INDEX.

ALABAMA CLAIMS, COURT OF.

See CONSTITUTIONAL LAW, A, 3.

APPEAL.

Where appeals by five defendants from a final decree were allowed in open court in October, 1885, and the amount of the supersedeas bond as to one of them was fixed at $100, but he never gave it, and the others perfected their appeal, and the record was filed in this court in October, 1886, and, when the case came on for hearing in November, 1889, he asked leave to file a proper bond, it was granted *nunc pro tunc* as of the day of hearing. *Shepherd* v. *Pepper*, 626.

See EQUITY, 5.

ARMY OF THE UNITED STATES.

1. It was the purpose of Congress by the 12th and 13th sections of the army appropriation act of July 15, 1870, 16 Stat. 318, 319, to reduce the number of officers in the army, and to that end § 11 authorized the President to eliminate from it officers who were unfit for the discharge of their duties by reason of a cause which had no meritorious claim upon the consideration of the government, while § 12 made a general grant of power to the President to make the reduction by selecting the best, and mustering out the residue; and the President, being empowered to proceed under either grant, could commence proceedings under § 11, and abandon them, and then proceed under § 12. *Street* v. *United States*, 299.
2. The 12th section of the army appropriation act of July 15, 1870, 16 Stat. 318, authorized the President to fill vacancies in the army then existing, or which might occur prior to the 1st day of January then next. The 1st day of January, 1871, fell on Sunday; *Held*, that, in the exercise of the power thus conferred, an order made on the 2d day of January, 1871, was valid. *Ib.*
3. The executive action, under the army appropriation act of July 15, 1870, reducing the army, was recognized by Congress in 18 Stat. 497, c. 159, § 2; 20 Stat. 35, c. 50; 20 Stat. 321, c. 100; 20 Stat. 354, c. 175; 21 Stat. 510, c. 151, and was thereby validated, even if otherwise invalid. *Ib.*

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

1. It is settled law in Virginia that an assignment by a debtor for the benefit of creditors will not be declared void, as given "with intent to delay, hinder or defraud creditors, purchasers" etc., unless such an inference is so irresistible as to preclude any other; that the fact that creditors may be delayed or hindered, is not, of itself, sufficient to vacate the instrument; and that one creditor may be preferred over another. *Peters* v. *Bain*, 670.

2. When an assignment for the benefit of partnership and individual creditors includes all the property of the grantors as partners and individually, it should be construed distributively, partnership assets being applied to the payment of partnership debts, and individual assets to individual liabilities. *Ib.*

3. An assignment for the benefit of creditors, with preferences, authorized the trustees to "make sale of the real and other personal estate hereby conveyed, at public auction or private sale, at such time or times, and place or places, and after such notice as to them shall seem best, and they may make such sale upon such terms and conditions as to them shall seem best, except that at any sale of said property, real or personal, at public auction, any creditor secured by this deed in the second class above enumerated shall have the right to purchase any part or parcel of said property so sold, and pay the said trustees therefor, at its full face value, the amount found due such purchaser secured by this deed, or so much thereof as may be necessary to enable such creditor to complete the payment of his purchase money, and to enable as many creditors as possible to become bidders on these terms, the said trustees may have the real estate hereby conveyed, or any part thereof, laid off into lots or parcels, as they may think best;" *Held*, that the deed was not void in law because of the insertion of this provision. *Ib.*

4. The individual members of a private banking house, who were also the controlling directors in a national bank, made an assignment of their property for the benefit of creditors, which assignment was assailed as fraudulent in several matters, among which were alleged frauds upon the national bank, and frauds upon their own depositors previous to the assignment; *Held*, that violations of their fiduciary relations to the bank, or their treatment of their own depositors did not render the assignment of all their property for the benefit of their creditors, fraudulent for that reason. *Ib.*

5. The knowledge by a director and stockholder in a national bank that the bank is insolvent, does not invalidate an assignment of all his property for the benefit of his creditors, with preferences, made with such knowledge. *Ib.*

6. The court below was right in finding no evidence in this case of a fraudulent intent on the part of the firm or either of its members to hinder and delay their creditors. *Ib.*

7. The individual partners in a private bank were also directors in a national bank, and, by reason of their position, became possessed of a large part of the means of the national bank which they used in their own business. They assigned all their property to trustees for the benefit of their creditors. The national bank also suspended and went into the hands of a receiver; *Held*, (1) That the receiver was entitled to the surrender of such of the property as had been actually purchased with the moneys of the bank as he might elect; but that purchases made and paid for out of the general mass could not be claimed by the receiver unless it could be shown that moneys of the bank in the general fund at the time of the purchase were appropriated for that purpose; (2) That the receiver was not estopped by such election and taking, from receiving the full benefit of the deed of trust in favor of the national bank. *Ib.*

8. In Virginia, trustees and beneficiaries in a deed of trust to secure *bona fide* debts occupy the position of purchasers for a valuable consideration. *Ib.*

9. When the counsel of an insolvent debtor draws an assignment of his client's property to himself as trustee for the benefit of creditors, he may be presumed to have had knowledge of the dealings of the insolvent with his creditors. *Ib.*

10. Under the circumstances of this case a decree directing the payment of the costs of suit out of the trust fund is correct. *Ib.*

ATTORNEY AND COUNSELLOR.

See CONSTITUTIONAL LAW, A, 3.

ATTORNEY GENERAL.

The supervisory powers of the Attorney General over the accounts of district attorneys, marshals, clerks and other officers of the courts of the United States under Rev. Stat. § 368, are the same which were vested in the Secretary of the Interior before the creation of the Department of Justice. *United States* v. *Waters*, 208.

See DISTRICT ATTORNEY.

AUDITOR IN TREASURY DEPARTMENT.

The powers of an Auditor in the Treasury Department are limited to the examination and auditing of accounts, to the certification of balances, and to their transmission to the comptroller; and do not extend to the allowance or disallowance of the same. *United States* v. *Waters*, 208.

BAILMENT.

See PLEDGE.

BANK.

1. A customary depositor in a bank in New York deposited with it a sight draft on a railway company in Boston. It was described as a "check" on the deposit ticket, which distinguished between "checks" and "bills." He had made similar deposits before, never drawing against them, the bank always reserving the right to charge exchange and interest for the time taken in collection. The depositor's bank-book was with the bank at the time of the deposit. No entry was made in it until some days later, and then not by direction of the depositor. The receiving teller applied to the cashier for instructions on the receipt of the deposit and was directed to receive it as cash. The bank sent the draft to Boston for collection, and it was collected there. Before that was done, the bank in New York, which was insolvent when the transaction took place, suspended, closed its doors, and never resumed; *Held*, that the question whether the bank had become the owner of the draft, or was only acting as the agent of its customer, was one of fact, rather than of law, and that there was not enough evidence to establish that the customer understood that the bank had become the owner of the paper. *St. Louis & San Francisco Railway* v. *Johnston*, 566.

2. When a bank has become hopelessly insolvent, and its president knows that it is so, it is a fraud to receive deposits of checks from an innocent depositor, ignorant of its condition, and he can reclaim them or their proceeds; and the pleadings in this case are so framed as to give the plaintiff in error the benefit of this principle. *Ib.*

See Bill of Exchange and Promissory Note; Certificate of Deposit.

BANKRUPT.

A person in failing circumstances conveyed away his equity of redemption in mortgaged real estate, and then became bankrupt. His assignee in bankruptcy recovered the tract from the grantee in an action brought for that purpose, to which the mortgagee was not made party, and then conveyed it by deed to a purchaser. The mortgagee sued in the state court to foreclose his mortgage, making the bankrupt, his assignee, and the grantee of the assignee, parties; the land was sold under a decree of foreclosure; and the purchaser under it received a deed and was put into possession. Thereupon the grantee of the assignee in bankruptcy brought ejectment against him to recover possession; *Held*, that the state court had jurisdiction of the foreclosure suit, and had a right to hear and determine whether the mortgage debt was still a lien, and whether the mortgagee's claim was upon the land or upon the fund in the hands of the assignee in bankruptcy. *Adams* v. *Crittenden*, 296.

BETTERMENTS.

1. A tract of land in Leadville, Colorado, was deemed by the municipal authorities as the most convenient and proper situation for the erection of a school-house, which had become a necessity in that part of the town. The person in possession claimed under what was known as a squatter title. Another person laid claim to it under a placer patent from the United States. Both claims of title were known to the authorities, and were submitted by them in good faith to counsel for advice. The counsel advised them that the squatter title was good, and on the faith of that advice they purchased the lot from the person in possession, and built a school-house upon it, at a cost of $40,000. The claimant under the placer title brought an action of ejectment to recover possession. The municipal authorities, being satisfied that he must prevail, filed their bill in equity to enjoin him from proceeding to judgment in his action at law, and commenced proceedings under a statute of the State for condemnation of the tract for public use. The plaintiff in the ejectment suit appeared in the condemnation proceedings, and claimed to recover from the municipality the value of the improvements as well as the value of the land as it was when acquired by the municipality; and, being a citizen of Kansas, had the cause removed, on the ground of diverse citizenship, into the Circuit Court of the United States. It was there agreed that the value of the property, without the improvements, was $3000; and the court instructed the jury that they should find "that the value of said property at this date is $3000;" *Held*, that this instruction was correct. *Searle* v. *School District No.* 2, 553.
2. No vested right is impaired by giving to an occupant of land, claiming title and believing himself to be the owner, the value of improvements made by him under that belief, when ousted by the legal owner under an adverse title. *Ib.*

See TRUSTEE.

BIGAMY.

See CONSTITUTIONAL LAW, A, 4.

BILL OF EXCHANGE AND PROMISSORY NOTE.

1. On June 14, 1887, the Fidelity National Bank of Cincinnati drew a draft for $100,000 on the Chemical National Bank of New York City, payable to the order of the American Exchange National Bank of Chicago, and put it into the hands of one W., who delivered it for value to K. & Co. They endorsed it for deposit to their account in the Chicago Bank, which credited its amount to them and paid their checks against it. It was not paid; *Held*, that the draft was a foreign bill of exchange; that W. did not act as the agent of the Cincinnati Bank; and that in a suit by the Chicago Bank against the receiver of the Cincinnati Bank, which had failed, to recover the amount of the draft,

the Chicago Bank was a *bona fide* holder and owner of it for value, and want of consideration could not be shown by the receiver. *Armstrong* v. *American Exchange Bank*, 433.

