INDEX TO THE OMITTED CASES.

[*For the Index to the Other Cases reported in this Volume, see post,* page cclxxxi.]

ADMIRALTY.

1. A decree in admiralty for the condemnation of a vessel is not final if the libel claims the condemnation of the cargo as well, and the cargo has been delivered to the respondents at an appraised value, and the money deposited with the register. *Dayton, Claimant, etc.*, v. *United States*, lxxx.
2. The court declines to hear argument whether mandamus shall issue to the Circuit Court directing it to order stipulators for value and sureties on an appeal bond in an admiralty suit to appear for examination concerning their property: whether it has the power to issue the writ in such case *quære*. *Phillips, Petitioner*, clxvii.

APPEAL.

1. An order for allowing an appeal relates back to the date of the prayer for allowance, and is considered as made on that day. *Latham* v. *United States*, xcvii.
2. An appeal by one of three complainants from a joint decree, without notice to the others and without their refusing to join in it, is dismissed. *Downing* v. *McCartney*, xcviii.
3. An allowance by a Circuit Court of an appeal taken by a receiver, is equivalent to leave by the court to the receiver to take an appeal. *Farlow* v. *Kelley*, cci.
4. An appeal bond for costs need not be signed by all the appellants. Being approved by the court it stands as security for all the appellees. *Scruggs* v. *Memphis &c. Railroad*, cciv.

See PRACTICE, 3, 11.

APPEAL BOND.

See APPEAL, 4;
PRACTICE, 14.

APPEARANCE.

See PRACTICE, 6.

BANKRUPTCY.

1. A bankrupt may prosecute in his own name a writ of error to a judgment rendered after the adjudication of bankruptcy; but the assignee

will be heard on questions which he thinks involve the estate of the bankrupt. *Hill* v. *Harding*, cc.

2. The rights of an assignee in bankruptcy over collateral lodged by the bankrupt with the bank more than two months prior to the bankruptcy, as security for indebtedness which then existed or might thereafter be created, are only such as the bankrupt had when the proceedings in bankruptcy were commenced. *Bacon* v. *International Bank*, ccxvi.

BILL OF REVIEW.

A petition to file a bill of review on the ground of newly discovered evidence will not be granted if the bill, when filed, ought not to be sustained by reason of the laches of the petitioner in neglecting to discover the evidence earlier. *Dumont* v. *Des Moines Valley Railroad*, clx.

BOND.

If a bond contains a provision that on default of the payment of interest the principal shall become due at the election of the holder, and such default takes place, the commencement of suit to collect the principal and interest and the production of the bond at the trial are sufficient proof of such election. *Rice* v. *Edwards*, clxxv.

CASES AFFIRMED OR FOLLOWED.

See DAMAGES, 1;
MORTGAGE, 2.

CERTIORARI.

A motion for a *certiorari* to the Court of Claims is denied. *Clarke* v. *United States*, lxxxvi.

See PRACTICE, 11.

CHOSE IN ACTION.

An assignee of a chose in action takes it subject to the equities of the original debtor or obligor, and is bound to inquire into their existence when the instrument itself puts him upon the track of inquiry. *Smith* v. *Orton*, lxxv.

CITATION.

A citation served on the 1st December, before the return of the writ, is served in time. *Waters* v. *Barrill*, lxxxiv.

See PRACTICE, 28.

CLERK OF THE SUPREME COURT.

1. The clerk of this court, when money paid into court is put in his custody, is entitled to a fee of one per cent of the amount. *Florida* v. *Anderson*, cxxxv.

2. The court orders the balance of the fund paid to the State of Florida. *Ib.*

See COSTS, 2.

COLLUSION.

See PRACTICE, 10, 16.

CONSTITUTIONAL LAW.

The contract of marriage is not a contract within the meaning of the provision in the Constitution prohibiting States from impairing the obligation of contracts. *Hunt* v. *Hunt*, clxv.

CONTRACT.

The performance of a contract for the construction of a railroad, made by a deceased person with the railroad company, cannot be enforced by his heirs, even if the profits are partly in lands. *Crane* v. *Kansas Pacific Railway*, clxviii.

See EVIDENCE, 5, 6;
PRINCIPAL AND AGENT, 1.

COSTS.

