INDEX.

ACTION.

See COVENANT.

ADMIRALTY.

1. In a suit in admiralty, *in rem*, in a District Court, against a British steamship, brought by the widows of five persons, to recover $5000 each, for the loss of their lives, on board of a pilot-boat, by a collision which occurred on the high seas between the two vessels, through the negligence of the steamship, a stipulation for value was given by the claimant of the steamship, in the sum of $25,000, to obtain her release. The District Court dismissed the libel. It was amended by claiming $10,000 for the loss of each life, and then the libellants appealed to the Circuit Court, which made the same decree. The libellants having appealed to this Court, the appellee made a motion, under subdivision 5 of Rule 6, to dismiss the appeal for want of jurisdiction, and united with it a motion to affirm; *Held*, that the amount involved, if not the entire sum of $25,000, was, at least, the sum of $10,000 in each case, and that the motion to dismiss must be denied. *The Alaska*, 201.
2. But as there was sufficient color for the motion to dismiss to warrant this court in entertaining the motion to affirm, the decree was affirmed, on the ground that the appeal was taken for delay only, in view of the decision in *The Harrisburg*, 119 U. S. 199, that in the absence of an act of Congress or of a statute of a State giving a right of action therefor, a suit in admiralty cannot be maintained in the courts of the United States to recover damages for the death of a human being on the high seas or on waters navigable from the sea, which was caused by negligence. *Ib.*
3. The provision in Rev. Stat. § 4283, limiting the liability of the owner of a vessel, applies to cases of personal injury and death, as well as to cases of loss of or injury to property. *Butler* v. *Boston and Savannah Steamship Co.*, 527.
4. When proceedings have been properly begun in admiralty by the owner of a vessel to limit his liability under Rev. Stat. § 4283, and monitions have issued and been published, it becomes the duty of all claimants, whether for loss of property or injury to the person, or loss of life, to have the liability of the owner contested in that suit, and an allega-

tion that the owner himself was in fault does not affect the jurisdiction of the court to entertain the cause of limited liability. *Ib.*

5. The steamboat inspection act of February 28, 1871, 16 Stat. 440, c. 100, Rev. Stat. Title LII. does not supersede or displace the proceeding for limited liability in cases arising under its provisions. *Ib.*
6. Whether the act of June 26, 1884, 23 Stat. 53, c. 121, § 18, is intended to be explanatory of the intent of Congress in its legislation concerning limited liability of shipowners, *quære*. *Ib.*
7. In the absence of an allegation to the contrary, it will be presumed in a limited liability case in admiralty that the captain and the first mate of a sea-going coast-wise steamer were licensed pilots. *Ib.*
8. The law of limited liability was enacted by Congress as part of the maritime law of the United States, and is coëxtensive in its operation with the whole territorial domain of that law. *Ib.*
9. While the general maritime law with slight modifications, is accepted as law in this country, it is subject under the Constitution to such modifications as Congress may see fit to adopt. *Ib.*
10. The Constitution has not placed the power of legislation to change or modify the general maritime law in the legislatures of the States. *Ib.*
11. The limited liability act (Rev. Stat. 4282–4285) applies to the case of a disaster happening within the technical limits of a county in a State, and to a case in which the liability itself arises from a law of the State. *Ib.*
12. Whether a law of a State can have force to create a liability in a maritime case, within the dominion of the admiralty and maritime jurisdiction, where neither the general maritime law nor an act of Congress has created such liability, is not decided. *Ib.*
13. *The City of Norwich*, 118 U. S. 468, affirmed as to insurance money. *Ib.*

ALIEN.

See CONSTITUTIONAL LAW, 6.

AMENDMENT.

See DOWER, 1;
JURISDICTION, A, 2.

APPEAL.

1. It is a well-settled rule that this court will not entertain an appeal where the transcript of the record is not filed in this court at the term next succeeding the taking of the appeal, unless a recognized satisfactory excuse for the laches is made. *Richardson* v. *Green*, 104.
2. It is not a sufficient excuse that the clerk of the court below was mistaken in his understanding as to the time when the transcript must be filed, and that it was prepared as soon as possible by him, having

due regard to the other duties of his office, and the size of the record. *Ib.*

3. Where the transcript of the record was placed in the hands of the clerk of this court at the next term after the appeal was allowed and perfected by the filing of a bond, but no appearance was entered for the appellant, nor any deposit for costs made, at that term, but these things were done at the next following term, and the case was then docketed, and a motion to dismiss the appeal was made at the third term thereafter; *Held*, that the motion must be denied. *Ib.*
4. Where an appeal is allowed in open court at the same term the decree is made yet if the bond to perfect the appeal is not accepted at or during that term, a citation is necessary. *Ib.*
5. The issuing of a citation may be waived by the appellee, and a general appearance by him is a waiver of a citation. *Ib.*
6. Where this court has jurisdiction of an appeal, and a citation is necessary, it will issue one. *Ib.*
7. Reasons stated why the appeal in this case is not open to the objection that it does not involve more than $5000, or to the objection that the appellee is not named in the order allowing the appeal. *Ib.*
8. Where the appellee died after the argument of the motion to dismiss the appeal, the order on the motion was entered *nunc pro tunc* as of the day of the argument. *Ib.*
9. An appeal prayed and granted in a Circuit Court "of this cause to the Supreme Court" brings the whole case here including orders previously made in it. *Central Trust Co.* v. *Seasongood*, 482.

ARMY OFFICERS.

See OFFICERS IN THE ARMY.

ASSESSMENT.

See LOCAL LAW, 8, 9, 10.

BAILMENT.

1. A state bank gave a receipt or certificate, stating that J., agent for W., had placed with it, on special deposit, $5200 of railroad mortgage bonds, and a note for $5000. The receipt was sent by the bank by mail directly to W., on the request of J. At the same time the bank entered the note and the bonds in its special deposit book as deposited by J., agent for W. Afterwards, with the concurrence of J., but without authority from W., the bank discounted the note and applied its avails to pay a debt due to it from a firm whose business J. managed, and delivered up the bonds to J., knowing that he intended to pledge them as security to another bank for a loan of money to the same firm. The bank also knew that J. held the note and bonds as investments for W., and that it was not a safe investment to lend their avails to the firm; *Held*, that the bank was liable to W. for the amount of the note and the value of the bonds. *Manhattan Bank* v. *Walker*, 267.

2. A suit in equity by W. against the bank for the return of the property or the payment of its value, would lie, as it was a suit to charge the bank, as a trustee, for a breach of trust, in regard to a special deposit. *Ib.*

BANKER'S LIEN.

1. The controversy in this case involves the allowance in favor of the trustee in bankruptcy of S. of liens upon certain bonds, owned in fact by C. and D., though ostensibly belonging to C. only, as pledged to secure, by express agreement, the general balance of account of a New Orleans bank, of which C. was president; and also, by implication from the usage of the banking business in which S. was engaged, C.'s general balance. *Reynes* v. *Dumont*, 354.
2. The court is of opinion upon the evidence that the bonds were pledged to secure the remittance by the bank to S. of "exchange bought and paid for;" that is, bills drawn against shipments and purchased by advances to the shippers, and that they cannot be held to make good a debit balance of the bank created by the non-payment of certain drafts drawn by it directly on Europe and unaccompanied by documents. *Ib.*
3. A banker's lien rests upon the presumption of credit extended in faith of securities in possession or expectancy, and does not arise in reference to securities in possession of a bank under circumstances, or where there is a particular mode of dealing, inconsistent with such lien. *Ib.*
4. The pledge of these bonds to guarantee the remittance by the bank as before stated and the circumstances under which they were left in the possession of S., and had been made use of by C., preclude the allowance of the banker's lien claimed on behalf of S. as against the ultimate indebtedness of C. *Ib.*
5. The receipt by D. and the assignee of C. of the remaining bonds and money realized from bonds and coupons, after the satisfaction of the amounts decreed as liens by the Circuit Court, did not deprive D. and C.'s assignee of the right of appeal. *Embry* v. *Palmer*, 107 U. S. 3, 8, approved. *Ib.*

BILL OF LADING.

A bill of lading, fraudulently issued by the station agent of a railroad company without receiving the goods named in it for transportation, but in other respects according to the customary course of business, imposes no liability upon the company to an innocent holder who receives it without knowledge or notice of the fraud and for a valuable consideration: and this general rule is not affected in Texas by the statutes of that State. *Friedlander* v. *Texas and Pacific Railway Co.*, 416.

BANKRUPT.

If an attachment of property in an action in a state court is dissolved by the defendant's entering into a recognizance with sureties to pay

within ninety days after any final judgment against him, the amount of that judgment; and the defendant, after verdict against him, obtains his discharge in bankruptcy upon proceedings commenced more than four months after the attachment; the Bankrupt Act does not prevent the state court from rendering judgment against him on the verdict, with a perpetual stay of execution, so as to leave the plaintiff at liberty to proceed against the sureties. *Hill* v. *Harding*, 698.

CADET AT WEST POINT.

See LONGEVITY PAY.

CALIFORNIA.

See PUBLIC LAND, 4.

CASES AFFIRMED.