2. The fact that the draft was payable to the order of the plaintiff was not notice to it that W. was not its purchaser or remitter; and the Cincinnati Bank had represented to the plaintiff that W. was a *bona fide* holder of the draft, for his use in making good trades of his with K. & Co. *Ib.*

3. An instrument signed by the Cincinnati Bank, dated June 14, 1887, addressed to the Chicago Bank, stating that W. & Co. had deposited $200,000 to the credit of the latter bank, for the use of K. & Co. was put by the former bank into the hands of W. & Co., who delivered it to K. & Co., who deposited it with the Chicago Bank, which gave credit for its amount to K. & Co. as cash, and paid with a part of it an overdraft of K. & Co. and honored their checks against the rest of it. In a suit by the Chicago Bank against the said receiver to recover the $200,000; *Held*, that the instrument was in its legal character a certificate of deposit; that the plaintiff was an innocent purchaser of it, for value; that, as the Cincinnati Bank had represented to the plaintiff that it had received from W. & Co. consideration for the paper, it was estopped from setting up the falsity of such representation; that the plaintiff did not take the paper under such circumstances as would put a man of ordinary prudence on inquiry; and that there was nothing to lead the plaintiff to suspect that the money represented by the paper was that of the Cincinnati Bank. *Ib.*

4. A defence set up to the suit on the certificate of deposit was, that H., (the vice-president of the Cincinnati Bank,) its assistant cashier, and W., of W. & Co., conspired to defraud that bank by using its funds in speculating in wheat in Chicago, through K. & Co., so as to make a "corner" in wheat; *Held*, that rumors on the board of trade and in the public press that H. was the real principal for whom W. was acting, could not affect the plaintiff; and that the plaintiff could not refuse to honor the checks of K. & Co. against the deposit, on the ground that K. & Co. intended to use the money to pay antecedent losses in the gambling wheat transactions. *Ib.*

5. The statute of Illinois, 1 Starr & Curtis Stat. 1885, pp. 791, 792, §§ 130, 131, and the case of *Pearce* v. *Foote*, 113 Illinois, 228, do not apply to the present case. *Ib.*

See BANK.

CASES AFFIRMED, APPLIED OR APPROVED.

1. *Harshman* v. *Knox County*. *Knox County* v. *Harshman*, 152.
2. *Phœnix Ins. Co.* v. *Erie Transportation Co.*, 117 U. S. 312. *California Ins. Co.* v. *Union Compress Co.*, 387.
3. All the questions presented and argued in this case have been often considered and decided by this court, and the court adheres to the

decisions in *Montclair* v. *Ramsdell*, 107 U. S. 147; *Bernards Township* v. *Stebbins*, 109 U. S. 341; and *New Providence* v. *Halsey*, 117 U. S. 336. *Bernards Township* v. *Morrison*, 523.

4. *Cotton* v. *New Providence*, 47 N. J. Law, 401; and *Mutual Benefit Life Co.* v. *Elizabeth*, 42 N. J. Law, 235, approved. *Bernards Township* v. *Morrison*, 523.
5. *County of Greene* v. *Daniel*, 102 U. S. 187, followed. *Lincoln County* v. *Luning*, 529.
6. This case differs in no material fact from *Delano* v. *Butler*, 118 U. S. 634, and is governed by it. *Aspinwall* v. *Butler*, 595.

CASES DISTINGUISHED.

The case distinguished from that of *United States* v. *Langston*, 118 U. S. 389. *Wallace* v. *United States*, 180.

CERTIFICATE OF DEPOSIT.

1. An instrument signed by the Cincinnati Bank, dated June 14, 1887, addressed to the Chicago Bank, stating that W. & Co. had deposited $200,000 to the credit of the latter bank, for the use of K. & Co., was put by the former bank into the hands of W. & Co., who delivered it to K. & Co., who deposited it with the Chicago Bank, which gave credit for its amount to K. & Co. as cash, and paid with a part of it an overdraft of K. & Co. and honored their checks against the rest of it. In a suit by the Chicago Bank against the said receiver to recover the $200,000; *Held*, that the instrument was in its legal character a certificate of deposit; that the plaintiff was an innocent purchaser of it, for value; that, as the Cincinnati Bank had represented to the plaintiff that it had received from W. & Co. consideration for the paper, it was estopped from setting up the falsity of such representation; that the plaintiff did not take the paper under such circumstances as would put a man of ordinary prudence on inquiry; and that there was nothing to lead the plaintiff to suspect that the money represented by the paper was that of the Cincinnati Bank. *Armstrong* v. *American Exchange Bank*, 433.
2. A defence set up to the suit on the certificate of deposit was, that H. (the vice-president of the Cincinnati Bank), its assistant cashier, and W. of W. & Co., conspired to defraud that bank by using its funds in speculating in wheat in Chicago, through K. & Co., so as to make a "corner" in wheat; *Held*, that rumors on the board of trade and in the public press that H. was the real principal for whom W. was acting, could not affect the plaintiff; and that the plaintiff could not refuse to honor the checks of K. & Co. against the deposit, on the ground that K. & Co. intended to use the money to pay antecedent losses in the gambling wheat transactions. *Ib.*
3. The statute of Illinois, 1 Starr & Curtis, Stat. 1885, pp. 791, 792, §§ 130,

131, and the case of *Pearce* v. *Foote*, 113 Illinois, 228, do not apply to the present case. *Ib.*

CLAIMS AGAINST THE UNITED STATES.

The property of a subject of the Emperor of the French in Louisiana was occupied by the army of the United States during the war of the rebellion. A claim for the injury caused thereby was adjusted by the commanding general, but payment was refused in consequence of the passage of the act of February 21, 1867, 14 Stat. 397, c. 57. After the organization of the commission under the Claims Convention of 1880 with France, 21 Stat. 673, his executor (he having meantime died in Paris leaving a will distributing his estate) presented this claim against the United States to the commissioners, and an allowance was made which was paid to the executor. In settling the executor's accounts in the courts of Louisiana two of the legatees, who were citizens of France, laid claim to the whole of the award. The other legatees, who were citizens of the United States, claimed the right to participate in the division of this sum. The award of the commission being silent on the subject, the briefs of counsel on both sides before the commission together with letters from the claimants' counsel, and a letter from one of the commissioners, were offered to show that only the claims on the part of the French legatees were considered by the commission, and the evidence was admitted. The Supreme Court of Louisiana ordered the award to be distributed among all the legatees, French and American; *Held*, (1) That this court had jurisdiction to review the judgment of the state court; (2) That the French legatees only were entitled to be represented before the commission, and they only were entitled to participate in the distribution; (3) That the briefs of counsel were properly admitted in evidence; (4) That the letters of counsel and of the commissioner should have been rejected; but, (5) That it was immaterial whether the evidence was or was not received, as the decision of the question depended upon considerations which such evidence could in no way affect. *Burthe* v. *Denis*, 514.

COMPTROLLER IN TREASURY DEPARTMENT.

A comptroller in the Treasury Department has no power to review, revise or alter items in accounts expressly allowed by statute, or items of expenditures or allowances made upon the judgment or discretion of officers charged by law with the duty of expending the money or making the allowances. *United States* v. *Waters*, 208.

COMPTROLLER OF THE CURRENCY.

See NATIONAL BANK, 3.

CONDITION SUBSEQUENT.

See PATENT FOR INVENTION, 6.

CONFISCATION.

A condemnation under the confiscation act of July 17, 1862, 12 Stat. 589, of real estate owned in fee by a person who had participated in the rebellion, and a sale under the decree, left the remainder, after the expiration of the confiscated life-estate, so vested in him that he could dispose of it after receiving a full pardon from the President. *Illinois Central Railroad Co.* v. *Bosworth*, 92.

CONFLICT OF LAW.

See INSOLVENT DEBTOR.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. The Constitution of the United States, in proper cases, permits equity courts of one State to control persons within their jurisdiction from prosecuting suits in another State. *Cole* v. *Cunningham*, 107.
2. It is no violation of that provision of the Constitution of the United States which requires that full faith and credit shall be given in each State to the judicial proceedings of every other State, if a court in one State, (in which proceedings have been begun, under a general insolvent law of the State, to distribute the estate of an insolvent debtor among his creditors,) enjoins a creditor of the insolvent, (who is a citizen of the same State, and subject to the jurisdiction of the court,) from proceeding to judgment and execution in a suit against the insolvent in another State, begun by an attachment of his property there, after knowledge of his embarrassment and actual insolvency, which property the insolvent law of the State of the debtor's residence requires him to convey to his assignee in insolvency, for distribution with his other assets — there being nothing in the law or policy of the State in which the attachment is made, opposed to those of the State of the creditor and of the insolvent debtor. *Ib.*
3. In an action brought in a state court against the judges of the Court of Commissioners of the Alabama Claims, by one who had been an attorney of that court, to recover damages caused by an order of the court disbarring him, the plaintiff averred and contended that the court had not been legally organized, and that it did not act judicially in making the order complained of; *Held*, that a decision by the state court that the Court of Alabama Claims was legally organized and did act judicially in that matter, denied to the plaintiff no title, right, privilege or immunity claimed by him under the Constitution, or under a treaty or statute of the United States, or under a commission held or authority exercised under the United States. *Manning* v. *French*, 186.
4. The provision in § 501, Rev. Stat. Idaho, that "no person who is a bigamist or polygamist, or who teaches, advises, counsels or encourages

any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization or association which teaches, advises, counsels or encourages its members or devotees or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law either as a rite or ceremony of such order, organization or association, or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust or profit within this Territory" is an exercise of the legislative power conferred upon Territories by Rev. Stat. §§ 1851, 1859, and is not open to any constitutional or legal objection. *Davis* v. *Beason*, 333.

5. The cases in which the legislation of Congress will supersede the legislation of a State or Territory, without specific provisions to that effect, are those in which the same matter is the subject of legislation by both. *Ib.*

6. It was never intended that the first article of amendment to the Constitution, that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof," should be a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society. *Ib.*

7. No State has power to tax the property of the United States within its limits. *Wisconsin Central Railroad Co.* v. *Price*, 496.

8. The Eleventh Amendment to the Constitution does not operate to prevent counties in a State from being sued in a Federal Court. *Lincoln County* v. *Luning*, 529.

