required fee, and the fifteen years' term of the Canada patent had been continuous and without interruption, the United States patent did not expire before the end of the fifteen years' duration of the Canada patent. *Bate Refrigerating Company* v. *Hammond*, 151.
9. It was not necessary to the validity of the United States patent that it should have been limited in duration, on its face, to the duration of the Canada patent, but it is to be so limited by the courts, on evidence *in pais*, as to expire at the same time with the Canada patent, not running more than the seventeen years. *Ib.*
10. Under Rev. Stat. § 4899, a specific patentable machine, constructed with the knowledge and consent of the inventor, before his application for a patent, is set free from the monopoly of the patent in the hands of every one; and therefore, if constructed with the inventor's knowledge and consent, before his application for a patent, by a partnership of which he is a member, may be used by his copartners after the dissolution of the partnership, although the agreement of dissolution pro-

vides that nothing therein contained shall operate as an assent to such use, or shall lessen or impair any rights which they may have to such use. *Wade* v. *Metcalf*, 202.

11. Claims 1, 2, 8 and 13 of letters patent No. 236,350, granted January 4, 1881, to James H. Morley, E. S. Fay and Henry E. Wilkins, on the invention of said Morley, for an improvement in machines for sewing buttons on fabrics, namely, "1. The combination, in a machine for sewing shank-buttons to fabrics, of button-feeding mechanism, appliances for passing a thread through the eye of the buttons and locking the loop to the fabric, and feeding mechanism, substantially as set forth. 2. The combination, in a machine for sewing shank-buttons to fabrics, of a needle and operating mechanism, appliances for bringing the buttons successively to positions to permit the needle to pass through the eye of each button, and means for locking the loop of thread carried by the needle to secure the button to the fabric, substantially as set forth." "8. The combination, in a machine for sewing buttons to fabrics, of button-feeding and sewing appliances, substantially as set forth, and feeding appliances and operating mechanism whereby the feeding devices are moved alternately different distances to alternate short button stitches with long stitches between the buttons, as specified." "13. The combination, with button-sewing appliances, of a trough, appliances for carrying the buttons successively from the trough to the sewing devices, and mechanism for operating said appliances and sewing devices, as set forth," are valid. *Morley Sewing Machine Co.* v. *Lancaster*, 263.
12. The Morley machine contains and is made up of three main groups of instrumentalities: (1) Mechanism for holding the buttons in mass, and delivering them separately, in proper position, over the fabric, so that they may be attached to it by the sewing and stitching mechanism; (2) the stitching mechanism; (3) the mechanism for feeding the fabric along, so as to space the stitches and consequently the buttons when sewed on. *Ib.*
13. A description given of the devices used by Morley, which make up the three mechanisms; and of those used in the alleged infringing machine (the Lancaster machine), and making up the same three mechanisms. *Ib.*
14. The Morley machine was the first one which accomplished the result of automatically separating buttons which have a shank from a mass of the same, conveying them in order to a position where they can be selected by the machine, one after another, and, by sewing mechanism, coupled with suitable mechanism for feeding the fabric, be sewed thereto at prescribed suitable distances apart from each other. *Ib.*
15. No machine existing prior to Morley's is shown to have accomplished the operation of turning a shank button, the head of which is heavier than its shank and eye combined, into such a position that a plane passing through its eye shall be perpendicular to a plane passing

through the long axis of the sewing needle, so as to insure the passage of the needle through the eye. *Ib.*