1. *Amy* v. *Watertown*, *No.* 2, 130 U. S. 320, affirmed and applied to this case. *Knowlton* v. *Watertown*, 327.
2. *City of Norwich*, 118 U. S. 468, affirmed as to insurance money. *Butler* v. *Boston and Savannah Steamship Co.*, 527.
3. *County of Warren* v. *Marcy*, 97 U. S. 96, affirmed. *Union Trust Co.* v. *Southern Inland Navigation Co.*, 565.
4. *Embry* v. *Palmer*, 107 U. S. 3, approved. *Reynes* v. *Dumont*, 354.
5. *Head Money Cases*, 112 U. S. 580, followed. *Chinese Exclusion Case*, 581.
6. *Lake County* v. *Rollins*, 130 U. S. 662, affirmed and applied to the bonds in controversy in this action. *Lake County* v. *Graham*, 674.
7. *Reynes* v. *Dumont*, 130 U. S. 354, followed. *Kilbourn* v. *Sunderland*, 505.
8. *Whitney* v. *Robertson*, 124 U. S. 190, followed. *Chinese Exclusion Case*, 581.

See LIS PENDENS.

CASES EXPLAINED OR QUALIFIED.

1. *Broughton* v. *Pensacola*, 93 U. S. 266, and *Mobile* v. *Watson*, 116 U. S. 289, differ essentially from this case. *Amy* v. *Watertown*, *No.* 1, 301.
2. *Clark* v. *Reyburn*, 8 Wall. 318, explained. *Parker* v. *Dacres*, 43.
3. *Thomas* v. *Railroad Co.*, 101 U. S. 71, explained. *Oregon Railway and Navigation Co.* v. *Oregonian Railway Co.*, 1.

CERTIORARI.

See PRACTICE, 4.

CHINESE IMMIGRATION.

The history of Chinese immigration into the United States stated, together with a review of the treaties and legislation affecting it. *Chinese Exclusion Case*, 581.

See CONSTITUTIONAL LAW, A, 7, 8.

CITATION.

See APPEAL, 4, 5.

CLERK OF THE DISTRICT COURT IN UTAH.

See SALARY.

COLORADO.

See ESTOPPEL;
MUNICIPAL CORPORATION.

COMMON CARRIER.

See ADMIRALTY;
BILL OF LADING.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. If the trial court makes the decision of a motion for a new trial depend upon a remission of the larger part of the verdict, this is not a reëxamination by the court of facts tried by the jury in a mode not known at the common law; and is no violation of the Seventh Article of Amendment to the Constitution. *Arkansas Valley Land and Cattle Co.* v. *Mann*, 69.
2. In their relations with foreign governments and their subjects or citizens, the United States are a nation, invested with the powers which belong to independent nations. *Chinese Exclusion Case*, 581.
3. So far as a treaty made by the United States with any foreign power can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal. *The Head Money Cases*, 112 U. S. 580, and *Whitney* v. *Robertson*, 124 U. S. 190, followed. *Ib.*
4. The abrogation of a treaty, like the repeal of a law, operates only on future transactions, leaving unaffected those executed under it previous to the abrogation. *Ib.*
5. The rights and interests created by a treaty, which have become so vested that its expiration or abrogation will not destroy or impair them, are such as are connected with and lie in property, capable of sale and transfer or other disposition, and not such as are personal and untransferable in their character. *Ib.*
6. The power of the legislative department of the government to exclude aliens from the United States is an incident of sovereignty, which cannot be surrendered by the treaty making power. *Ib.*
7. The act of October 1, 1888, 25 Stat. 504, c. 1064, excluding Chinese laborers from the United States, was a constitutional exercise of legislative power, and, so far as it conflicted with existing treaties between the United States and China, it operated to that extent to abrogate them as part of the municipal law of the United States. *Ib.*

8. A certificate issued to a Chinese laborer under the fourth and fifth sections of the act of May 6, 1882, 22 Stat. 58, c. 126, as amended July 5, 1884, 23 Stat. 115, c. 220, conferred upon him no right to return to the United States of which he could not be deprived by a subsequent act of Congress. *Ib.*

See RAILROAD, 4;
TAX AND TAXATION, 1, 2.

B. OF THE STATE.

When the constitution of a State imposes upon the municipal corporations within it a limitation of their power to incur debts, it is not within the power of the legislature of the State to dispense with that limitation, either directly or indirectly. *Lake County* v. *Graham*, 674.

See CORPORATION, 3;
ESTOPPEL;
MUNICIPAL CORPORATION.

CONTRACT.

1. Courts decline to enforce contracts which impose a restraint, though only partial, upon business of such character, that restraint to any extent will be prejudicial to the public interest. *Gibbs* v. *Consolidated Gas Co. of Baltimore*, 396.
2. But where the public welfare is not involved and the restraint upon one party is not greater than protection to the other party requires, a contract in restraint of trade may be sustained. *Ib.*
3. A corporation cannot disable itself by contract from the performance of public duties which it has undertaken, and thereby make public accommodation or convenience subservient to its private interests. *Ib.*
4. Where particular contracts are inhibited by statute, and if attempted, are in positive terms declared "utterly null and void," such contracts will not be enforced. *Ib.*
5. Recovery cannot be had for services rendered, or losses incurred, in securing the execution of an illegal agreement, by a party privy to the unlawful design. *Ib.*
6. When, under a contract to furnish, and to put in complete operation in the purchaser's mill, machinery of a certain description and quality, for a price payable partly upon the arrival of the machinery at the mill, and partly after the completion of the work, the machinery furnished and set up does not, when tested, comply with the requirements of the contract, the purchaser, upon giving notice to the seller that, if the latter does not "put the mill in repair so that it will do good work," the former will do so, is entitled to deduct, in an action for the unpaid part of the price, the reasonable cost of altering the construction and setting of the machinery so as to conform to the contract. *Stillwell and Bierce Manufacturing Co.* v. *Phelps*, 520.

See COVENANT;
SALE.

CONTRIBUTORY NEGLIGENCE.

When, in an action brought by an employé of a railroad company to recover damages for injuries caused by the negligence of other employés, the defence of contributory negligence is set up, the plaintiff is entitled to have the question submitted to the jury unless no recovery could be had upon any view which could be properly taken of the facts which the evidence tended to establish. *Dunlap* v. *Northeastern Railroad*, 649.

CORPORATION.

1. In the United States a corporation can only have an existence under the express law of the State by which it is created, and can exercise no power or authority which is not granted to it by the charter under which it exists, or by some other legislative act. *Oregon Railway and Navigation Co.* v. *Oregonian Railway Co.*, 1.
2. When a statute makes a grant of property, powers, or franchises to a private corporation or to a private individual, the construction of the grant in doubtful points should always be against the grantee, and in favor of the government; and this general rule of construction applies with still greater force to articles of association organizing a corporation under general laws. *Ib.*
3. When a state constitution contains a general provision that corporations shall not be created by special laws, but may be formed under general laws, no private corporation can be created thereafter until such general law has been enacted. *Ib.*
4. When a corporation is organized through articles of association entered into under general laws, the memorandum of association stands in the place of a legislative charter in so far that its powers cannot exceed those enumerated therein; but powers enumerated and claimed therein which are not warranted by statute are void for want of authority. *Thomas* v. *Railroad Co.*, 101 U. S. 71, explained. *Ib.*
5. The use of the words "successors or assigns" in a proviso attached to a statute making specific grants to a corporation does not necessarily imply that the corporation can transfer all its property and its franchises to another corporation, to be exercised by the latter. *Ib.*
6. A provision in a general act for the organization of corporations that a corporation organized under it may authorize its own dissolution and the disposition of its property thereafter, does not authorize such a corporation, not dissolving but continuing in existence, to dispose of all its corporate franchises and powers by lease. *Ib.*

See CONTRACT, 3; RAILROAD, 1, 2, 3; PUBLIC LAND, 8, 9, 10; TAX AND TAXATION, 3, 4, 5, 6.

COUNTY COURT.

See LOCAL LAW, 4, 5, 6, 7.

COURT AND JURY.

See CONSTITUTIONAL LAW, 1;
CONTRIBUTORY NEGLIGENCE;
CRIMINAL LAW.

COVENANT.

A purchaser of land, taking a conveyance from the vendor, with a covenant for peaceable possession, cannot maintain an action for its rental value from the date of conveyance until placed in actual possession, in consequence of being kept out by a trespasser: since he might have required the delivery of such possession to accompany the conveyance and the payment of the purchase money. *Andrus* v. *St. Louis Smelting Co.*, 643.

CRIMINAL LAW.

A statute of Utah provided that every person guilty of murder in the first degree shall suffer death, or, upon the recommendation of the jury, may be imprisoned at hard labor in the penitentiary for life, at the discretion of the court; *Held*, (1) That the authority given to substitute imprisonment at hard labor in the penitentiary for life for the punishment by death, when the accused is found guilty of murder in the first degree, depends upon a previous recommendation to that effect by the jury; (2) that when a person is on trial charged with the commission of murder in the first degree, it is the duty of the court to inform the jury of their right, under the statute, to recommend imprisonment for life at hard labor in the place of the punishment of death; and that failure to do so is error. *Calton* v. *Utah*, 83.

See JURISDICTION, A, 8.

CUSTOMS DUTIES.