9. No state statute exempting a county in the State from liability to suit except in the courts of the county can defeat the jurisdiction of suits given by the Constitution to the Federal courts. *Ib.*

10. The statute of the State of Mississippi of March 2, 1888, requiring all railroads carrying passengers in that State (other than street railroads) to provide equal, but separate, accommodations for the white and colored races, having been construed by the Supreme Court of the State to apply solely to commerce within the State, does no violation to the commerce clause of the Constitution of the United States. *Louisville, New Orleans &c. Railway* v. *Mississippi*, 587.

See BETTERMENTS, 2; TAX AND TAXATION, 1, 2; EQUITY 9; TREATY, 1.

B. OF THE STATES.

This court follows the Supreme Court of Nevada in holding that the statute under which the bonds in controversy were issued was not in conflict with the Constitution of that State. *Lincoln County* v. *Luning*, 529.

CONSUL.

1. The question considered, as to what are "Official services" performed by consuls, under the consular regulations of 1874 and 1881, prescribed

by the President by virtue of the provisions of § 1745 of the Revised Statutes. *United States* v. *Mosby*, 273.

2. Fees collected by a consul for the examination of Chinese emigrants going to the United States on foreign vessels; and fees for certificates of shipment of merchandise in transit through the United States to other countries; and fees for recording instruments which are not official documents recorded in the record books required to be kept by the consul, but relate to private transactions for individuals not requiring the use of the consul's title or seal of office; and fees for cattle-disease certificates; and fees for acknowledgments and authentications of instruments certifying the official character and signature of notaries public; and fees for settling private estates; and fees for shipping and discharging seamen on foreign-built vessels sailing on the China coast under the United States flag; are not moneys which he is required to account for to the United States. *Ib.*
3. Fees collected by him for certifying extra copies of quadruplicate invoices of goods shipped to the United States; and money received for interest on public moneys deposited in bank; and fees collected for certificates of shipments or extra invoices; and fees for certifying invoices for free goods imported into the United States; are moneys which he is required to account for to the United States. *Ib.*
4. The practice of consuls to do acts which are not official is recognized by the statutes and the consular regulations. *Ib.*
5. The claimant had a judgment in the Court of Claims against the United States for $13,839.21. Both parties appealed. The items of the disallowance of which the claimant complained did not amount to more than $3000. But it was held that he could avail himself of anything in the case which properly showed that the judgment was not for too large a sum; and this court, disallowing one of the items allowed to him, allowed one of the items disallowed, and rendered a judgment in his favor for a less amount than that rendered below. *Ib.*

CONTRACT.

1. The city of Galesburg, Illinois, by an ordinance, granted to one Shelton, and his assigns, in May, 1883, a franchise for thirty years, to construct and maintain water works for supplying the city and its inhabitants with water for public and private uses, the city to pay a specified rent for fire hydrants, and a tariff being fixed for charges for water to consumers. In December, 1883, the water works were completed by a water company to which Shelton had assigned the franchise, and a test required by the ordinance was satisfactorily made, and the city, by a resolution, accepted the works. The water furnished by the company for nine months was unfit for domestic purposes. After November, 1884, the supply of water was inadequate for the protection of the city from fire, and its quality was no better than before. During eighteen months after December, 1883, the company had ample

time to comply with the contract. The city, by a resolution passed June 1, 1885, repealed the ordinance, and then gave notice to the company that it claimed title to certain old water mains which it had conditionally agreed to sell to Shelton, and of which the company had taken possession. The city then took possession of the old mains, and, in June, 1885, filed a bill in equity against the water company to set aside the contract contained in the ordinance and the agreement for the sale of the old mains. In August, 1883, the company executed a mortgage to a trustee on the franchise and works, to secure sundry bonds, which were sold to various purchasers in 1884 and 1885. The interest on them being in default, the trustee foreclosed the mortgage by a suit brought in November, 1885, and the property was bought by a committee of the bondholders, in November, 1886. In February, 1886, the trustee had been made a party to the suit of the city. After their purchase, the members of the committee were also made parties and they filed a cross-bill, praying for a decree for the amount due by the city for water rents, and for the restoration to them of the old mains, and for an injunction against the city from interfering with the operation of the works. After issue, proofs were taken; *Held*, (1) The supply of water was not in compliance with the contract, in quantity or quality; (2) The taking possession by the city of the old mains was necessary for the protection of the city from fire; (3) The contract of the city for the sale of the old mains was conditional and was not executed; (4) The city was not estopped, as against the bondholders, from refusing to pay the rent for the hydrants, which, by the mortgage, was to be applied to pay the interest on the bonds, or from having the contract cancelled; (5) The obligation of Shelton and his assigns was a continuing one, and their right to the continued enjoyment of the consideration for it was dependent on their continuing to perform it; (6) The bondholders were bound to take notice of the contents of the ordinance before purchasing their bonds, and purchased and held them subject to the continuing compliance of the company with the terms of the ordinance; (7) In regard to the old mains, the lien of the mortgage was subject to the conditions of the agreement for the sale of them by the city to Shelton; (8) A suit by the city for a specific performance of the contract, or one to recover damages for its non-performance would be a wholly inadequate remedy in the case; (9) A decree was proper annulling the ordinance and the agreement; dismissing the cross-bill; directing the city to pay into court, for the use of the cross-plaintiffs, $3000, as the value of the use of the water by the city from December, 1883, to June, 1885; and dividing the costs of the suit equally between the city and the cross-plaintiffs. *Farmer's Loan and Trust Co.* v. *Galesburg*, 156.

2. Where the subject matter of a contract relates to the construction of a railroad in Massachusetts, and the defendant resides there, and the contract was made there, and a suit on the contract is brought there,

the law of Massachusetts is to govern in expounding and enforcing the contract, and in determining the rule of damages for a breach of it. *Mills* v. *Dow*, 423.

3. Where a contract states that the purchasing price of its subject matter is $15,000, and that that sum has been "this day advanced and paid" therefor, it is competent for the vendor, in a suit by him on the contract, to show that only $10,000 was paid, with a view to recover the remaining $5000. *Ib.*
4. The language of the contract is ambiguous and does not show actual prior or simultaneous payment. *Ib.*
5. Evidence of a promise by the defendant, as a part of the consideration of the contract, to pay certain debts mentioned in it which the plaintiff owed, is admissible; and the refusal of the defendant to pay those debts on demand was a breach of the contract. *Ib.*
6. An agreement to "assume" a prior contract, and to save the plaintiff harmless from "all liability" by reason of certain other contracts, is broken by a failure to pay the parties to whom the plaintiff was liable, and it is not necessary to a breach that the plaintiff should show that he had first paid those parties. *Ib.*
7. The agreement is not merely one to indemnify the plaintiff from damage arising out of his liability, but is an agreement to assume his contracts and to discharge him from his liability. *Ib.*
8. Such agreement was a personal one on the part of the defendant. *Ib.*
9. Where losses have been made in an illegal transaction, a person who lends money to the loser, with which to pay the debt, can recover the loan, notwithstanding his knowledge of the fact that the money was to be so used. *Armstrong* v. *American Exchange Bank*, 433.
10. An obligation will be enforced, though indirectly connected with an illegal transaction, if it is supported by an independent consideration, so that the plaintiff does not require the aid of the illegal transaction to make out his case. *Ib.*
11. It does not appear that the plaintiff had knowledge or notice that the paper in suit was delivered to it to be used through it by K. & Co. in connection with an attempt to corner the market. *Ib.*
12. In an action brought against one party to a contract by an assignee seeking to charge him by virtue of a contract of assignment from the other party and other facts, a complaint stating the same facts, not under oath, and signed by attorney only, in an action by the assignee against his assignor, is incompetent evidence of an admission by the plaintiff that he had no cause of action against this defendant. *Delaware Co. Commissioners* v. *Diebold Safe & Lock Co.*, 473.
13. By a contract for the construction of a jail, under the statute of Indiana, (which requires all such contracts to be let to the lowest responsible bidder, taking a bond from him for the faithful performance of the work,) the contractors agreed to construct the jail and to provide all the materials therefor within a certain time for the sum of $20,000,

which the county commissioners agreed to pay, partly in monthly payments on their architect's certificate, and the rest on the completion and acceptance of the building; and it was agreed that the county should not in any manner be answerable or accountable for any material used in the work; and that, if the contractors should fail to finish the work by the time agreed, they should pay $25 as liquidated damages for every day it should remain unfinished. The contractors assigned to a third person the obligation to do the iron work upon the jail, as if it had been awarded directly to him, and the right to recover therefor from the commissioners $7700 at the times mentioned in the original contract. The assignee did the work to the satisfaction of the commissioners, and to the value of $7700, but not within the time stipulated in the original contract; *Held*, that the assignments, though notified to the commissioners, if not assented to by them, did not make them liable to the assignee, or prevent them from making a settlement in good faith with the original contractors. *Ib.*

See DEED, 1, 3.

CORPORATIONS.

1. In the absence of an enabling statute, either general or special, a railroad or other corporation cannot purchase and hold real estate indefinitely, without regard to the uses to be made of it. *Case* v. *Kelly*, 21.
2. The rule that the limitation of the power of a corporation in a State to receive and hold real estate concerns the State alone does not apply when the corporation, as plaintiff, seeks to acquire real estate which it is not authorized by law to acquire. *Ib.*
3. While the relations of a party towards a corporation, as a director and officer, or as its principal stockholder, do not preclude him from entering into contracts with it, from making loans to it, and from taking its bonds as collateral security, a court of equity will refuse to lend its aid to their enforcement unless satisfied that the transaction was entered into in good faith, with a view to the benefit of the company as well as of its creditors, and not solely with a view to his own benefit. *Richardson's Executor* v. *Green*, 30.
4. In the case of a corporation, as in that of a natural person, any conveyance of its property, without authority of law, in fraud of its creditors, is void as to them. *Ib.*
5. The capital stock of a corporation, when it becomes insolvent, is, in law, part of its assets, to be appropriated to the payment of its debts, and if any part of it has been issued without being fully paid up, a court of equity may require it to be paid up. *Ib.*
6. On the dissolution of a corporation at the expiration of the term of its corporate existence, each stockholder has the right, as a general rule, and in the absence of a special agreement to the contrary, to have the partnership property converted into money, whether such a sale be

necessary for the payment of debts, or not. *Mason* v. *Pewabic Mining Co.*, 50.

