GENERAL INDEX.

[For Index to Omitted Cases, see *ante*, cclxiv.]

ACCIDENT.

See INSURANCE, 1.

APPEAL.

1. An appeal taken from the judgment of a District Court in Washington Territory to the Supreme Court, under the territorial act of November 23, 1883, in relation to the removal of causes to the Supreme Court, is a matter of right, if taken within the prescribed time, and no notice of intention to take it need be given. Rights, under our system of law and procedure, do not rest in the discretionary authority of an officer, judicial or otherwise. *Hollon Parker, Petitioner*, 221.
2. The final decree in a suit of equity, entered October 10, 1885, adjudged and decreed that there was due to the administratrix of J. F. a sum named in the decree, and that if, within ninety days from that date the court should be satisfied that a certain other sum named and paid for the purchase of notes, etc., had inured to the benefit of J. F. or his estate, that sum should be credited on the amount so decreed to be paid; *Held*, that for the purpose of an appeal the date of the decree was October 10, 1885. *Radford* v. *Folsom*, 392.

See EQUITY, 3;
JURISDICTION, A, 7, 11;
WASHINGTON TERRITORY.

BANKRUPT.

1. The connection of the plaintiff in error with the partnership of Griffith & Wundram was not a matter in issue in the proceedings in bankruptcy against that firm. *Abendroth* v. *Van Dolsen*, 66.
2. An adjudication of the bankruptcy of a firm, and of the members in whose name the firm was doing business, in a bankrupt proceeding affecting them alone, to which a special partner was not a party, does not estop a copartnership creditor from setting up the liability of such special partner, imposed upon him by the statute, for non-compliance with its provisions. *Ib.*
3. A special partner in a partnership, who is not a party to proceedings in bankruptcy against the partnership and the general members of it, is not entitled to the stay of proceedings provided for in Rev. Stat.

§ 5118, until the question of the debtor's discharge shall have been determined. *Ib.*

4. A discharge of two general partners in bankruptcy cannot be set up in favor of a special partner in an action against the three as general partners on the ground that the special partner has made himself liable as a general partner. *Ib.*

CASES AFFIRMED OR FOLLOWED.

1. This case is controlled by *Anthony* v. *County of Jasper*, 101 U. S. 693. *Coler* v. *Cleburne*, 162.
2. *Bond* v. *Dustin*, 112 U. S. 104, and (3) *Dundee Mortgage Co.* v. *Hughes*, 124 U. S. 157, followed. *Spalding* v. *Manasse*, 65.
4. *Marshall* v. *United States*, 124 U. S. 391, is affirmed on rehearing, 391.
5. *Rude* v. *Westcott*, 130 U. S. 152, affirmed. *Cornely* v. *Marckwald*, 159.
6. *United States* v. *Hall*, 131 U. S. 50, affirmed and applied to the certificates of division in opinion in this case. *United States* v. *Perrin*, 55.
7. *United States* v. *Hall*, 131 U. S. 50, affirmed and applied to the certificate of division in opinion in this case. *United States* v. *Reiley*, 58.
8. *United States* v. *Jones*, 131 U. S. 1, affirmed and applied to this case. *United States* v. *Drew*, 21.

CASES DISTINGUISHED.

1. *Ex parte Brown*, 116 U. S. 401, distinguished. *Hollon Parker, Petitioner*, 221.
2. The case distinguished from *Weyauwega* v. *Ayling*, 99 U. S. 112. *Coler* v. *Cleburne*, 162.

CIRCUIT COURT COMMISSIONER.

See OATH.

CIVIL LAW.

See LOCAL LAW, 1, 2, 3, 4, 5.

CLOUD UPON TITLE.

See EQUITY, 5, 6.

COMMON CARRIER.

1. In an action against the proprietors of a stage coach, for an injury caused to a passenger by the misbehavior of one of the horses, evidence of subsequent similar misbehavior of the horse is admissible, in connection with evidence of his misbehavior at and before the time of the accident, as tending to prove a vicious disposition and fixed habit. *Kennon* v. *Gilmer*, 22.
2. In assessing damages for a personal injury caused by negligence, the jury may rightly be instructed to take into consideration the plaintiff's bodily and mental pain and suffering, taken together, and necessarily resulting from the original injury. *Ib.*

3. In an action at law for a personal injury, in which damages have been assessed by a jury at an entire sum, the court is not authorized, upon a motion for a new trial for excessive damages and for insufficiency of the evidence to justify the verdict, to enter an absolute judgment, according to its own estimate of the damages which the plaintiff ought to have recovered, for a less sum than assessed by the jury; and either party is entitled to a reversal of such a judgment by writ of error. *Ib.*

CONSTITUTIONAL LAW.