1. When there is a general finding in favor of the plaintiff on the issues of fact raised by the pleadings in an action for the recovery of duties illegally exacted, the facts must be taken to be as alleged by him in the pleadings. *Badger* v. *Cusimano*, 39.
2. Since the enactment of § 7 of the act of March 3, 1883, c. 121, 22 Stat. 488, 523, the value of an importation of goods is to be ascertained for the purpose of customs duties by their actual market value, without reference to the "charges" specified in §§ 2907, 2908, Rev. Stat.; and it appearing in this case that under an appraisement of imported oranges, the invoiced value of such "charges" was reduced, and the amount of such reduction added to the invoiced value of the fruit, although such invoice value represented its true market value; *Held*, that such addition to the true invoice value was illegal, and that the power of the collector to make it was apart from any question of fraud in the appraisement, and could be raised in an action at law when the importer had taken such steps as entitled him to bring suit for the recovery of the duties so illegally exacted. *Ib.*

3. The notice of dissatisfaction with the decision of the collector of customs as to the rate and amount of duties on imported goods, required by the act of June 30, 1864, c. 171, § 14 (Rev. Stat. § 2931), to be given "within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs," may be given at any time after the entry of the goods and the collector's original estimate of the amount of duties, and before the final ascertainment and liquidation of the duties as stamped upon the entry. *Davies* v. *Miller*, 284.
4. In settling the meaning and application of tariff laws, the commercial designation of an article is the first and most important thing to be ascertained. *Robertson* v. *Solomon*, 412.
5. When the commercial designation of an article fails to give it its proper place in the classification of a tariff law, then resort must be had to its common designation. *Ib.*
6. In an action to recover back duties paid on an importation of white beans, which were classified at the Custom House as "vegetables," in the general category of "articles of food," it was error in the court to exclude evidence offered by the collector to prove the common designation of "beans" as "an article of food." *Ib.*

DAMAGES.

1. In trover for the conversion of cattle the plaintiff, proving his case, is entitled to recover for the value of such calves, the increase of the cows, as were in existence at the time of the demand and conversion. *Arkansas Valley Land and Cattle Co.* v. *Mann*, 69.
2. In trover for the conversion of cattle intended for consumption; the plaintiff, if he recover, is entitled to interest on the value of the cattle at the legal rate of the place of the conversion. *Ib.*
3. Conjectural estimates of injury, founded upon no specific data, but upon opinions formed upon guesses, without any knowledge of the subject, furnish no legal ground for the recovery of specific damages. *Rude* v. *Westcott*, 152.
4. The legal rate of interest upon the cost of a silver mill may be taken by a jury as its fair rental value, in the absence of other evidence concerning that value. *New York and Colorado Mining Syndicate* v. *Fraser*, 611.
5. In estimating damages resulting from the stoppage of a mill, the jury may take into consideration the wages of the men thrown out of work while the mill was idle. *Ib.*

See LOCAL LAW, 13, 14, 15.

DISTRICT OF COLUMBIA.

Semble, that the Baltimore and Potomac Railroad Company is not authorized to occupy the public streets of Washington for the purposes of a

freight yard as such. *Baltimore and Potomac Railroad Co.* v. *Hopkins*, 210.

See JURISDICTION, A, 5, 6, 7;
LOCAL LAW, 8, 9, 10;
NEGOTIABLE PAPER.

DIVISION IN OPINION.

See JURISDICTION, A, 8.

DOWER.

1. A bill in equity by a widow to obtain her right of dower, alleging that she conveyed it to one of the defendants upon an express trust for her, and he conveyed to the other defendants with notice of the trust, may be allowed to be amended by alleging that she was induced to make her conveyance by his fraudulent misrepresentations as to the nature of the instrument. *Jones* v. *Van Doren*, 684.
2. Upon a bill in equity by a widow against one who has obtained from her by fraud a conveyance of her right of dower, and another who, with notice of the fraud, has taken a mortgage from him, and has foreclosed the mortgage by sale of all the land, part to the mortgagee and part to a purchaser in good faith, and praying for a redemption of the mortgage and a reconveyance of the land still held by the mortgagee, and for general relief, dower may be decreed, and damages if necessary to give full indemnity. *Ib.*
3. In a suit in equity to obtain a right of dower from persons who have taken conveyances thereof by, or with notice of fraud upon the plaintiff, the statute of limitations begins to run only from her discovery of the fraud. *Ib.*

DUE PROCESS OF LAW.

See RAILROAD, 4.

EQUITY.

1. Searls, the appellee, filed a bill in the Circuit Court of the United States for the Eastern District of Michigan against Worden for infringement of letters patent. After hearing, a decree was entered in that case in his favor for the recovery of $24,960.31 damages and costs. Worden appealed to this court, but gave no supersedeas bond. Thereupon execution issued on the decree, which was levied on certain lots, the property of Ballard the appellant. Searls then filed his bill in the Circuit Court in aid of the execution, praying to have a conveyance by Worden to Ballard of the lots levied upon set aside, as made to defraud Worden's creditors. On the final hearing of that case the conveyance was set aside as fraudulent, from which Ballard took this appeal. Meanwhile Worden's appeal in the patent suit was reached on the docket in this court, and, after hearing, the judgment below was reversed, and the cause was remanded to the Circuit Court, with directions to dismiss

the bill. See 121 U. S. 14. Thereupon Ballard moved in this case, on the records in the two cases, and on affidavits, to reverse the decree of the court below, and to remand this cause to the Circuit Court, with direction to dismiss the bill; *Held*, that if such a course could properly be taken in any case, it would be improper to take it in this case; but that, as the appellant might be subjected to great injustice if the cause should go to hearing on the appeal in the present condition of the record, the cause should be remanded with instructions to the Circuit Court to allow the defendant below to file such supplemental bill as he might be advised, in the nature of a bill of review, or for the purpose of suspending or avoiding the decree, upon the new matter arising from the reversal of the former decree in *Worden* v. *Searls*. *Ballard* v. *Searls*, 50.

2. In January, 1875, a patent issued from the state land office in Michigan for 160 acres of mineral land to McDonald and McKay, who furnished the money for it. The application was made by Moore in their behalf, and under an agreement which the court finds to be established by the proof as made (but not as made in writing) that he was to have one third interest in it in consideration of his services in prospecting. On the 18th of October, 1875, Moore, being then unmarried, executed and delivered a deed of one sixth interest in the tract to Monroe for a valuable consideration, informing him that he (Moore) was to have a deed of one third part from McDonald and McKay, which was probably at that time made out. McDonald and McKay executed their deed to Moore some time in 1875, and deposited it with a third party to be delivered when a debt due from Moore to McDonald should be settled, which was done in 1877. Moore did not know of the existence of this deed, and it was subsequently lost. On the 16th of December, 1880, at Moore's request, and for the avowed purpose of defeating his deed to Monroe, McDonald and McKay conveyed the promised one third interest to the wife of Moore, he having been in the meantime married, and the wife having knowledge of the deed to Monroe, and of the object of the conveyance to her. Moore then entered into possession, and managed the property as if it were his own. Monroe died intestate in Colorado in 1878, and his widow moved into Canada. In the summer of 1871 she first learned that Moore disputed Monroe's title. She wrote him a letter informing him of the claim of the widow and heirs of Monroe to one sixth part of it, which he received in the fall of 1881, or in the spring of 1882. February 8, 1882, the widow and heirs commenced this suit to compel a conveyance of the one sixth interest to them; *Held*: (1) That the transaction must be regarded in equity as if McDonald and McKay had conveyed to Moore, and Moore had conveyed to his wife, she holding one half of the interest conveyed to her, being one-sixth of the whole, in trust for Monroe and his heirs; (2) that Moore was guilty of a fraud in preventing the conveyance to himself which would have inured to the benefit of Monroe, and that his wife, by accepting with knowledge, became a party to it; (3) that

the fact that McDonald and McKay could not have been compelled to convey to Moore because of the want of written evidence of their agreement to do so does not entitle Mrs. Moore to invoke the Statute of Frauds as a defence, they having kept their faith with Moore by conveying under his directions; (4) that treating Moore's deed as a covenant to convey to Monroe, he would have been precluded from denying the title if the deed of McDonald and McKay had been made directly to him; and that this was not changed by the interposition of a third person, who took without consideration and in order to enable the fraud to be carried into effect; (5) that the fraud was of such character as to enable a court of equity to decree the relief as against the covenantor, not only under his own name, but under the name of his wife; (6) that as the contract was binding at the time of Monroe's death, his heirs had the right to compel specific performance; (7) that there was no sufficient proof that the deed of Moore to Monroe was set aside by consent, and the purchase abandoned by Monroe; (8) that the defence of laches, if available at all, was not made out; (9) that the allegations of the bill as amended were sufficient to support the decree. *Moore* v. *Crawford*, 122.

3. Where it is competent for a court of equity to grant the relief asked for, and it has jurisdiction of the subject matter, the objection that the complainant has an adequate remedy at law should be taken at the earliest opportunity, and before the defendants enter upon a full defence. *Reynes* v. *Dumont*, 130 U. S. 354, followed. *Kilbourn* v. *Sunderland*, 505.