1. When the judgment is silent as to costs in this court, neither party recovers his costs here; but each must pay, if not already paid, whatever fees are properly chargeable to him according to law and practice. *Osborn* v. *United States*, cxxxvii.
2. When the clerk has no security for fees due to him from a party entitled to a mandate he may withhold the mandate until his fees are paid, or he is otherwise satisfied in that behalf. *Ib.*
3. The rules relating to taxation of costs amended. *Ib.*
4. A court has no power to award costs in criminal proceedings unless some statute has conferred it. *United States ex rel. Phillips* v. *Gaines*, clxix.
5. In Tennessee the costs of a criminal prosecution are made by statute a debt of the State, for which the comptroller may be compelled to draw a warrant upon the state treasurer when the proper foundation has been laid for such an order by the court; but in this case the steps required by law to be taken in order to charge such costs upon the State as a debt had not been taken. *Ib.*
6. An officer of a State, sued in his official capacity, and charged with no official delinquency, is not liable for costs. *Hauenstein* v. *Lynham*, cxci.

COURT OF CLAIMS.

1. Although this court does not apply strict rules of pleading to cases appealed from the Court of Claims, yet the allegations and proofs must so far correspond as to give to the United States the benefit of the principal of *res judicata* in cases where they ought to have the protection which it affords. *Baird* v. *United States*, cvi.
2. When a petition in the Court of Claims is silent upon a subject which forms part of the *res gestæ*, that silence concludes the petitioner. *Ib.*
3. On the proofs, this court arrives at the conclusion that the judgment of

the Court of Claims was right, both in respect of the petitioner, and in respect of the United States. *Ib.*

4. A request for an order upon the Court of Claims for an additional finding is refused, because that court had not been requested to make the findings in accordance with rules 4 and 5 regulating appeals therefrom. *United States* v. *Driscoll*, clix.
5. The court refuses a rule on the Court of Claims to certify up evidence used in that court on the trial of a cause which has been brought here by appeal from that court. *Stark* v. *United States*, ccv.
6. This court will not direct the Court of Claims to send up the evidence on which the court bases its findings. *United States* v. *Smoot*, ccvi.

CRIMINAL PROCEEDINGS.

See COSTS, 4, 5.

DAMAGES.

1. *Campbell* v. *Kenosha*, 5 Wall. 194, affirmed. The court is satisfied that this writ of error was not sued out for delay, and refuses to allow 10 per cent damages. *Kenosha* v. *Campbell*, xcvii.
2. In an action to recover damages for carelessly and negligently shooting and wounding the plaintiff, it is no error to charge the jury that in computing the damages they may take into consideration a fair compensation for the physical and mental suffering caused by the injury. *McIntyre* v. *Giblin*, clxxiv.

See JURISDICTION, 17;
PRACTICE, 4, 15, 26.

DISTRICT OF COLUMBIA.

See LOCAL LAW, 2.

DEED.

1. The grantee in a deed of realty, to whom it is conveyed to protect him against an obligation of the grantor for which he has become surety, becomes the holder of the legal title in trust for the grantor, when the latter has discharged the obligation and thus released him from the liability. *Smith* v. *Orton*, lxxv.
2. A deed of trust from the vendee of real estate to the vendor, to secure the payment of part of the purchase money, recited that there was an indebtedness on the property of eight promissory notes, each for $1000 with interest, as appeared by a deed referred to, which were to be assumed by the vendee as part consideration of the sale, and the vendor saved harmless therefrom. By reference to the deed it appeared that these notes were payable in one, two, three, etc., years respectively, with interest; *Held*, that the interest on each of these notes was payable at its maturity, and, no fraud or mistake being shown, that the obligation of the vendee to protect the vendor extended to the payment

of the overdue interest on the specified notes, as well as the principal. *Sawyer* v. *Weaver*, cli.

EJECTMENT.

The legal title must prevail in ejectment; and neither party can set up facts which go to show that equitably the other party is the rightful owner of the property. *Marshall* v. *Ladd*, lxxxix.

EQUITY.

1. In equity, parol testimony is admissible to show that a conveyance, absolute on its face, was in fact a mortgage. *Risher* v. *Smith*, clvi.
2. It is clear from the evidence that the order which was the subject matter of this action, was for the purpose of security only, and that the debt for which it was security was paid before the defendant Taylor received the government drafts. *Ib.*
3. A decree in equity will not be reversed for an immaterial departure from technical rules when no harm has been done. *Rice* v. *Edwards*, clxxv.

See CHOSE IN ACTION;
PLEADING.

ESTOPPEL.

