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ACTION.

See ASSUMPSIT.

ADVERSE POSSESSION.

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APPEAL.

1. Where the certificate of authentication of a record transmitted to this court on appeal begins by setting out the name and office of the clerk of the court below as the maker of the certificate, and has appended to it the seal of the court, but lacks the signature of the clerk, this court has jurisdiction of the appeal; and, if no motion to dismiss is made until it is too late to take a new appeal, will permit the certificate to be amended by adding the clerk's signature. *Idaho and Oregon Land Improvement Co.* v. *Bradbury*, 509.
2. Under the act of April 7, 1874, c. 80, § 2, an appeal, and not a writ of error, lies to this court from the decree of a territorial court in a proceeding in the nature of a suit in equity, although issues of fact have been submitted to a jury. *Ib.*

See EVIDENCE, 2; JURISDICTION, A, 2; INJUNCTION, 1, 3; PRACTICE, 5.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

1. In the absence of a statute forbidding it, an assignment for the benefit of creditors may be made to an assignee who is not a citizen or resident of the State where the assignment is made or the debtor resides. *Bachrack* v. *Norton*, 337.
2. It having been held in *Cunningham* v. *Norton*, 125 U. S. 77, that the act of Texas of March 24, 1879, was intended to favor general assignments by insolvents for the benefit of their creditors, and to sustain them notwithstanding technical defects; it is now *held*, that there is noth-

ing in the sixth section of the act, directing the assignee's bond to be filed with the county clerk of "*his*" county, to indicate a legislative intent that an assignee under such an assignment must necessarily be a citizen or resident of the State. *Ib.*

3. *Cunningham* v. *Norton*, 125 U. S. 77, affirmed to the point that the act of the legislature of Texas of March 24, 1879, in regard to assignments by insolvent debtors for the benefit of their creditors was intended to favor such assignments; and that a provision in such an assignment, void in itself, did not necessarily vitiate the assignment, or prevent its execution for the benefit of creditors. *Muller* v. *Norton*, 501.
4. A provision in an assignment for the benefit of creditors that the assignee shall at once take possession of all the assigned property "and convert the same into cash" as soon as and upon the best terms possible, can hardly be construed into a discretionary authority to sell on credit. *Ib.*
5. In Texas an assignment for the benefit of creditors, under the statute, may be made to more than one assignee. *Ib.*

ASSUMPSIT.

An action by a municipal corporation to recover from a street railroad company the cost of maintaining pavements in the street which the company was, by its charter, bound to maintain, is not an action upon the statute, but one in assumpsit. *Metropolitan Railroad Co.* v. *District of Columbia*, 1.

BANKER.

See INTERNAL REVENUE.

BANKRUPTCY.

1. The right of action of a plaintiff under a title derived from an assignee in bankruptcy, to redeem from a sale under a deed of trust, was held in this case to be barred by the two years' limitation contained in § 5057 of the Revised Statutes. *Greene* v. *Taylor*, 415.
2. That section does not apply only to a suit to which the assignee in bankruptcy is a party; but it applies to a case where nearly a year of the two years had run against the right while the assignee owned it, after his appointment, and the rest of the two years ran against it in the hands of the plaintiff, his transferee, so that more than two years elapsed between such appointment and the bringing of the suit to redeem, and the property covered by the trust deed was held adversely by the defendant, under a sale under the trust deed, for more than two years before the bringing of that suit. *Ib.*
3. On the facts of this case there was no fraudulent concealment by the defendants from the assignee in bankruptcy or the plaintiff. *Ib.*
4. Sufficient information as to the trust deed, and its contents, was given in the bankruptcy schedule, filed more than eleven months before the assignee was appointed, and more than one month before the sale

under the trust deed, to put the assignee in bankruptcy and the plaintiff on inquiry. *Ib.*

5. Moreover it appeared that, two days before the sale under the deed of trust, the plaintiff knew of the contents of the schedule in bankruptcy and who held the debt secured by the deed of trust. *Ib.*
6. The plaintiff having, by a petition to the bankruptcy court, procured the sale of the property by the assignee in bankruptcy, and the application of its proceeds on the debt on which his suit to redeem was founded, waived any right to redeem arising under a judgment before recovered by him for his debt. *Ib.*
7. On the facts as stated in the opinion of the court it is *held*, that this suit is one between an assignee in bankruptcy and one claiming an adverse interest touching the property which is the subject of controversy, within the meaning of Rev. Stat. § 5057, prescribing a limitation for the commencement of such an action. *Avery* v. *Cleary*, 604.
8. The omission by a bankrupt to put upon his schedules, or the omission by him or by his administrator to disclose to his assignee in bankruptcy the existence of policies of insurance on his life which had been taken out by him, and had, before the bankruptcy, been assigned to a trustee for the benefit of his daughters, does not amount to a fraudulent concealment of the existence ot the policies, so as to take an action against the administrator (who was also such trustee and guardian of the daughters) to recover from him the amount of insurance paid to him as trustee, out of the operation of the limitation prescribed in Rev. Stat. § 5057. *Ib.*
9. Mere ignorance of the existence of a cause of action by an assignee in bankruptcy does not remove the bar against such action prescribed by a statute of limitation; but, in order to set aside such bar, within the rule as announced in *Bailey* v. *Glover*, 21 Wall. 342, there must be no laches on the part of the assignee in coming to the knowledge of the fraud which is the foundation of the suit. *Ib.*

See EVIDENCE, 1.

CALIFORNIA.

See CONSTITUTIONAL LAW, A, 7.

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Vicksburg, Shreveport & Pacific Railway Co. v. *Dennis*, 116 U. S. 665, approved and applied. *Yazoo & Mississippi Valley Railroad* v. *Thomas*, 174.

Yazoo & Mississippi Valley Railroad Co. v. *Thomas*, 132 U. S. 174, affirmed and applied. *Yazoo & Mississippi Valley Railroad Co.* v. *Board of Levee Commissioners*, 190.

Dahl v. *Raunheim*, 132 U. S. 260, affirmed and applied. *Dahl* v. *Montana Copper Co.*, 264.

Feibelman v. *Packard*, 109 U. S. 421. Affirmed in *Bachrack* v. *Norton*, 337.

Taylor v. *Ypsilanti*, 105 U. S. 60. Affirmed in *Young* v. *Clarendon Township*, 340.

Cunningham v. *Norton*, 125 U. S. 77. Affirmed in *Bachrack* v. *Norton*, 337; and in *Muller* v. *Norton*, 501.

Avery v. *Cleary*, 132 U. S. 604. Affirmed in *Cleary* v. *Ellis Foundry Co.*, 612.

The present case is controlled by that of *Hartranft* v. *Langfeld*, 125 U. S. 128. *Robertson* v. *Edelhoff*, 614.

Clayton v. *Utah*, 132 U. S. 632, affirmed and applied to this case. *Jack* v. *Utah Territory*, 643.

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McArthur v. *Scott*, 113 U. S. 340, distinguished from this case. *Miller* v. *Texas and Pacific Railway Co.*, 662.

CLAIMS AGAINST THE UNITED STATES.

See CONTRACT, 4, 5.

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See RAILROAD.

CONFLICT OF LAW.

See JURISDICTION, B, 2, 3, 4.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. The statutes of the State of Texas of July 14, 1879, and March 11, 1881, providing for the sale of a portion of the vacant and unappropriated public lands of the State, did not operate to confer upon a person making application under them for a survey of part of said lands and paying the fees for filing and recording the same, a vested interest in such lands which could not be impaired by the subsequent withdrawal of them from sale under the provisions of the statute of January 22, 1883. *Campbell* v. *Wade*, 34.

2. Neither the charter of the Pennsylvania Railroad Company, contained in an act of the legislature of Pennsylvania, passed April 13, 1846, (Laws of 1846, No. 262, p. 312,) nor the acts supplementary thereto, nor the act of that legislature, passed May 16, 1857, (Laws of 1857, No. 579, p. 519,) constituted such a contract between the State and the company as exempted the latter from the operation of § 8 of Article 14 of the constitution of Pennsylvania of 1873, requiring that corporations invested with the privilege of taking private property for public use should make compensation for property injured or destroyed by the construction or enlargement of their works, highways or improve-

ments; nor did such constitutional provision, as applied to the company, in respect to cases afterwards arising, impair the obligation of any contract between it and the State. *Pennsylvania Railroad Co.* v. *Miller*, 75.

3. The company took its original charter subject to the general law of the State, and to such changes as might be made in such general law, and subject to future constitutional provisions and future general legislation, since there was no prior contract with it exempting it from liability to such future general legislation, in respect of the subject matter involved. *Ib.*
4. Exemption from future general legislation, either by a constitutional provision or by an act of the legislature, cannot be admitted to exist, unless it is expressly given, or unless it follows by an implication equally clear with express words. *Ib.*
5. If, in a trial in a state court of a person accused of crime, the jury is brought into court; and, on being polled it is disclosed that they were agreed upon a verdict of guilty under two counts in the indictment, but could not agree as to the other counts; and, in the presence of the jury, the prosecuting attorney proposes to enter a *nolle prosequi* as to those counts; and, the jury having retired, the court permits this to be done; and the jury, being then instructed to pass only upon the remaining counts, return a verdict of guilty as charged in the indictment; all this, however irregular, does not amount to a deprivation of the liberty of the defendant without due process of law. *Cross* v. *North Carolina*, 131.
6. The constitutionality of the act of the legislature of Michigan of March 22, 1869, which is considered in this case was fully settled in the case of *Taylor* v. *Ypsilanti*, 105 U. S. 60, to which the court adheres. *Young* v. *Clarendon Township*, 340.
7. The legislature of California, in 1878, enacted a statute which provided for the payment of the police force of San Francisco at a rate "which should not exceed $102 a month for each one," subject to the condition that the treasurer of the city and county "should retain from the pay of each police officer the sum of two dollars per month to be paid into a fund to be known as the police life and health insurance fund." The act further provided that upon the death of any member of the police force after June 1, 1878, there should be paid by said treasurer out of said life and health insurance fund to his legal representative the sum of $1000. On the 4th of March, 1889, this act was repealed and another statute enacted creating "a police relief and pension fund," and transferring to it the police life and health insurance fund, which had been created under the other act, and making new and different provisions for the distribution of the new fund. W. was a police officer of the city and county from 1869 until his death on March 13, 1889, after the repealing act had gone into operation. His administrator sued to recover $1000 from the police life and health

insurance fund, which then amounted to $40,000; *Held*, that this fund was a public fund, subject to legislative control, and that W. had no vested interest in it, which could not be taken away by the legislature during his lifetime. *Pennie* v. *Reis*, 464.