4. Equity jurisdiction may be invoked, although there is also a remedy at law, unless the remedy at law, both in respect of the final relief and the mode of obtaining it is as efficient as the remedy which equity could confer under the same circumstances. *Ib.*

5. When a charge of fraud involves the consideration of principles applicable to fiduciary and trust relations, equity has jurisdiction over it, as "fraud" has a more extensive signification in equity than it has at law. *Ib.*

6. When a party injured by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon its discovery; and mere submission to any injury after the act inflicting it is completed cannot generally, and in the absence of other circumstances, take away a right of action, unless such acquiescence continues for the period limited by the statute for the enforcement of the right. *Ib.*

7. In a suit in equity to set aside a conveyance of a silver mine in Idaho, as induced by false and fraudulent concealment and misrepresentations, the court, after stating the pleadings and the facts, *holds*, that neither the law nor the equities are with the plaintiffs. *Synnott* v. *Shaughnessy*, 572.

See BAILMENT, 2;
DOWER.

EQUITY OF REDEMPTION.

See MORTGAGE, 1, 2, 3.

EQUITY PLEADING.

See LOCAL LAW, 11.

ESTOPPEL.

The constitution of Colorado imposed a limit upon the power of municipal corporations to contract debts. The legislature authorized county commissioners (a vote of the tax-payers first being had) to issue bonds of the county, not to exceed the amount of the floating debt, that amount to be ascertained by the commissioners, no reference being made in the statute to the constitutional limitation. The commissioners of Lake County settled the amount of the floating debt of the county at $500,000, which was in excess of the constitutional limitation, and issued bonds to that amount, in which reference was made to the statute, and in which it was "certified that all the provisions and requirements of said act have been fully complied with by the proper officers in the issuing of this bond." *Held*, that the county was not estopped to deny that the bond was issued in violation of the provisions of the constitution. *Lake County* v. *Graham*, 674.

EVIDENCE.

1. In the absence of a provision of statute in Montana respecting the manner of authenticating a copy of the certificate of incorporation of a corporation of a State, filed in the records of a county of Montana, the certificate of the original custodian in the State of origin, under his seal of office, is a sufficient authentication. *Hammer* v. *Garfield Mining and Milling Co.*, 291.
2. In an action to recover for goods sold and delivered, a copy of an itemized account of them may be handed to a witness to refresh his memory in regard to the matters contained in it. *New York and Colorado Mining Syndicate* v. *Fraser*, 611.
3. Evidence that a witness is familiar enough with gold mills to know what they can perform and what they can earn, but that he has only seen one silver mill, being the one in controversy, lays no foundation for his testimony as to the fair rental value of that silver mill. *Ib.*
4. In the absence of other and better evidence, the rental value of a silver mill may be shown by proof of the amount of ore delivered and milled. *Ib.*
5. The declarations of the defendant's agent as to matters within the scope of his authority were properly admitted in evidence. *Ib.*

See DAMAGES, 3;

MINERAL LAND, 4.

EXCEPTION.

When the exception to the refusal of a request to instruct the jury shows no evidence tending to prove the facts which the request assumes to exist, there is nothing before the court for consideration. *New York and Colorado Mining Syndicate* v. *Fraser*, 611.

EXECUTION.

See LOCAL LAW, 3.

FLORIDA INTERNAL IMPROVEMENT FUND.

The conveyance by the trustees of the Internal Improvement Fund of Florida, on the 10th February, 1871, to the Southern Inland Navigation and Improvement Company was subject to such decree as the court might render in a suit commenced in the Circuit Court of the United States for the Northern District of Florida against said trustees and others on the 3d of November, 1870; and as the Navigation and Improvement Company was a party to that suit, and as the decree of December 4, 1873, in that suit, rescinded the agreements which the company had with the trustees in respect of lands constituting a part of the trust fund and restored to that fund the lands conveyed or attempted to be conveyed to the company by the trustees, the said deed of February 10, 1871, and the mortgage by that company to the Union Trust Company of March 20, 1871, based upon it, are invalid as against the present trustees of the Internal Improvement Fund. *Union Trust Co.* v. *Southern Inland Navigation Co.*, 565.

FRAUD.

See EQUITY, 4, 5, 6, 7.

FRAUDULENT CONVEYANCE.

See EQUITY, 2 (1), (5) 7.

INTEREST.

See DAMAGES, 1, 4.

INDIAN.

See JURISDICTION, C, 3.

JUDGMENT.

1. A judgment of a lower appellate court, which reverses the judgment of the court of original jurisdiction and remands the case to it for further proceedings, is not a final judgment. *Smith* v. *Adams*, 167.
2. A judgment of reversal is only final when it also enters or directs the entry of a judgment which disposes of the case. *Ib.*
3. The suspension of the execution of a judgment in a criminal case until the next term of court, unaccompanied by any pending motion for a

rehearing or modification of the judgment or other proceeding taken at the term of court when the judgment was rendered, leaves the judgment in full force, and the court without further jurisdiction of the case. *United States* v. *Pile*, 280.

4. A party to a decree in a state court in a matter subject to its jurisdiction cannot attack it collaterally in a suit commenced in a Circuit Court of the United States after the jurisdiction of the state court had attached. *Central Trust Co.* v. *Seasongood*, 482.

See FLORIDA INTERNAL IMPROVEMENT FUND; RAILROAD, 5.

JUDGMENT NUNC PRO TUNC.

See APPEAL, 8.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. An order overruling a motion for a new trial after the plaintiff, by leave of court, has remitted a part of the verdict, is not subject to review by this court upon a writ of error sued out by the party against whom the verdict is rendered. *Arkansas Valley Land and Cattle Co.* v. *Mann*, 69.

2. Amendments are discretionary with the court below, and are not reviewable here. *Bullitt County* v. *Washer*, 142.

3. By "the matter in dispute," as that phrase is used in the statutes conferring jurisdiction on this court, is meant the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken; and its pecuniary value may be determined not only by the money judgment prayed, but, in some cases, by the increased or diminished value of the property directly affected by the relief prayed, or by the pecuniary result to one of the parties immediately from the judgment. *Smith* v. *Adams*, 167.

4. A promise by a third person to grant to a litigant certain lands, or make particular donations exceeding $5000 in value in case of a successful prosecution of a suit, will not confer jurisdiction on this court, if without such promise or conditional donation the court would not have the requisite jurisdiction. *Ib.*

5. In an action against the Baltimore and Potomac Railroad Company to recover for injuries suffered by an unlawful use of the streets of Washington by the company, the judgment being for less than the jurisdictional amount necessary to sustain a writ of error, this court will not acquire jurisdiction by reason of a charge to the jury which instructs them that certain uses of those streets were warranted by statutes of the United States, and that certain other uses were not authorized by them. *Baltimore and Potomac Railroad Co.* v. *Hopkins*, 210.

6. The amount necessary to give this court jurisdiction to reëxamine a judgment or decree against a defendant in the court below (whether rendered in the trial court or in the appellate court) is to be determined by the amount of the judgment in the trial court without adding interest, unless interest is part of the claim litigated, or forms part of the judgment in the trial court and runs from a period antecedent to that judgment. *District of Columbia* v. *Gannon*, 227.

7. At the trial of an action against the District of Columbia to recover for personal injuries received by reason of a defect in the streets of Washington, the refusal to charge that the District cannot be held responsible for the negligence of a government which is imposed upon it by Congress; or that no such action can be maintained against it because it derives no profit from the duty of maintaining the streets, does not draw in question the validity of the statutes of the United States creating the government of the District, so as to give this court appellate jurisdiction of the cause, independently of the amount of the judgment in the trial court. *Ib.*

8. A certificate of division in opinion upon a matter over which the court below has no jurisdiction brings nothing before this court for review. *United States* v. *Pile*, 280.

9. The modes of procedure in Montana being substantially the same at law and in equity, if the trial court there calls a jury in a case where the remedy sought is equitable, and the trial is conducted in the same manner as a trial of an issue at law, and there is a general finding by the jury, and the case is brought here by writ of error, the finding will be treated here as if made by the court, and as covering all the issues; and the only questions which can be considered here are those arising from the rulings in the admission or rejection of evidence, and those respecting the inferences deducible from the proofs made. *Hammer* v. *Garfield Mining and Milling Co.*, 291.

10. When it does not appear, affirmatively, from the record that the Circuit Court had jurisdiction, the judgment below will be reversed and the cause remanded for further proceedings in accordance with law. *Brock* v. *Northwestern Fuel Co.*, 341.

11. Where the objection of want of jurisdiction in equity because of adequate remedy at law is not made until the hearing on appeal, and the subject matter belongs to the class over which a court of equity has jurisdiction, this court is not necessarily obliged to entertain such objection; even if taken *in limine*, it might have been worthy of attention. *Reynes* v. *Dumont*, 354.

12. This court has no authority to review on bill of exceptions rulings of a judge of the Circuit Court at the trial of an action at law, had before him at chambers, by consent of the parties, under an order providing that it should be so tried, and that if at such trial there should appear to the judge to be in issue questions of fact of such a character that he would submit them to a jury if one were present, they should be submitted to a jury at the next term. *Andes* v. *Slauson*, 435.

13. This court will not, by a technical construction of an obscure record, preclude itself from correcting an error committed in the trial below, if a construction can be given to it which will give jurisdiction. *Dunlap* v. *Northwestern Railroad*, 649.

14. An action on the official bond of a collector of customs is not one of which this court has appellate jurisdiction, under § 699 of the Revised Statutes, without regard to the sum or value in dispute. *United States* v. *Haynes*, 653.