See PLEADING, 2.

EVIDENCE.

1. There was no error in the rulings of the court admitting evidence to show the market-value of the property converted. *Thatcher* v. *Kautcher*, cxlvi.
2. An adjusted account of an Internal Revenue Collector at the Treasury, showing the exact amount finally allowed him as extra compensation, is conclusive evidence on that question. *United States* v. *Morgan*, clxiv.
3. The agreement of compromise between the parties which is referred to in the opinion was competent evidence and properly received as such, although not set forth and relied upon in the pleadings. *O'Reilly* v. *Edrington*, clxxvii.
4. When competent evidence becomes immaterial under a charge favorable to the party offering it, its exclusion is not error. *Relfe* v. *Wilson*, clxxxix.
5. In an action to recover of the defendant the profits which the plaintiff would have gained in supplying articles to him under a contract, which articles the plaintiff was ready and willing to furnish and the defendant refused to receive, the burden of proof is on the plaintiff to show clearly that the articles refused came within the contract. *Union Pacific Railroad* v. *Clopper*, excii.
6. In the trial of such an action brought to recover profits on stone contracted to be supplied to a railroad company for the construction of a

bridge and its approaches, and which the company refused to receive, the testimony of experts is admissible to show what constitutes the bridge and its approaches, and whether a dyke is a necessary part of them; and the jury should be told to consider what was the condition of things at the time the contract was made, and not the condition as developed subsequently by the operation of nature. *Ib.*

7. Upon the pleadings and proof, the plaintiff was entitled to recover, whether the deposition objected to was admitted or excluded, and therefore its admission worked no injury to the defendant. *Wilson* v. *Hoss*, ccx.

See EQUITY, 1; INSURANCE; LOCAL LAW, 3; PROMISSORY NOTE, 3, 4.

EXCEPTION.

1. Where there is only one exception to a general finding by the court in an action at law tried without the intervention of a jury, and that is not well taken, this court will not examine the record further. *Morris* v. *Shriner*, xci.
2. A bill of exceptions, signed after the term at which the judgment was rendered, without the consent of the parties or an express order of court to that effect made during the term, will not be considered part of the record, except under very extraordinary circumstances. *Jones* v. *Grover & Baker Sewing Machine Co.*, cl.
3. The court cannot pass upon an exception to the admission of a paper in evidence at the trial, if the record contains no copy of it. *Ib.*
4. If a series of propositions is embodied in instructions, and the instructions are excepted to in a mass, the exception will be overruled if any one proposition is correct. *Relfe* v. *Wilson*, clxxxix.

EXECUTOR AND ADMINISTRATOR.

See CONTRACT.

EXPERT.

See EVIDENCE, 6.

FEE.

See CLERK OF THE SUPREME COURT, 1.

FRAUD.

On the facts reviewed in the opinon, *Held*, that the title of the appellant to the premises in dispute, whether derived through the sale on execution, or acquired under the confiscation act, is void for fraud. *Monger* v. *Shirley*, cxxxi.

GUARANTY.

See PROMISSORY NOTE, 2, 3, 4.

HABEAS CORPUS.

A writ of *habeas corpus* is ordered to issue, and also a writ of *certiorari* to bring up a petition by this petitioner to the judge of a Circuit Court

of the United States for a writ of *habeas corpus*, and the denial thereof made in chambers; inasmuch as the petition in this court showed that the papers had been filed in the Circuit Court and remained there of record. *Ex parte Lange*, ccvii.

ILLINOIS.

See PROMISSORY NOTE, 1, 3.

INSURANCE.

When the plaintiff in an action at law on a life insurance policy against the insurer avers in his declaration that the company had been notified of the death of the person whose life was insured in the policy, and that the necessary preliminary proofs required by it had been made, and the answer is a general denial of all and singular the allegations of the petition so far as the same may have a tendency to give to said plaintiffs any right or cause of action against the respondent, and, not specially traversing the allegations as to notice and proof, sets up specific defences, on which alone the defendant relies, it is not necessary to prove the notification, nor that the necessary preliminary proofs were made. *Knickerbocker Life Ins. Co.* v. *Schneider*, clxxii.

See PRINCIPAL AND AGENT, 2.

INTEREST.

See DEED, 2;
PRINCIPAL AND AGENT, 1.

INTERNAL REVENUE COLLECTOR.

See EVIDENCE, 2;
SECRETARY OF THE TREASURY.

JURISDICTION.