1. The provision in the constitution of West Virginia of 1872 that the property of a citizen of the State should not "be seized or sold under final powers issued upon judgments or decrees heretofore rendered, or otherwise, because of any act done according to the usages of civilized warfare in the prosecution of 'the war of the rebellion,' by either of the parties thereto" does not impair the obligation of a contract, within the meaning of the Constitution of the United States, when applied to a judgment previously obtained, founded on a tort committed as an act of public war. *Freeland* v. *Williams*, 405.
2. A bill in equity to invalidate a judgment obtained against the defendant for a tort committed under military authority, in accordance with the usages of civilized warfare and as an act of public war and to also enjoin its enforcement is "due process of law" and is not in conflict with the Constitution of the United States. *Ib.*

CONTEMPT.

1. The courts of the United States have power to punish by fine or imprisonment, at their discretion, misbehavior in their presence, or misbehavior so near thereto as to obstruct the administration of justice, although the offence is also punishable by indictment under Rev. Stat. § 5399. *Savin, Petitioner*, 267.
2. Attempting to deter a witness, in attendance upon a court of the United States in obedience to a subpœna, and while he is near the court-room, in the jury-room temporarily used as witness-room, from testifying for the party in whose behalf he was summoned, and offering him, when in the hallway of the court, money not to testify against the defendant, is misbehavior in the presence of the court. *Ib.*
3. Within the meaning of § 725, the court, at least when in session, is present in every part of the place set apart for its own use, and for the use of its officers, jurors and witnesses; and misbehavior anywhere in such place is misbehavior in the presence of the court. *Ib.*
4. Although the word "summary," as used in the first section of the act of March 3, 1831, (4 Stat. 487, c. 99,) was omitted from the present revision of the statutes, the courts of the United States have the power to punish by fine or imprisonment, at their discretion, contempts of their authority, in the cases defined in § 725. *Ib.*
5. In proceeding against a party for contempt, the court is not bound to re-

quire service of interrogatories upon the appellant to afford him an opportunity to purge himself of contempt in answering, but may, in its discretion, adopt such mode of determining the question as it deems proper, having due regard to the essential rules that prevail in the trial of matters of contempt. *Ib.*

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

CONTRACT.

1. A contract relating to a patent medicine, which communicates its ingredients in confidence and provides in substance that the parties shall enjoy a monopoly of the sale of it, each within a defined region in the United States, and that it shall not be sold below a certain rate or price, is not unreasonable or invalid as in restraint of trade. *Fowle* v. *Park*, 88.
2. On the facts stated in the opinion; *Held*, that the defendants sold the balsam within the prohibited territory, or to those by whom to their knowledge it was to be there sold, and that, as the record disclosed violations of the contracts in these respects, the cause should have gone to a master to state an account. *Ib.*
3. A contract between A, a subscriber to the stock of a proposed incorporated company, and B, another subscriber to the same, made without the knowledge of the remaining subscribers, by which A agrees to purchase the stock of B at the price paid for it, if at a specified time B elects to sell it, is not contrary to public policy, and can be enforced against A if made fairly and honestly, and if untainted with actual fraud. *Morgan* v. *Struthers*, 246.
4. A contract for the purchase of "future-delivery" cotton, neither the purchase or delivery of actual cotton being contemplated by the parties, but the settlement in respect to which is to be upon the basis of the mere "difference" between the contract price and the market price of said cotton futures, according to the fluctuations in the market, is a wagering contract and illegal and void, as well under the statutes of New York and Virginia, as generally in this country. *Embrey* v. *Jemison*, 336.

See COURT AND JURY;
COVENANT;
RAILROAD.

COPYRIGHT.

1. In this case, it was held, on the facts, that the title to a copyright in a book had passed from the person who secured it to another person, as the result of a completed transaction between them, independently of all agreements in regard to other matters, the consideration for the sale having been paid, and the contract having never been rescinded. *Thompson* v. *Hubbard*, 123.

2. The grantee, having sued the grantor for infringing the copyright, it appeared that although the copyright had been properly secured by the grantor, the grantee, in publishing editions of the book, had, in some of the copies, not printed, in the notice of copyright, either the year or the name, and in others, had omitted the name; *Held*, that he had forfeited the right to sue the grantor for infringement. *Ib.*
3. The requirement of the statute in regard to printing the prescribed notice of copyright in the book, is one of the conditions precedent to the perfection of the copyright, the other two being the deposit, before publication, of the printed copy of the title, and the depositing in the public office, within the prescribed time after publication, of copies of the book. *Ib.*
4. Such requirement in regard to printing the notice extends to editions published by the grantee of a copyright, during his ownership thereof. *Ib.*
5. The failure of the grantee to print the notice prevents his right of action, even as against his grantor, who originally secured the copyright, from coming into existence. *Ib.*

CORPORATION.