8. No tax can be imposed by a State upon telegraphic messages sent by a company which has accepted the provisions of Rev. Stat. §§ 5263–5268, or upon the receipts derived therefrom, where the communication is carried, either into the State from without, or from within the State to another State. *Western Union Telegraph Co.* v. *Alabama*, 472.
9. A statute of Alabama imposed a tax "on the gross amount of the receipts by any and every telegraph company derived from the business done by it in this State." The Western Union Telegraph Company reported to the board of assessors only its gross receipts received from business wholly transacted within the State. The board required of the company a further return of its gross receipts from messages carried partly within and partly without the State. The company made such further return and the tax was imposed upon its gross receipts as shown by the two returns; *Held*, that the statute of Alabama thus construed was a regulation of commerce, and that the tax imposed upon the messages comprised in the second return was unconstitutional. *Ib.*
10. The provision in the Revised Statutes of Texas that when service is made in an action against a partnership upon one of the firm the judgment may be rendered against the partnership and against the member actually served, (§ 1224,) and the provision directing the manner of the service of process upon a non-resident or an absent defendant (§ 1230) are not repugnant to the Constitution of the United States. *Sugg* v. *Thornton*, 524.
11. Under the power of Congress, reserved in the organic acts of the Territories, to annul the acts of their legislatures, the absence of any action by Congress is not to be construed to be a recognition of the power of the legislature to pass laws in conflict with the act of Congress under which they were created. *Clayton* v. *Utah Territory*, 632.

See CORPORATION;
CRIMINAL LAW, 2.

B. OF A STATE.

See CONSTITUTIONAL LAW, A, 1;
CORPORATION.

CONTINGENT REMAINDER.

See JUDGMENT;
WILL.

CONTRACT.

1. When a contract respecting property contains an agreement to be performed by the owner of it when he shall "dispose of or sell it," it is obvious that the words "dispose of" are not synonymous with the word "sell;" and their meaning must be determined by considering the remainder of the contract. *Hill* v. *Sumner*, 118.
2. In this case an agreement by the owner of the property which formed the subject of the dispute that he would not dispose of or sell it, was held to have been violated by a lease of it for a term of two years. *Ib.*
3. When a contract is so extortionate and unconscionable on its face as to raise a presumption of fraud or to require but slight additional evidence to justify such presumption, fraud may be set up as a defence in an action at law with the same effect with which it could be set up in equity as a ground for affirmative relief; and if articles delivered in performance of such an unconscionable contract have been accepted in ignorance, and under circumstances excusing their non-return, and they have some value, the amount sued for will be reduced to that value in the judgment. *Hume* v. *United States*, 406.
4. Persons dealing with public officers are bound to inquire about their authority to bind the government, and are held to a recognition of the fact that government agents are bound to fairness and good faith as between themselves and their principals. *Ib.*
5. The plaintiff contracted in writing to sell to the government a quantity of shucks at 60 cents a pound at a time when the market value was $1\frac{3}{4}$ cents a pound. He delivered them and they were consumed in the government service. He then claimed to be paid at the contract price, which, being refused, he sued therefor in the Court of Claims; *Held*, that he could only recover the market value of the shucks. *Ib.*
6. A contract between the parties as to the sale of, and payment for, a ranch and cattle, interpreted as to the mode of payment provided for. *McGillin* v. *Bennett*, 445.

See DAMAGES, 1, 2;
FRAUD, 1, 4;
RAILROAD.

CORPORATION.

The constitution of Colorado provided that no foreign corporation should do business in the State without having a known place of business and an agent upon whom process might be served. A statute of the State made provision for the filing by such corporation with the Secretary of State of a certificate showing its place of business and designating such agent or agents, and also a copy of its charter of incorporation, or of its certificate of incorporation under a general incorporation law; and, in case of failure to do so, that each and every officer, agent and stockholder of the corporation should be jointly and severally personally liable on its contracts made while in default.

Said act further provided that no corporation, foreign or domestic, should purchase or hold real estate except as provided in the act. The act did not indicate a mode by which a foreign corporation might acquire real estate in Colorado. G., being the owner in fee of a tract of realty in that State, conveyed it by deed of warranty to a corporation organized under the laws of Missouri, which had not then attempted, and did not afterwards attempt, to comply with those provisions of the constitution or laws of Colorado. F., the defendant below, claimed through this corporation. Some months after his deed to the corporation, G. executed, acknowledged and delivered a quit-claim deed of the premises to the grantor of P., the plaintiff below; *Held*, (1) That perhaps the reasonable interpretation of the statute was that a foreign corporation should not purchase or hold real estate in Colorado until it should acquire, in the mode prescribed by the local law, the right to do business in that State; (2) That these constitutional and statutory provisions were valid so far as they did not directly affect foreign or interstate commerce; (3) That the company violated the laws of the State when it purchased the property without having previously designated its place of business and an agent; (4) But that the deed was not thereby necessarily made absolutely void as to all persons and for every purpose, inasmuch as the constitution and laws of Colorado did not prohibit foreign corporations from purchasing and holding real estate within its limits; (5) That the penalty of personal liability of officers, agents and stockholders in case of non-compliance with the provisions of the statute, having apparently been deemed by the state legislature sufficient to effect its object, it was not for the judiciary to enlarge that penalty, by forfeiting the estate for the benefit of parties claiming under a subsequent deed from the same grantor; (6) That the grantee under the subsequent quit-claim deed could occupy no better position than the grantor, common to both parties, would have occupied if he had himself brought the action; and that, in that case, it could not have been maintained. *Fritts* v. *Palmer*, 282.

See JURISDICTION A, 6;
MASTER AND SERVANT.

COUNTERCLAIM.

See MOTION TO DISMISS OR AFFIRM, 2 (3) (4) (5) (7).

COURT AND JURY.

See PRACTICE, 4.

COURTS OF THE UNITED STATES.

In regard to motions for a new trial, and bills of exceptions, the courts of the United States are independent of any statute or practice pre-

vailing in the courts of the State in which the trial is had. *Missouri Pacific Railway Co.* v. *Chicago & Alton Railroad Co.*, 191.

See EJECTMENT;
EQUITY, 1;
JURISDICTION, A, B.

CRIMINAL LAW.

1. The false making or forging of a promissory note in a State, purporting to be executed by an individual, and made payable at a national bank, is not a fraud upon the United States, or an offence described in Rev. Stat. § 5418. *Cross* v. *North Carolina*, 131.
2. The same act or series of acts may constitute an offence equally against the United States and against a State, and subject the guilty party to punishment under the laws of each government. *Ib.*

CUSTOMS DUTIES.

1. The payment of money to a customs official to avoid an onerous penalty, though the imposition of that penalty may have been illegal, is sufficient to make the payment an involuntary one. *Robertson* v. *Frank Brothers Co.*, 17.
2. The compulsory insertion by an importer of additional charges upon the entry and invoice, which necessarily involve the payment of increased duties, makes the payment of those duties involuntary. *Ib.*
3. The general rule that the valuation of merchandise made by a customs appraiser is conclusive if no appeal be taken therefrom to merchant appraisers, is subject to the qualification that if the appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement may be impeached. *Ib.*
4. A statute which requires the dutiable value of imported goods to be reached by adding to the market value of the goods the cost of transportation, and other defined charges, does not authorize an appraiser to reach the amount of such cost and charges by an estimate or percentage; and an importer who pays duties on an importation thus calculated may, in an action brought to recover such as were illegally exacted, show wherein such estimate or percentage was illegal and excessive. *Ib.*
5. When an article is designated in a tariff act by a specific name, and a duty imposed upon it by such name, general terms in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it. *Robertson* v. *Glendenning*, 158.
6. Under the act of March 3, 1883, 22 Stat. 489, embroidered linen handkerchiefs are subject to a duty of thirty-five per cent ad valorem as "handkerchiefs;" and not to thirty per cent ad valorem as "embroideries." *Ib.*
7. The "professional productions of a statuary or of a sculptor only," as that phrase is used in the tariff act, (§ 2504, Rev. Stat. 2d ed. p. 478,)

embraces such works of art as are the result of the artist's own creation, or are copies of them, made under his direction and supervision, or copies of works of other artists, made under the like direction and supervision, as distinguished from the productions of the manufacturer or mechanic. *Merritt* v. *Tiffany*, 167.

8. Dyes or colors called napthylamine red, orange II, orange IV, and resorcine red J, imported in 1879, were liable to a duty of fifty cents per pound and thirty-five per cent ad valorem under the provision of Schedule M of § 2504 of the Revised Statutes, 2d ed. p. 479, imposing that rate of duty on "Paints and dyes — aniline dyes and colors, by whatever name known," although none of them were known in commerce before 1875, if, according to the understanding of commercial dealers in and importers of them, they would, when imported, be included in the class of articles known as aniline dyes, by whatever name they had come to be known; or if, under § 2499 of the Revised Statutes, they bore a similitude, either in material, quality, or the use to which they might be applied, to what were known as aniline dyes at the time the Revised Statutes were enacted, in 1874. *Pickhardt* v. *Merritt*, 252.
9. Pieces of ivory for the keys of pianos and organs, matched to certain octaves, sold to manufacturers, who scrape them to make them adhere to wood, and then glue them to wood, were charged with duty as manufactures of ivory, under Schedule M of section 2504 of the Revised Statutes of 1874, 2d ed. p. 474, and under Schedule N of section 2502 of the Revised Statutes, as enacted by the act of March 3, 1883, 22 Stat. 511. The importer claimed that they were liable to a less duty, as musical instruments, under Schedule M of section 2504 of the Revised Statutes of 1874, 2d ed. p. 478, and under Schedule N of section 2502 of the Revised Statutes as enacted by said act of March 3, 1883, 22 Stat. 513. In a suit by him against the collector to recover the alleged excess of duty paid, the court charged the jury that if the articles were made on purpose to be used in pianos and organs, and were used exclusively in them, they were dutiable as musical instruments and not as manufactures of ivory; *Held*, that this was error; and that the articles as imported were manufactures of ivory. *Robertson* v. *Gerdan*, 454.
10. Ordinary headless hair-pins, made of steel wire and iron wire, when imported into the United States, are subject to a duty of 45 per cent as "manufactures, articles or wares, not specially enumerated or provided for," "composed wholly or in part of iron, steel, copper," etc., and not as "pins, solid-head, or other." *Robertson* v. *Rosenthal*, 460.
11. Section 7 of the act of March 3, 1883, 22 Stat. 488, c. 121, repealing Rev. Stat. §§ 2907, 2908, took effect immediately upon the passage of the act. *Robertson* v. *Bradbury*, 491.
12. Contemporaneous construction by the Treasury Department of a repealing clause in the customs-laws is entitled to weight in favor of importers. *Ib.*