1. An appeal allowed or a writ of error served is essential to the exercise of the appellate jurisdiction of this court. *Washington County* v. *Durant*, lxxx.
2. The removal or appointment of a receiver in a suit for the foreclosure of a mortgage on a railroad rests in the sound discretion of the court below, and is not reviewable here. *Milwaukee and Minnesota Railroad* v. *Howard*, lxxxi.
3. The averments of alienage and citizenship in the declaration are sufficient to give the court jurisdiction. *Waters* v. *Barrill*, lxxxiv,
4. The decrees for the payment of rent by the Milwaukee and St. Paul Railroad Company to the receiver of the La Crosse and Milwaukee Railroad were not final decrees from which appeals could be taken to this court, and this proceeding was irregular, and involved useless litigation. *Milwaukee and St. Paul Railroad* v. *Soutter*, lxxxvi.
5. This court has jurisdiction of a case brought up on a certificate of division of opinion on the question whether the Circuit Court has

jurisdiction of it. *Baltimore and Ohio Railroad* v. *Marshall County*, xcix.

6. Since the passage of the act of July 13, 1866, c. 184, §§ 67, 68, 14 Stat. 172, and the repeal of § 50 of the act of June 30, 1864, 13 Stat. 241, the Circuit Courts of the United States have no jurisdiction of cases arising under the internal revenue laws, to recover duties illegally assessed, and paid under protest, unless the plaintiff and defendant in such suit are citizens of different States. *Williams* v. *Reynolds*, cxi.
7. The claim set up in the state court being founded on the Bankruptcy Act, and the decision of the state court being adverse to it, this court has jurisdiction to review it. *Mays* v. *Fritton*, cxiv.
8. Whether this court can recall its mandate, and modify it, after the term is ended in which the judgment was rendered, *quære*. In this case the mandate of this court, and the decree and mandate of the Circuit Court entered on that mandate, correctly represent what this court decided. *Phipps* v. *Sedgwick*, cxxxix.
9. In an action in a state court by a real estate broker to recover commissions on sales of land, the exclusion of evidence that he had not paid the tax or received the license required by the statutes of the United States, when properly excepted to, raised a Federal question; but in this case the question was frivolous, and manifestly taken for delay. *Ruckman* v. *Bergholz*, cxliii.
10. This court has jurisdiction of an appeal from a decree of a Circuit Court, requiring stockholders in an insolvent national bank to pay a given percentage on their stock which the comptroller of the currency had ordered collected, and such further sums as may be necessary to pay the debts of the bank. *Germanica National Bank* v. *Case*, cxliv.
11. The case presents no question of Federal law. *Van Norden* v. *Benner*, cxlv.
12. This court has power at any time to amend a decree which has by inadvertence or mistake been entered in a different form from that in which the court intended it. *Elizabeth* v. *American Nicholson Pavement Co.*, cxlviii.
13. No Federal question is presented by the record in these cases, the question respecting the forfeiture of the charter of the turnpike company being a question of state law only, as to which the judgment of the state court is final. *Nonconnah Turnpike* v. *Tennessee*, clviii.
14. The question raised and decided in a state court, whether there could be a sale of cotton so as to pass title to the vendee before the payment of the government tax, is not a Federal question. *Carson* v. *Ober*, clx.
15. An objection not made below cannot be assigned as error and considered here. *Flournoy* v. *Lastrapes*, clxi.
16. On the facts set forth in the opinion, it is held that the judgment below, to which the writ of error was directed, was not a final judgment, and that this court was therefore without jurisdiction. *Hand* v. *Hagood*, clxxxi.