7. Directors of a corporation, conducting its business and receiving moneys belonging to it after the expiration of the term for which it was incorporated, will be held to an account on the dissolution and the final liquidation of the affairs of the corporation in a court of equity. *Ib.*
8. When a legislature has full power to create corporations, its act recognizing as valid a *de facto* corporation, whether private or municipal, operates to cure all defects in steps leading up to an organization, and makes a *de jure* out of what was before only a *de facto* corporation. *Comanche County* v. *Lewis*, 198.

See NATIONAL BANK, 1;
PLEDGE.

COSTS.

At the last term of court motions to dismiss *Nelson* v. *Green* and *Nelson et al.* v. *Green* were argued at the same time with a motion to dismiss this case, and the motion was granted as to those cases, and denied as to this case. After the entry of judgment counsel in those cases moved on behalf of the appellants that the sum of $450 which had been deposited with the clerk for copies of the record should be refunded; *Held*, (the judgment being announced in delivering the opinion and announcing the judgment in this case,) that $200 of that amount should be refunded. *Richardson's Executor* v. *Green*, 30.

COUNSEL FEES.

See DISTRICT ATTORNEY;
RECEIVER.

COURT AND JURY.

See MASTER AND SERVANT, 1, 4.

CRIMINAL LAW.

1. Bigamy and polygamy are crimes by the laws of the United States, by the laws of Idaho, and by the laws of all civilized and Christian countries; and to call their advocacy a tenet of religion is to offend the common sense of mankind. *Davis* v. *Beason*, 333.
2. A crime is none the less so, nor less odious, because sanctioned by what any particular sect may designate as religion. *Ib.*
3. The second subdivision of § 504, Rev. Stats. Idaho, requiring every person desiring to have his name registered as a voter to take an oath that he does not belong to an order that advises a disregard of the criminal law of the Territory, is not open to any valid legal objection. *Ib.*
4. The act of Congress of March 22, 1882, 22 Stat. 31, c. 47, "to amend

section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," does not restrict the legislation of the Territories over kindred offences or over the means for their ascertainment and prevention. *Ib.*

DAMAGES.

See JURISDICTION, 11;
PATENT FOR INVENTION, 7.

DECREE.

See JUDGMENT.

DEED.

1. In a deed of real estate, "subject, however, to certain incumbrances now resting thereon, payment of which is assumed by the grantee," and containing a covenant of special warranty by the grantor against all persons claiming under him, the clause assuming payment of the incumbrances includes existing mortgages made by the grantor, as well as unpaid taxes assessed against him. *Keller* v. *Ashford*, 610.
2. The grantee named in a deed of real estate, by the terms of which he assumes the payment of a mortgage thereon, is liable to the grantor for a breach of that agreement, although he is not shown to have had any knowledge of the deed at the time of its execution, if after being informed of its terms he collects the rents and sells and conveys part of the land. *Ib.*
3. An agreement in a deed of real estate, by which the grantee assumes the payment of a mortgage made by the grantor, is a contract between the grantee and the mortgagor only; and does not, unless assented to by the mortgagee, create any direct obligation, at law or in equity, from the grantee to the mortgagee. But the mortgagee may avail himself in equity of the right of the mortgagor against the grantee. And if the mortgagee, after the land has been sold under a prior mortgage for a sum insufficient to pay that mortgage, and after he has recovered a personal judgment against the mortgagor, execution upon which has been returned unsatisfied, brings a suit in equity against the grantee alone, and the omission to make the mortgagor a party is not objected to at the hearing, it affords no ground for refusing relief. *Ib.*

DESCENT.

A citizen of France can take land in the District of Columbia by descent from a citizen of the United States. *Geofroy* v. *Riggs*, 258.

DICTUM.

A mere dictum in an opinion, not essential to the decision, is not authoritative and binding. *Wisconsin Central Railroad Co.* v. *Price*, 496.

DIPLOMATIC SERVICE.

See SALARY.

DISTRICT ATTORNEY.

The amount of counsel fee to be allowed to a district attorney, under Rev. Stat. § 824, for trial before a jury of a person indicted for crime, is discretionary with the court, within the limits of the statute; and the action of the court in this respect is not subject to review by the Attorney General, or by the accounting officers of the treasury. *United States* v. *Waters*, 208.

DISTRICT OF COLUMBIA.

The District of Columbia, as a political community, is one of "the States of the Union," within the meaning of that term as used in article 7 of the Consular Convention of February 23, 1853, with France. *Geofroy* v. *Riggs*, 258.

See DESCENT;
NATIONAL BANK, 2, 6.

EJECTMENT.

See BETTERMENTS.

EMINENT DOMAIN.

In exercising the right of eminent domain for the acquisition of private property for public use, the compensation to be awarded must not only be just to the owner, but also just to the public which is to pay for it. *Searl* v. *School District No.* 2, 553.

EQUITY.

1. A bill in equity for the foreclosure of a mortgage of a railroad for non-payment of overdue interest, the principal being payable at a future day, was taken *pro confesso*, the company appearing but not answering. A sale was made under the decree of the court, and, it appearing that there was a surplus over and above what was necessary to pay the overdue interest, costs and expenses, the court ordered it to be applied to the reduction of the principal sum due upon the bonds, and entered a decree that the balance of such principal sum, remaining after such application, was due and payable from the company to the holders of the bonds, and that the trustee recover it for them, with interest until paid; *Held*, (1) That the application of the surplus was properly made; (2) That the decree, declaring the remainder of the principal sum due and immediately payable, was irregular and was not warranted by the pleadings. *Ohio Central Railroad Co.* v. *Central Trust Co.*, 83.
2. The defendant in a bill in equity, taken *pro confesso*, is not precluded

from contesting the sufficiency of the bill or from insisting that the averments contained in it do not justify the decree. *Ib.*

3. A decree on a bill taken *pro confesso* may be attacked on appeal, if not confined to the matter of the bill. *Ib.*
4. The 92d rule in equity does not authorize a decree to be entered in a suit in equity for the foreclosure of a mortgage for a balance due to the complainant over and above the proceeds of the sale, if, as a matter of fact, such balance has not become payable. *Ib.*
5. A railroad company, whose road, property and franchises have been sold under a decree for the foreclosure of a mortgage entered on a bill taken *pro confesso*, may prosecute an appeal from the final decree distributing the proceeds of the sale and adjudging a balance still due the mortgage creditors. *Ib.*
6. A court of equity does not interfere with judgments at law, unless the complainant has an equitable defence of which he could not avail himself at law, or had a good defence at law which he was prevented from availing himself of by fraud or accident, unmixed with negligence of himself or his agents. *Knox County* v. *Harshman*, 152.
7. Where by statute the summons in any action against a county may be served upon the clerk of the county court, and the officer's return in such an action shows such a service, the county cannot maintain a bill in equity to restrain process of execution upon the judgment, on the ground that service was not made upon the clerk, or that he did not inform the county court thereof. *Ib.*
8. A State is an indispensable party to any proceeding in equity in which its property is sought to be taken and subjected to the payment of its obligations. *Christian* v. *Atlantic & North Carolina Railroad Co.*, 233.
9. The State of North Carolina subscribed in 1856 for capital stock in a railway company which had been incorporated by its legislature, issued its bonds with thirty years to run, sold them, and with the proceeds paid its subscription, and received certificates of stock therefor, which certificates it never parted with and still holds. In the act incorporating the company and authorizing the issue of the bonds it was provided that as security for their redemption "the public faith of the State" "is hereby pledged to the holders," "and in addition thereto all the stock held by the State" in the railroad company "shall be pledged for that purpose" and that "any dividend" on the stock "shall be applied to the payment of the interest accruing on said coupon bonds." The State being in default in the payment of the interest due on the bonds since 1868, a bondholder, who was a citizen of Virginia, brought suit in the Circuit Court of the United States in the Eastern District of North Carolina against the Railroad Company, its president and directors, the person holding the proxy of the State upon the stock held by it, and the treasurer of the State, praying to have the complainant's bonds decreed to be a lien upon the stock owned by the State and upon any dividends that might

be declared thereon, and that such dividends might be paid to complainant and to such bondholders as might join in the suit, and for the sale of the stock if the dividends should prove insufficient, and for an account, and for the appointment of a receiver, and for an injunction; *Held*, that, as the State was an indispensable party to the suit, the bill must be dismissed. *Ib.*

10. Two attorneys representing two separate parties, delivered a promissory note to a third person as bailee, and took his receipt therefor, in which he stated that he held it subject to their joint order, and to be dealt with as they might jointly direct. One of the separate parties filed a bill in equity against the bailee to compel him to deliver up the proceeds of the note (which had been paid) without making parties to the bill the two attorneys and the other party; claiming that he was entitled to do so by reason of an award in an arbitration that had taken place by which it had been decided that he should become the owner of the note on the performance of certain conditions which he had performed; *Held*, that they were necessary parties to the bill and that no decree could be made by the court in their absence. *Gregory* v. *Stetson*, 579.

See CONTRACT, 1, (8), (9);
CONSTITUTIONAL LAW, A, 1, 2;
CORPORATION, 3, 7;
DEED, 3;
JUDGMENT;
JURISDICTION, B, 4;
MORTGAGE;
RECEIVER.

EQUITY PLEADING.

1. In a bill in equity to quiet title, an allegation that the plaintiff is seized in fee simple is a sufficient allegation that he has the possession as well as the title. *Gage* v. *Kaufman*, 471.

2. In a bill in equity, an allegation that the plaintiff has no adequate remedy at law is dispensed with by rule 21 in equity. *Ib.*

3. A bill in equity to remove a cloud created by a tax deed, alleging that no taxes were due upon which the land could be sold, need not offer to pay any taxes as a condition of relief. *Ib.*

4. By the law of Illinois a tax deed is no more than *prima facie* evidence in favor of the purchaser, and may be shown to be invalid by proof that there was no advertisement of sale, or no judgment or precept, or no taxes unpaid, or no notice to redeem given or recorded; and a bill to remove a cloud upon title alleging that the defendant claims under a tax deed valid on its face, but invalid on the grounds aforesaid, is good on demurrer. *Ib.*

ESTOPPEL.

See BILL OF EXCHANGE AND PROMISSORY NOTE, 3;
CONTRACT, 1, 4;
MORTGAGE, 3;
NATIONAL BANK, 5.

EVIDENCE.

1. Extrinsic evidence to aid in the interpretation of the judgment of a court or commission is inadmissible unless, after reference to the pleadings and proceedings, there remains some ambiguity or uncertainty in it. *Burthe* v. *Denis*, 514.