See ADMIRALTY, 1; APPEAL, 1, 2, 3, 4, 9; JUDGMENT, 1, 2, 3; PRACTICE, 3, 4; REMOVAL OF CAUSES; STATUTE, A, 1, 2; WITNESS.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

A motion to set aside a judgment if made, and service thereof made at the term at which the judgment is rendered, may be heard and decided at the next term of the court if properly continued by order of court. *Amy* v. *Watertown*, (No. 1,) 301.

C. JURISDICTION OF TERRITORIAL COURTS.

1. The validity of an election to determine the county seat of a county in Dakota under the laws of the Territory, when presented to the courts in the form prescribed by those laws, becomes a subject of action within the jurisdiction of the territorial court, whose judgment thereon is subject to appeal to the Supreme Court of the Territory. *Smith* v. *Adams*, 167.

2. The act of March 3, 1885, 23 Stat. 385, c. 341, § 9, was enacted to transfer to territorial courts, established by the United States, the jurisdiction to try the crimes described in it, (including the crime of murder,) under territorial laws, when sitting as and exercising the functions of a territorial court; and not when sitting as or exercising the functions of a Circuit or District Court of the United States under Rev. Stat. § 1910. *Gon-shay-ee, Petitioner*, 343.

3. The facts that the petitioner in this case was sentenced to imprisonment in Ohio, and that the offence was committed within a judicial district instead of an Indian reservation, do not take this case out of the decision in *Gon-shay-ee's Case*, 130 U. S. 343. *Captain Jack, Petitioner*, 353.

D. JURISDICTION OF THE COURT OF CLAIMS.

Congress enacted that A B and C D "be permitted to sue in the Court of Claims, which court shall pass upon the law and facts as to the liability of the United States for the acts of its officer" E F, . . . "collector of internal revenue," etc., "and this suit may be maintained, any statute of limitation to the contrary notwithstanding." *Held*, that this was a waiver of the defence based upon the statute of limitations,

but not a waiver of the defence based on the general principle of law that the United States are not liable for unauthorized wrongs inflicted on the citizen by their officers while engaged in the discharge of official duties. *United States* v. *Cumming*, 452.

KENTUCKY.

See LOCAL LAW, 4, 5, 6, 7.

LACHES.

In a suit in equity, brought by the United States to redeem a parcel of land in Kansas, from a mortgage, the defence of laches cannot be set up, although the bill was filed more than twelve years after the defendant obtained title to the land by purchasing it on a foreclosure sale under the mortgage, and more than thirteen years after the United States purchased the land on a sale on execution on a judgment obtained by it, after the mortgage was given, against the mortgagor, who still owned the land, the United States not having been a party to the foreclosure suit. *United States* v. *Insley*, 263.

See EQUITY, 2 (8).

LIMITATION, STATUTES OF.

1. The general rule respecting statutes of limitation is that the language of the act must prevail, and that no reason based on apparent inconvenience or hardship will justify a departure from it. *Amy* v. *Watertown*, (No. 2,) 320.
2. Cases considered in which courts of equity and some courts of law have held that the running of the statute was suspended on the ground of fraud. *Ib.*
3. Cases considered in which courts of law have held the operation of the statute suspended for want of parties, or because the law prohibits the bringing of an action. *Ib.*
4. Inability to serve process upon a defendant, caused by his designed elusion of it, is no excuse for not commencing an action within the prescribed period. *Ib.*
5. In Wisconsin an action is not commenced for the purpose of stopping the running of the statute of limitations until service of process had been effected, or until service had been attempted and followed up by actual service within sixty days or publication within that time. *Knowlton* v. *Watertown*, 327.
6. Even before the act of June 1, 1872, c. 255, a provision, in a state statute of limitations of personal actions, that a service of the summons, or its delivery to an officer with intent that it should be served, should be deemed a commencement of the action or equivalent thereto, was applicable, like the rest of the statute, to an action in the Circuit Court of the United States. *Michigan Ins. Bank* v. *Eldred*, 693.
7. A provision in a statute of limitations, that the delivery of the sum-

mons to an officer, with intent that it should be actually served, shall be deemed equivalent to the commencement of the action, is satisfied if the summons made out by the clerk, pursuant to the attorney's direction, is placed by the clerk in a box in his office, designated by the officer, with the clerk's assent, as a place where processes to be served by him may be deposited and from which he usually takes them daily. *Ib.*

See DOWER, 3.

LIMITED LIABILITY.

See ADMIRALTY, 3, 4, 5, 6, 7, 8, 11.

LIS PENDENS.

County of Warren v. *Marcy*, 97 U. S. 96, affirmed to the point that all persons dealing with property are bound to take notice of a suit pending with regard to the title thereto, and will, on their peril, purchase the same from any of the parties to the suit. *Union Trust Co.* v. *Southern Inland Navigation Co.*, 565.

LOCAL LAW.

1. The constitution and general laws of Oregon do not authorize a railroad corporation, organized under the laws of the State, to take a lease of a railroad and franchises. *Oregon Railway and Navigation Co.* v. *Oregonian Railway Co.*, 1.
2. The general laws of Oregon confer upon a foreign corporation no right to make a lease of a railroad within the State, but only the right to construct or acquire and operate one there. *Ib.*
3. The Civil Practice Act of Washington Territory of 1873 provides that all sales of real estate under execution, except sales of an estate of less than a leasehold of two years unexpired term, shall be subject to a right of redemption by the judgment debtor, or his successor in interest, within six months after confirmation of sale upon tender to the sheriff of the amount due with interest, and that the sheriff "may be required by order of the court or a judge thereof to allow such redemption, if he unlawfully refuses to allow it." The freehold estate of the plaintiff below having been sold under a decree of foreclosure, he tendered to the sheriff the amount necessary to redeem it within six months from the date of the confirmation of the sale. The sheriff refused to receive the money. No application was made to the court or a judge thereof, under the statute, for an order upon the sheriff requiring him to allow the redemption; but about nine years after the sale, the plaintiff below brought this suit to redeem; *Held*, that, without deciding whether the statute of the Territory is applicable to a sale under a decree of foreclosure, a court of equity should refuse aid to a party asserting under it a right of redemption, who has neglected, at least without sufficient cause, before the expiration of six months from the confirmation of

the sale, to invoke the authority of the proper court or judge to compel the recognition of such right by the officer whose duty it was, under the statute, to accept a tender made in conformity with law. *Parker* v. *Dacres*, 43.

4. In Kentucky when the record of a County Court, composed of the county judge and a majority of the justices of the peace of the county, shows affirmatively an adjudication of the necessity of a construction contract; an appropriation for preliminary work upon it; the appointment of an agent to make the contract; and the levy of taxes to pay for work done under it, it is not necessary, in order to fix liability on the county, that the record should further show that the contract was reported to the court with the name of the person making it; that it was filed in the court, or that it was accepted by the county judge. *Bullitt County* v. *Washer*, 142.
5. When a body like the county courts of Kentucky has judicial powers, and also large administrative and executive powers, and is by law authorized to employ agents in the execution of the latter branch of powers, the acts of the agents are not in every case required to appear of record. *Ib.*
6. When a County Court in Kentucky, constituted as the law requires, enters into a construction contract on behalf of the county in the manner prescribed by law, and charges the county with the amount specified therein, its jurisdiction in that special mode of organization ceases; and it is then the legitimate province of the County Court, held by the county judge alone, to superintend and control the erection of the structure. *Ib.*
7. As a general rule in Kentucky, when any power is conferred or duty imposed by statute upon a County Court, the term is understood to mean a court held by the presiding judge alone, and not in conjunction with the justices, and should be held so to mean, even when used in connection with fiscal matters, if it relates to mere ministerial duties. *Ib.*
8. Under the laws in force in the District of Columbia, when the cause of action in this case arose, the failure of the commissioner of improvements to deposit with the register a statement exhibiting the cost of setting the curbstone and paving the footway in front of each lot or part of lot, separately, and the amount of tax to be paid by each proprietor, the failure of the register to place without delay in the hands of the collector a list of the persons taxed and the failure of the collector to give the required notice to such persons, rendered invalid a tax sale under those laws and certificates thereof, as against an innocent purchaser. *Lyon* v. *Alley*, 177.
9. The provisions in those laws respecting the deposit of such statement with the register, the placing the list in the hands of the collector, and the notice to the owners were intended as a condition precedent, a strict compliance with which was necessary in order to make the tax a lien upon the lots. *Ib.*