17. This court has power to adjudge damages for delay on appeals as well as writs of error, and this power is not confined to money judgments. *Gibbs* v. *Diekma*, clxxxvi.
18. A record in a state court which shows a verdict and motion for a new trial overruled, but no judgment on the verdict, shows no final judgment to which a writ of error may be directed. *National Life Ins. Co.* v. *Scheffer*, cciii.
19. This court has not jurisdiction in error over the judgment of a state court brought here under the 25th section of the Judiciary Act of 1879, unless the record discloses that one of the questions described in that section arose in the state court, or was decided by its judgment. *Marshall* v. *Knott*, ccv.
20. A Federal question not raised at the trial of a cause in the state court below will not be considered here. *Bergner* v. *Palethorp*, ccviii.
21. If in an action in a state court to recover damages under a state statute for death caused by a collision on navigable waters within the State, no Federal question is raised during the trial, this court cannot take jurisdiction in error. *Staten Island Railway* v. *Lambert*, ccxi.
22. At a trial in a state court upon a policy of insurance of a steamboat, the question whether, if the steamboat was burned while carrying turpentine as freight the owner must show affirmatively his license to carry the turpentine, or whether the law would presume a license until the contrary was shown, is not a Federal question. *Marsh* v. *Citizens Ins. Co.*, ccxiii.
23. The overruling of a motion that the cause proceed no farther by reason of an alleged compromise of the suit is not a final judgment or decree. *De Liano* v. *Gaines*, ccxiv.
24. A statement in the opinion of the highest court of a state that the only Federal question in the case was probably abandoned as "it is manifest that the Circuit Court could not have taken jurisdiction" is not such a decision of the question as to give this court jurisdiction. *Weatherby* v. *Bowie*, ccxv.

See ADMIRALTY, 1, 2;
EXCEPTION;
PRACTICE, 3.

LOCAL LAW.

1. A sheriff's deed executed by a deputy sheriff in his own name is good in Louisiana. *Flournoy* v. *Lastrapes*, clxi.
2. In the District of Columbia a valid note of the husband may be secured by a deed of trust of the general property of the wife, executed by husband and wife in the manner required by law. *Kaiser* v. *Stickney*, clxxxvii.
3. In Missouri, in an action brought against an insurer to recover on a policy, evidence of an offer by the insurer to settle for less than the policy, and of an intimation by the same to the insured that the policy

was obtained by misrepresentation, is admissible to show "vexatious delay." *Relfe* v. *Wilson*, clxxxix.

4. The act of Missouri giving damages for vexatious refusal by insurance companies to pay policies is not repealed. *Ib.*

See COSTS, 5 (Tennessee);
PROMISSORY NOTE, 1 (Illinois and Missouri);
3 (Illinois);
PRINCIPAL AND AGENT, 1. *Lex loci*, generally.

LOUISIANA.

See LOCAL LAW, 1.

MANDAMUS.

1. On application for mandamus on a Circuit Court, that court having made return, this court will not, on the suggestion of a third party, pass an order implying that the return was imperfect or might work an injustice to the petitioner. *Ex parte Harmon*, lxvii.
2. Mandamus will not lie when there is an ample remedy by appeal if the case is put in a condition for it. *Conn. Mut. Life Ins. Co., Petitioner*, clxxx.

MANDATE.

This court will not recall a mandate at the term following the one when it was sent to the inferior court. *Le More* v. *United States*, lxxxv.

MARRIAGE.

See CONSTITUTIONAL LAW.

MISSOURI.

See LOCAL LAW, 3, 4;
PROMISSORY NOTE, 1.

MORTGAGE.

A mortgagee who has notice through his agent in the negotiation of the loan, that the discharge of a prior mortgage on the property was fraudulently obtained, cannot acquire the property discharged of the prior incumbrance, by purchase at a sale under decree of foreclosure of his own mortgage. *Conn. Gen. Life Ins. Co.* v. *Burnstine*, cliii.

Brine v. *Insurance Co.*, 96 U. S. 627, followed in regard to the right of redemption from a sale under foreclosure of a mortgage in Illinois. *Metropolitan Bank* v. *Conn. Mut. Life Ins. Co.*, clxii.

MOTION TO ADVANCE.

A motion to advance is denied, because not coming within the 30th rule. *Baltimore and Ohio Railroad* v. *Marshall County*, xcix.

MOTION TO DISMISS.

A motion to dismiss for want of jurisdiction is denied because it involves looking into the merits. *Lynch* v. *De Bernal*, xciv.

See PRACTICE, 5.

NATIONAL BANK.

See JURISDICTION, 10.

NON-JOINDER OF PARTIES.

An objection on the ground of the non-joinder of parties who are proper but not indispensable parties cannot be made for the first time in this court. *Gibbs* v. *Diekma*, clxxxvi.

PARTIES.

See NON-JOINDER OF PARTIES.

PARTNERSHIP.

When a contract is within the scope of the business of a partnership, each partner is presumed to be the agent of all, and it is immaterial what the secret understanding of the parties may have been as to the powers of each. *Andrews* v. *Congar*, clxxxiii.

PATENT FOR INVENTION.