2. A recorder's copy of a deed is competent and sufficient evidence of its contents against the grantee in favor of a person not a party to it, after the grantee and a person who procured it to be made and to whom it was originally delivered have failed to produce it upon notice to do so. *Keller* v. *Ashford*, 610.

See BILL OF EXCHANGE AND PROMISSORY NOTE, 2, 4;
CLAIMS AGAINST THE UNITED STATES, (3), (4), (5);
CONTRACT, 5;
EQUITY PLEADING, 4;
PUBLIC LAND, 2.

FEES.

See CONSUL, 2, 3;
DISTRICT ATTORNEY.

FEME COVERT.

See NATIONAL BANK, 6, 7.

FENCE.

See PUBLIC LAND, 5.

FORFEITURE.

See INTERNAL REVENUE, 2, 3, 4.

FRANCE.

See TREATY, 2, 3.

FRAUD.

As respects fraud in law, as distinguished from fraud in fact, in a conveyance, if that which is invalid can be separated from that which is valid, without defeating the general intent, the maxim "void in part, void *in toto*" does not necessarily apply, but the instrument may be sustained notwithstanding the invalidity of a particular provision. *Peters* v. *Bain*, 670.

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS, 3, 4, 5, 6, 7, 9;
BANK, 2;
BANKRUPT;
BILL OF EXCHANGE AND PROMISSORY NOTE, 4;
CERTIFICATE OF DEPOSIT;
CORPORATION, 3, 4;
PUBLIC LAND, 2.

INSOLVENT DEBTOR.

An insolvent debtor of Louisiana, under the insolvent laws of that State, surrendered his property for the benefit of his creditors, the surrender

was duly accepted, and the creditors elected a syndic who qualified and was commissioned as such. On his schedules the debtor returned the house in which he resided and the furniture therein as the property of his wife to which he had no claim. The syndic did not take possession of it, and laid no claim to it until a foreign creditor, who was not a party to the proceedings in insolvency, and who had obtained a judgment against the debtor in the Circuit Court of the United States after the insolvency, levied upon the house as the property of the debtor. The syndic then filed in the creditor's suit a third opposition, setting up claim to the property, and praying that the seizure under the execution be set aside, and that the marshal be enjoined from levying upon it. A decree in accordance with the prayer was entered, conditioned upon the syndic's paying cost of seizure and filing in the Circuit Court an order from the state court to the syndic to take possession of the property, and to administer it as part of the insolvent's estate; *Held*, that there was no error in this decree, but that it was eminently judicious and proper. *Geilinger* v. *Philippi*, 246.

See CONSTITUTIONAL LAW, A, 2.

INSURANCE.

The defendant, a fire insurance company, issued a policy of insurance to the plaintiff, a cotton compress company, on "cotton in bales, held by them in trust or on commission," and situated in specified places. The cotton was destroyed by fire in those places. The plaintiff received cotton for compression, and issued receipts to the depositors, which said, "not responsible for any loss by fire." The holders of the receipts exchanged them with one or the other of two railroad companies for bills of lading of the cotton, which exempted the carrier from liability for loss or damage by fire. On issuing the bills of lading the railroad companies notified the plaintiff of their issue, and ordered it to compress the cotton. It was burned while in the hands of the plaintiff for compression, after the bills of lading were issued. In a suit to recover on the policy; *Held*,

(1) It was competent for the plaintiff to prove, at the trial, that it took out the policy for the benefit of the railroad companies, and in pursuance of an agreement between it and those companies that it should do so; also, that, by like agreement, it collected from the railroad companies a specified sum for all cotton compressed by it, as covering the compression, the loading, and the cost of insuring the cotton; also, that such customs of business were known to the defendant when the policy was issued, and that an officer of the plaintiff had stated to the agents of the defendant, when the policy was applied for, that it was intended to cover the interests of the plaintiff and of the railroad companies; also, what claims had been made on the railroad companies, by owners of cotton burned, to recover its value;

(2) The railroad companies were beneficiaries under the policy, because

they had an insurable interest in the cotton, and to that extent were its owners, and it was held in trust for them by the plaintiff;

(3) It was lawful for the plaintiff to insure in its own name goods held in trust by it, and it can recover for their entire value, holding the excess over its own interest in them for the benefit of those who entrusted the goods to it;

(4) The issuing of the bills of lading for the cotton did not effect such a change in the possession of the cotton as to avoid the policy, under a provision in it making it void, "if any change take place in the possession of the subject of insurance;"

(5) The plaintiff can recover for losses caused by the negligence of the railroad companies in improperly exposing the cotton to danger from fire.

(6) The exception "not responsible for any loss by fire" in the receipts given by the plaintiff, and the clause in the bills of lading exempting the railroad companies from liability for loss or damage by fire, did not free the latter from responsibility for damages occasioned by their own negligence or that of their employés;

(7) The ruling, that a common carrier may insure himself against loss proceeding from the negligence of his own servants, made in *Phœnix Insurance Co.* v. *Erie Transportation Co.*, 117 U. S. 312, 324, affirmed.

(8) The words in the policy, "direct loss or damage by fire," explained;

(9) The mere fact of the dwelling by the court below, with emphasis, in its charge to the jury, on facts which seemed to it of controlling importance, and expressing its opinion as to the bearing of those facts on the question of negligence, is immaterial, if it left the issue to the jury;

(10) Under a clause in the policy, that it "shall not apply to or cover any cotton which may at the time of loss be covered in whole or part by a marine policy," such clause is not operative unless it amounts to double insurance, which can exist only in the case of risks on the same interest in property and in favor of the same person;

(11) The right of action of the plaintiff accrued on the occurring of the loss, and did not require that the railroad companies should have actually paid damages for the loss of the cotton. *California Insurance Co.* v. *Union Compress Co.*, 387.

INTEREST.

Where a dividend was declared by the receiver in October, 1887, the plaintiff is entitled to interest on the amount of his dividend from the time it was declared. *Armstrong* v. *American Exchange Bank*, 433.

See JURISDICTION, A, 9;
MORTGAGE, (7), (8).

INTERNAL REVENUE.

1. Statutes to prevent frauds upon the revenue, although they impose penalties or forfeitures, are not to be construed, like penal laws generally,

strictly in favor of the defendant; but they are to be fairly and reasonably construed, so as to carry out the intention of the legislature. *United States* v. *Stowell*, 1.

2. The forfeiture imposed by the act of February 8, 1875, c. 36, § 16, for carrying on the business of a distiller without having given bond, or with intent to defraud the United States of the tax on the spirits distilled, includes all personal property owned by other persons, knowingly and voluntarily permitted by them to remain on any part of the premises, and actually used, either in the unlawful business, or in any other business openly carried on there; but in the lot of land on which the distillery is situated, only the right, title and interest of the distiller, and of persons who have consented to the carrying on of the business of a distiller thereon, is forfeited. And there is a like forfeiture of personal property under Rev. Stat. § 3258, for setting up an unregistered still; and of personal property and interests in real estate under § 3305, for omitting to keep books as required by law. *Ib.*
3. The forfeiture imposed by the act of February 8, 1875, c. 36, § 16, and by Rev. Stat. §§ 3258, 3305, takes effect from the time of the commission of the offence, both as to the right, title and interest in the land, and as to personal property then upon the land. *Ib.*
4. When the owner of land, upon which an illicit distillery has been set up and carried on with his consent, has previously made a mortgage thereof to one who does not permit or connive at the illicit distilling, and the mortgagor, upon a subsequent breach of condition of the mortgage, makes a quitclaim deed to the mortgagee, the forfeiture of the land, as well as of trade fixtures annexed to it for a lawful purpose before the setting up of the still, is of the equity of redemption only. *Ib.*

JUDGMENT.

A decree in equity, cancelling bonds of one railroad corporation and a mortgage by a second railroad corporation of its property to secure their payment, upon a bill filed by the latter against the former and the trustee under the mortgage, binds all the bondholders, unless obtained by fraud. And a bill afterwards filed by bondholders not personally made parties to that suit against those two corporations and a third railroad corporation alleged to claim a right in the property, by purchase or otherwise, prior to the lien of the bondholders, charging fraud and collusion in obtaining that decree, cannot be maintained without proof of the charges, if the second and third corporations, by pleas and answers under oath, fully and explicitly deny them, and aver that the third corporation had since purchased the property in good faith and without knowledge or notice of any fraud or irregularity in obtaining the decree. *Beals* v. *Illinois, Missouri & Texas Railroad Co.*, 290.

See EVIDENCE, 1;
PUBLIC LAND.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. This court has no jurisdiction to review a judgment of the highest court of a State, unless a Federal question has been, either in express terms or by necessary effect, decided by that court against the plaintiff in error. *San Francisco* v. *Itsell*, 65.
2. The record from the trial court must be taken in this court as it was presented to the appellate court below, and an objection to it, not made there, will not be considered here. *Keyser* v. *Hitz*, 138.
3. The decision of a state court that a judge of a Federal Court acted judicially in disbarring an attorney of the court involves no Federal question. *Manning* v. *French*, 186.
4. A petition for a writ of error forms no part of the record upon which action is taken here. *Ib.*
5. The verdict was for $5000, and the judgment was for that amount, and $306 interest for the time between verdict and judgment, and for $60.25 costs; *Held*, that the matter in dispute exceeded the sum or value of $5000, exclusive of costs, within the act of February 16, 1875, c. 77, § 3, 18 Stat. 316, even though, without the interest included in the judgment, the amount, exclusive of costs, would not be over $5000. *Quebec Steamship Co.* v. *Merchant*, 375.
6. Where the Supreme Court of a State 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 by this court without considering the Federal question. *Hopkins* v. *McLure*, 380.
7. In this case, the Supreme Court of the State held that the law was not changed by an isolated decision made by it, because such decision was an erroneous declaration of what was the law; and on that view this court held that no Federal question was presented by the record, and the writ of error was dismissed. *Ib.*
8. No judgment or decree of the highest court of a Territory can be reviewed in this court in matter of fact, but only in matter of law. *Starr* v. *Beck*, 541.
9. Upon appeal from a judgment of the Supreme Court of the District of Columbia in general term, affirming a judgment in special term, dismissing a bill in equity founded upon a contract bearing interest, the sum in dispute at the time of the judgment in general term, including interest to that time, is the test of the appellate jurisdiction of this court. *Keller* v. *Ashford*, 610.
10. The refusal of a Circuit Court to grant a rehearing is not subject to review here. *Boesch* v. *Graff*, 694.
11. To a master's report upon the damages to be awarded in an equity suit for the infringement of letters patent the bill of exceptions raised the points: (1), that the infringement was not wilful; (2), that the reduction in price of the article manufactured by the plaintiff was not

solely due to the infringement; *Held*, that this was sufficient to bring before the court the whole subject of the computation of damages. *Ib.*