16. The Lancaster machine infringes the Morley patent, although there are certain specific differences between the button-feeding mechanisms in the two machines, and also certain specific differences between their sewing mechanisms. *Ib.*
17. Morley, having been the first person who succeeded in producing an automatic machine for sewing buttons of the kind in question upon fabrics, is entitled to a liberal construction of the claims of his patent. *Ib.*
18. Where an invention is one of a primary character, and the mechanical functions performed by the machine are, as a whole, entirely new, all subsequent machines which employ substantially the same means to accomplish the same result are infringements, although the subsequent machine may contain improvements in the separate mechanisms which go to make up the machine. *Ib.*
19. Morley having been the first inventor of an automatic button-sewing machine, by uniting in one organization mechanism for feeding buttons from a mass, and delivering them one by one to sewing mechanism and to the fabric to which they are to be secured, and sewing mechanism for passing a thread through the eye of the button, and securing it to the fabric, and feeding mechanism for moving the fabric the required distances to space the buttons, another machine is an infringement, in which such three sets of mechanism are combined, provided each mechanism, individually considered, is a proper equivalent for the corresponding mechanism in the Morley patent; and it makes no difference that, in the infringing machine, the button-feeding mechanism is more simple, and the sewing mechanism and the mechanism for feeding the fabric are different in mechanical construction, so long as they perform each the same function as the corresponding mechanism in the Morley machine, in substantially the same way, and are combined to produce the same result. *Ib.*
20. The defendant employs, for the purposes of his machine, known devices, which, in mechanics, were recognized as proper substitutes for the devices used by Morley, to effect the same results. In this sense the mechanical devices used by the defendant are known substitutes or equivalents for those employed in the Morley machine to effect the same results; and this is the proper meaning of the term "known equivalent," in reference to a pioneer machine such as that of Morley. Otherwise, a difference in the particular devices used to accomplish a particular result in such a machine would always enable a defendant to escape the charge of infringement, provided such devices were new with the defendant in such a machine, because, as no machine for accomplishing the result existed before that of the plaintiff, the particular device alleged to avoid infringement could not have existed or been known in such a machine prior to the plaintiff's invention. *Ib.*

21. The second claim of reissued letters patent No. 6080, granted to James H. Pattee, October 6, 1874, for improvements in cultivators, changes the first claim of the original patent, (1), by omitting the plates B, and (2) by the addition of the direct draft; and thus substantially enlarges the invention, and consequently is invalid. *Pattee Plow Co.* v. *Kingman*, 294.

22. The machines manufactured by the defendants do not infringe letters patent No. 174,684, granted to Thomas W. Kendall, March 14, 1876, for improvements in cultivators. *Ib.*

23. Letters patent No. 187,899, granted to Henry H. Pattee, February 27, 1877, for improvements in cultivators, embrace nothing that is not old, and nothing that is patentable, — that is, which involves invention rather than mechanical skill. *Ib.*

24. Claims 1 and 2 of letters patent No. 178,463, granted June 6, 1876, to George M. Peters, for an improvement in tools for attaching sheet-metal moldings, on an application filed March 7, 1876, namely, "1. A sheath for applying metallic moldings, said sheath being furnished with a stop for advancing the molding, all substantially as and for the purpose specified; 2. The within described sheath for applying metallic moldings, said sheath being furnished with recesses *f' g'*, and a key G, or their equivalent stops, as and for the purposes explained," cover improvements which are merely adaptations of old devices to new uses, not involving invention. *Peters* v. *Active Manufacturing Co.*, 530.

25. Claim 3 of the patent, namely, "3. A sheath composed of two grooved bars A E B E', bolts or screws C, and washers D, whereby the sheath is rendered capable of adjustment to contain moldings of different diameters, as herein set forth," is not infringed by an apparatus in which no washers are used for adjustment. *Ib.*

26. Claims 1, 2 and 3 of letters patent No. 213,529, granted to George M. Peters, March 25, 1879, for an improvement in vehicle dashes, namely, "1. The combination of a dash and laterally adjustable attachments, whereby the same may be connected to vehicles of different widths, substantially as set forth. 2. A dash or dash-frame having slots or openings, whereby attachments may be made at different points, substantially as and for the purposes set forth. 3. A dash provided with bearings having slots or openings, substantially as and for the purpose specified," are for improvements which are merely applications of old devices to new uses, not involving invention. *Peters* v. *Hanson*, 541.

27. Claim 4 of that patent, namely, "(4). A dash-frame provided with bearings, arranged to strengthen the frame in those parts whereby the dash is to be connected to the laterally adjustable feet or to the vehicle," sets forth no patentable invention. *Ib.*

28. Claims 1, 2, 3 and 11 of reissued letters patent No. 9891, granted to George M. Peters, October 11, 1881, for improvements in vehicle dash-frames, on the surrender of original letters patent No. 224,792, granted

February 24, 1880, on an application filed May 5, 1879, the reissue having been applied for June 15, 1881, namely, "1. A vehicle dash whose lever bar is provided exteriorly with a channel or recess, the metal on either side of the channel or recess affording a bearing for the dash-foot or other portion of the vehicle to which the dash is connected, for the purposes specified. 2. A dash whose lower rail is composed near or at the ends of two thick portions united by an easily perforated web, for the purposes specified. 3. A dash provided with a rail having vertically flat sides, one or both of said sides being exteriorly channelled, substantially as and for the purposes specified." "11. The foot channelled on either or both sides, substantially as and for the purposes specified" are for improvements which amount only to applications of old devices to new uses, not involving invention. *Ib.*