13. Prior to March 3, 1883, a collector of customs in the United States was required by law, under penalty for non-performance, to ascertain the dutiable value of imported goods by adding to their cost at the place of production the cost of transporting them to the place of shipment to the United States and of the box or case in which they were enclosed. This aggregate was called their price or value "free on board," which, in the absence of fraud, was taken to be their dutiable value. The act of March 3, 1883, 22 Stat. 488, c. 121, § 7, repealed this provision of law. Shortly after this section took effect, and in ignorance of its passage, a shipment of goods produced in Switzerland was made at Antwerp, the consular invoice of which contained in detail the original cost of the goods in Switzerland, the cost of transportation separately stated, and the aggregate "free on board at Antwerp." On their arrival at the port of New York the consignee cabled for a new invoice, to conform to the changed law. One was sent, but without a consular certificate. The consignee presented both invoices at the custom-house and asked to use the second as explanatory of the first, and to enter the goods at their net value, charges off. The weigher's return at the custom-house showed a less quantity of goods than that stated in the invoice. The custom-house officers required the importer to enter the goods at their dutiable value according to the first invoice and gave him to understand that that was all he could do. The collector decided and the Secretary of the Treasury affirmed the decision on appeal, that the cost of transportation, etc., was not to be deducted from the dutiable value of the goods, and that the duties were to be collected on the quantity as shown by the invoice; *Held*, (1) that the levy of duties after March 3, 1883, on a valuation including the charges of transportation from the place of production to the place of shipment was contrary to law; (2) that under the circumstances the importer was not bound to ask for an appraisement under Rev. Stat. § 2926; (3) that the collector was not entitled to exact a duty upon a deficiency in weight arising from loss of goods and not from shrinkage; (4) that the payment of the duties under these circumstances was not voluntary. *Ib.*

14. Ribbons, composed of silk and cotton, in which silk is the component material of chief value, used exclusively as trimmings for ornamenting hats and bonnets, and having a commercial value only for that purpose, are liable to only twenty per cent duty, under the following provision in "Schedule N. — Sundries," in § 2502 of Title 33 of the Revised Statutes, as enacted by the act of March 3, 1883, 22 Stat. 512: "Hats, and so forth, materials for: Braids, plaits, flats, laces, trimmings, tissues, willow-sheets and squares, used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, grass, palm-leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, twenty per centum ad valorem;" and are not liable to fifty per cent duty, under the

following clause in "Schedule L. — Silk and Silk Goods," in the same section, Id. 510: "All goods, wares and merchandise, not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem." *Robertson* v. *Edelhoff*, 614.

15. Plaintiff imported into the United States a quantity of iron advertising or show cards of various sizes. They were sold here for advertising purposes, to hang on walls, or in windows, in public places, and contained generally the name of the person or of the article advertised, and some picture or ornament, which were printed from lithographic stones upon the plates of sheet iron in the same way that lithographing is done upon paper or cardboard. The principal part of the value of the completed card was in the printing done upon the material, and not in the material itself; *Held*, that they were subject to a duty of forty-five per cent ad valorem as manufactures, etc., not specially enumerated or provided for, composed wholly or in part of iron, under the last paragraph of Schedule C, Rev. Stat. § 2502, as enacted March 3, 1883, 22 Stat. 501, c. 121; and not as printed matter not specially enumerated or provided for, under the first paragraph of Schedule M in the same amending act. *Forbes Lithograph Manufacturing Co.* v. *Worthington*, 655.

DAMAGES.

1. In an action in the nature of an action on the case to recover from the defendant damages which the plaintiff has suffered by reason of the purchase of stock in a corporation which he was induced to purchase on the faith of false and fraudulent representations made to him by the defendant, the measure of damages is the loss which the plaintiff sustained by reason of those representations — such as the money which he paid out and interest, and all outlays legitimately attributable to the defendant's fraudulent conduct; but it does not include the expected fruits of an unrealized speculation. *Smith* v. *Bolles*, 125.
2. In applying the general rule that "the damage to be recovered must always be the natural and proximate consequence of the act complained of" those results are to be considered proximate which the wrong-doer, from his position, must have contemplated as the probable consequence of his fraud or breach of contract. *Ib.*

DEED.

A deed of land sold for non-payment of taxes, which recites that the sale was made on a day which was not the day authorized by law, is void on its face, and is not admissible in evidence to support an adverse possession under a statute of limitations. *Redfield* v. *Parks*, 239.

See LOCAL LAW, 15, 16.

DEMURRER.

See PLEADING.

DEPUTY MARSHAL.

See EXECUTIVE.

DISTRICT OF COLUMBIA.

1. The District of Columbia is a municipal corporation, having a right to sue and be sued, and is subject to the ordinary rules that govern the law of procedure between private persons. *Metropolitan Railroad Co.* v. *District of Columbia*, 1.
2. The Maryland statute of limitations of 1715, which is in force in the District of Columbia, embraces municipal corporations. *Ib.*
3. The sovereign power of the District of Columbia is lodged in the government of the United States, and not in the corporation of the district. *Ib.*

EJECTMENT.

In the courts of the United States an action of ejectment is an action at law, and the plaintiff must recover on the legal title. *Redfield* v. *Parks*, 239.

EQUITY.

1. A decision of a District Court, in equity, on a question of fact, affirmed by the Circuit Court, will not be disturbed by this court unless the error is clear. *Dravo* v. *Fabel*, 487.
2. A suit to enforce a mechanic's lien under a territorial statute authorizing the court to order the real estate subject to the lien to be sold, and any deficiency to be paid by the owner, as in suits for the foreclosure of mortgages, is in the nature of a suit in equity. *Idaho and Oregon Land Improvement Co.* v. *Bradbury*, 509.
3. A court of equity need not formally set aside the verdict of a jury upon issues submitted to it, before making a decree according to its own view of the evidence. *Ib.*
4. In a suit in the nature of a suit in equity, a territorial court, after a jury has found upon special issues submitted to it, and has also returned a general verdict, may set aside the general verdict, and substitute its own findings of fact for the special findings of the jury. *Ib.*

See EVIDENCE, 5, 6; JURISDICTION A, 1, 7; LOCAL LAW, 2; MUNICIPAL CORPORATION, 9 (7); REMOVAL OF CAUSES, 4.

ERROR.

Where a defendant, on a trial, introduced under the objection of the plaintiff, parol evidence of what occurred in negotiations between the parties prior to the making of a contract between them, with a view to the construction of the contract, he cannot on a writ of error to review a judgment against him, allege as error the admission of such evidence. *McGillin* v. *Bennett*, 445.

EVIDENCE.

1. The petition of a bankrupt in bankruptcy, in which he states under oath that he owns no real estate and holds no interest in real property is evidence of the execution and validity of a prior deed of his real estate in a suit in which he contests both. *Dent* v. *Ferguson*, 50.
2. After a suit in equity for the infringement of a patent has been heard and decided in favor of the defendant on the merits, the plaintiff cannot put in evidence a disclaimer, except at a rehearing granted upon such terms as the court sees fit to impose. *Roemer* v. *Bernheim*, 103.
3. Before former declarations of a witness can be used to impeach or contradict his testimony, his attention must be drawn to what may be brought forward, with particularity as to time, place and circumstance, so that he can deny it, or make an explanation tending to reconcile what he formerly said with what he is testifying. *Ayers* v. *Watson*, 394.
4. After a witness' testimony has been taken, committed to writing and used in the court, and by death he is placed beyond the power of explanation, then, in another trial had after his death, former declarations by him, whether by deposition or otherwise, contradictory to those made by him in that testimony, cannot for the first time be brought forward and used to impeach it. *Ib.*
5. When the plaintiff in a suit in equity does not waive an answer under oath, the defendant's answer, directly responsive to the bill, is evidence in his behalf. *Dravo* v. *Fabel*, 487.
6. The statute of Pennsylvania providing that a party in a suit in equity may be examined as a witness by the other party as if under cross-examination, and that his evidence may be rebutted by counter testimony, has no application to suits in equity in courts of the United States held within the State. *Ib.*
7. The party offering in a court of the United States in Pennsylvania a deposition taken under that statute, makes the witness his own, and is not at liberty to contend that he is not entitled to credit. *Ib.*
8. In an action to recover damages for the taking of ore from a mine by the proprietor of an adjoining mine, who had broken in, a witness for defendant was asked whether he had a model of the mine, but was not asked whether it was correct, and did not say that it would illustrate the subject about which he was testifying. Plaintiff objected to its production and the objection was sustained. At the hearing in error in this court no copy of the model was produced; *Held*, that it was properly rejected. *Patrick* v. *Graham*, 627.
9. The evidence of a person who did not personally know about the amount of ore taken from the mine was properly rejected at the trial of such action, and cannot be held to have been admissible under a stipulation which does not form part of the record. *Ib.*

See DEED; ERROR; PATENT FOR INVENTION, 12; POST-OFFICE DEPARTMENT, 7.

EXCEPTION.

1. An exception to the refusal of the presiding judge at a jury trial to instruct the jury in language prayed for by counsel is of no avail, if the refusal be followed by instructions in the general charge, substantially to the same effect, but in the language of the court. *Anthony* v. *Louisville & Nashville Railroad Co.*, 172.
2. A general exception to the whole of a charge to the jury will not avail a plaintiff in error if the charge contains distinct propositions and any one of them is free from objections. *Ib.*
3. An exception to the refusal to give instructions in the language of counsel is of no avail if the court substantially gives the same instructions although in different language. *Patrick* v. *Graham*, 627.

See MOTION TO DISMISS OR AFFIRM, (6).

EXECUTIVE.

A regulation by the President to fix the length of service and compensation of special deputy marshals, or supervisors of elections, appointed in pursuance of the provisions in Rev. Stat. §§ 2012, 2016 and 2021, if it has any validity, cannot have a retroactive effect. *United States* v. *Davis*, 334.

See POST-OFFICE DEPARTMENT;
PUBLIC LAND, 4.

EXECUTORY DEVISE.

See JUDGMENT;
WILL.

FINDING OF FACTS.

See EQUITY, 1, 4;
PRACTICE, 2.

FORGERY.

See CRIMINAL LAW, 1.

FRAUD.