1. The decree below rightfully denied to the parties their claim for rents and profits, and it is affirmed. *Welch* v. *Barnard*, civ.
2. If the subject of a patent is a combination of several processes, parts or devices, the use of any portion of the combination less than the whole is not an infringement. *Garratt* v. *Seibert*, cxv.
3. The second claim in the patent granted to Nicholas Seibert for an improvement in lubricators for steam-engine cylinders, does not embrace the heating apparatus and the combination devised for preparing tallow for use in the lubricator, which is covered by the first claim in the patent. *Ib.*
4. All the combinations and all their separate elements patented to William Westlake, April 6, 1864, for an improvement in lanterns, for which reissued letters were obtained December 23, 1869, were anticipated by inventions referred to in the opinion of the court. *Dane* v. *Chicago Manufacturing Co.*, cxxvi.
5. Upon a bill in equity by the owner against an infringer of a patent the plaintiff is entitled to recover the amount of gains and profits that the defendant made by the use of the invention. *Mevs* v. *Conover*, cxlii.
6. The surrender of his patent by a patentee, in order to obtain a reissue made after obtaining final judgment against an infringer, does not affect his rights which have passed into the judgment. *Ib.*
7. The internal revenue stamps used by the defendant in error are no infringement of the letters patent issued to the plaintiff in error, June

8, 1869, for an improvement in stamps used for revenue and other purposes. *Fletcher* v. *Blake*, cxcvii.

8. The surrender of letters patent for an invention extinguishes them; and if made after appeal to this court, no substantial controversy remains. *Meyer* v. *Pritchard*, ccix.

PLEADING.

1. To bring a defence in a case like this within the rule which affords protection to a *bonâ fide* purchaser without notice, it must be averred in the plea or answer, and proved, that the conveyance was by deed, and that the vendor was seized of the legal title; and that all the purchase money was paid, and paid before notice; and there must be a distinct denial of notice, not only before purchase, but also before payment. *Smith* v. *Orton*, lxxv.

2. When it appears in the pleadings that a former bill for the same cause of action was dismissed for the reason that a plea that had been filed and not denied presented a good defence, an averment that there has been no adjudication upon the merits is not enough; but it must be averred in the pleadings and shown that the nature of the defence did not present a bar to the action. *Leary* v. *Long*, ccxviii.

See JURISDICTION, 3.

PRACTICE.

1. The court, on appellant's motion, reinstates a case which had been docketed and dismissed on motion of appellees. *West* v. *Brashear*, lxvi.

2. This case is dismissed because neither party is ready for argument at the second term at which it is called. *Mayer* v. *The Venelia &c.*, lxx.

3. One of the several codefendants having appealed from a joint decree against all, without summons and severance, the case is dismissed. *Shannon* v. *Cavazos*, lxxi.

4. It appearing to the court that this writ of error was sued out merely for delay, the judgment is affirmed with ten per cent damages. *Phelps* v. *Edgerton*, lxxi.

5. On a motion to dismiss for want of jurisdiction, the opposing counsel is entitled to a reasonable notice, having regard to the distance of his residence from the court, and to the time necessary to enable him to arrange his business so as to be able to be present at the hearing: and it is within the discretion of the court to determine whether the notice actually given was reasonable. *Davidson* v. *Lanier*, lxxii.

6. After the lapse of a term a general appearance cannot be changed to a special appearance, so as to affect the rights of parties, without leave of court first obtained. *United States* v. *Armejo*, lxxxii.

7. The order remanding the petitioner became, by the certificate of the clerk, a part of the record in this case. *Crandall* v. *Nevada*, lxxxiii.

8. The question of law in this case ought not to have been made, either below or here, and the judgment below is affirmed. *Clark* v. *United States*, lxxxv.