See CLAIMS AGAINST THE UNITED STATES, (1);
CONSTITUTIONAL LAW, A, 3;
CONSUL, 5;
EQUITY, 3;
RECEIVER, 3.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Under the act of March 3, 1887, 24 Stat. 552, c. 373, as amended by the act of August 13, 1888, 25 Stat. 433, c. 866, a Circuit Court of the United States has not jurisdiction on the ground of diverse citizenship, if there are two plaintiffs to the action, who are citizens of and residents in different States, and the defendant is a citizen of and resident in a third State, and the action is brought in the State in which one of the plaintiffs resides. *Smith* v. *Lyon*, 315.
2. Under the act of March 3, 1875, c. 137, the restriction of the original jurisdiction of the Circuit Court of the United States in suits by an assignee whose assignor could not have sued in that court does not apply to a suit removed from a state court. *Delaware Co. Commissioners* v. *Diebold Safe & Lock Co.*, 473.
3. It is no objection to the exercise of jurisdiction by a Circuit Court of the United States over a suit brought by an assignee of a contract, that the assignor is a citizen of the same State as the defendant, if the assignor was not a party to the suit at the time of its removal from the state court, and, being since made a party, disclaims all interest in the suit, and no further proceedings are had against him, and the complaint alleges that the defendant consented to the assignment. *Ib.*
4. A Circuit Court can make no decree in a suit in the absence of a party whose rights must necessarily be affected thereby. *Gregory* v. *Stetson*, 579.

See CONSTITUTIONAL LAW, A, 9;
EQUITY, 10.

C. JURISDICTION OF STATE COURTS.

See BANKRUPT.

LIEN.

A liquidated claim against a railroad company, not converted into judgment, which another railroad company, purchasing its road and property, agrees with the selling company to assume and pay as part of the consideration, does not thereby become a lien upon the property so as to take priority over the lien of a mortgage made by the purchasing company to secure an issue of bonds. *Fogg* v. *Blair*, 534.

LIMITATION, STATUTES OF.

When, after default by a municipal corporation in the payment of interest upon its bonds the legislature provides for the creation of a special

fund by the debtor, out of which the creditor is to be paid, the debtor cannot set up the statute of limitations to an action on the bonds and coupons, without showing that the fund has been provided. *Lincoln County* v. *Luning*, 529.

See MORTGAGE, (9).

LOCAL LAW.

California. *See* WILL, 2.
District of Columbia. *See* MORTGAGE, (6).
Illinois. *See* EQUITY PLEADING, 4.
Kansas. *See* MUNICIPAL CORPORATION, 2, 4, 5, 6.
Louisiana. *See* INSOLVENCY.
Massachusetts. *See* WILL, 2.
New York. *See* TAX AND TAXATION.
Utah. *See* PUBLIC LAND, 5; WILL.
Virginia. *See* ASSIGNMENT FOR THE BENEFIT OF CREDITORS, 1, 8.

MARRIED WOMEN.

See NATIONAL BANK, 6, 7.

MASTER AND SERVANT.

1. In this case, which was an action against a railroad company, by one of its employés, to recover damages for a personal injury, it was *Held*, that it was proper for the Circuit Court to direct the jury to find a verdict for the defendant. *Coyne* v. *Union Pacific Railroad Co.*, 370.

2. The plaintiff was a laborer or construction hand, under a construction boss or foreman of the defendant. He was injured by the fall of a steel rail, which he and other laborers were trying to load from the ground upon a flat car, and which struck the side of the car and fell back. The negligence alleged was, that the foreman moved out the construction train to which the flat car belonged, in the face of an approaching regular freight train, to avoid which the laborers were hurrying to load the rails; and that he failed to give the customary word of command to lift the rail in concert, but, with the approaching freight train in sight, and with oaths and imprecations, ordered the men to get the rail on in any way they could, and they lifted it without concert; *Held*, that whatever negligence there was, was that of either the plaintiff himself or of his fellow-servants who with him had hold of the rail. *Ib.*

3. The stewardess of a steam-vessel belonging to a corporation sued it to recover damages for personal injuries sustained by her. She came out of the cabin, which was on deck, to throw the contents of a pail over the side of the vessel, at a gangway facing the door of the cabin, and leaned over a railing at the gangway, composed of four horizon-

tal rods, which gave way, because not properly secured, and she fell into the water, probably striking the side of a boat. The rods were movable, to make a gangway, and had been recently opened to take off some baggage of passengers, and not properly replaced. The porter and the carpenter had attempted to replace them, but left the work, knowing that it was unfinished. The persons composing the ship's company were divided into three classes of servants, called three departments — the deck department, containing the first and second officers, the purser, the carpenter and the sailors; the engineer's department, containing the engineers, the firemen and the coal-passers; and the steward's department, containing the steward, the waiters, the cooks, the porter and the stewardess. Every one on board, including the plaintiff, had signed the shipping articles, and she had participated in salvage given to the vessel. The master was in command of the whole vessel; *Held*, that the porter and the carpenter were fellow-servants with the plaintiff, and that the corporation was not liable to her for any damages. *Quebec Steamship Co.* v. *Merchant*, 375.

4. The Circuit Court left it to the jury to determine, if they found there was negligence, whether the injury was occasioned by the careless act of a servant not employed in the same department with the plaintiff; *Held*, error, and that the court ought to have directed the jury, as requested, to find for the defendant, on the ground that the negligence was that of a fellow-servant, either the porter or the carpenter. *Ib.*

MORTGAGE.

S. gave two deeds of trust of a lot of land in the District of Columbia to secure loans made by P. Afterwards he gave a deed of trust of the same lot to secure a loan made by C., that deed covering also a lot in the rear of the first lot, and fronting on a side street. At the time all the deeds were given, there was a dwelling-house on the premises, the main part of which was on the first lot, but some of which was on the rear lot. P., on an allegation that B., a trustee in each of the first two deeds, had refused to sell the property covered by them, filed a bill asking the appointment of a trustee in place of those appointed by the first two deeds. The suit resulted in a decree appointing a new trustee in place of B., "in the deed of trust," but not identifying which one. The new trustee and the remaining old one then sold the land at auction to P., under the first trust deed. S. then filed a bill to set aside the sale, and P. filed a cross bill to confirm it. The bill was dismissed. P. then filed this bill against S. and C., and all necessary parties, to have a trustee appointed to sell the land covered by the three trust deeds, and the improvements on it, to have a receiver of the rents appointed, and to have the rents and the proceeds of sale applied first to pay P. A receiver was appointed, and a decree made

for the sale of the entire property, as a whole, by trustees whom the decree appointed, and for the ascertainment by the trustees of the relative values of the land covered by the first two trust deeds and the improvements thereon, and of the rear piece of land and the improvements thereon, and for the payment to P. of the net proceeds of sale representing the value of the land and improvements covered by the first two trust deeds, less the expenses chargeable thereto, and of the residue to C., and, out of the rents, to P., what he had paid for taxes and insurance premiums, and for a personal decree against S., in favor of P., for any deficiency in the proceeds of sale to pay the claims of P.; *Held*, (1) It was the intention of both S. and P. that the first two deeds of trust should include the rear land as well as the front lot; (2) The decree in the first suit by P. was so uncertain as to be practically void, and there was no effective appointment of a trustee and no effective sale to P.; (3) P. was not estopped by that sale from having the property sold again; (4) P. was not required, as a condition of the sale of the rear lot, to pay the whole of the debt due to C.; and the case was a proper one for selling the property as an entirety; (5) It was, also, a proper one for the appointment of a receiver of the rents, and those rents in the hands of the receiver, after paying charges, ought to go to make up any deficiency in the proceeds of sale to satisfy the *corpus* of all the secured debts, and ought to be first applied to pay any balance due to P.; (6) Under § 808 of the Revised Statutes relating to the District of Columbia a decree *in personam* for a deficiency is a necessary incident of a foreclosure suit in equity; (7) As the notes secured by the deeds of trust bore interest at the rate of nine per cent per annum, until paid, it was proper to allow that rate of interest on the principal until paid, and not to limit the rate to six per cent after decree, because the contracts were not merged in the decree; (8) The rate of interest on the decree for deficiency is properly six per cent, under §§ 713 and 829 of said Revised Statutes. (9) The statute of limitation not having been pleaded as to any part of the principal or interest, the defendant cannot avail himself of it. *Shepherd* v. *Pepper*, 626.

See BANKRUPT; CONTRACT; DEED, 3; EQUITY, 1, 4, 5; INTERNAL REVENUE, 4; LIEN.

MUNICIPAL CORPORATION.

1. Full control over the matter of the organization of new counties in the State of Kansas is, by its constitution, article 9, § 1, given to the legislature of the State, which has power, not only to organize a county in any manner it sees fit, but also to validate by recognition any organization already existing, no matter how fraudulent the proceedings therefor were. *Comanche County* v. *Lewis*, 198.

2. When both the executive and legislative departments of the State have

given notice to the world that a county within the territorial limits of the State of Kansas has been duly organized, and exists, with full power of contracting, it is not open to the county to dispute those facts in an action brought against it by a holder of its bonds, who bought them in good faith in open market. *Ib.*

3. The debts of a county, contracted during a valid organization, remain the obligations of the county, although, for a time, the organization be abandoned, and there are no officers to be reached by the process of the court. *Ib.*
4. A recital in the bond of a municipal corporation in Kansas that it was issued in accordance with authority conferred by the act of March 2, 1872, Kansas Laws of 1872, 110, c. 68, and in accordance with a vote of a majority of the qualified voters, is sufficient to validate the bonds in the hands of a *bona fide* holder; and the certificate of the auditor of the State thereon that the bond was regularly issued, that the signatures were genuine, and that the bond had been duly registered, is conclusive upon the municipality. *Ib.*
5. A recital on a bond issued by a county in Kansas for the purpose of building a bridge, need not necessarily refer to the particular bridge for the construction of which it was issued. *Ib.*
6. In Kansas a county has power to borrow money for the erection of county buildings, and to issue its bonds therefor. *Ib.*
7. The organization of townships and the number, character, and duties of their various officers are matters of legislative control. *Bernards Township* v. *Morrison*, 523.
8. Officers duly appointed under statute authority represent a municipality as fully as officers elected. *Ib.*
9. When the legislature has declared how an officer is to be selected, and the officer is selected in accordance with that declaration, his acts, within the scope of the powers given him by the legislature, bind the municipality. *Ib.*

See CASES AFFIRMED, 2, 3; CONTRACT, 1; EQUITY, 7; LIMITATION, STATUTES OF.