1. In the absence of fraud, stockholders are bound by a decree against their corporation in respect to corporate matters, and such a decree is not open to collateral attack. *Hawkins* v. *Glenn*, 319.
2. Rules applicable to a going corporation, remain applicable notwithstanding it may have become insolvent and ceased to carry on its operations, where, as in this case, it continues in the possession and exercise of all corporate powers essential to the collection of debts, the enforcement of liabilities and the application of assets to the payment of creditors. *Ib.*
3. Stockholders of record are liable for unpaid instalments, although they may have in fact parted with their stock, or may have held it for others. *Ib.*

See EQUITY, 5, 6;
LIMITATION, STATUTES OF;
RAILROAD.

COSTS.

See PRACTICE, 2.

COURT AND JURY.

The instructions of the court below fairly left it to the jury to determine whether the sale of cattle, which is the subject of this controversy, was an absolute sale or a conditional sale. *Segrist* v. *Crabtree*, 287.

See COMMON CARRIER, 2, 3.

COURT OF ORDINARY.

See EXECUTOR AND ADMINISTRATOR;
JUDGMENT.

COVENANT.

1. In construing a covenant in a deed, the words are to be taken most strongly against the party using them; but, in construing a covenant created by statute out of language of grant in a deed, and in derogation of the common law, the words should be construed strictly. *Douglass* v. *Lewis*, 75.
2. Covenants of seisin and for quiet enjoyment, created by statute from the use of certain words in a deed, are operative to their full extent only when the parties have failed to insert covenants in these respects in the deed, and may be controlled and limited in their operation by express covenants in that regard. *Ib.*
3. When a general covenant of warranty is inserted in a deed, a statutory covenant of seisin is not to be implied. *Ib.*

CRIMINAL LAW.

The death of the accused in a criminal case brought there by writ of error abates the suit. *List* v. *Pennsylvania*, 396; *Menken* v. *Atlanta*, 405.

See HABEAS CORPUS;
JURISDICTION, A, 7.

DAMAGES.

It appearing that this writ of error was sued out for the purposes of delay, the court affirms the judgment below with ten per cent damages, interest and cost. *Palmer* v. *Arthur*, 60.

See COMMON CARRIER, 2, 3;
PATENT FOR INVENTION, 1, 2, 3.

DEED.

See COVENANT.

DELAY.

See DAMAGES.

DISTRICT OF COLUMBIA.

See HUSBAND AND WIFE.

DIVISION IN OPINION.

See JURISDICTION, A, 6.

EQUITY.

1. A demurrer to a bill in equity cannot introduce as its support new facts which do not appear on the face of the bill, and which must be set up by plea or answer. *Stewart* v. *Masterson*, 151.
2. Where there is matter in the bill which is properly pleaded, and is properly ground for equitable relief, and requires an answer or a plea, a demurrer to the whole bill will be overruled. *Ib.*
3. Where a bill is taken as confessed by one of two defendants before a decree is made dismissing the bill, on demurrer, as to the other de-

fendant, the latter can appeal from the decree, although it does not dispose of the case as to his codefendant. *Ib.*