10. An erasure and interlineation in an assessment roll in the District of Columbia, made nearly twelve months after it was completed and deposited in the register's office, and after lots not assessed had passed into the ownership of a *bona fide* purchaser, is neither a reassessment nor an amendment of the original assessment. Although the illegality of a tax sale is patent on the face of the proceedings, if the property was acquired by a *bona fide* purchaser before the sale and without notice of the tax, a court of equity has jurisdiction to remove the cloud upon the title. *Ib.*
11. In Utah a complaint which alleges that the plaintiff is owner and in possession of land, that the defendant claims an adverse interest or estate therein, that such claim is without legal or equitable foundation and is void, and that it is a cloud on the plaintiff's title and embarrasses him in the use and disposition of his property and depreciates his property, and which prays for equitable relief in these respects, is sufficient to require the adverse claim on the part of the defendant to be set up, inquired into and judicially determined, and the question of title finally settled. *Parley's Park Silver Mining Co.* v. *Kerr*, 256.
12. The provisions of the Revised Statutes of Wisconsin which require service of process generally on cities to be "by delivering a copy thereof to the mayor and city clerk," and the provisions of the charter of the city of Watertown which requires such service to be made by leaving a copy with the mayor, have been held by the highest court of the State to be peremptory and to exclude all other officers, and it has also held that the fact that there is a vacancy in the office of mayor does not authorize service to be made upon some other substituted officer: and this court concurs with that court in this construction. *Amy* v. *Watertown*, (No. 1,) 301.
13. To entitle a property owner to recover for injury to his property in Ohio by reason of the location of a railroad on a public street, road or alley, it is not necessary under the provisions of Rev. Stats. Ohio, § 3283, that the property should be situated upon the street so occupied; but it is sufficient if it is near enough to be injured by the location and occupation. *Shepherd* v. *Baltimore & Ohio Railroad Co.*, 426.
14. Damages for a temporary injury sustained by a property owner by reason of the occupation of a street during the construction of a railroad are not recoverable under § 3283, Rev. Stats. Ohio. *Ib.*
15. The pleadings in this case cover both the claim for damages under the statute, and the claim for special damages by reason of obstruction during construction. *Ib.*

See BILL OF LADING (Texas);
CRIMINAL LAW (Utah);
JURISDICTION, A, 9 (Montana);
JURISDICTION, C (Dakota);
LIMITATION, STATUTES OF, 5 (Wisconsin);
MECHANICS' LIEN (Texas).

LONGEVITY PAY.

The time of the service of a cadet in the Military Academy at West Point is to be regarded as a part of the time he served in the army within the meaning of the act of July 5, 1838, 5 Stat. 256, and should be counted in computing his longevity pay; and in an action to recover that pay he is entitled to judgment for so much of the amount thereon thus computed as is not barred by the statute of limitations. *United States* v. *Watson*, 80.

MARITIME LAW.

See ADMIRALTY.

MASTER AND SERVANT.

See CONTRIBUTORY NEGLIGENCE.

MECHANICS' LIEN.

A statute of Texas, passed in 1879, gave a lien for wages to mechanics and laborers, on a railroad, prior to all other liens, and authorized its enforcement, in a suit, by a judgment for the sale of the railroad, and provided that it should not be necessary to make other lien-holders defendants, but that they might intervene and become parties. It did not provide for any notice by publication. In 1882, a railroad in Texas was mortgaged to secure bonds. In 1884, a creditor of the railroad company holding such labor claims, in a suit against it alone, in a court of the State, obtained a judgment for his claim and lien, and for the sale of the railroad. In a suit afterwards brought by a bondholder, in the Circuit Court of the United States, to have the rights of the creditors of the company ascertained, and a receiver appointed, it was referred to a master to report on the priority of claims. The creditor by judgment presented his claim; it was objected to by the bondholder as fraudulent and embracing amounts not covered by the statutory lien. The master reported that the claim included amounts which were not a lien, as well as amounts which were, but did not separate them; that the claim was a valid one against the company, but that it was not a lien entitled to priority. The court, on exceptions, awarded priority of lien to the claim, for the full amount of the judgment; *Held*, (1) The bondholders were not bound by the judgment rendered in a suit to which they were not made parties; (2) as the claims of the creditor originated after the mortgage was made, he was bound to prove affirmatively, before the master, the existence and priority of his lien; (3) the evidence before the master did not sustain the lien for the whole amount; (4) the proceeding in the state court could not be sustained as one *in rem*, because the adverse claimants did not have even constructive notice of it; (5) the claim was founded wholly on the statute of Texas; (6) it was proper that the claim should be reëxamined before a master. *Hassall* v. *Wilcox*, 493.

MINERAL LAND.

1. The question, under Rev. Stat. § 2319, as to what customs and rules of miners in a mining district not inconsistent with the laws of the United States are in force in the district where an application is made for a patent of mineral land, is one of fact determinable by the Commissioner of the Land Office. *Parley's Park Silver Mining Co.* v. *Kerr*, 256.
2. Rule 4 of the rules of the Blue Ledge mining district in Utah, adopted May 17, 1870, limiting the width of a mining location to 100 feet, was so modified May 4, 1872, that thereafter the surface width was to be governed by the laws of the United States. *Ib.*
3. The provision in Rev. Stat. § 2324, that records of mining claims shall contain such "reference to some natural object or permanent monument as will identify the claim," means only that this is to be done when such reference can be made; and when it cannot be made, stakes driven into the ground are sufficient for identification, or a reference to a neighboring mine, with distance and date of location, which will be presumed to be a well-known natural object in the absence of contradictory proof. *Hammer* v. *Garfield Mining and Milling Co.*, 291.
4. The oath of one of the locators of a mining claim, accompanying the recorded notice of the location is, in the absence of contradiction, *prima facie* evidence of the fact of the citizenship of all the locators. *Ib.*
5. It being established, in an action to quiet a mining title in Montana, that the plaintiff was in quiet and undisputed possession of the premises, the validity of his location not being questioned in the pleadings, and that the boundary of his claim was so marked on the surface as to be readily traced, this constitutes a *prima facie* case which can only be overcome by proof of abandonment, or forfeiture, or other divestiture, and the acquisition of a better right or title by the defendant. *Ib.*
6. A forfeiture of a mining claim cannot be established except upon clear and convincing proof of the failure of the former owner to have work performed or improvements made to the amount required by law. *Ib.*

See PUBLIC LAND, 5, 6.

MORTGAGE.

1. No right exists at common law, or in the system of equity as administered in the courts of England prior to the organization of the government of the United States, to redeem from a sale under a decree of foreclosure. *Parker* v. *Dacres*, 43.
2. *Clark* v. *Reyburn*, 8 Wall. 318, does not recognize a right of redemption after a sale under a decree of foreclosure, independently of a right given by statute. *Ib.*
3. The courts of the United States, sitting in equity, recognize a statutory right of redemption from a sale under a decree of foreclosure, and that the statute conferring it is a rule of property in the State. *Ib.*

See LOCAL LAW, 3.

MONTANA.

See EVIDENCE, 1;
JURISDICTION, A, 9.

MOTION FOR A NEW TRIAL.

See JURISDICTION, A, 1.

MOTION TO DISMISS OR AFFIRM.

See ADMIRALTY, 1, 2.

MOTION TO SET ASIDE JUDGMENT.

See JURISDICTION, B.

MUNICIPAL CORPORATION.

The constitution of Colorado of 1876 provided that no county should contract any debt by loan in any form except for certain purposes therein named; that such indebtedness contracted in any one year should not exceed the rate therein named; and that "the aggregate amount of indebtedness of any county for all purposes . . . shall not at any time exceed twice the amount above herein limited," etc.; *Held*, that this limitation was an absolute limitation upon the power of the county to contract any and all indebtedness, not only for the purposes named in the constitution, but for every other purpose whatever, including county warrants issued for ordinary county expenses, such as witnesses' and jurors' fees, election costs, charges for board of prisoners, county treasurer's commissions, etc. *Lake County* v. *Rollins*, 662.

See CONSTITUTIONAL LAW, B;
ESTOPPEL.

MUNICIPAL TAXES AND ASSESSMENTS.

See LOCAL LAW, 8, 9, 10.

MURDER.

See CRIMINAL LAW.

NEGLIGENCE.

See CONTRIBUTORY NEGLIGENCE.

NEGOTIABLE PAPER.

Negotiable certificates, issued by the Board of Public Works of the District of Columbia, redeemed according to law, and cancelled by the proper officers by stamping in ink across the face words stating such cancellation, are thereby extinguished; and if a clerk, who has no duty or authority connected with their redemption or care, afterwards steals them, fraudulently effaces the marks of cancellation, and puts them in

circulation, the District of Columbia is not liable to a purchaser in good faith, for value and before maturity. *District of Columbia* v. *Cornell*, 655.

OFFICER IN THE ARMY.

1. A retired army officer, accepting pay under an appointment in the diplomatic or consular service, is thereby precluded from receiving salary as an officer in the army. *Badeau* v. *United States*, 439.
2. Whether a retired army officer, whose name is dropped from the rolls under the provisions of Rev. Stat. § 1223, in consequence of his accepting an appointment in the diplomatic or consular service of the government, can be restored to the army under the provisions of the act of March 3, 1875, 18 Stat. 512, is not decided in this case. *Ib.*
3. An officer whose name is placed on the retired list of the army by the Secretary of War, in apparent compliance with provisions of law, is an officer *de facto*, if not *de jure*, and money paid to him as salary cannot be recovered back by the United States. *Ib.*

See LONGEVITY PAY.

OFFICER IN THE DIPLOMATIC OR CONSULAR SERVICE.

See OFFICER IN THE ARMY, 1.

OREGON.

See LOCAL LAW, 1, 2.

PARTIES.

On the facts it is held that Stewart was not an indispensable party to this suit, and that the plaintiffs are entitled to a portion of the relief prayed for. *Kilbourn* v. *Sunderland*, 505.

PARTNERSHIP.