29. The reissue of the letters patent No. 8637, granted to John Béné, March 25, 1879, for an improvement in the process of refining and bleaching hair, is limited to the second clause and is to be construed as a patent for a process of refining hair by treating it in a bath composed of a solution of chlorine salt dissolved in an excess of muriatic acid; but within that limit it is a pioneer invention and is entitled to receive a liberal construction. *Béné* v. *Jeantet*, 683.

30. The testimony of two experts in a patent suit being conflicting, and the evidence of one being to facts within his knowledge which tended to show that there was no infringement, while that of the other, who was called to establish an infringement, was largely the assertion of a theory, and the presentation of arguments to show that facts testified to by the other could not exist; *Held*, that no case of infringement was made out. *Ib.*

PLEADING.

An allegation that the plaintiff is a joint stock company organized under the laws of a State is not an allegation that it is a corporation, but, on the contrary, that it is not a corporation but a partnership. *Chapman* v. *Barney*, 677.

POST-OFFICE.

See EVIDENCE, 4.

PRACTICE.

1. When there has been an appearance and no plea, or where, on account of amendments and changes of pleading the declaration remains without an answer, it is error to call a jury and to enter a verdict unless for assessment of damages merely. *Chapman* v. *Barney*, 677.

2. It is error to proceed to trial and enter a verdict and render judgment against a defendant on an amended declaration which the party plaintiff is charged, when he has no notice of the order giving leave to

amend, or opportunity to plead to the amended declaration, or say in court to answer to the suit. *Ib.*

See APPEAL BOND; COSTS; EVIDENCE, 1; MOTION TO DISMISS; MOTION TO DISMISS OR AFFIRM.

PRINCIPAL AND AGENT.

1. A stock-broker received orders by telegraph from his principal to sell certain securities belonging to the principal in his hands and invest the proceeds in certain other securities, named in the order, at a fixed limit. When the telegram arrived the order might have been executed that day, and the securities ordered could have been bought within the limit. The principal was in the habit of dealing with the agent in that way, the agent executing the orders, making advances when necessary and charging the principal with commissions and interest. At the time when this order was received the principal was indebted to the agent for advances, commissions and interest about $4000 more than the value of the securities in his hands. The broker did not execute the order, did not notify the principal by telegraph that he declined to do so, and made no demand for further advances; but notified him of his refusal by a letter written on the day when the order was received, but received by the principal two days later. The securities which had been ordered sold depreciated below the prices at which they could have been sold on that day, and those which had been ordered bought advanced, so that they could have been sold at a large profit. The broker sued the principal for advances on an open account current and interest and commissions. The principal set up as a counter-claim the losses from these sources: *Held*, (1) That the broker was bound to follow the directions of his principal or give notice that he declined to continue the agency; (2) That this notice should have been given by telegraph, and that the delay caused by using the mail alone was inexcusable under the circumstances; (3) That in the absence of a special agreement to the contrary, it was the principal's judgment, and not the broker's, that was to control; (4) That the broker was liable for all the damages which the principal sustained by the refusal to change the stock, both on the stocks ordered sold, and those ordered purchased. *Galigher* v. *Jones*, 193.
2. An agent is bound to act with absolute good faith toward his principal in respect to every matter entrusted to his care and management. In accepting a gift from his principal he is under an obligation to withhold no information in his possession respecting the subject of the gift, or the condition of the estate in his hands, which good faith requires to be disclosed, or that may reasonably influence the judgment of the principal in making the gift. All transactions between them whereby the agent derives advantages beyond legitimate compensation for his services will be closely examined by courts of equity, and set

aside if there be any ground to suppose that he has abused the confidence reposed in him. *Ralston* v. *Turpin*, 663.

See DAMAGES;
DEED.

PUBLIC LAND.