4. Cross-bills are necessary where certain defendants seek affirmative relief against their codefendants. *Veach* v. *Rice*, 293.
5. A case instituted by a creditor of a corporation, on his own behalf and on behalf of other unsecured creditors, to set aside a conveyance of its real estate and a mortgage of its personal property, both made by the corporation in trust to secure certain preferred creditors, including among them a director of the corporation, and also to procure a dissolution of the corporation, and the closing up of its business, is a suit brought to remove an incumbrance or lien or cloud upon the title to such property within the meaning of § 8 of the act of March 3, 1875, 18 Stat. 472, c. 137, which authorizes a Circuit Court of the United States to summon in an absent defendant, and to exercise jurisdiction over his rights in the property in suit within the jurisdiction of the court. *Mellen* v. *Moline Iron Works*, 352.
6. It is not necessary that the creditors of an insolvent corporation should obtain judgment on his claim, and take out execution and exhaust his remedies at law, in order to invoke the jurisdiction of a court of equity in his favor to remove an incumbrance or cloud or lien upon the title of the corporation's property, under the act of March 3, 1875, 18 Stat. 470, c. 137. *Ib.*
7. An adjudication that a particular case is of equitable jurisdiction is not void, even if erroneous, and cannot be disturbed by a collateral attack. *Ib.*
8. A sale of the trust property which is in dispute in a cause pending in a court of equity, made by the receiver by order of court, and after full compliance with its directions as to notice, is not open to attack by one who is subsequently summoned into the suit, if there has been no fraud, no sacrifice of the property, or no improvidence; since the proceeds of the sale take the place of the property, and all his rights in the latter are transferred to the former. *Ib.*
9. The proceedings in this case to remove the incumbrance upon the property of the Moline Iron Works, which are set forth and described in the opinion of the court, conformed to the requirements of the act of March 3, 1875, 18 Stat. 470. *Ib.*
10. Purchasers of property involved in a pending suit may be admitted as parties, in the discretion of the court; but they cannot demand, as of absolute right, to be made parties, nor can they complain if they are compelled to abide by whatever decree the court may render, within the limits of its power, in respect to the interest their vendor had in the property purchased by them *pendente lite*. *Ib.*

See CONSTITUTIONAL LAW, 2;
JURISDICTION, A, 4, 5.

EVIDENCE.

See COMMON CARRIER, 1;
HUSBAND AND WIFE.

EXECUTOR AND ADMINISTRATOR.

1. The judgment of the Court of Ordinary allowing the resignation of one of two administrators upon proceedings had pursuant to statute, and discharging him after he had accounted to his co-administrator, and the latter had given a new bond, operated to exonerate the sureties upon the joint bond of both from liability for a *devastavit* committed after such order of discharge. *Veach* v. *Rice*, 293.
2. Where the Ordinary takes an administrator's bond in good faith, and it appears after liability has been incurred, that the names of some of the supposed sureties were signed thereto without authority, the mere fact that the latter cannot be held will not constitute a defence as to those who executed the bond without being misled or having relied upon the others being bound. *Ib.*

FRAUD.

See CONTRACT, 3.

FRENCH LAW.

See LOCAL LAW, 1–5.

HABEAS CORPUS.

1. Where a court is without authority to pass a particular sentence, such sentence is void, and the defendant imprisoned under it may be discharged on *habeas corpus*. *Hans Nielsen, Petitioner*, 176.
2. A judgment in a criminal case denying to the prisoner a constitutional right, or inflicting an unconstitutional penalty, is void, and he may be discharged on *habeas corpus*. *Ib.*
3. A petitioner for a writ of *habeas corpus* to obtain his discharge from imprisonment under the judgment and sentence of a District or Circuit Court of the United States for contempt, is at liberty to allege and to prove facts, not contradicting the record, which go to show that the court was without jurisdiction. *Cuddy, Petitioner*, 280.

HUSBAND AND WIFE.

1. In a suit in equity in the Supreme Court of the District of Columbia it is competent, under the acts of Congress, for a married woman, who is a party thereto, to disclose, as a witness, directions given by her to her husband respecting the investment of her separate property, though she could not be compelled to make such disclosure against her wishes. Rev. Stat. Dist. Col. §§ 876, 877. *Stickney* v. *Stickney*, 227.
2. There is no higher presumption that a married woman in the District of Columbia intends, by placing her separate money in the hands of her husband, thereby to make a gift of it to him, than there is that a third person has such intent when he in like manner deposits money with him. 16 Stat. 45, c. 23. *Ib.*
3. In the District of Columbia, whenever a husband acquires possession of the separate property of his wife, whether with or without her consent,

he must be deemed to hold it in trust for her benefit, in the absence of any direct evidence that she intended to make a gift of it to him. *Ib.*

INSURANCE.

A certificate of policy issued by a Mutual Accident Association stated that it accepted B. as a member in division AA of the association; "the principal sum represented by the payment of two dollars by each member in division AA," not exceeding $5000, to be paid to the wife of B. in 60 days after proof of his death, from sustaining "bodily injuries effected through external, violent and accidental means." B. and two other persons jumped from a platform four or five feet high, to the ground, they jumping safely and he jumping last. He soon appeared ill, and vomited, and could retain nothing on his stomach, and passed nothing but decomposed blood and mucus and died nine days afterwards. In a suit by the widow to recover the $5000, the complaint averred that the jar from the jump produced a stricture of the duodenum, from the effects of which death ensued. At the time of the death the association could have levied a two dollar assessment on 4803 members in division AA; *Held*, (1) It was not error in the court to refuse to direct the jury to find a special verdict, as provided by the statute of the State; (2) the issue raised by the complaint as to the particular cause of death was fairly presented to the jury; (3) the jury were at liberty to find that the injury resulted from an accident; (4) the policy did not contract to make an assessment, nor make the payment of any sum contingent on an assessment or on its collection; and the association took the risk of those who should not pay. *United States Accident Co.* v. *Barry*, 100.