9. The court withholds its decision on this motion for a writ of prohibition, until the certificate of division of opinion on the allowance of the writs of *habeas corpus* complained of can be filed, and a hearing had thereon. *Virginia, Petitioner*, lxxxix.
10. In this case the court permits a third party to intervene and file affidavits to show that the suit has been settled between the parties, and that its further prosecution is collusive and fictitious and for the purpose of aiding further proceedings against persons not parties to the record; and, counter affidavits being filed by the appellant, a rule is issued against the appellant to show cause why the suit should not be dismissed. *American Wood Paper Co.* v. *Heft*, xcii.
11. The record showing no allowance of appeal below, and it appearing by affidavits that an appeal was actually allowed of which the clerk omitted to make entry, this court refused a *certiorari* to bring up the record; and the case was passed to enable appellant's counsel to move in the Circuit Court for an entry *nunc pro tunc* of the prayer and allowance. *Chicago* v. *Bigelow*, xciii.
12. A defendant in equity is required to pay into court for the benefit of complainant money received by him pending the litigation, before service of process but after knowledge of the complainant's equity. *Texas* v. *White*, xcv.
13. A rule is granted without affidavits, under the circumstances of this case, (though the practice is irregular,) to show cause why money should not be paid into court for the benefit of complainant. *Ib.*
14. The hearing on a motion for additional security on a writ of error, supported by affidavits but without notice to the opposite party, is postponed in order that notice may be given. *Wood* v. *Richards*, xcviii.
15. There is no merit in any of the defences set up here; and, it being apparent that the appeal was taken for the purpose of delay, the judgment below is affirmed with interest and ten per cent damages. *Peyton* v. *Heinekin*, ci.
16. One party to a suit cannot pay the fees of counsel on both sides, both in the court below and on appeal, without being held to have such control over both the preparation and argument of the cause, as to make the suit merely collusive in both courts. *Gardner* v. *Goodyear Dental Vulcanite Co.*, ciii.
17. No appeal being asked for below or rendered, no appeal bond given, and there being no citation, the appeal is dismissed on motion. *Monger* v. *Shirley*, cx.
18. After hearing the parties the court advances the causes as causes in which a State is a party under the act of June 30, 1870, 16 Stat. 176, c. 181. Rev. Stat. § 949. *Huntington* v. *Texas*, cx.
19. Under the circumstances, the court allows an amendment of the record, on the certificate of the court below, without issuing a writ of *certiorari*. *Stitt* v. *Huidekopher*, cxviii.
20. The writ of error is dismissed, because it should have been directed to the Court of Appeals of the State of Virginia. *Underwood* v. *McVeigh*, cxix.

21. When a judgment of affirmance is entered on motion under the rules, it will not be set aside and a rehearing ordered if the court is satisfied that the judgment below would be affirmed on the rehearing, if one were granted. *Treat* v. *Jemison*, cxxxv.

22. It appearing that the only Federal question involved in this case has been decided in another case at the present term, the court postpones the hearing of a motion to dismiss, in order to allow it to be amended, under the rules, by adding a motion to affirm. *Foree* v. *McVeigh*, cxlii.

23. When a joint decree is made in the court below against two or more parties, and the decree is found to be correct as to some of the parties, and incorrect as to the others, the ordinary and proper practice is to reverse it as an entirety, and remand the cause for a new decree; but when such a decree does not affect the rights of the different parties in a different manner, as, for instance, when it is found right in all respects, except as to the amount, the court sometimes reverses it in part and affirms it in part, this being always within the discretion of the court. *Elizabeth* v. *American Nicholson Pavement Co.*, cxlviii.

24. This question is one of fact; and this court cannot see that the evidence is so clearly against the decision of the court below, that it would be justified in reversing it. *Conn. Gen. Life Ins. Co.* v. *Burnstine*, cliii.

25. It is no error to refuse to give special instructions asked for when the general charge has stated them in language equally favorable to the party asking. *Relfe* v. *Wilson*, clxxxix.

26. Damages are awarded in a case where the appeal was taken for delay, and was frivolous. *Whitney* v. *Cook*, cxcvii.

27. The judges of the court differing in opinion, the submission is set aside, and an argument ordered. *Louisiana ex rel. Folsom* v. *New Orleans*, cci.

28. Service of notice of citation on the attorney of a party is sufficient. *Scruggs* v. *Memphis &c. Railroad*, cciv.

29. A cause is docketed and dismissed upon motion of the appellee, and subsequently redocketed on motion of the appellant. *Ambler* v. *Whipple*, ccvi.

30. This bill is dismissed because the evidence sent here fails to support the finding on which the bill was dismissed; and as grave constitutional questions were involved, it is remanded to the Circuit Court with power to allow amendments to the pleadings and take further proof. *Southern* v. *Hagood*, ccxii.

See APPEAL;
CERTIORARI;
CITATION;
CLERK OF THE SUPREME COURT;
COURT OF CLAIMS, 4;
DAMAGES;
EXCEPTION;
MANDAMUS;
MANDATE;
MOTION TO ADVANCE;
MOTION TO DISMISS;
SUPERSEDEAS;
WRIT OF ERROR.