On the facts of this case, it was held that the defendant was not a co-partner with another person, in his general business, and liable for his debts. *Wilson* v. *Edmonds*, 472.

PATENT FOR INVENTION.

1. The first claim in reissued letters patent No. 5294, granted February 25, 1873, to the Collins Company, as assignee of Lucius Jordan and Leander E. Smith, for an improvement in wrenches, was only the application to the bar of the Coes wrench, (which was an existing patented invention at the date of the alleged invention of Jordan and Smith,) for the purpose of securing and supporting the step, and resisting the strain of a nut already in use on the Hewitt or Dixie wrench; and as such it lacks the novelty of invention requisite to support a patent within the recent decisions of this court; and this conclusion is not affected by the fact that in complainant's wrench the screw-rod of the Coes wrench is availed of instead of the screw-sleeve of the Dixie wrench. *Collins Company* v. *Coes*, 56.

2. The second claim in said reissue is for "the nut F, combined with the wrench-bar, and interiorly recessed at *d*, for the purpose set forth." Some years later the patentee filed in the Patent Office a disclaimer thereto "except when said recessed nut and wrench-bar are in combination with the handle G, the step or step-plate E, the screw-rod C, and the movable jaw B, of the wrench, substantially as is shown and described in said last mentioned reissued letters patent," being the reissue in question; *Held*, that whether this qualified disclaimer was or was not effectual, it was, in view of the fact that the screw-rod and movable jaw of the patent had no different effect from the screw-sleeve and movable jaw of the prior Dixie wrench upon the other parts of the combination, an admission that the second claim of the patent is void for want of novelty. *Ib.*

3. The third claim of the patent is also void for want of novelty. *Ib.*

4. In view of the state of the art at the time of their issue, letters patent No. 101,590, granted to Turner Cowing, April 5, 1870, for "a wood pavement composed of blocks, each side having a single plain surface and one or more of the sides being inclined, and the blocks being so laid on their larger ends as to form wedge-shaped grooves or spaces to receive concrete or other suitable filling, substantially as set forth," are void for want of novelty. *Brown* v. *District of Columbia*, 87.

5. The substitution of blocks of wood of a given shape for blocks of stone of the same shape in the construction of a pavement neither involves a new mode of construction, nor develops anything substantially new in the resulting pavement, and is therefore not patentable as an invention. *Ib.*

6. Letters patent No. 94,062 to William W. Ballard and Buren B. Waddell, dated April 24, 1869, for improvements in street pavements, were granted for novelty in the method of making the blocks, and not for novelty in the blocks themselves, or in a wooden pavement constructed of them; and it required no invention, but only mechanical skill to produce this method, so far as it varies from other methods, for a like purpose previously known. *Ib.*

7. Letters patent No. 94,063 to William W. Ballard and Buren B. Waddell for "an improved mode of cutting blocks for street pavements," are void because the thing patented required only mechanical skill, and involved no invention, and was not patentable. *Ib.*

8. Letters patent No. 232,975, granted October 5, 1880, to Henry G. Thompson, as assignee of the inventor, Moses C. Johnson, for an improvement in cutting-pliers, the claim of which is, "The body, composed of the side-plates, *a b*, the independent fulcra 2 3 4 5 for the jaw-levers and hand-levers, the jaw-levers provided with cutting edges and lips *e*, and the hand-levers having short arms *g' h'*, and a prong and notch always in engagement as described, combined with the V-shaped spring, held, as described, by the lips of the jaw-levers, all as and for the purpose set forth," are invalid, because Johnson was not the first

inventor of the combination claimed in the patent. *Thompson* v. *Hall*, 117.

9. A general and full assignment by a patentee of the letters patent, and all his interest therein, to the full end of the term, and of all reissues, renewals, or extensions, accompanied by a clause that the net profits from sales, royalties, settlements, or any source, are to be divided between the parties, the patentee to receive one fourth thereof, is a full and absolute transfer of title; and the assignee does not hold the property as trustee for the benefit of the patentee, but is trustee only of one fourth of the profits which may be received. *Rude* v. *Westcott*, 152.
10. The payment of a sum in settlement of a claim for an alleged infringement of letters patent, cannot be taken as a standard to measure the value of the improvements patented in determining the damages sustained by the owner of the patent in other cases of infringement. *Ib.*
11. An agreement concerning compensation for the use of a patented invention, where the charge may be fixed at the pleasure of the owner of the patent, cannot be received as evidence of the value of the improvements patented so as to bind others who have no such agreement. *Ib.*
12. In order to make the price received by a patentee from sales of licenses a measure of damages against infringers, the sales must be common, that is of frequent occurrence, so as to establish such a market-price for the article that it may be assumed to express, with reference to all similar articles, their salable value at the place designated. *Ib.*
13. Conjectural estimates of injury, founded upon no specific data, but upon opinions formed upon guesses, without any knowledge of the subject, furnish no legal ground for the recovery of specific damages for the infringement of letters patent. *Ib.*
14. Reissued letters patent No. 4364, granted to John J. Schillinger, May 2, 1871, for an "improvement in concrete pavements," on the surrender of original letters patent No. 105,599, granted to said Schillinger, July 19, 1870, were valid. *Hulburt* v. *Schillinger*, 456.
15. The proper construction of the claims of the reissue stated, in view of a disclaimer filed March 1, 1875. *Ib.*
16. The questions of utility, novelty and infringement considered. *Ib.*
17. The entire profit made by the defendant from laying his pavement was given to the plaintiff, because it appeared that it derived its entire value from the use of the plaintiff's invention; that if it had not been laid in that way it would not have been laid at all; and that the profit made by the defendant was a single profit derived from the construction of the pavement as an entirety. *Ib.*
18. Letters patent No. 281,558, granted to George M. Peters, July 17, 1883, for an "improvement in dies for making dash-frames," are invalid, for want of patentable invention. *Peters* v. *Active Mf'g Co.*, 626.

See EQUITY, 1.

PILOT.

See ADMIRALTY, 7.

PLEDGE.

See BANKER'S LIEN.

PRACTICE.

1. Between the time when the Process Act of May 8, 1792, 1 Stat. 275, went into effect, and the passage of the act of June 1, 1872, 17 Stat. 196, (Rev. Stat. § 914,) it was always in the power of the Federal courts, by general rules, to adapt their practice to the exigencies and conditions of the times; but since the passage of the latter act the practice, pleadings and forms and modes of proceeding must conform to the state law and to the practice of the state courts, except when Congress has legislated upon a particular subject, and prescribed a rule. *Amy* v. *Watertown*, (No. 1,) 301.
2. When a state statute prescribes a particular method of serving mesne process, that method must be followed; and this rule is especially exacting in reference to corporations. *Ib.*
3. Unless the fact upon which a reversal of a judgment is claimed appears in the record sufficiently to be passed upon, the judgment will not be reversed. *N. Y. and Colorado Mining Syndicate* v. *Fraser*, 611.
4. Where the certificate to the transcript of a record, on a writ of error, did not comply with subdivision 1 of Rule 8, and the record was not complete, not containing the pleadings, so that, under subdivision 3 of Rule 8, this court could not hear the case, it was not dismissed, because it had been submitted on both sides, on the merits, and the defendant in error had not moved to dismiss it for non-compliance with the rules, although more than three years had elapsed since the filing of the transcript, but leave was given to the plaintiff in error to sue out a writ of *certiorari*, to bring up the omitted papers. *Redfield* v. *Parks*, 623.

See APPEAL, 1, 8; EQUITY, 3; CUSTOMS DUTIES, 1; JURISDICTION, A, 10, 11, 13.

PUBLIC LAND.

1. No portion of the public domain, unless it be in special cases, not affecting the general rule, is open to sale until it has been surveyed, and an approved plat of the township embracing the land has been returned to the local land office. *Buxton* v. *Traver*, 232.
2. A settler upon public land, in advance of the public surveys, acquires no estate in the land which he can devise by will, or which, in case of his death intestate, will pass to his heirs at law, until, within the specified time after the surveys and the return of the township plat, he files a declaratory statement such as is required when the surveys

have preceded settlement, and performs the other acts prescribed by law. *Ib.*

3. Section 2269 of the Revised Statutes has no application to the case of a settler who dies before the time arrives when the papers necessary to establish a preëmption right can be filed. *Ib.*
4. No title to land in California, dependent upon Spanish or Mexican grants, can be of any validity, which has not been submitted to, and confirmed by, the board provided for that purpose under the act of March 3, 1851, 9 Stat. 631; or, if rejected by that board, confirmed by the District Court or by the Supreme Court of the United States. *Botiller* v. *Dominguez*, 238.
5. The question, under Rev. Stat. § 2319, as to what customs and rules of miners in a mining district not inconsistent with the laws of the United States are in force in the district when an application is made for a patent of mineral land, is one of fact determinable by the Commissioner of the Land Office. *Parley's Park Silver Mining Co.* v. *Kerr*, 256.
6. Rule 4 of the rules of the Blue Ledge mining district in Utah, adopted May 17, 1870, limiting the width of a mining location to 200 feet, was so modified May 4, 1872, that thereafter the surface width was to be governed by the laws of the United States. *Ib.*
7. The United States holds the title to land acquired for purchase at a sale under an execution, for public purposes and not for private purposes, and holds in like manner the incidental right of redemption. *United States* v. *Insley*, 263.
8. A corporation, created under the laws of one of the States of the Union, all of whose members are citizens of the United States, is competent to locate, or join in the location of, a mining claim upon the public lands of the United States, in like manner as individual citizens. *McKinley* v. *Wheeler*, 630.
9. Whether such a corporation will not be treated as one person, and as entitled to locate only to the extent permitted to a single individual, *quære*. *Ib.*
10. A corporation interested in mining may be represented by its officer or agent at any meeting of miners called together to frame rules and regulations in their mining district. *Ib.*

RAILROAD.