1. An executed agreement by one party to cause the debts of the other to be cancelled by his creditors, valid in its inception, is not invalidated as to the debtor by reason of the settlements being effected for a small percentage, or even by the employment of improper means to effect them. *Dent* v. *Ferguson*, 50.
2. The proof in this case fails to show imbecility, dotage or loss of mental capacity on the part of the appellee at the time when the contract in dispute was made. *Ib.*
3. The maxim "*in pari delicto, potior est conditio defendentis,*" is decisive of this case. *Ib.*
4. A creditor made a compromise with his debtor for sixty cents on the

dollar, and subsequently sued him to recover the balance of the claim, on the ground of fraudulent action by the debtor in obtaining the compromise, and that the debtor had violated his agreement not to voluntarily pay any other creditor more than sixty per cent: *Held*, that he could not recover because (1) there was no breach of good faith on the part of the debtor, and no misrepresentation as to his assets, and no false answer made by him to any question; (2) the payment of more than sixty per cent to another creditor having been made when the latter had an attachment suit against the debtor, which was about to be tried, was not a voluntary payment within the meaning of the agreement. *Cleaveland* v. *Richardson*, 318.

5. The evidence in this case fails to establish any fraud in the making of the notes and mortgage which are the subject of controversy, or in the use afterwards made of the notes. *Rio Grande Railroad Co.* v. *Vinet*, 565.

See BANKRUPTCY, 3, 4, 5, 8;
CONTRACT, 3, 5;
FRAUDULENT CONVEYANCE;
INSOLVENT DEBTOR;
POST-OFFICE DEPARTMENT, 2.

FRAUDULENT CONVEYANCE.

1. A conveyance by a debtor, deeply indebted, and in anticipation of decrees and judgments which, added to existing incumbrances, will amount to the value of the property conveyed, will lead a court of equity to presume that the instrument was executed in fraud of the creditors. *Dent* v. *Ferguson*, 50.

2. If a person conveys his property for the purpose of hindering, delaying or defrauding his creditors, and for many years acquiesces and concurs in devices, collusive suits and impositions upon the court in furtherance of that purpose, without taking any step to annul such conveyance or stop such proceedings, a court of equity will not aid him or his heirs to recover the property from the grantee or his heirs after the fraud is accomplished. *Ib.*

See EVIDENCE, 1;
FRAUD, 2, 4.

GARNISHEE.

See INSOLVENT DEBTOR.

HIGHWAY.

See MUNICIPAL CORPORATION, 4, 5.

HUSBAND AND WIFE.

See LOCAL LAW, 2, 3, 4.

INJUNCTION.

1. An appeal from a decree granting, refusing or dissolving an injunction does not disturb its operative effect. *Knox County* v. *Harshman*, 14.

2. When an injunction has been dissolved it cannot be revived except by a new exercise of judicial power. *Ib.*

3. The prosecution of an appeal cannot operate as an injunction where none has been granted. *Ib.*

See JURISDICTION, A, 4;
SUPERSEDURE.

INSOLVENT DEBTOR.

A creditor of an insolvent debtor, having full knowledge of the insolvency, secured for himself a transfer of a large part of the notes, book accounts and debts of the insolvent. Other creditors, by a proceeding which was part of the same transaction, secured their debts by attachments sufficient to absorb all the property of the debtor. A creditor not included in the arrangement sued the debtor and, by garnishee process, brought in the creditor who had obtained the notes, etc.; *Held*, (1) that the garnishee was bound to establish, as against the pursuing creditor, that his claim against the debtor was just, and that he will receive from the assets no more than is reasonably necessary to pay it; and (2) if he is found liable at all as garnishee, he is liable to account not only for the money collected on the notes, accounts, etc., but also for the value of those which remain in his hands, at least to a sufficient amount to satisfy the debt of the pursuing creditor. *Klein* v. *Hoffheimer*, 367.

See ASSIGNMENT FOR BENEFIT OF CREDITORS;
FRAUD, 4.

INSURANCE.

In Iowa it is provided by statute that "any person who shall hereafter solicit insurance or procure applications therefor, shall be held to be the soliciting agent of the insurance company or association issuing a policy on such application, or on a renewal thereof, anything in the application or policy to the contrary notwithstanding;" *Held*, (1) That a person procuring an application for life insurance in that State became by the force of the statute the agent of the company in that act, and could not be converted into the agent of the assured by any provision in the application; (2) That, if he filled up the application (which he was not bound to do) or made representations or gave advice as to the character of the answers to be given by the applicant, his acts in these respects were the acts of the insurer; (3) That a "provision and requirement" (printed on the back of the policy issued on the application) that none of its terms could be modified or forfeitures waived except by an agreement in writing signed by the president or secretary, "whose authority for this purpose will not be delegated" did not change the relation established by the statute of Iowa between the solicitor and the insured. *Continental Life Insurance Co.* v. *Chamberlain*, 304.

INTEREST.

See MUNICIPAL CORPORATION, 3.

INTERNAL REVENUE.

The plaintiff had a place of business, indicated by a sign over the door, where his mail matter was received, and where he could be met by his clients, and where the latter could deliver to him stocks to be sold by him or under his supervision, and he was engaged there in the business of buying and selling stocks for his customers, in which business he regularly employed capital, by the use of which interest was earned upon moneys advanced by him for his customers; *Held*, that he was a "banker" within the meaning of that term as used in Rev. Stat. § 3407, and subject to taxation as such under the provisions of § 3408. *Richmond* v. *Blake*, 592.

INVOLUNTARY PAYMENT.

See CUSTOMS DUTIES, 1, 2, 13 (4);
FRAUD, 4.

JUDGMENT.

A contingent interest in real estate or an executory devise is bound by judicial proceedings affecting the real estate, where the court has before it all parties that can be brought before it in whom the present estate of inheritance is vested, and the court acts upon the property, according to the rights that appear, without fraud. *Miller* v. *Texas & Pacific Railway Co.*, 662.

See JURISDICTION, A, 1;
PRACTICE, 1;
WILL.

JURISDICTION.

A. JURISDICTION OF THIS COURT.

1. A bill in equity prayed for an injunction restraining the defendant from trespassing on the land of the plaintiff and taking mineral and ore therefrom, and that he account to the plaintiff for the value of the ore already taken therefrom. After a hearing on pleadings and proofs, the Circuit Court made a decree granting a perpetual injunction, and ordering an account before a master; *Held*, that the decree was not final or appealable. *Keystone Manganese and Iron Co.* v. *Martin*, 91.
2. The granting or refusal, absolute or conditional, of a rehearing in equity, rests in the discretion of the court, and is not a subject of appeal. *Roemer* v. *Bernheim*, 103.
3. This court has jurisdiction to review, on writ of error, a decision of the highest court of a State, in which it is decided that a provision in a tax act of the State that it shall not apply to railroad corporations exempted from taxation by their charters is not applicable to a par-

ticular corporation, party to the suit, although its charter contains a provision respecting exemption from taxation. *Yazoo & Mississippi Valley Railroad Co.* v. *Thomas*, 174.

4. A complaint in a suit in a District Court in Idaho Territory prayed for an injunction restraining the defendant from interfering with the possession of a mining claim which the plaintiff had, by a written agreement, licensed the defendant to work, for a compensation, the agreement also containing a provision for the conveyance of the claim to the defendant, on certain terms. The complaint also prayed for an accounting concerning all ore taken from the mine by the defendant, and the payment to the plaintiff of the amount due to the plaintiff under the agreement. The defendant filed a cross complaint praying for a specific performance by the plaintiff of the contract to convey. The District Court, by one judgment, granted to the plaintiff the injunction asked, and ordered an accounting before a referee, and dismissed the cross complaint. On appeal by the defendant the judgment was affirmed by the Supreme Court of the Territory, and the defendant appealed to this court; *Held*, (1) The judgment was not final or appealable; (2) It made no difference that the judgment dismissed the cross complaint; (3) The right of the defendant to appeal from the judgment, so far as the cross complaint is concerned will be preserved; and time will run against him, as to all parts of the present judgment of the District Court only from the time of the entry of a final judgment after a hearing under the accounting. *Winters* v. *Ethell*, 207.

5. The rulings upon a motion for a new trial are not open to consideration in this court. *Dahl* v. *Raunheim*, 260.

6. The objection that a corporation cannot sue in a territorial court, on the ground that it does not appear that the corporation has complied with the conditions imposed by a statute of the Territory upon its transacting business there, cannot be urged for the first time in this court. *Dahl* v. *Montana Copper Co.*, 264.

7. On appeal from the decree of a territorial court in a proceeding in the nature of a suit in equity, this court cannot consider the weight or sufficiency of evidence, but only whether the facts found by the court below support the decree, and whether there is any error in rulings, duly excepted to, on the admission or rejection of evidence. *Idaho and Oregon Land Improvement Co.* v. *Bradbury*, 509.

8. Where the Supreme Court of a State decides a Federal question, in rendering a judgment, and also decides against the plaintiff in error on an independent ground not involving a Federal question, and broad enough to maintain the judgment, the writ of error will be dismissed, without considering the Federal question. *Hale* v. *Akers*, 554.

9. This court has jurisdiction to hear and determine, irrespective of the amount involved, an appeal from a decree of the Supreme Court of the Territory of Utah, in which the power of the governor of the Ter-

ritory, under the organic act, to appoint a person to be the auditor of public accounts is drawn in question. *Clayton* v. *Utah*, 632.

See APPEAL, 1, 2; EQUITY, 1; EVIDENCE, 6; EXCEPTION; MOTION TO DISMISS OR AFFIRM; PRACTICE, 5; REMOVAL OF CAUSES.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. An action on a marshal's bond, to recover damages for the wrongful taking of goods under an attachment issued out of a Circuit Court of the United States, is a case arising under the laws of the United States, and is within the jurisdiction of a Circuit Court of the United States without averment of citizenship of the parties. *Feibelman* v. *Packard*, 109 U. S. 421, affirmed and applied. *Bachrack* v. *Norton*, 337.
2. Property of a debtor, brought within the custody of the Circuit Court of the United States by seizure under process issued upon its judgment, remains in its custody to be applied in satisfaction of its judgment, notwithstanding the subsequent death of the debtor before the sale under execution. *Rio Grande Railroad Co.* v. *Gomila*, 478.
3. The jurisdiction of a court of the United States, once obtained over property by its being brought within its custody, continues until the purpose of the seizure is accomplished, and cannot be impaired or affected by any legislation of the State, or by any proceedings subsequently commenced in a state court. *Ib.*
4. Probate laws of a State which, upon the death of a party to a suit in a Federal Court, withdraw his estate from the operation of the execution laws of the State, and place it in the hands of his executor or administrator for the benefit of his creditors and distributees, do not apply when, previous to the death of the debtor, his property has been seized upon execution, and thus specifically appropriated to the satisfaction of a judgment in that court. *Ib.*

See COURTS OF THE UNITED STATES; CRIMINAL LAW, 2; REMOVAL OF CAUSES.