JUDGMENT.

1. The judgments of Courts of Ordinary in Georgia in respect to subjects matter within their jurisdiction are no more open to collateral attack than those of any other court. *Veach* v. *Rice*, 293.
2. The objection that too large an amount of interest has been included in a judgment cannot be raised for the first time in this court *Hawkins* v. *Glenn*, 319.

See CORPORATION, 1;
EQUITY, 7, 8.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. The denial of a change of venue, moved for on the affidavit of the party's agent to the state of public opinion in the county in which the action is brought, is not reviewable by this court on error to the Supreme Court of a Territory, even if a subject of appeal to that court from the trial court under the territorial statutes. *Kennon* v. *Gilmer*, 22.

2. Decisions of the Postmaster General, imposing forfeitures on contractors for failure to carry the mails according to their contracts, are not subject to review by this court. *Allman* v. *United States*, 31.

3. An appeal lies to this court from a judgment against the United States rendered under the jurisdiction conferred on District Courts by the act of March 3, 1887, 24 Stat. 505, c. 359, without regard to the amount of the judgment. *United States* v. *Davis*, 36.

4. In a bill in equity in a Circuit Court of the United States to revive, in the name of the executor of the plaintiff, a suit in equity which had gone to final decree, a decree of revival, entered after due notice to defendants, and after their appearance and pleading to the bill, is a final decree, from which an appeal lies to this court. *Terry* v. *Sharon*, 40.

5. When a cause in equity in a Circuit Court, from which an appeal would lie to this court, has gone to final decree, and the executor of the plaintiff files his bill in that court to revive the suit in his name, and his prayer is granted, and an appeal is taken from the decree granting it, this court will not, on the hearing of that appeal, consider the merits of the original case, nor the jurisdiction of the court below over it, if there is sufficient in the record to give an apparent jurisdiction. *Ib.*

6. Certificates of division in opinion which present no clear and distinct propositions of law, but which, on the contrary, split up the case into fragments for the purpose of obtaining the opinion of this court before a trial or decision in the court below, are insufficient to invoke its jurisdiction. *United States* v. *Hall*, 50.

7. There is no general right of appeal to this court in criminal cases. *United States* v. *Perrin*, 55.

8. No error can be examined in the rulings of the court at the trial of a cause by the court without a jury by agreement of parties, if there is no allegation in the record that the stipulation was in writing as required by the statute. *Spalding* v. *Manasse*, 65.

9. Where a case is tried by a Circuit Court, on the written waiver of a jury, and there is a bill of exceptions which sets forth the facts which were proved, that is a sufficient special finding of facts to authorize this court, under § 700 of the Revised Statutes, to determine whether the facts found are sufficient to support the judgment. *Coler* v. *Cleburne*, 162.

10. When the defendant below sues out the writ of error, the matter in dispute here is the judgment rendered against him. *Pacific Express Co.* v. *Malin*, 394.

11. Since the act of March 3, 1887, 24 Stat. 552, c. 373, took effect, no appeal or writ of error lies to this court from a decision of a Circuit Court remanding a cause to a state court which had been removed from it, although the order remanding it was made before that act took effect. *Chicago, Burlington &c. Railway* v. *Gray*, 396.

See EQUITY, 3.

B. Jurisdiction of Circuit Courts of the United States.

1. A fatal defect in the allegation of diverse citizenship in a petition for the removal of a cause from a state court for that reason, cannot be corrected in the Circuit Court of the United States. *Crehore* v. *Ohio and Mississippi Railway*, 240.
2. When a judgment of a Circuit or District Court of the United States is attacked collaterally, every intendment will be made in support of jurisdiction, unless the want of it, either as to subject matter or as to parties, appears in some proper form; and this general rule applies to judgments punishing for contempt. *Cuddy, Petitioner*, 280.

C. Jurisdiction of District Courts of the United States.

See Jurisdiction, B, 2.

D. Jurisdiction of the Court of Claims.

The act of March 3, 1887, "to provide for the bringing of suits against the government of the United States," 24 Stat. 505, c. 359, does not confer upon the District or Circuit Courts of the United States, or upon the Court of Claims, jurisdiction in equity to compel the issue and delivery of a patent for public land. *United States* v. *Jones*, 1.