1. The power to lease a railroad, its appurtenances and franchises is not to be presumed from the usual grant of powers in a railroad charter; and, unless authorized by legislative action so to do, one company cannot transfer them to another company by lease, nor can the other company receive and operate them under such a lease. *Oregon Railway and Navigation Co.* v. *Oregonian Railway Co.*, 1.
2. A provision in a general act for organizing corporations for the purpose of navigating streams, with power to construct railroads where portage

is necessary, that a corporation organized under it shall not lease such a railroad, does not imply that without such a restraint the corporation could make such a lease. *Ib.*

3. The operation of a railroad and payment of rent for three years by a lessee under a lease of it for ninety-six years, which was executed in violation of the corporate powers both of the lessor and of the lessee, does not so far execute the contract of lease by part performance, as to estop the lessee from setting up its illegality in an action at law to recover after accruing rent. *Ib.*

4. In proceedings commenced under a state statute for condemnation of land for a railroad, a published notice in compliance with the terms of the statute, specifying the section, township and range, county and State, in which it is proposed to locate the railroad, is sufficient notice to a non-resident owner of land therein, and such publication is "due process of law," as applied to such a case. *Huling* v. *Kaw Valley Railway and Improvement Co.*, 559.

5. When, after notice to the owner as required by law, land has been condemned for a railroad by commissioners regularly appointed and duly sworn, who discharged their duties in the manner required by law, the question whether one of the commissioners was or was not a freeholder, as directed by the statute, is not open for consideration collaterally in an action of trespass by the owner against the railroad company for entering on the land after condemnation. *Ib.*

See BILL OF LADING; CONTRIBUTORY NEGLIGENCE; LOCAL LAW, 1, 2, 13, 14; MECHANICS' LIEN; RECEIVER'S CERTIFICATES; TAX AND TAXATION, 3, 4, 5, 6.

RECEIVER'S CERTIFICATES.

It is immaterial whether the receiver's certificates, which are in controversy in this suit were properly issued to the appellee, for the reason that: (1) it is apparent that the order of the state court under which they were issued was the result of an agreement between the parties to this suit; and (2) if they should be held to be invalid the appellee could not be restored to the rights under the decree of the state court which he surrendered for them. *Central Trust Co.* v. *Seasongood*, 482.

REMOVAL OF CAUSES.

A petition for removal which alleges the diverse citizenship of the parties in the present tense is defective, and if it does not appear in the record that such diversity also existed at the commencement of the action, the cause will be remanded to the Circuit Court with directions to send it back to the state court, with costs against the party at whose instance the removal was made. *Stevens* v. *Nichols*, 230.

SALARY.

Under §§ 823 and 839 of the Revised Statutes, the clerk of a District Court in the Territory of Utah is not entitled, for his personal compensation,

over and above office expenses, to more than $3500 a year. This view is not affected by the provisions of § 7 of the act of June 23, 1874, c. 469, 18 Stat. 253, or those of § 1883 of the Revised Statutes. *United States* v. *Averill*, 335.

See OFFICERS OF THE ARMY, 1, 3.

SALE.

1. A recital in an instrument between two parties that one party, the owner of a great number of cattle, had, on the day of its execution, "sold" the cattle to the other party, followed by clauses guaranteeing the title, and providing the mode in which the buyer was to make payment, contains all the elements of an actual sale, as distinguished from an executory contract. *Arkansas Valley Land and Cattle Co.* v. *Mann*, 69.
2. A provision in a bill of sale of cattle, that the seller shall retain possession until, and as security for, the payment of the price, is not inconsistent with an actual sale, by which title passes to the buyer. *Ib.*

SERVICE OF PROCESS.

See LOCAL LAW, 12.

SHIP.

See ADMIRALTY.

SPECIFIC PERFORMANCE.

See EQUITY, 2 (6).

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. The validity of a statute is drawn in question when the power to enact it is fairly open to denial, and is denied; but not otherwise. *Baltimore and Potomac Railroad* v. *Hopkins*, 210.
2. The "validity of a statute of the United States," as the term is used in the act of March 3, 1885, c. 355, § 2, 23 Stat. 443, "regulating appeals from the Supreme Court of the District of Columbia" to this court, refers only to the power of Congress to enact the particular statute drawn in question, and not to a judicial construction of it which does not question that power. *Ib.*
3. If an act of Congress is in conflict with a treaty of the United States with a Foreign Power, this court is bound to follow the statutory enactments of its own government. *Botiller* v. *Dominguez*, 238.
4. In the construction of a state statute in a matter purely domestic this court is always strongly disposed to give great weight to the decisions of the highest tribunal of the State. *Amy* v. *Watertown*, (No. 1,) 301.

See CONSTITUTIONAL LAW, A, 3; JURISDICTION, A, 3; CORPORATION, 2, 3, 5, 6; RAILROAD, 2.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 3, 4, 5, 6, 11;
CONSTITUTIONAL LAW, A, 7, 8;
CUSTOMS DUTIES, 2, 3;
JURISDICTION, A, 14; C, 2; D;
LIMITATION, STATUTES OF, 6;
LONGEVITY PAY;
MINERAL LAND, 1, 2, 3;
OFFICER IN THE ARMY, 2;
PRACTICE, 1;
PUBLIC LAND, 3, 4, 5, 6;
SALARY.

C. STATUTES OF STATES AND TERRITORIES.

Dakota. *See* JURISDICTION, C;
District of Columbia. *See* LOCAL LAW, 8, 9, 10;
Ohio. *See* LOCAL LAW, 13, 14;
Oregon. *See* LOCAL LAW, 1, 2;
Utah. *See* CRIMINAL LAW;
Washington *See* LOCAL LAW, 3;
Wisconsin. *See* LIMITATION, STATUTES OF, 5.

STEAMBOAT INSPECTION.

See ADMIRALTY, 5.

TAX AND TAXATION.

1. The legislature of New Jersey, by a statute, enacted that a "poor farm," belonging to the city of New Brunswick, and situated in the township of North Brunswick, should be at all times thereafter liable and subject to taxation by that township so long as it should be embraced within its limits. Subsequently, it was enacted by a statute, that the property of the cities of the State, and all land used exclusively for charitable purposes should be exempt from taxation, and that all inconsistent acts were repealed. The "poor farm" was used exclusively for charitable purposes; *Held*, (1) The provision of the first statute was repealed; (2) the legislature could constitutionally repeal the power of taxation given by the first statute; (3) the first statute did not create a contract between the State and the township, the obligation of which could not be constitutionally impaired by its repeal. *Williamson* v. *New Jersey*, 189.
2. The power of taxation on the part of a municipal corporation is not private property, or a vested right of property in its hands; but the conferring of such power is an exercise by the legislature of a public and governmental power which cannot be imparted in perpetuity, and is always subject to revocation, modification and control, and is not the subject of contract. *Ib.*
3. Legislative immunity from taxation is a personal privilege, not transferable, and not to be extended beyond the immediate grantee, unless otherwise so declared in express terms. *Picard* v. *East Tennessee, Virginia and Georgia Railroad*, 637.
4. Immunity from taxation does not pass to the purchaser at a sale of "the property and franchises of a railroad corporation" to enforce a

statutory lien. *Morgan* v. *Louisiana*, 93 U. S. 217, on this point affirmed. *Ib.*

5. Although a grant of immunity from taxation by a legislature to a corporation has sometimes been held to be a privilege which may be transferred, the later and better opinion is that, unless other provisions remove all doubt of the intention of the legislature to include the immunity in the term "privileges," it will not be so construed. *Ib.*
6. The property of the East Tennessee, Virginia and Georgia Railroad Company, situated in the State of Tennessee, is not exempt from taxation under the laws of that State. *Ib.*

TAX SALE.

See LOCAL LAW, 8, 9, 10.

TERRITORIAL COURTS.

See JURISDICTION, D.

TREATIES.

See CONSTITUTIONAL LAW, 4, 5, 6, 7;
STATUTE A, 3.

TROVER.

See DAMAGES, 1, 2.

TRUST.

See PATENT FOR INVENTION, 9.

UNITED STATES.

See LACHES.

UTAH.

See CRIMINAL LAW;
LOCAL LAW, 11;
SALARY.

WASHINGTON CITY.

See DISTRICT OF COLUMBIA.

WASHINGTON TERRITORY.

See LOCAL LAW, 3.

WISCONSIN.

See LOCAL LAW, 12.

WITNESS.

Whether a witness called to testify to any matter of opinion has such qualifications and knowledge as to make his testimony admissible is a preliminary question for the judge presiding at the trial; and his decision of it is conclusive, unless clearly shown to be erroneous in matter of law. *Stillwell and Bierce Manufacturing Co.* v. *Phelps*, 520.

See EVIDENCE, 3.