C. JURISDICTION OF STATE COURTS.

A State is not deprived of jurisdiction over a person who criminally forges a bill of exchange or promissory note with intent to defraud, in violation of its statutes, or of its power to punish the offender committing such offence, by the fact that he follows this crime up by committing against the United States the further crime of making false entries concerning such bill or note on the books of a national bank, with intent to deceive the agent of the United States designated to examine the affairs of the bank, and in violation of the statute of the United States in that behalf. *Cross* v. *North Carolina*, 131.

See CRIMINAL LAW, 2; JURISDICTION, B, 4.

LETTERS PATENT.

See PATENT FOR INVENTION.

LEGAL MAXIMS.

See FRAUD, 3.

LEX LOCI.

See MUNICIPAL CORPORATION, 3.

LIEN.

1. The doctrine that a vendor not taking security for the price of real estate sold by him holds in equity a lien upon the property for such price has no application to this case. *Thompson* v. *White Water Valley Railroad Co.*, 68.
2. In Indiana, a person who contracts with a telegraph corporation to do the specified work of putting up certain lines of wire on poles, is not an "employé" of the corporation, within the meaning of the act of the legislature of Indiana, approved March 13, 1877, (Laws of Indiana 1877, Special Session, 27, c. 8; also, Rev. Stats. Indiana, §§ 5286–5291,) giving a first and prior lien on the corporate property and earnings of a corporation to its employés, for all work and labor done and performed by them for the corporation, from the date of their employment by the corporation. *Vane* v. *Newcombe*, 220.
3. Such a lien is not given to him by virtue of the mechanics' lien act of Indiana, of March 6, 1883, (Laws of 1883, 140; Elliott's Supplement of 1889, §§ 1688 and 1690,) unless he complies with that act in regard to describing, in his notice of lien, the lot or land on which the structure stands on which he claims a lien. *Ib.*
4. By perfecting a claim to his lien under the act of 1877, he waived the right, if any, which he had to a common law lien, as to the personal property and earnings of the corporation. *Ib.*
5. The poles and wires were real estate on which he could have no lien at common law. *Ib.*
6. Moreover he gave up any right he had to a common law lien, as to the wires, by giving up possession of them. *Ib.*

LIMITATION, STATUTES OF.

1. This court expresses no opinion upon the question whether, when the right of property in highways and public places is vested in a municipality, an assertion of that right against purprestures or public nuisances is subject to the law of limitations. *Metropolitan Railroad Co.* v. *District of Columbia*, 1.
2. An action by a municipal corporation to recover from a street railroad company the cost of maintaining pavements in a street, which the company is, by its charter, bound to maintain, is not an action upon

the statute, but one in assumpsit, liable to be barred by a statute of limitation. *Ib.*

See BANKRUPTCY, 1, 2, 7, 8, 9; DEED; LOCAL LAW, 17; PUBLIC LAND, 1.

LOCAL LAW.

1. The defendant in a possessory action in the nature of ejectment, brought in a court of Washington Territory where the laws permitted a mingling of common law and equity jurisdictions, pleaded the general issue, and also set up four defences, one of which was the statute of limitations, and one of which was an equitable defence. The plaintiff filed a general demurrer to the second, third and fourth defences. The demurrer being overruled, the plaintiff elected to stand upon it, and the case was thereupon dismissed; *Held*, that the final judgment was one dismissing the action at law, and was not a judgment in the exercise of chancery jurisdiction. *Brown* v. *Rank*, 216.
2. In Louisiana, as in the States in which the English system of equitable jurisprudence prevails, a creditor who has received from his debtor the legal title to real estate, may institute other proceedings against the debtor in relation to the same property, in order to strengthen his title or establish his lien, if he deems it his interest to do so. *Bradley* v. *Claflin*, 379.
3. In Louisiana a married woman, who has received from her husband a conveyance of real estate as a *dation en paiement* of a debt against him arising out of her paraphernal property which came into his control, may cause a mortgage of the same property to secure the same debt to be recorded in the manner provided by law, and the mortgage may become valid if the title under the conveyance fails. *Ib.*
4. In Louisiana a mortgage or lien on real estate of the husband in favor of the wife is created by Art. 3319 [3287] of the code when the husband receives her dotal or paraphernal property, which mortgage though not registered, is not merged in a simulated and fraudulent title conveyed to her by her husband as a *dation en paiement*, and its registry by the wife makes it valid against creditors of the husband asserting title under liens subsequent thereto. *Ib.*
5. A judgment in Texas against a partnership, and against one member of it upon whom process has been served, no process having been served upon another member who is non-resident and absent, binds the firm assets so far as the latter is concerned, but not his individual property. *Sugg* v. *Thornton*, 524.
6. In Texas an equitable claim of title to real estate is equally available with a legal one. *Miller* v. *Texas and Pacific Railway*, 662.
7. In Texas, the holder of a head-right-certificate could locate it upon a tract of public land, and then abandon the location and locate it upon another tract, and, in such case the abandoned tract became thereby again public land, subject to location by other parties. *Ib.*

8. From the evidence it would appear that the Rutledge certificate which is in controversy in this case was in the land office in Texas on or before August 1, 1857, in compliance with the requirements of the act of the Legislature of Texas of August 1, 1856. 1 Paschal's Digest, 701, art. 4210. *Ib.*
9. By the act of the legislature of Texas of April 25, 1871, 2 Paschal's Digest, 1453, arts. 7096–7099, it was provided that a certificate of location and survey of public lands, not on file at the passage of that act, and not withdrawn for locating an unlocated balance, should be returned to and filed in the office within eight months thereafter, or the location and survey should be void; *Held*, that in the absence of clear proof that a valid located certificate was not on file there within the statutory time, the court would not raise such a presumption in favor of another title, superimposed upon the land at a time when the certificate was valid and possession was enjoyed under it. *Ib.*
10. The practice of locating land certificates upon prior rightful locations is not favored by the laws of Texas. *Ib.*
11. The failure of the holder of a head-right-certificate in Texas to complete his title, by complying with statutory provisions in regard to the filing of his certificate, enures to the benefit of the State alone. *Ib.*
12. In Texas the rights of a subsequent locator, having actual notice of a prior location, are postponed to the superior rights of the prior locator, although the subsequent location may have passed into a patent. *Ib.*
13. The provisions in the constitution and laws of Texas respecting the location of land certificates, reviewed. *Ib.*
14. In Texas land certificates are chattels, and may be sold by parol agreement and delivery, the purchaser and grantee thereby acquiring the right to locate a certificate and to take out a patent in his own name and to his own use. *Ib.*
15. The failure in the certificate of acknowledgment of a deed of the separate property of a married woman in Texas, to state that she was examined apart from her husband, cannot be supplied by proof that such was the fact. *Ib.*
16. In Texas an habendum to a deed running "to have and to hold to him the said" grantee, "his heirs and assigns forever, free from the just claim or claims of any and all persons whomsoever, claiming or to claim the same," imports a general warranty and estops the grantor and his heirs from setting up an adverse title against the grantee. *Ib.*
17. On the facts as stated in the opinion the court holds that the statute of limitations of Texas is a complete bar to the claims set up by the complainants, both in the original bill and in the cross-bills. *Ib.*

Alabama. *See* CONSTITUTIONAL LAW, 9.
California. *See* CONSTITUTIONAL LAW, 7.
Colorado. *See* CORPORATION.
Indiana. *See* LIEN, 2, 3, 4, 5, 6.

Iowa. *See* INSURANCE.
Michigan. *See* CONSTITUTIONAL LAW, 6.
MUNICIPAL CORPORATION, 9.
Ohio. *See* MUNICIPAL CORPORATION, 4, 5.
Pennsylvania. *See* CONSTITUTIONAL LAW, A, 2.
EVIDENCE, 6, 7.
Texas. *See* ASSIGNMENT FOR BENEFIT OF CREDITORS, 2, 3, 4.
CONSTITUTIONAL LAW, A, 1, 10.
MOTION TO DISMISS OR AFFIRM, 2.
Utah. *See* CONSTITUTIONAL LAW, A, 11.

MANDAMUS.

A judgment for damages and costs was recovered in a Circuit Court of the United States, on bonds and coupons issued by a municipal corporation. In answer to an alternative writ of mandamus issued three and one-half years afterwards, for the levy of a tax to satisfy the judgment, it was set up, in bar, that the original judgment was void because the Circuit Court had no jurisdiction of the subject matter of the action on the ground that the bonds were not payable to order or bearer. A peremptory writ was granted by a judgment to review which a writ of error was taken. A motion to dismiss the writ was made, united with a motion to affirm; *Held*, (1) Although there was no ground for contending that this court had no jurisdiction, yet the reasons assigned for taking the writ of error were frivolous, and it was taken for delay only; (2) The principal of the bonds was payable to bearer; (3) The judgment ought to be affirmed; (4) The proceeding by mandamus being in the nature of execution, if the prosecution of writs of error to the execution of process to enforce judgments were permitted when no real ground existed therefor, such interference might become intolerable, and this court in the exercise of its inherent power and duty to administer justice, ought, independently of subdivision 5 of rule 6, to reach the mischief by affirming the action below; (5) No different interpretation is put on that subdivision from that which has hitherto prevailed. *Chanute City* v. *Trader*, 210.

MASTER AND SERVANT.

A person employed by a corporation under a written contract to sell sewing-machines, and to be paid for his services by commissions on sales and collections; the company furnishing a wagon, and he furnishing a horse and harness, to be used exclusively in canvassing for such sales and in the general prosecution of the business; and he agreeing to give his whole time and best energies to the business, and to employ himself under the direction of the company and under such rules and instructions as it or its manager shall prescribe; is a servant of the company, and the company is responsible to third persons injured by

his negligence in the course of his employment. *Singer Manufacturing Co.* v. *Rahn*, 518.

MECHANICS' LIEN.

See EQUITY, 2;
LIEN, 2, 3, 4.

MICHIGAN.

See CONSTITUTIONAL LAW, A, 6.

MINERAL LAND.