E. Jurisdiction of Territorial Courts.

See Washington Territory.

LIMITATION, STATUTES OF.

Statutes of limitation do not commence to run as against subscriptions to stock, payable as called for, until a call or its equivalent has been had, and subscribers cannot object when an assessment to pay debts has been made, that the corporate duty in this regard had not been earlier discharged. *Hawkins* v. *Glenn*, 319.

See Local Law, 6.

LOCAL LAW.

1. By the French jurisprudence prevailing in Louisiana, a creditor may exercise the rights of action of his debtor, a right analogous to the garnishee or trustee process in some States. *New Orleans* v. *Gaines' Administrator*, 191.
2. This right cannot be enforced in the Federal courts by an action at law, but by a suit in equity, on the principle of subrogation. *Ib.*
3. The true owner of lands in Louisiana, having recovered the lands, and obtained judgment for the fruits and revenues against the possessor, may file a bill in equity against the possessor's grantor, who guaranteed the title, to recover the amount thus recovered — the warrantor of title in Louisiana being liable to the grantee for the fruits and revenues, for which the latter has to account to the true owner. *Ib.*
4. There are degrees of bad faith in the case of unlawful possessors. A merely technical possessor in bad faith, who supposed his title was a

good one, and resisted the claims of the true owner in moral good faith, will not be compelled to answer for fruits and revenues which he has not received. *Ib.*

5. A fictitious charge against such a possessor (by way of fruits and revenues) of a certain per cent per annum on an inflated valuation of the property, exhibited in sales at auction in a time of wild speculation, will be set aside as speculative and unjust. *Ib.*

6. The statute of Virginia, (Code of 1873, c. 146, § 20,) provided that when a right of action accrues "against a person who had before resided in this State, if such person shall, by departing without the same, or by absconding or concealing himself, or by any other indirect ways or means, obstruct the prosecution of such right, the time that such obstruction may have continued shall not be computed as any part of the time within which the said right might or ought to have been prosecuted;" *Held*, that this was inapplicable when the defendant, although once a resident of that State, removed therefrom before any right of action accrued against him, and before the transactions occurred out of which the plaintiff's cause of action arose. *Embrey* v. *Jemison*, 336.

See Executor and Administrator (Georgia);
Husband and Wife (District of Columbia);
Judgment, 1 (Georgia);
Mortgage (Michigan);
Washington Territory.

LOUISIANA.

See Local Law, 1, 5.

MAIL TRANSPORTATION.

The "fifty per centum on the contract as originally let," to which the power of the Postmaster General to expedite service under a contract for carrying the mails is restricted by the proviso in § 2 of the act of April 7, 1880, c. 48, 21 Stat. 72, is fifty per cent on the compensation for all the service, both as originally stipulated and as increased by additional service, which is to be determined by the rates fixed in the original contract. *Allman* v. *United States*, 31.

See Jurisdiction, A, 2.

MANDAMUS.

Mandamus lies where an inferior court refuses to take jurisdiction, when by law it ought to do so, or when, having obtained jurisdiction, it refuses to proceed in its exercise. *Ex parte Brown*, 116 U. S. 401, distinguished. *Hollon Parker, Petitioner*, 221.

A writ of mandamus to correct a mistake of an inferior court as to its jurisdiction may issue to the court and to its judges, although the court is composed of different members from those by whom the error complained of was committed. *Ib.*

MANDATE.

In a case which had been dismissed for want of jurisdiction, no opposition having been made thereto, the court allowed a mandate, notwithstanding notice of the motion for the mandate had not been given. *Pacific Express Co.* v. *Malin*, 394.

MESNE PROFITS.

See LOCAL LAW, 1–5.

MORTGAGE.

1. If a mortgage of real estate in Michigan containing a power of sale is duly recorded, as provided by law, it is not necessary that the bond secured by it and that an agreement referred to in it and adopted and made a part of it should also be recorded, in order that a foreclosure may be had by advertisement and sale in the manner provided by the statutes of the State. *Bacon* v. *Northwestern Life Ins. Co.*, 258.
2. Where a mortgage debt is payable in instalments, a provision in the mortgage that if at the expiration of the time limited for the payment of all there shall remain due on the mortgage a sum not greater than a sum named, which is less than the amount of the whole mortgage debt, the mortgagor may have the privilege of paying the amount due by giving his note therefor secured by mortgage on other real estate, does not suspend the power of foreclosure and sale for non-payment of instalments as they become due. *Ib.*
3. This court concurs with the Supreme Court of the State of Michigan in holding that the misspelling of the name of the mortgagee in an advertisement for the foreclosure of the mortgage by public sale under a power of sale in the mortgage in the manner required by the statutes of the State, and other errors in that advertisement which worked no prejudice to the mortgagor — as a reference in the advertisement to the record pointed out to all persons interested the means of obtaining true information and of correcting all mistakes — were not defects sufficient to defeat a title acquired at that sale. *Ib.*

MOTION FOR CHANGE OF VENUE.

