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ACCRETION.

A fractional section of land, on the left bank of the Missouri River, in Iowa, was surveyed by United States surveyors in 1851, and lot 4 therein was formed, and so designated on the plat filed, and as containing 37.24 acres, the north boundary of it being on the Missouri River. In 1853 the lot was entered and paid for, and was patented in June, 1855, as lot 4. Afterwards, by ten mesne conveyances, made down to 1888, the lot was conveyed as lot 4, and became vested in the plaintiff. About 1853 new land was formed against the north line, and continued to form until 1870, so that then more than 40 acres had been formed by accretion by natural causes and imperceptible degrees within the lines running north and south on the east and west of the lot, and the course of the river ran far north of the original meander line. The defendant claimed to own a part of the new land by deed from one who had entered upon it. The plaintiff filed a bill to establish his title to the new land, claiming it as a part of lot 4. On demurrer to the bill: *Held*, (1) The bill alleging that the land was formed by "imperceptible degrees," the time during which the large increase was made being nearly 20 years, the averment must stand, notwithstanding the character of the river, and the rapid changes constantly going on in its banks; (2) Where a water line is the boundary of a given lot, that line, no matter how it shifts, remains the boundary; and a deed describing the lot by its number conveys the land up to such shifting water line; so that, in the view of accretion, the water line, if named as the boundary, continues to be the boundary, and a deed of the lot carries all the land up to the water line; (3) Accretion is an addition to land coterminous with the water, which is formed so slowly that its progress cannot be perceived, and does not admit of the view, that, in order to be accretion, the formation must be one not discernible by comparison at two distinct periods of time; (4) The patent having conveyed the lot as lot 4, and the successive deeds thereafter having conveyed it by the same description, the patent and the deeds covered the successive accretions, and neither the United States, nor any grantor, retained any interest in any of the accretion; (5) Where a plat is referred to in a deed as containing a description of land, the courses, distances, and other particulars appearing upon the plat are to be as much regarded, in ascertaining the true description

of the land and the intent of the parties, as if they had been expressly enumerated in the deed. *Jefferis* v. *East Omaha Land Co.*, 178.

ADMIRALTY.

1. The provision of the act of March 3, 1887, c. 373, § 1, 24 Stat. 552, that "no civil suit" shall be brought before a Circuit or District Court against any person in any other district than that of which he is an inhabitant, does not apply to cases in admiralty. *In re Louisville Underwriters*, 488.
2. A libel in admiralty *in personam* may be maintained against a corporation in any district by service there upon an attorney appointed by the corporation, as required by the statutes of the State, to be served with legal process. *Ib.*

AMENDMENT OF RECORD.

When it is found by a Circuit Court of the United States that the clerk has failed to put in the record an order which was made at the next preceding term of the court, remanding a case to the District Court, the Circuit Court may direct such an order to be entered *nunc pro tunc*. *In re Wight*, 136.

APPEAL.

1. When the term at which an appeal is returnable goes by without the filing of the record, a second appeal may be taken, if the time for appeal has not expired. *Evans* v. *State Bank*, 330.
2. If an appellee does not avail himself of his right, under the ninth rule, to docket and dismiss an appeal for neglect of the appellant to docket the case and file the record, as required by the rules, the appellant may file the record at any time during the return term. *Ib.*
3. The failure to obtain a citation or give a bond within two years from the rendition of a decree does not deprive this court of jurisdiction over an appeal, when the transcript of the record is filed here during the term succeeding its allowance. *Ib.*
4. The holder of $14,000 out of $955,000 of railroad bonds secured by a mortgage was permitted by the Circuit Court to appeal to this court, in the name of the trustee in the mortgage, from a decree which it was claimed affected the interest of such holder. It appearing that some time before the appeal was taken the trustee had executed a release of his right to appeal, and of errors in the decree, and that the court had, in the decree, found that there was no proof showing that the trustee had not acted in good faith; *Held*, that the release bound all the bondholders represented by the trustee; that it was properly brought before this court, though not found in the transcript of the record; that the appeal was the appeal of the trustee; and that on the motion of the appellee, it must be dismissed. *Elwell* v. *Fosdick*, 500.
5. When the record is not filed in this court at the term succeeding the

allowance of an appeal, the appeal ceases to have any operation or effect, and the case stands as if it had never been allowed. *Small* v. *Northern Pacific Railroad*, 514.

See DISTRICT OF COLUMBIA;
JURISDICTION, D, 3, 4.

ARMY AND NAVY.

An officer in the army or navy of the United States does not hold his office by contract, but at the will of the sovereign power. *Crenshaw* v. *United States*, 98.

See CONSTITUTIONAL LAW, 10, 11.

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See EQUITY, 5.

CASES AFFIRMED OR APPROVED.

1. *Liverpool and London Insurance Co.* v. *Gunther*, 116 U. S. 113, affirmed. *Gunther* v. *Liverpool and London Ins. Co.*, 110.
2. *Pennsylvania Railroad* v. *Locomotive Truck Co.*, 110 U. S. 490, again affirmed. *Howe Machine Co.* v. *National Needle Co.*, 388.
3. The case of *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 U. S. 418, affirmed, on substantially the same state of facts. *Minneapolis Eastern Railway Co.* v. *Minnesota*, 467.
4. *Gibson* v. *Shufeldt*, 122 U. S. 27. *Wheeler* v. *Cloyd*, 537.
5. *Austin* v. *Citizens' Bank*, 30 La. Ann. 689, approved and applied to this case. *Mendenhall* v. *Hall*, 559.
6. *McCulloch* v. *Maryland*, 4 Wheat. 316, 436; *Weston* v. *City Council of Charleston*, 2 Pet. 449; *Henderson* v. *Mayor of New York*, 92 U. S. 259; and *Brown* v. *Maryland*, 12 Wheat. 419, in no wise conflict with the points decided in this case; and the court fully assents to those cases, and has no doubt of their correctness in any particular. *Home Ins. Co.* v. *New York*, 594.