1. An applicant for a placer patent, who has complied with all the proceedings essential for the issue of a patent for his location, but whose patent has not issued, may maintain an action to quiet title against a person asserting title to a portion of the placer location under a subsequent location of a lode claim. *Dahl* v. *Raunheim*, 260.
2. If on the trial of such an action the court instruct the jury that if they believe that the premises were located by the grantors and predecessors in interest of the plaintiff as a placer mining claim in accordance with law and they continued to hold the premises until conveyed to the plaintiff, and the plaintiff continued to hold them up to the time of the application of a patent therefor, and at the time of the application there was no known lode or vein within the boundaries of the premises claimed, and there is a general verdict for the plaintiff, the jury must be deemed to have found that the lode claimed by the defendant did not exist when the plaintiff's application for a patent was filed. *Ib.*
3. When a person applies for a placer patent in the manner prescribed by law, and all the proceedings in regard to publication and otherwise are had thereunder which are required by the statutes of the United States, and no adverse claims are filed or set up, and it appears that the ground has been surveyed and returned by the Surveyor General to the local land office as mineral land, the question whether it is placer ground is conclusively established and is not open to litigation by private parties seeking to avoid the effect of the proceedings. *Ib.*

See EVIDENCE, 8, 9;
JURISDICTION, A, 1, 4.

MISTAKE OF FACT.

See POST-OFFICE DEPARTMENT, 3.

MORTGAGE.

A mortgage by a railroad company, which covers its entire property and also all property appertaining to its road which it might afterwards acquire, is valid as to such after-acquired property; and the bonds issued under it are a prior encumbrance on a part of the chartered line constructed, after the funds realized from the mortgage bonds had

been exhausted, out of moneys subsequently furnished by parties who took from the company a special lien upon the rents and profits of the section so constructed with their money. *Thompson* v. *White Water Valley Railroad Co.*, 68.

See LOCAL LAW, 2, 3, 4.

MOTION FOR NEW TRIAL.

See JURISDICTION, A, 5.

MOTION TO DISMISS OR AFFIRM.

1. There is color for a motion to dismiss a writ of error to a state court for want of jurisdiction if it appear that no Federal question was raised on the trial of the case, but that it was made for the first time in the highest appellate court of the State sitting to review the decision of the case in the trial court. *Sugg* v. *Thornton*, 524.
2. Plaintiffs sued defendant in a state court in Texas to recover $5970, the alleged value of goods destroyed by a fire charged to have been caused by defendant's negligence. Defendant pleaded and excepted to the petition. The cause was then removed to the Circuit Court of the United States on defendant's motion, who there answered further, pleading the general issue, excepting to the petition among other things for insufficiency and vagueness in the description of the goods, and charging contributory negligence on plaintiffs' part. Plaintiffs filed an amended petition more precise in statement and reducing the damage claimed to $4656.71. To this defendant answered, again charging contributory negligence and setting up, "by way of set-off, counterclaim and reconvention," injuries to himself to the extent of $8000, resulting from plaintiffs' negligence, for which he asked judgment. Plaintiffs excepted to the cross-demand. On the 6th October, 1888, the cause coming to trial, defendant's exceptions were overruled, except the one for vagueness, and as to that plaintiffs were allowed to amend; plaintiffs' exceptions to the counterclaim were sustained; and the jury rendered a verdict for $4300 principal, and $792.15 interest. It appeared by the record that plaintiffs on the same day remitted $435.50, and judgment was entered for $4656.65; but it further appeared that on the 8th October, plaintiffs moved for leave to remit that amount of the judgment and leave was granted the remittitur to be as of the day of the rendition of the judgment, and the judgment to be for $4656.65 and costs. On the same 8th of October, defendant filed a bill of exceptions in the cause "signed and filed herein and made a part of the record in this cause this 8th day of October, 1888." On the 9th October, a motion for a new trial was overruled. On a motion to dismiss the writ of error or to affirm the judgment, *Held*, (1) That the remittitur was properly made, and that it was within the power of the Circuit Court to order it as it was ordered; (2) That if no other question were raised in the case, the

motion to dismiss would be granted; (3) That the counterclaim, being founded on a "cause of action arising out of, or incident to, or connected with the plaintiffs' cause of action," was properly set up, and conferred upon this court jurisdiction to examine further into the case; (4) That the plaintiffs' exception to the counterclaim was properly sustained; (5) That if the counterclaim could be maintained, a recovery could be had only for damages which were the natural and proximate consequences of the act complained of; (6) That the defendant's exceptions to the charge of the court having been taken two days after the return of the verdict, were taken too late; (7) That the facts furnished ground for maintaining that the counterclaim was set up only for the purpose of giving jurisdiction to this court; (8) But whether that were so or not, the judgment ought to be affirmed on the case made. *Pacific Express Co.* v. *Malin*, 531.

MUNICIPAL CORPORATION.

1. The negotiable security of a municipal corporation, invalid in the hands of the original holder by reason of an irregularity in its issue to which he was a party, but which becomes valid in the hands of an innocent purchaser for value without knowledge or notice of the irregularity, remains valid when acquired by another purchaser for value, who was no party to the irregularity, but who, at the time of his purchase, had knowledge of the infirmity, and of a pending suit against the original holder and others to have the whole issue declared invalid by reason thereof. *Scotland County* v. *Hill*, 107.
2. The litigations respecting the Scotland County bonds in the state courts and in the courts of the United States reviewed. *Ib.*
3. In the absence of a provision to the contrary, overdue coupons on bonds of a municipal corporation bear interest at the legal rate in the place where they are payable. *Ib.*
4. In Ohio it is the duty of a municipal corporation to keep the streets of the municipality in order; and a person receiving injuries in consequence of its neglect so to do, has a right of action at the common law for the damage caused thereby. *Cleveland* v. *King*, 295.
5. A building-permit by municipal authorities authorizing the occupation of part of a public street as a depository for building materials, and requiring proper lights at night to indicate their locality, does not relieve the municipality from the duty of exercising a reasonable diligence to prevent the holders of the permit from occupying the street in such a way as to endanger passers-by in their proper use of it. *Ib.*
6. It is settled law that a municipality has no power to issue its bonds in aid of a railroad, except by legislative permission. *Young* v. *Clarendon Township*, 340.
7. The legislature in granting permission to a municipality to issue its bonds in aid of a railroad may impose such conditions as it may choose. *Ib.*

8. Where authority is granted to a municipality to aid a railroad and incur a debt in extending such aid, that power does not carry with it authority to execute negotiable bonds except subject to the restrictions and directions of the enabling act. *Ib.*

9. The act of the legislature of Michigan of March 22, 1869, "to enable any township, city or village to pledge its aid by loan or donation to any railroad company, etc.," provided that the bonds when "issued" should be "delivered by the person . . . having charge of the same to the treasurer of this State;" that the treasurer should "hold the same as a trustee for the municipality issuing the same and for the railroad company for which they were issued;" that whenever the railroad company should "present to said treasurer a certificate from the governor of this State that such railroad company has in all respects complied with the provisions of this act . . . such of said bonds as said company shall be entitled to receive shall be delivered to said company;" that the treasurer should endorse upon each bond delivered the date of its delivery and to whom it was delivered; and that in case the bonds were not demanded in compliance with the terms of the act within three years from the date of delivery to the treasurer, "the same shall be cancelled by said treasurer and returned to the proper officers of the township or city issuing the same." The township of Clarendon, in Michigan, having complied with the requirements of the act on its part, delivered to the state treasurer its bonds to the amount of $10,000, dated July, 1869, for the benefit of the Michigan Air Line Railroad Company. The company completed its railroad before February, 1871, and became entitled to the governor's certificate under the act; but on May 26, 1870, the Supreme Court of the State had declared the act to be unconstitutional, and the governor in consequence thereof refused to give the certificate. On the 28th May, 1872, before the expiration of three years from their delivery, the treasurer returned the bonds to the township. November 12, 1884, the appellant obtained judgment against the railroad company and an execution was issued, which was returned *nulla bona.* On the 24th February, 1885, he filed a bill in equity against the township and the company, claiming that the township was equitably indebted to the company to the amount of the bonds and coupons with interest, and that he was entitled to receive the amount of that indebtedness, and to apply it on his judgment debt; *Held*, (1) that the municipal authorities had no power to deliver the bonds, after their execution, except to the state treasurer, and that the word "deliver" as used in the statute with reference to this act, was used in its ordinary and popular sense, and not in its technical sense; (2) that to the governor alone was given the power to determine whether the bonds should ever in fact issue, and, if issued, when they should issue; (3) that the endorsement by the treasurer upon each bond of the date of its delivery and of the person to whom it was

delivered, was necessary to make it a completed bond and that this could not be done until the governor's authorization was made; (4) that as the bonds were never endorsed and delivered by the treasurer they never became operative; (5) that the rules in regard to escrows could not be applied to these instruments because they were never executed in compliance with the peremptory requirements of the statute; (6) that if the railroad company had any cause of action against the township by reason of these facts, it was barred by the statute of limitations of the State of Michigan; (7) that there was no equitable reason why the bar at law should not be set up and maintained in equity. *Ib.*

See DISTRICT OF COLUMBIA, 1, 2;
LIMITATION STATUTES OF, 1, 2;
MANDAMUS.

NATIONAL BANK.

1. The exemption of national banks from suits in state courts in counties other than the county or city in which the association was located, granted by the act of February 18, 1875, 18 Stat. 316, c. 80, was a personal privilege which could be waived by appearing to such a suit brought in another county, but in a court of the same dignity, and making defence without claiming the immunity granted by Congress. *Charlotte First National Bank* v. *Morgan*, 141.
2. The provision in the act of July 12, 1882, 22 Stat. 163, c. 290, § 4, respecting suits by or against national banks, refers only to suits brought after the passage of that act. *Ib.*
3. A national bank was sued to recover interest alleged to have been usuriously exacted. The complaint which was sworn to January 13, 1883, charged that the usurious transactions took place "after the 12th day of February, 1877, and before the commencement of this action, to wit: on the 25th day of May, 1878, and at other times and dates subsequent thereto." The defendant answered generally and set up the statute of limitations. The jury found that usurious interest had been taken during the two years next before the commencement of the action, and rendered a verdict for plaintiff on which judgment was entered. The defendant moved in arrest of judgment, and also for a new trial, on the ground of a variance between the pleadings and proof; *Held*, that, although the complaint might have been more specific, enough was alleged to sustain the judgment. *Ib.*

See CRIMINAL LAW, 1;
JURISDICTION, C.

NEGOTIABLE SECURITY.