NATIONAL BANK.

1. A national bank went into voluntary liquidation in September, 1873. Before that it had become liable to a state bank, as guarantor on sundry notes, made by a third person, and which were discounted for it by the state bank. In August, 1874, transactions took place between the maker of the notes and the state bank, and the person who acted as the president of the national bank, whereby the maker was released from further liability on the notes, but such acting president attempted to continue, by agreement, the liability of the national bank as guarantor. In a suit begun in October, 1876, a judgment on the guaranty was obtained in May, 1880, by the state bank against the national bank. In a suit brought by a creditor against the national bank and

its stockholders to enforce their statutory liability for its debts, the court on an application made in June, 1887, enquired into the liability of the stockholders to have the claim of the state bank enforced as against them, in view of the transactions of August, 1874, and disallowed that claim; *Held*, (1) It was proper to reëxamine the claim; (2) The judgment against the bank was not binding on the stockholders in the sense that it could not be reëxamined; (3) The guaranty of the bank was released as to the stockholders by the release of the maker of the notes; (4) The rights of the stockholders could not be affected by the acts of the president done after the bank had gone into liquidation. *Schrader* v. *Manufacturers' Bank*, 67.

2. After the passage of the act of June 30, 1876, 19 Stat. 63, savings banks organized in the District of Columbia under an act of Congress, and having a capital stock paid up in whole or in part, were entitled to become national banking associations in the mode prescribed by Rev. Stat. § 5154. *Keyser* v. *Hitz*, 138.
3. A certificate signed by the Deputy Comptroller of the Currency as "Acting Comptroller of the Currency," is a sufficient certificate by the Comptroller of the Currency within the requirements of Rev. Stat. § 5154. *Ib.*
4. A transfer of stock in a bank to a person without his or her knowledge or consent, does not of itself impose upon the transferee the liability attached by law to the position of a shareholder in the association; but if, after the transfer, the transferee approves or acquiesces in it, or in any way ratifies it, (as, for instance, by joining in an application to convert the bank into a national bank,) or accepts any benefit arising from the ownership of such stock, he or she becomes liable to be treated as a shareholder, with such responsibility as the law imposes in such case; and this liability is the same whether new certificates have or have not been issued to the transferee after the transfer. *Ib.*
5. The endorsement, by the payee, of a check which appears on its face to be drawn by the cashier of a bank in payment of a dividend due the payee as a stockholder, estops him from denying knowledge of its contents or ownership of the shares. *Ib.*
6. A married woman in the District of Columbia may become a holder of stock in a national banking association, and assume all the liabilities of such a shareholder, although the consideration may have proceeded wholly from the husband. *Ib.*
7. The coverture of a married woman, who is a shareholder in a national bank, does not prevent the receiver of the bank from recovering judgment against her for the amount of an assessment levied upon the shareholders equally and ratably under the statute; but no opinion is expressed as to what property may be reached in the enforcement of such judgment. *Ib.*
8. When the previous proceedings looking to an increase in the capital stock of a national bank have been regular and all that are requisite,

and a stockholder subscribes to his proportionate part of the increase and pays his subscription, the law does not attach to the subscription a condition that it is to be void if the whole increase authorized be not subscribed; although there may be cases in which equity would interfere to protect him in case of a material deficiency. *Aspinwall* v. *Butler*, 595.

9. The provision in Rev. Stat. § 5142, that no increase of capital in a national bank shall be valid until the whole amount of the increase shall be paid in, and the Comptroller of the Currency notified and his consent obtained, was intended to secure the actual cash payment of the subscriptions made, and to prevent watering of stock; but not to invalidate *bona fide* subscriptions actually made and paid. *Ib.*
10. The Comptroller of the Currency has power by law to assent to an increase in the capital stock of a national bank less than that originally voted by the directors, but equal to the amount actually subscribed and paid for by the shareholders under that vote. *Ib.*

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS, 4, 5, 7.

NEGLIGENCE.

See MASTER AND SERVANT.

PARTNERSHIP.

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS, 2, 7.

PARTY.

See EQUITY, 8, 9, 10.

PATENT FOR INVENTION.

1. The claim in letters patent No. 59,375, granted to Alexander F. Evory and Alonzo Heston, November 6, 1866, for an "improvement in boots and shoes" was for a manufactured article, and not for the mode of producing it; and, as it was merely a carrying forward of the original idea of the earlier patents on the same subject — simply a change in form and arrangement of the constitutent parts of the shoe, or an improvement in degree only — it was not a patentable invention. *Burt* v. *Evory*, 349.
2. Not every improvement in an article is patentable, but the improvement must be the product of an original conception; and if it is a mere carrying forward, or more extended application of an original idea, an improvement in degree only, it is not an invention. *Ib.*
3. The combination of old devices into a new article, without producing any new mode of operation, is not invention. *Ib.*
4. The claim of letters patent No. 190,152, granted May 1, 1877, to Alexander C. Martin, for an "improvement in furniture casters," namely, "The floor-wheels EE, the anti-friction pivot wheel F, the housing B, the elliptical housing opening, or its mechanical equivalent,

and the rocker-formed collar bearing, or its mechanical equivalent, all combined so as to allow the floor-wheel axis to oscillate horizontally, substantially as and for the purpose specified," being a claim selected by the patentee in obedience to the requirements of the Patent Office, after an extended construction of it had been rejected, and being a combination of specified elements, must be limited to a combination of all such elements. *Phœnix Caster Co.* v. *Spiegel*, 360.

5. In view of the state of the art, the words in the claim, "the rocker-formed collar bearing, or its mechanical equivalent," must be restricted to such a bearing resting on a collar beneath the floor-wheel housing, as is shown in the Martin patent; and the claim does not cover a caster which does not have the collar of that patent, or its rocker-formed collar bearing or an equivalent therefor. *Ib.*

6. S., by an assignment absolute in form and for an expressed sum and "other valuable considerations," assigned to G. an interest in letters patent. G., by a writing executed the following day, made a further agreement with S. as to the times, and modes, and amounts of payments, and further agreed that if he should fail to carry out his said agreements, the title was to revert to S. *Held*, that the transfer was absolute, subject to be defeated by failure to perform the condition subsequent. *Boesch* v. *Gräff*, 694.

7. When an invention patented in a foreign country is also patented in the United States, articles containing it cannot be imported into the United States from the foreign country and sold here without the license or consent of the owner of the United States patent, although purchased in the foreign country from a person authorized to sell them. *Ib.*

8. When a plaintiff in a suit for the infringement of letters patent seeks to recover because he has been compelled to lower his price in order to compete with the infringing defendant, he must either show that the reduction was due solely to the defendant's acts, or to what extent it was due to them, and must furnish data by which actual damages may be calculated. *Ib.*

PLEDGE.

R. loaned to a railroad company $100,000 upon its notes, and received from it 1250 shares of paid-up stock as a bonus, and 200 mortgage bonds of the company, and the practical control of the board of directors of the corporation. After this he demanded of this board 100 more bonds, as further collateral, and they agreed to it. Subsequently he proposed to the board that he would make further advances if they would put 300 more bonds in his hands as collateral, and they assented to this proposal; but he never made such further advances. These 400 bonds, together with other bonds and property of the company, then came into his hands at a time when he was acting as and claiming to be the treasurer of the company. After the insolvency of the company took

place, R. claimed to hold these 400 bonds individually, as collateral for his debt; *Held*, that as between him and the other creditors of the company, he could not, under the circumstances, hold them as collateral for his debt. *Richardson's Executor* v. *Green*, 30.

POLYGAMY.

See CONSTITUTIONAL LAW, A, 4;
CRIMINAL LAW.

PRACTICE.

See COSTS.

PRO CONFESSO.

See EQUITY, 2, 3, 5.

PUBLIC LAND.

1. When a decree in equity in a suit relating to public land gives the boundaries of the tract, the claim to which is confirmed, with precision, and has become final by stipulation of the United States and the withdrawal of their appeal therefrom, it is conclusive, not only on the question of title, but also as to the boundaries which it specifies. *United States* v. *Hancock*, 193.
2. Proof that a surveyor of public land, who in the course of his official duty surveyed a tract which had been confirmed under a Mexican land-grant, accepted from the grantee some years after the survey a deed of a portion of the tract, which he subsequently sold for $1500, though it may be the subject of criticism, is not the "clear, convincing and unambiguous" proof of fraud which is required to set aside a patent of public land. *Ib.*
3. Doubts respecting the correctness of a survey of public land, which was made in good faith and passed unchallenged for fifteen years, should be resolved in favor of the title as patented. *Ib.*
4. There is an implied license, growing out of the custom of nearly one hundred years, that the public lands of the United States, especially those in which the native grasses are adapted to the growth and fattening of domestic animals, shall be free to the people who seek to use them where they are left open and unenclosed, and no act of the government forbids their use. *Buford* v. *Houtz*, 320.
5. During the progress of the settlement of the newer parts of the country the rule that the owner of domestic animals should keep them confined within his own grounds, and should be liable for their trespasses upon unenclosed land of his neighbor, has nowhere prevailed; but, on the contrary, his right to permit them, when not dangerous, to run at large without responsibility for their getting upon such land of his neighbor, has been universally conceded, and is a part of the statute law of Utah. Comp. Laws, § 2234. *Ib.*

6. Where Congress has prescribed conditions upon which portions of the public domain may be alienated, and has provided that upon the performance of the conditions a patent shall issue to the donee or purchaser, and all such conditions have been complied with, and the tract to be alienated is distinctly defined, and nothing remains but to issue the patent, then the donee or purchaser is to be treated as the beneficial owner of the land, holding it as his own property, subject to state and local taxation; but when an official executive act, prescribed by law, remains to be done before the tract can be distinctly defined, and before a patent can issue, the legal and equitable titles remain in the United States, and the land is not subject to local taxation. *Wisconsin Central Railroad Co.* v. *Price*, 496.