See JURISDICTION, A, 1.

MOTION FOR REHEARING.

A renewal of an application for a rehearing after the close of the term at which judgment was rendered, and for reasons which have been passed upon by the court, is not in order, and does not commend itself to the favorable consideration of the court. *Williams* v. *Conger*, 390.

MUNICIPAL BOND.

A statute of Texas provided that bonds to be issued by a city, for erecting water works, should be signed by the mayor, and forwarded by him to the state comptroller for registration. Bonds issued for that purpose

were dated January 1, 1884, but not signed till July 3, 1884, and then were not signed by the mayor, but, under a resolution of the city council, were signed by a private citizen, who had been mayor on January 1, 1884, but had gone out of office in April, 1884, and been succeeded by a new mayor, and who appended the word "mayor" to his signature. The bonds stated on their face that they were authorized by a statute of Texas, and an ordinance of the city, specifying both. In a suit against the city, to recover on coupons cut from the bonds, brought by a *bonâ fide* holder of them; *Held*, (1) No one could lawfully sign the bonds but the person who was mayor of the city when they were signed; (2) the city council had no authority to provide for their signature by any other person; (3) the city was not estopped as against the plaintiff, from showing the facts as to the signature of the bonds; (4) the bonds were invalid. *Coler* v. *Cleburne*, 162.

NOTARY PUBLIC.

See OATH, 1.

OATH.

1. The statutes of the United States confer upon notaries public no general authority to administer oaths. *United States* v. *Hall*, 50.
2. No statute of the United States authorizes notaries public to administer an oath to a deputy surveyor of the United States in regard to the manner in which he fulfilled a contract for surveying public land. *Ib.*
3. No statute of the United States authorizes a commissioner of a Circuit Court to administer an oath to a deputy surveyor of the United States in regard to the manner in which he fulfilled a contract for surveying public land.

PARTIES.

See EQUITY, 10;
PROMISSORY NOTE.

PARTNERSHIP.

See BANKRUPT.

PATENT FOR INVENTION.

1. The decision in *Rude* v. *Westcott*, 130 U. S. 152, affirmed that the payment of a sum in settlement of a claim for an alleged infringement of a 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. *Cornely* v. *Marckwald*, 159.
2. Where a plaintiff seeks to recover damages because he has been compelled to lower his prices to compete with an infringing defendant, he must show that his reduction in prices was due solely to the acts of the defendant, or to what extent it was due to such acts. *Ib.*
3. Where he seeks to recover damages for the loss of the sale of infring-

ing machines which the defendant has sold, he must show what profit he made on his own machines. *Ib.*

POSTMASTER GENERAL.

See JURISDICTION, A, 2;
MAIL TRANSPORTATION.

PRACTICE.

1. Under the circumstances set forth in the motion papers below, the court, as to so much of the record as was printed by order of the court below, dispenses with the filing of ten of the twenty-five copies required by Rule 10 to be printed for the use of the court and counsel, and remits the clerk's fees for supervision of printing. *Dent* v. *Ferguson*, 397.
2. M. filed a bill in equity against S. for the infringement of letters patent. S. answered and filed a cross-bill. The decree dismissed the original bill from which M. appealed. Thereupon S. took an appeal in the cross-suit from rulings excluding evidence. In this court the clerk required S. to pay one half the cost of printing the record. This court, after argument, affirmed the decree dismissing the original bill, and dismissed the cross-appeal. 128 U. S. 605. *Held*, that S. was entitled to recover of M. the amount so paid. *Nichols* v. *Marsh*, 401.
3. The counsel for appellees having undertaken to appear for the heirs and representatives of the original appellee, deceased, and having filed in the office of the clerk of this court a waiver of publication, and having failed to appear, and the cause having been heard and having proceeded to final hearing, (128 U. S. 464;) *Held*, that the decree be made absolute against the heirs and representatives of the deceased appellee. *Hunt* v. *Blackburn*, 403.

See APPEAL;
CRIMINAL LAW;
DAMAGES;
JURISDICTION, A, 1, 6, 7, 8, 11;
MANDATE;
MOTION FOR REHEARING;
WASHINGTON TERRITORY.