See MUNICIPAL CORPORATION, 1, 3.

NUISANCE.

See LIMITATION, STATUTES OF, 1.

PARTNERSHIP.

1. In the absence of written stipulations or other evidence showing a different intention, partners will be held to share equally both profits and losses; but it is competent for them to determine, as between themselves, the basis upon which profits shall be divided and losses borne, without regard to their respective contributions, whether of money, labor, or experience to the common stock. *Paul* v. *Cullum*, 539.

2. L. and W., the owners of a stock of goods, made a written agreement with H. reciting that the latter was "taken into partnership," that the stock should be inventoried and delivered to H. "as a capital stock" "to be sold with his entire direction and supervision under the name" of the L. and W. Company; that a new set of books should be opened, showing the business of the new firm; that the profits and losses should be shared in the proportion of eight-tenths for L. and W. and of two-tenths for H.; and that the "partnership" should pertain only to merchandising and have no connection with any outside business L. and W. might have jointly or separately. After this agreement was made, L. constituted H. his attorney in fact, with power "to bargain, and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession, or in action, and to make, do and transact all and every kind of business of what nature and kind soever, and also, for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfactions of mortgage, judgment, and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises;" *Held*, (1) That by this agreement L., W. and H. became partners and as between themselves established a community of property as well as of profits and losses in respect to said goods and the business of the L. and W. Company; (2) That in the absence of L. this power of attorney authorized H. to represent him in a general assignment of the property of the L. and W. Company for the benefit of its creditors. *Ib.*

See CONSTITUTIONAL LAW, A, 10.

PATENT FOR INVENTION.

1. Claims 1, 3, 5 and 6 of reissued letters patent No. 8718, granted May 20, 1879, to Charles F. Brush for "improvements in electric lamps," the original patent, No. 203,411, having been granted to said Brush May 7, 1878, are invalid by reason of their prior existence as perfected

inventions in a lamp made in June, 1876, by one Hayes. *Brush* v. *Condit*, 39.

2. Although claims 5 and 6 speak of an "annular clamp," and the apparatus of Hayes had a rectangular clamp, the latter embodied the principle of the invention, carried out by equivalent means, the improvement, if any, in the use of the circular clamp over the rectangular clamp being only a question of degree in the use of substantially the same means. *Ib.*
3. The first five claims of letters patent No. 288,494, granted to Joseph Aron, as assignee of William W. Rosenfield, the inventor, November 13, 1883, for an "improvement in railway car gates," are invalid, because what Rosenfield did did not require invention. *Aron* v. *Manhattan Railway Co.*, 84.
4. The same devices employed by him existed in earlier patents; all that he did was to adapt them to the special purpose to which he contemplated their application, by making modifications which did not require invention, but only the exercise of ordinary mechanical skill; and his right to a patent must rest upon the novelty of the means he contrived to carry his idea into practical application. *Ib.*
5. The fourth claim in the reissued letters patent No. 8388, granted August 27, 1878, to Augustus Day for an improvement in track clearers, viz., "The combination with the draw-bar C and scraper A of the diagonal brace E, as and for the purpose set forth," would naturally suggest itself to any mechanic, and involves no patentable novelty. *Day* v. *Fairhaven & Westville Railway Co.*, 98.
6. A claim in letters patent must be held to define what the Patent Office has determined to be the patentee's invention, and is not to be enlarged in construction beyond the fair interpretation of its terms. *Ib.*
7. Letters patent No. 208,541 granted to William Roemer, September 1, 1878, for improvements in locks for satchels, are void for want of novelty. *Roemer* v. *Bernheim*, 103.
8. The improvement in grain-car doors, as claimed by Chauncey R. Watson and patented to him by letters patent No. 203,226, dated April 30, 1878, may have been new and useful, but did not involve the exercise of the inventive faculty, and embraced nothing that was patentable. *Watson* v. *Cincinnati, Indianapolis &c. Railway Co.*, 161.
9. Claim 1 of letters patent No. 273,569, granted to Charles Marchand, March 6, 1883, for an improvement in the manufacture of hydrogen peroxide, namely, "1. The method of making hydrogen peroxide by cooling the acid solution, imparting thereto a continuous movement of rotation, as well in vertical as in horizontal planes — such for example, as imparted by a revolving screw in a receptacle — and adding to said acid solution the binoxide in small quantities, while maintaining the low temperature and the rotary or eddying movements, substantially as described," is invalid, as not covering any patentable subject matter. *Marchand* v. *Emken*, 195.

10. The claim of letters patent No. 172,346, granted to Herman Royer, January 18, 1876, for an improvement in machines for treating rawhides, namely, "In combination with the drum A of a rawhide fulling machine, operating to twist the leather alternately in one direction and the other, a shifting device for the purpose of making the operation automatic and continuous, substantially as described," does not cover any patentable combination, it being a mere aggregation of parts. *Royer* v. *Roth*, 201.

11. The automatic shifting device was old, as attached to a washing machine, and there was no modification of its action produced by attaching it to the fulling machine. Therefore, its application to that machine did not require the exercise of invention. *Ib.*

12. Where a complaint in an action at law for the infringement of a reissued patent for an invention, avers that the reissue is "for the same invention," as the original patent, and the answer denies "each and every, all and singular, the allegations" of the complaint, it is error, on the trial, to exclude the original patent from being put in evidence by the defendant. *Oregon Improvement Co.* v. *Excelsior Coal Co.*, 215.

13. The claim of letters patent No. 195,233, granted to William Roemer, September 18, 1877, for an improvement in a combined lock and handle for travelling-bags, namely, "The lock-case made with the notched sides *a a*, near its ends to receive and hold the handle-rings B," substantially as herein shown and described, having been inserted by amendment, after his application for a broader claim was rejected, and after he had amended his specification by stating that he dispensed with an extended bottom-plate, cannot be so construed as to cover a construction which has an extended bottom-plate. *Roemer* v. *Peddie*, 313.

14. When a patentee, on the rejection of his application, inserts in his specification, in consequence, limitations and restrictions for the purpose of obtaining his patent, he cannot, after he has obtained it, claim that it shall be construed as it would have been construed, if such limitations and restrictions were not contained in it. *Ib.*

15. In a suit in equity, brought under § 4915 of the Revised Statutes, in a Circuit Court of the United States, there was a decree in favor of the plaintiff, that he was entitled to receive a patent for certain claims. The decision rested solely on the fact that he was the prior inventor, as between him and the defendant. On appeal by the defendant to this court; *Held*, that this court must consider the question of the patentability of the inventions covered by the claims, and that, as they were not patentable, the decree must be reversed and the bill be dismissed. *Hill* v. *Wooster*, 693.

See EVIDENCE, 2.

PENNSYLVANIA.

See CONSTITUTIONAL LAW, A, 2.

PLEADING.

When a pleading misstates the effect and purpose of a statute upon which the party relies, a demurrer to it does not admit the correctness of the construction, or that the statute imposes the obligations or confers the rights which the party alleges. *Pennie* v. *Reis*, 464.

See PATENT FOR INVENTION, 12;
PRACTICE, 1.

POST-OFFICE DEPARTMENT.

1. When a part of an established post-route is found to be impracticable by reason of being almost impassable, that portion of it may be changed by the Post-Office Department without thereby creating a new route, requiring a new advertisement and bid. *United States* v. *Barlow*, 271.
2. In order to maintain an action brought to recover moneys alleged to have been fraudulently obtained from the Post-Office Department for expediting mail service, it is not necessary to show that a subordinate officer of the Department participated in the fraud. *Ib.*
3. Money paid by the Post-Office Department to a contractor for carrying the mails under a clear mistake of fact, and not through error in judgment, may be recovered back. *Ib.*
4. The Postmaster General, in the exercise of the judgment and discretion reposed in him in regard to matters appertaining to the postal service, is not at liberty to act upon mere guesses and surmises, without information or knowledge on the subject. *Ib.*
5. When a sum of money has been voluntarily paid by the United States to a mail contractor, by mistake of fact, or under circumstances to bring the payment within the provisions of Rev. Stat. § 4057, the amount may be applied by the government towards the payment of any balance that may be found due him, in the settlement of his accounts, for other services under his contract. *United States* v. *Carr*, 644.
6. A contract to carry the mails from one station to another station, by way of two intervening specified stations, a stated number of miles and back, is not performed by carrying them over that route one way, returning from the terminal station to the place of beginning by a shorter route, avoiding the intermediate stations. *Ib.*
7. When a contractor for carrying the mails seeks to recover the full contract price, for a service which as actually performed was less than that contracted for, the burden of proof is on him to show knowledge or information by the Department of his conduct in the premises. *Ib.*
8. Knowledge by the Post-Office Department of the failure of a mail contractor to perform the full service required by his contract is not to be presumed from reports of the local postmaster to the Department that the service had been performed. *Ib.*

PRACTICE.

1. When the answer, in an action at law, both denies the plaintiff's allegations and sets up matters in avoidance, and the jury returns a general verdict for the defendant upon all the issues, he is entitled to judgment, notwithstanding any error in rulings upon the matters in avoidance, or any statements of fact in that part of the answer setting up those matters, or in a bill of exceptions to such rulings. *Glen* v. *Sumner*, 152.
2. Either a statement of facts by the parties, or a finding of facts by the Circuit Court, is strictly analogous to a special verdict, and must state the ultimate facts of the case, presenting questions of law only, and not be a recital of evidence or of circumstances, which may tend to prove the ultimate facts, or from which they may be inferred. *Raimond* v. *Terrebone Parish*, 192.
3. *Avery* v. *Cleary*, *ante*, 604, affirmed; but as the defendant did not prosecute a writ of error, the judgment below is affirmed on the ground that no error was committed to the plaintiff's prejudice. *Cleary* v. *Ellis Foundry Co.*, 612.
4. It was proper for the Circuit Court to direct a verdict for the plaintiff. *Robertson* v. *Edelhoff*, 614.
5. Where a case has gone to a hearing, testimony been submitted to the jury under objections but without stating any reason for the objection, and a verdict rendered with judgment on the verdict, the losing party cannot, in the appellate court, state for the first time a reason for that objection which would make it good. *Patrick* v. *Graham*, 627.

See COURTS OF THE UNITED STATES;
EQUITY, 3, 4;
EXCEPTION;
JURISDICTION A, 2, 6, 7;
MANDAMUS;
MOTION TO DISMISS OR AFFIRM.

PROBATE COURT.

See JURISDICTION, B, 4.

PUBLIC LAND.