7. The act of the Secretary of the Interior in approving the selection of indemnity lands by a railroad land-grant company, to supply deficiencies in selections within the place limits, is judicial, and until it is done the company has no equitable right in the selected tracts; and this rule is not affected by the fact that such a refusal was given under a mistake of law, and was subsequently withdrawn, and an assent given. *Ib.*

8. The filing of a homestead entry of a tract across which a stream of water runs in its natural channel with no right or claim of right to divert it therefrom, confers the right to have the stream continue to run in that channel, without diversion; which right, when completed by full compliance with the requirements of the statutes on the part of the settler and the issue of a patent, relates back to the date of the filing and cuts off intervening adverse claims to the water. *Sturr* v. *Beck*, 541.

9. The legislation of Congress upon this subject reviewed. *Ib.*

10. Swamp lands located on a military land warrant prior to the passage of the swamp-land act of September 28, 1850, but patented to the locator subsequently to the passage of that act, were not included in the lands granted by it to the several States. *Culver* v. *Uthe*, 655.

11. Section 891 of the Revised Statutes authorizes certified copies of records of the land office at Washington, concerning the location of land warrants to be introduced in evidence. *Ib.*

12. The delivery of his warrant by the holder of a land warrant to the proper officers of the government, with directions that it be located on a designated tract of public land, constituted a sale of that tract within the meaning of the act of September 28, 1850, 9 Stat. 519, c. 84, granting the swamp lands to the States. *Ib.*

See BETTERMENTS, 1.

RAILROAD.

See CORPORATION, 1; EQUITY, 1, 4, 5; INSURANCE; JUDGMENT; MASTER AND SERVANT, 1, 2; PLEDGE.

REBELLION.

See CONFISCATION.

RECEIVER.

1. An allowance of counsel fees on behalf of a receiver is made to the receiver, and not to the counsel. *Stuart* v. *Boulware*, 78.
2. A receiver is an officer of the court, entitled to apply to the court for instruction and advice, and permitted to retain counsel, whose fees are within the just allowances that may be made by the court. *Ib.*
3. Allowances to a receiver for counsel are largely discretionary, and the action of the court below in this respect is treated by an appellate court as presumably correct. *Ib.*

See MORTGAGE, (5).

REMOVAL OF CAUSES.

A claim against a county, heard before the county commissioners, and on appeal from their decision by the circuit court of the county, under the statutes of Indiana, may be removed, at any time before trial in that court, into the Circuit Court of the United States, under Rev. Stat. § 639, cl. 3. *Delaware Co. Commissioners* v. *Diebold Safe & Lock Co.*, 473.

RIPARIAN RIGHTS.

See PUBLIC LAND, 8.

RULES.

See EQUITY PLEADING, 2.

RUNNING WATER.

See PUBLIC LAND, 8.

SALARY.

An envoy extraordinary and minister plenipotentiary of the United States to Turkey was never appointed before July 13, 1882. On that day, the claimant, being minister resident and consul general of the United States to Turkey, at a salary of $7500 a year, was appointed to the higher grade. By each of the diplomatic appropriation bills of 1882, 1883 and 1884, $7500 was appropriated for the salary of an envoy extraordinary and minister plenipotentiary to Turkey. The claimant, having been paid the $7500 salary for each of those years, sued in the Court of Claims to recover the difference between that amount and an annual salary of $10,000, claiming the latter under § 1675 of the Revised Statutes, as amended by the act of March 3, 1875, c. 153, 18 Stat. 483; *Held*, that as, under the amendment of 1875, the salary was to be $10,000, "unless where a different compensation is prescribed by law," and the office did not exist before July 1, 1882, and the first provision made by Congress for a salary for it was made by the act of

July 1, 1882, and was for $7500, and the same provision was continued while the claimant thereafter held the office, and he was paid the $7500, he had no further claim. *Wallace* v. *United States*, 180.

SERVICE OF PROCESS.

See EQUITY, 7.

STATE.

See EQUITY, 8, 9.

STATUTE.

See TABLE OF STATUTES CITED IN OPINIONS.

A. CONSTRUCTION OF STATUTES.

1. A provision in an act of a state legislature that the courts of the State shall be bound to take judicial notice of it after its passage and publication, is binding upon the courts of the State, and also in proceedings in the federal courts in the same State. *Case* v. *Kelly*, 21.
2. The construction of a state statute by the highest court of the State is accepted as conclusive in this court. *Louisville, New Orleans &c. Railway* v. *Mississippi*, 587.
3. This court accepts the construction given to a state statute against fraudulent conveyances by the highest court of the State as controlling. *Peters* v. *Bain*, 670.

See CONSTITUTIONAL LAW, A, 5;
INTERNAL REVENUE, 1.

B. STATUTES OF THE UNITED STATES.

See ARMY OF THE UNITED STATES;
ATTORNEY GENERAL;
CLAIMS AGAINST THE UNITED STATES;
CONFISCATION;
CONSTITUTIONAL LAW, A, 4;
CONSUL, 1;
CRIMINAL LAW, 4;
DISTRICT ATTORNEY;
INTERNAL REVENUE, 2, 3;
JURISDICTION, A, 5; B, 1, 2;
MORTGAGE, (6), (8);
NATIONAL BANK, 2, 3, 9;
PUBLIC LAND, 10, 11, 12;
REMOVAL OF CAUSES;
SALARY.

C. STATUTES OF STATES AND TERRITORIES.

California. *See* WILL, 2.
Idaho. *See* CONSTITUTIONAL LAW, A, 4;
CRIMINAL LAW, 3.
Illinois. *See* BILL OF EXCHANGE AND PROMISSORY NOTE, 5;
CERTIFICATE OF DEPOSIT, 3.
Indiana. *See* CONTRACT, 13.
Kansas. *See* MUNICIPAL CORPORATION, 1, 2, 4.
Massachusetts. *See* WILL, 2.

Mississippi. *See* CONSTITUTIONAL LAW, A, 10.
New York. *See* TAX AND TAXATION, 1.
Utah. *See* PUBLIC LAND, 5;
WILL, 1, 2.

SUNDAY.

See ARMY OF THE UNITED STATES, 2.

TAX AND TAXATION.

1. P. was a resident in the city of New York and a stockholder in a national bank situated there. In 1881 his shares in the bank were assessed at a valuation of $247,635. This valuation was entered by the tax commissioners in the annual Record of Valuations for 1881, a book which was kept open for public inspection from the second Monday of January, 1881, to May 1, 1881, and a public advertisement thereof was made. Before April, 1881, P. appeared before the commissioners and claimed a reduction, and they reduced the valuation to $190,635. On May 1st the assessment rolls were prepared from that record, with the valuation of P.'s shares at the latter sum, and he was assessed at that valuation. The tax rolls were completed on this basis, and notice was given that they would be open for inspection. P.'s tax, upon the reduced valuation, was $4994.63. The tax rolls were confirmed, and due notice was given to all taxpayers that the taxes were due and payable. P. paid $1310 of this tax, but declined to pay the further sum of $3684.63. The collector of taxes thereupon proceeded against him in the Court of Common Pleas for the city and county of New York, under c. 230 of the laws of New York of 1843, for the enforcement of the payment of the sum remaining due. He appeared and answered, and judgment was given against him, which judgment was affirmed by the Court of Appeals, and the case was remanded to the Court of Common Pleas. A writ of error was sued out from this court to review that judgment; *Held*, (1) That this court was bound by the decision of the Court of Appeals as to P.'s failure to comply with the state statute in relation to the method of procedure, form of assessment, etc.; (2) That the assessment was not made in contravention of the Constitution or laws of the United States, and was, therefore, not void for that reason; (3) That the mode provided by the statute of New York for the collection of the tax was "due process of law," and did not deprive P. of the equal protection of the laws; but that it was a purely executive process to collect the tax after the liability of the party was finally fixed. *Palmer* v. *McMahon*, 660.
2. When a law provides a mode for confirming or contesting an assessment for taxation, with appropriate notice to the person charged, the assessment cannot be said to deprive the owner of his property without due process of law. *Ib.*
3. Assessors should give all persons taxed an opportunity to be heard; but

it is sufficient if the law provides for a board of revision, authorized to hear complaints respecting the justice of the assessment, and prescribes the time during which, and the place where such complaints may be made. *Ib.*

See CONSTITUTIONAL LAW, A, 7;
EQUITY PLEADING, 4;
PUBLIC LAND, 6.

TRADE-MARK.

The trade-mark for tea (No. 9952) registered in the Patent Office by Ingraham, Corbin & May, December 27, 1881, was for the combination of the figure of a diamond and the words "The Tycoon Tea" enclosed in it; and its registration conferred no exclusive right to the use of the word "Tycoon" considered by itself. *Corbin* v. *Gould*, 308.

TREASURY DEPARTMENT.

See AUDITOR IN TREASURY DEPARTMENT;
COMPTROLLER IN TREASURY DEPARTMENT.

TREATY.

1. The treaty power of the United States extends to the protection to be afforded to citizens of a foreign country owning property in this country and to the manner in which that property may be transferred, devised or inherited. *Geofroy* v. *Riggs*, 258.
2. Article 7 of the Convention with France of September 30, 1800, construed. *Ib.*
3. Article 7 of the Consular Convention with France of February 23, 1853, construed. *Ib.*

TRESPASS.

See PUBLIC LAND, 5.

TRUSTEE.

Under the circumstances of this case the trustee is entitled to receive the value of the improvements made by him in good faith upon the real estate in controversy before being required to convey it. *Case* v. *Kelly*, 21.

ULTRA VIRES.

See CORPORATION, 2.

WARRANTY.

See DEED, 1.

WILL.

1. Under the statute of Utah, enacting that when a testator omits to provide in his will for any of his children or the issue of any deceased

child, such child or issue of a child shall have the same share in the estate it would have had had the testator died intestate, "unless it shall appear that such omission was intentional," the intention of the testator is not necessarily to be gathered from the will alone, but extrinsic evidence is admissible to prove it. *Coulam* v. *Doull*, 216.

2. A statute of Massachusetts, touching wills in which the testator fails to make provision for a child or children or issue of a deceased child in being when the will was made, was substantially followed by the legislature of California; and, as enacted in California, was followed in Utah. In Massachusetts it received a construction by the Supreme Judicial Court of the State which the Supreme Court of California declined to follow. In a case arising under the statute of Utah; *Held*, that the court was at liberty to adopt the construction which was in accordance with its own judgment, and that it was not obliged to follow the construction given to it by the Supreme Court of California. *Ib.*