PRINCIPAL AND AGENT.

1. In a contract between a commission merchant in New York and a person in another State that the latter shall send merchandise to the former to be sold, and that the former shall make advances on it to be repaid with commissions and interest out of the sales, the rate of interest is to be determined by the laws of New York, the place of performance. *Peyton* v. *Heinekin*, ci.
2. A factor who insures goods consigned to him for the benefit of his principal may recover from him the cost of the insurance. *Ib.*
3. The acts of a person assuming to be an agent in the sale of personal property will not bind the principal, unless he either authorized him to make the sale or held him out to the public as clothed with the authority of an agent; and there being no evidence in this case either of authority to sell the property in dispute, or of consent to the agent representing himself to have such authority, no basis has been laid for the propositions which the court was asked to give the jury. *Thatcher* v. *Kautcher*, cxlvi.

PROMISSORY NOTE.

1. If a person, not a party to a promissory note, writes his name on the back of it when the note is made, the law in Illinois regards him as a guarantor, unless the contrary is shown; but the law in Missouri regards him as *prima facie* a joint maker. *Andrews* v. *Congar*, clxxxiii.
2. In a suit against a joint maker of a promissory note a charge to the jury that he was only a guarantor works no injury to him. *Ib.*
3. Under the practice in Illinois if one is sued as guarantor of a note, and he verifies his plea of the general issue by affidavit, the plaintiff need not prove the execution of the note itself as well as the guaranty. *Ib.*
4. There was no error in the ruling that if the maker of the note which forms the basis of the controversy in this case could not use an account on its books as a set-off against the note, the defendant as guarantor could not. *Ib.*

PUBLIC LAND.

1. Grants of land made by Spain after the Treaty of St. Ildefonso were void. *United States* v. *Lynde*, lxix.
2. The Attorney General having stated that the Indians are entitled to the land claimed by them, the case is dismissed. *United States* v. *Chetimachas Indians*, lxx.
3. A petition to the Mexican government for a surplus of land which was not granted, is no foundation for an equitable claim against the United States. *Miramontes* v. *United States*, lxxiii.

RAILROAD.

See JURISDICTION, 2, 4.

RECEIVER.

See APPEAL, 3;
JURISDICTION, 4.

RES JUDICATA.

See COURT OF CLAIMS, 1.

SECRETARY OF THE TREASURY.

The Secretary of the Treasury may fix the amount of an extra allowance to a Collector of Internal Revenue in advance of the service rendered. *United States* v. *Morgan*, clxiv.

SERVICE.

See CITATION;
PRACTICE, 28.

SET-OFF.

See PROMISSORY NOTE, 4.

SPANISH GRANT.

See PUBLIC LAND, 1.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See PRACTICE, 9, 19.

B. STATUTES OF STATES.

Missouri. *See* LOCAL LAW, 4.
Tennessee. *See* COSTS, 3.

SUPERSEDEAS.

1. It appearing, on inspection of the record, that the appeal bond was filed too late to make the writ of error operate as a *supersedeas*, the court vacates an order heretofore made allowing a writ of *supersedeas*. *Patterson* v. *Hoa*, lxxxviii.
2. *Supersedeas* will not issue without notice to the other party, when the object is to avoid an alleged improper execution of the judgment below. *Boise County Commissioners* v. *Gorman*, cxxv.
3. A defective *supersedeas* bond is vacated and a proper one ordered to be filed. *Knox County* v. *United States*, clxvi.

TRUST.

See DEED, 1, 2.

VERDICT.

1. A general verdict "for the defendant" is equivalent to a special verdict on each and all the issues tried. *Flournoy* v. *Lastrapes*, clxi.
2. A verdict, the amount of which can be ascertained by a simple arith-

metical calculation, and which includes every material fact at issue, will be sustained. *Relfe* v. *Wilson*, clxxxix.

WRIT OF ERROR.

1. The court deny a motion to rescind an order advancing this cause founded upon the fact that the writ of error to the judgment below was allowed November 30, 1869, less than thirty days before the first day of the present term, which began December 6, 1869. *Cox* v. *United States ex rel. Garrahan*, c.
2. When the highest court of a State dismisses a suit brought up from the trial court for want of jurisdiction, the Federal question, if there be one in it, was decided by the trial court, and the writ of error should be directed to that court. *Lane* v. *Wallace*, ccxix.

See SUPERSEDEAS, 1.