1. While the title to public land is still in the United States, no adverse possession of it can, under a state statute of limitations, confer a title which will prevail in an action of ejectment in the courts of the United States, against the legal title under a patent from the United States. *Redfield* v. *Parks*, 239.
2. So long as a homestead entry, valid upon its face, remains a subsisting entry of record whose legality has been passed upon by the land authorities, and their action remains unreversed, it is such an appropriation of the tract as segregates it from the public domain, and

precludes it from a subsequent grant by Congress. *Hastings & Dakota Railway Co.* v. *Whitney*, 357.

3. A defect in a homestead entry on public land in Minnesota, made by a soldier in active service in Virginia during the war, which was caused by want of the requisite residence on it, was cured by the act of June 8, 1872 "to amend an Act relating to Soldiers' and Sailors' Homesteads," 17 Stat. 333, c. 338, § 1 (Rev. Stat. § 2308). *Ib.*
4. While the decisions of the Land Department on matters of law are not binding on this court, they are entitled to great respect. *Ib.*

See CONSTITUTIONAL LAW, A, 1;
LOCAL LAW, 7 to 14;
MINERAL LAND.

PUBLIC OFFICERS.

See CONTRACT, 4.

PURPRESTURE.

See LIMITATION, STATUTES OF, 1.

QUIET TITLE.

See MINERAL LAND, 1.

RAILROAD.

The purchaser from a railroad company, at a reduced rate of fare, of a ticket for a passage to a certain station and back, containing a contract signed by him, by which he agrees that the ticket is not good for a return passage unless stamped by the agent of the company at that station, and that no agent or employé of the company is authorized to alter, modify or waive any condition of the contract, is bound by those conditions, whether he knew them or not; and if without having attempted to have the ticket so stamped, but upon showing it to the baggage-master and gateman at the station, he has his ticket punched and his baggage checked, and is admitted to the train, and upon being told by the conductor that his ticket is not good for want of the stamp, refuses either to leave the train or to pay full fare, and is forcibly put off at the next station, he cannot maintain an action sounding in contract against the company, or except to the exclusion, at the trial of such an action, of evidence concerning the circumstances attending his expulsion and the consequent injuries to him or his business. *Boylan* v. *Hot Springs Railroad Co.*, 146.

See CONSTITUTIONAL LAW, A, 2;
MORTGAGE.

REMITTITUR.

See MOTION TO DISMISS OR AFFIRM, 2 (1).

REMOVAL OF CAUSES.

1. When it appears from the record in this court in a cause commenced in a state court, and removed to a Circuit Court of the United States on the ground of diverse citizenship, and proceeded in to judgment there, that the citizenship of the parties at the time of the commencement of the action, as well as at the time of filing the petition for removal, was not sufficiently shown, and that therefore the jurisdiction of the state court was never divested, the defect cannot be cured by amendment, and the judgment of the Circuit Court will be reversed at the cost of the plaintiff in error, and the cause remitted to that court with directions to remand it to the state court. *Jackson* v. *Allen*, 27.

2. On the facts stated in the opinion it is *held*, that there is no separable controversy in this case; but that if there were, the provision as to the removal of such a controversy has no application to a removal on the ground of local prejudice. *Young* v. *Parker*, 267.

3. In order to the removal of a cause from a state court on the ground of local prejudice, under Rev. Stat. § 639, it is essential, where there are several plaintiffs, or several defendants, that all the necessary parties on one side be citizens of the State where the suit is brought, and all on the other side be citizens of another State or other States; and the proper citizenship must exist when the action is commenced as well as when the petition for removal is filed. *Ib.*

4. A bill in equity was filed in a state court by a creditor of a partnership to reach its entire property. The prayer of the bill was that judgments confessed by the firm in favor of various defendants, some of whom were citizens of the same State with the plaintiff, might be set aside for fraud. On the allegations of the bill there was but a single controversy, as to all of the defendants. One of the defendants, who was a citizen of a different State from the plaintiff, removed the entire cause into a Circuit Court of the United States. After a final decree for the plaintiff, and on an appeal therefrom, this court held that the case was not removable under § 2 of the act of March 3, 1875, 18 Stat. 470, and reversed the decree, and remanded the case to the Circuit Court, with a direction to remand it to the state court, the costs of this court to be paid by the petitioner for removal. *Graves* v. *Corbin*, 571.

5. Under the act of March 3, 1875, c. 137, § 2, one of two corporations sued jointly in a state court for a tort, although pleading severally, cannot remove the case into the Circuit Court of the United States, upon the ground that there is a separable controversy between it and the plaintiff because the other corporation was not in existence at the time of the tort sued for — without alleging and proving that the two corporations were wrongfully made joint defendants for the purpose of preventing a removal into the federal court. *Louisville & Nashville Railroad Co.* v. *Wangelin*, 599.

SERVICE OF PROCESS.

See CONSTITUTIONAL LAW, A, 10.

STATEMENT OF FACTS.

See PRACTICE, 2.

STATUTE.

See TABLE OF STATUTES CITED IN OPINIONS.

A. CONSTRUCTION OF STATUTES.

The preamble to a statute is no part of it, and cannot enlarge or confer powers, or control the words of the act unless they are doubtful or ambiguous. *Yazoo & Mississippi Valley Railroad Co.* v. *Thomas*, 174.

See CUSTOMS DUTIES, 4, 11, 12, 13;
TAX AND TAXATION, 1.

B. STATUTES OF THE UNITED STATES.

See APPEAL, 2;
BANKRUPTCY, 1, 2, 7, 8;
CONSTITUTIONAL LAW, A, 8;
CRIMINAL LAW, 1;
CUSTOMS DUTIES, 6, 7, 8, 9, 10, 11, 13, 14, 15;
EXECUTIVE;
INTERNAL REVENUE;
NATIONAL BANKS, 1, 2;
PATENT FOR INVENTION, 15;
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REMOVAL OF CAUSES, 3, 4, 5.

C. STATUTES OF STATES AND TERRITORIES.

Alabama. *See* CONSTITUTIONAL LAW, A, 9.
California. *See* CONSTITUTIONAL LAW, A, 7.
Colorado. *See* CORPORATION.
Indiana. *See* LIEN, 2, 3, 4.
Iowa. *See* INSURANCE.
Louisiana. *See* LOCAL LAW, 4.
Maryland. *See* DISTRICT OF COLUMBIA, 2.
Michigan. *See* CONSTITUTIONAL LAW, A, 6; MUNICIPAL CORPORATION, 9.
Mississippi. *See* TAX AND TAXATION, 2.
Pennsylvania. *See* CONSTITUTIONAL LAW, A, 2; EVIDENCE, 6, 7.
Texas. *See* ASSIGNMENT FOR BENEFIT OF CREDITORS, 2, 3, 4, 5; CONSTITUTIONAL LAW, A, 1, 10; LOCAL LAW, 8, 9.
Utah. *See* CONSTITUTIONAL LAW, A, 11.

STATUTE OF LIMITATIONS.

See LIMITATION, STATUTES OF.

STREETS.

See MUNICIPAL CORPORATION, 4, 5.

SUPERSEDURE.

Although a bill to impeach a judgment at law is regarded as auxiliary or dependent, and not as an original bill, the supersedure of process on the decree dismissing the bill does not operate to supersede process on the judgment at law. *Knox County* v. *Harshman*, 14.

SUPERVISOR OF ELECTIONS.

See EXECUTIVE.

TAX AND TAXATION.

1. Exemptions from taxation, being in derogation of the sovereign authority and of common right, are not to be extended beyond the express requirements of the language used, when most rigidly construed. *Yazoo & Mississippi Valley Railroad Co.* v. *Thomas*, 174.
2. The appellant's charter provided that it should "be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi River, but not to extend beyond twenty-five years from the date of the approval of this act;" *Held*, that the exemption was intended to commence from and after the completion of a railroad to the Mississippi River, and was to continue thereafter for twenty years if the road was completed to the river in five years from the date of the approval of the act, but liable to be diminished by whatever time beyond five years was consumed by the completion of the road to the river. *Ib.*

See CONSTITUTIONAL LAW, A, 8, 9; INTERNAL REVENUE; DEED; JURISDICTION, A, 3.

TEXAS.

See CONSTITUTIONAL LAW, A, 1, 10; LOCAL LAW, 5 to 17.

UNITED STATES.

See CONTRACT, 3, 4; DISTRICT OF COLUMBIA, 3; POST-OFFICE DEPARTMENT.

UTAH.

1. Under the organic act of that Territory the power to appoint an auditor of public accounts is vested exclusively in the governor and council. *Clayton* v. *Utah*, 632.
2. So much of the acts of the legislature of Utah of January 20, 1852, and February 22, 1878, as relates to the mode of appointing an auditor of

public accounts is in conflict with the organic act, and is invalid; but so much as relates to the creation of the office is valid. *Ib.*

See CONSTITUTIONAL LAW, A, 11;
JURISDICTION, A, 9.

VENDOR AND VENDEE.

See LIEN, 1.

VERDICT.

See PRACTICE, 1.

VOLUNTARY PAYMENT.

See FRAUD, 4.

WILL.

R., a citizen of Texas, made his will there June 7, 1848, by which he devised all his property including the real estate in controversy, (1) to his wife for twenty-one years after his death; (2) after that to his offspring, child or children by his said wife; (3) in the event of the death of his wife without offspring by him, to the children of M. by M.'s then wife, who was a sister of R.'s wife; (4) in the event of the death of the offspring which he might have by his wife, to his wife for life. M. was named as executor of the will. R. died January 10, 1850, leaving surviving his wife and an infant son. This son was born after the making of the will and died in 1854. The will was duly proved by the executor shortly after R.'s death. About six months after R.'s death his widow married F., by whom she had several children. Two years after the probate of the will F. and his wife commenced proceedings to have the will declared null and void on the ground that the property was communal property. In these proceedings the executor was defendant, and a guardian *ad litem* was appointed for the infant, and such proceedings were had therein that in October, 1852, a decree was entered, declaring the will to be null and void, and setting it aside; *Held*, (1) That the devise to the children of M. was a contingent remainder, to vest only in case of the death of the testator's wife without offspring by him, and limited after the fee which was primarily given to the testator's child; (2) That the executor being a defendant and appearing and answering, and the infant son being represented by a guardian *ad litem*, and the executor being interested on behalf of his own children that the will should stand, (if that was of any consequence,) all the necessary parties were before the court to sustain the decree; (3) That the decree could not be attacked collaterally, and was binding on the children of M. *Miller* v. *Texas & Pacific Railway Co.*, 662.