1. The report upon a Spanish or Mexican grant by the surveyor general of New Mexico under the act of July 22, 1854, § 8, 10 Stat. 308, which required such report to be "laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bonâ fide* grants," is no evidence of title or right to possession. *Pinkerton* v. *Ledoux*, 346.
2. In ejectment, the question whether the tract in dispute is within the boundaries of a grant of public land, is to be determined by the jury on the evidence, as explained by the court. *Ib.*
3. When the description in the petition and grant of a Mexican grant differs from the description in the act of possession the former must prevail.
4. If, from the description and words in the petition and writ of possession of a Mexican grant the jury cannot definitely locate the boundaries of the grant, they must find for the defendant. *Ib.*
5. Whether the Nolan title has any validity without confirmation by Congress, *quœre*. *Ib.*
6. Whether the proviso in the act of July 1, 1870, 16 Stat. 646, that when the grants to Nolan to which it related "are so confirmed, surveyed and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States," was not intended to affect the entire claim of Nolan for any grant of lands in New Mexico, *quœre*. *Ib.*
7. The act approved March 2, 1867, c. 208, 14 Stat. 635, confirmed to the widow and children of one Bouligny, the one sixth part, amounting to 75,840 acres, of a certain land claim in Louisiana, and enacted that, inasmuch as the land embraced in the claim had been appropriated by the United States to other purposes, certificates of new location, in eighty-acre lots, be issued to the widow, in lieu of said lands, to be located on public lands. The next Congress, twenty-eight days afterwards, and on March 30, 1867, passed a joint resolution, which was approved by the President, directing the Secretary of the Interior to suspend the execution of the act, "until the further order of Congress." No action had meantime been taken by the General Land Office to carry out the act. On a petition by the widow for a mandamus to the Commissioner of the General Land Office directing him to execute and deliver to her the certificates; *Held*, (1) the execution of the act was suspended not merely until the further order of the same Congress which passed the joint resolution, but until the further order of the legislative body called, in § 1, of Article 1, of the

Constitution, "a Congress of the United States;" (2) the act did not vest in the beneficiaries a title to specific land, nor give them a vested right in the certificates which were to be issued; (3) no vested right, amounting to property, had attached at the time of the approval of the joint resolution, and it did not deprive the beneficiaries of any property, or right of property, in violation of the Constitution; (4) if the claim, founded on the act, amounted to a contract, the demand for relief would be substantially a prayer for a specific performance of the contract by the United States, jurisdiction to grant which was not given by statute to the court below. *Levey* v. *Stockslager*, 470.

8. When the United States retires from the prosecution of a suit instituted to vacate a patent of public land without causing the appeal to be dismissed, and another party, claiming the same land under another patent, is in court to prosecute the appeal, this court will not dismiss it on the motion of the appellee as of right, but will look into the case, and if the circumstances require it, will hear argument on the case and decide it, *United States* v. *Marshall Silver Mining Co.*, 579.
9. Errors and irregularities in the process of entering and procuring title to public lands should be corrected in the Land Department, so long as there are means of revising the proceedings and correcting the errors. *Ib.*
10. Silence for more than eight years after a party has abandoned a contest for a patent of mineral land, and has submitted to a decision of the question by the Land Department, however erroneous, is such laches as to amount to acquiescence in the proceedings, and precludes a court of equity from interfering to annul them. *Ib.*
11. When the officers of the Land Department act within the general scope of their powers in issuing a patent for public land, and without fraud, the patent is a valid instrument, and the court will not interfere, unless there is gross mistake or violation of law. *Ib.*
12. A bill in chancery brought by the United States to set aside and vacate a patent issued under its authority, is not to be treated as a writ of error, or as a petition for a rehearing in chancery, or as if it were a mere re-trial of the case before the land office. *Ib.*
13. The holder of a patent from the United States cannot be called upon to prove that everything has been done that is usual in the proceedings in the land office before its issue; nor can he be called upon to explain every irregularity, or even impropriety in the process by which the patent was procured. *Ib.*

See LOCAL LAW, 3.

PUNITIVE DAMAGES.

See DAMAGES, 1.

PURCHASER AT A FORECLOSURE SALE.

See EQUITY, 1.

RAILROAD.

See COMMON CARRIER, 1, 5;
CONTRACT, 2;
FRAUD, 3, 4;
JURISDICTION, A, 9.

RECEIVER.

See JURISDICTION, A, 9.

REMOVAL OF CAUSES.

A petition for removal of a cause from a state court to a Circuit Court of the United States, on the ground of diversity of citizenship, filed after a judgment therein has been reversed by the Supreme Court of the State, and the remand of the case for a new trial, is in time. *Schraeder Mining Co.* v. *Packer*, 688.