PROMISSORY NOTE.

The original payee cannot maintain an action upon a note, the consideration of which is money advanced by him upon or in execution of a contract of wager, he being a party to such contract, or having directly participated in the making of it in the name, or on behalf of one of the parties. *Embrey* v. *Jemison*, 336.

PUBLIC LAND.

See OATH, 2, 3.

RAILROAD.

1. A contract made by the president of a railroad corporation, in its behalf, and within the scope of its chartered powers, to pay certain sums to the proprietors of a railway bridge for the use thereof, and made

known to the directors and stockholders, and not disapproved by them within a reasonable time, binds the corporation. *Pittsburg &c. Railway* v. *Keokuk Bridge Co.*, 371.

2. A contract to pay certain sums for the use of a railway bridge across the Mississippi River, between Illinois and Iowa, is not *ultra vires* of a railroad corporation of Illinois or of Pennsylvania, whose road connects, by means of intervening railroads, with the bridge as part of a continuous line of transportation. *Ib.*

3. A being a railroad corporation of Ohio, Indiana and Illinois, B a railroad corporation of Pennsylvania and Ohio, and C a railroad corporation of Pennsylvania, these three corporations, for the purpose of establishing a continuous line of transportation, entered into an indenture, by which A leased its railroad to B for ninety-nine years, B covenanted to pay to A a proportion of the earnings of that road, and to assume and carry out certain transportation contracts existing between A and other companies, receiving and enjoying the benefits thereof, and C guaranteed the performance of B's covenants. Before the execution of the lease, a contract was drawn up, by which a corporation of Iowa and Illinois, authorized by its charter to build a railway bridge across the Mississippi River from Keokuk in Iowa to Hamilton in Illinois, agreed to build such a bridge, and granted to A and three other railroad corporations in perpetuity the right to use it for the passage of their trains; and they agreed to pay monthly to the bridge company stipulated tolls, and, if those should fall below a certain sum, to make up the deficiency, each contributing in proportion to the tonnage passed by it over the bridge. After the execution of the lease, and upon a formal request of the presidents of B and C in their behalf, undertaking that they should assume all the liabilities and be entitled to all the benefits of the bridge contract, as if it had been specifically named in and made part of the lease, A's president, in its behalf, executed the bridge contract, and reported to his directors that he had done so, and they never took any action upon the subject. C's president and directors, in two printed annual reports to their stockholders, declared the settled policy of the company to secure a continuous line of traffic from Philadelphia to Keokuk and westward, and stated that through B this object had been accomplished. A subsequent modification of the bridge contract, by which a deficiency in the tolls was to be borne equally by the four railroad corporations parties thereto, was executed by A's president, pursuant to a similar request and undertaking of the presidents of B and of C. The bridge was then opened for use, and was afterwards used by B and C; and the sums payable by A under the modified bridge contract for tolls and deficiencies were semi-annually demanded by the bridge company from B, and, after examination of the accounts, paid by B's comptroller for three years; *Held*, that B and C were liable to the bridge company for the amount of subsequent deficiencies payable by A under that contract, whether the lease was valid or invalid. *Ib.*

RECEIVER.

See EQUITY, 8.

REMOVAL OF CAUSES.

See JURISDICTION, B, 1.

REVIVOR, BILL OF.

See JURISDICTION, A, 4, 5.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See BANKRUPT, 3;
CONTEMPT, 1, 3, 4;
COPYRIGHT;
EQUITY, 5, 6, 9;
HUSBAND AND WIFE;
JURISDICTION, A, 3, 9, 11; D;
OATH.

B. STATUTES OF STATES AND TERRITORIES.

Georgia. *See* EXECUTOR AND ADMINISTRATOR;
New York. *See* CONTRACT, 4;
Virginia. *See* CONTRACT, 4;
LOCAL LAW, 6.

SUBROGATION.

See LOCAL LAW, 2.

WAGER-CONTRACT.

See CONTRACT, 3;
PROMISSORY NOTE.

WARRANTY.

See COVENANT, 2, 3.

WASHINGTON TERRITORY.

The chambers of a district judge of Washington Territory, who is also a judge of the Supreme Court of the Territory, may be held whilst he is in attendance upon the Supreme Court at the place where such court is sitting, although it be without the territorial limits of his district, and at such chambers he may receive notice of an appeal from a judgment rendered by him within his district. *Hollon Parker, Petitioner*, 221.

See APPEAL, 1.

WEST VIRGINIA.

See CONSTITUTIONAL LAW, 1.