RES JUDICATA.

See MANDAMUS, 2.

SALE UNDER A DECREE IN EQUITY.

See EQUITY, 1, 2.

SHIP.

See COMMON CARRIER, 2, 3, 5;
CONTRACT, 5.

STATUTE.

A. CONSTRUCTION OF STATUTES.

The repeal or modification by Congress of clauses in a legislative act of the District of Columbia, which are separable and separably operative, is no ratification of another clause in it, equally separable and separably operative, which it was beyond the delegated or constitutional power of the legislature of the District to enact. *Stoutenburgh* v. *Hennick*, 141.

B. STATUTES OF THE UNITED STATES.

See BANKRUPTCY, 1, 2;
CONSTITUTIONAL LAW, A, 8;
CUSTOMS DUTY, 1;
JURISDICTION, A, 2, 4;
LONGEVITY PAY;
NATIONAL BANK, 1, 2, 3;
PATENT FOR INVENTION, 8, 9;
PUBLIC LAND, 1, 7;
TAX AND TAXATION, 2;
WITNESS.

C. STATUTES OF STATES AND TERRITORIES.

Arizona. *See* LOCAL LAW, 2;
District of Columbia. *See* CONSTITUTIONAL LAW, A, 8;
Georgia. *See* DEED, 4, 5;
Illinois. *See* ASSIGNMENT FOR THE BENEFIT OF CREDITORS;
CONTRACT, 6 (3);

Iowa. *See* CONSTITUTIONAL LAW, A, 1, 9;
Kansas. *See* JURISDICTION, A, 2;
Louisiana. *See* JURISDICTION, A, 1;
New Mexico. *See* EVIDENCE, 1;
Ohio. *See* TAX AND TAXATION, 2;
Tennessee. *See* CONSTITUTIONAL LAW, B, 2;
West Virginia. *See* CONSTITUTIONAL LAW, A, 4;

D. FOREIGN STATUTES.

Dominion of Canada. *See* PATENT FOR INVENTION, 8.

E. TABLE OF STATUTES CITED IN OPINIONS. *See ante.*

STATUTE OF FRAUDS.

On the whole proof in this case, some of which is referred to in the opinion of the court; *Held*, (1) That the appellant's intestate intended that the property in dispute should belong to the appellee, that he bought it for her, and that he promised her orally that he would make over the title to her upon the consideration that she should take care of him during the remainder of his life, as she had done in the past; (2) that there had been sufficient part performance of this parol contract to take it out of the operation of the Statute of Frauds, in a court of equity, and to render it capable of being enforced by a decree for specific performance; (3) that the appellee had been guilty of no laches by her delay in commencing this suit. *Brown* v. *Sutton*, 238.

See CONTRACT, 2.

STOCKBROKER.

See DAMAGES, 2.
PRINCIPAL AND AGENT, 1.

SUBROGATION.

See INSURANCE, 4.

TAX AND TAXATION.

1. A State may make the ownership of property subject to taxation, relate to any day or days or period of the year which it may think proper; and the selection of a particular day on which returns of their property for the purpose of assessment are to be made by taxpayers does not preclude the making of assessments as of other periods of the year. *Shotwell* v. *Moore*, 590.

2. Section 2737 of the Revised Statutes of Ohio, which requires the taxpayer to return to the assessor, as of the day preceding the second Monday in April in each year, among other things a statement of "the monthly average, amount or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits, or other effects, within that time invested in or converted into, bonds or

other securities of the United States or of this State, not taxed, to the extent he may hold or control such bonds or securities on said day preceding the second Monday of April, and any indebtedness created in the purchase of such bonds or securities shall not be deducted from the credits under the fourteenth item of this section" does not tax the citizen for the greenbacks or other United States securities which he may have held at any time during the year, but taxes him upon the money, credits, or other capital which he has had and used, according to the average monthly amount so held, and is not in conflict with § 3701 of the Revised Statutes of the United States exempting the obligations of the United States from taxation under state, municipal or local authority. *Ib.*

UNDUE INFLUENCE.

See DEED, 1, 2.

VERDICT.

See PRACTICE, 1, 2.

WITNESS.

Section 858 of the Revised Statutes in regard to the exclusion of a party to a suit as a witness, makes every party a competent witness except in cases covered by the proviso to the section. *Goodwin* v. *Fox*, 601.