CASES DISTINGUISHED.

1. *Van Ness* v. *Van Ness*, 6 How. 62; and *Brown* v. *Wiley*, 4 Wall. 165, distinguished. *Ormsby* v. *Webb*, 47.
2. *Robertson* v. *Bradbury*, 132 U. S. 491, distinguished from this case. *Little* v. *Bowers*, 547.

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1. *Hart* v. *Sansom*, 110 U. S. 151, explained. *Arndt* v. *Griggs*, 316.
2. The case of *Bate Refrigerating Co.* v. *Hammond*, 129 U. S. 151, explained. *Pohl* v. *Anchor Brewing Co.*, 381.

CASES QUESTIONED OR OVERRULED.

Chisholm v. *Georgia*, 2 Dall. 419, questioned. *Hans* v. *Louisiana*, 1.

CERTIFICATE OF DIVISION IN OPINION.

The court again declines to answer a certified question which contains no clear and distinct proposition of law. *United States* v. *Lacher*, 624.

CIRCUIT COURTS OF THE UNITED STATES.

See AMENDMENT OF RECORD;
COMMISSIONERS OF CIRCUIT COURTS;
JURISDICTION, B.

COMMISSIONERS OF CIRCUIT COURTS.

1. The decision of a commissioner of a Circuit Court of the United States, upon a motion for bail and the sufficiency thereof, and his decision upon a motion for a continuance of the hearing of a criminal charge, are judicial acts in the "hearing and deciding on criminal charges" within the meaning of Rev. Stat. § 847, providing for a *per diem* compensation in such cases. *United States* v. *Jones*, 483.
2. The approval of a commissioner's account by a Circuit Court of the United States is *prima facie* evidence of its correctness, and, in the absence of clear and unequivocal proof of mistake on the part of the court, should be conclusive. *Ib.*

CONSTITUTIONAL LAW.

1. A State cannot, without its consent, be sued in a Circuit Court of the United States by one of its own citizens, upon a suggestion that the case is one that arises under the Constitution and laws of the United States. *Hans* v. *Louisiana*, 1.
2. While a State cannot be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts may be judicially resisted; and any law impairing the obligation of contracts under which such property or rights are held is void, and powerless to affect their enjoyment. *Ib.*
3. This suit was commenced against the State of North Carolina and against the auditor of that State, as defendants, to compel the levying of a special tax for the benefit of certain holders of its bonds; *Held*, (1) That the suit against the auditor was, under the circumstances, virtually a suit against the State; (2) That on the authority of *Hans* v. *Louisiana*, 134 U. S. 1, the suit could not be maintained against the State. *North Carolina* v. *Temple*, 22.
4. The first eight of the Articles of Amendment to the Constitution of the United States have reference only to powers exercised by the United States, and not to those exercised by the States. *Eilenbecker* v. *Plymouth County*, 31.

5. The provision in Article III of the Constitution of the United States respecting the trial of crimes by jury relates to the judicial power of the United States. *Ib.*

6. Article VI of the Amendments to the Constitution of the United States respecting a speedy and public trial by jury; Articles V and VI respecting the right of persons accused of crime to be confronted with the witnesses; Article VIII respecting excessive fines, and cruel and unusual punishments; and Article XIV respecting the abridgment of privileges, the deprivation of liberty or property without due process of law, and the denial of the equal protection of the laws, are not infringed by the statutes of Iowa authorizing its courts, when a person violates an injunction restraining him from selling intoxicating liquors, to punish him as for contempt by fine or imprisonment or both. *Ib.*

7. Proceedings according to the common law for contempt of court are not subject to the right of trial by jury, and are "due process of law," within the meaning of the Fourteenth Amendment to the Constitution. *Ib.*

8. All the powers of courts whether at common law or in chancery may be called into play by the legislature of a State, for the purpose of suppressing the manufacture and sale of intoxicating liquors when they are prohibited by law, and to abate a nuisance declared by law to be such; and the Constitution of the United States interposes no hindrance. *Ib.*

9. A District Court of a county in Iowa is empowered to enjoin and restrain a person from selling or keeping for sale intoxicating liquors, including ale, wine, and beer, in the county, and disobedience of the order subjects the guilty party to proceedings for contempt and punishment thereunder. *Ib.*

10. The provision in the naval appropriation act of August 5, 1882, c. 391, § 1, which directs, in certain cases, the honorable discharge of naval cadets from the navy, with one year's sea pay, is not in conflict with the contract clause of the Constitution of the United States. *Crenshaw* v. *United States*, 99.

11. It is not within the power of a legislature to deprive its successor of the power of repealing an act creating a public office. *Ib.*

12. The auditor of the State of Louisiana was sued in his official capacity, in order to compel him, in that capacity, to act to raise a tax, authorized by a former law, but contrary to subsequent legislation, and to the present laws of the State; *Held*, it was a suit against the State. *New York Guaranty Co.* v. *Steele*, 230.

13. The Fourteenth Amendment was not intended to compel the States to adopt an iron rule of equal taxation. *Bell Gap Railroad Co.* v. *Pennsylvania*, 232.

14. The act of the legislature of Minnesota, approved March 7, 1887, General Laws of 1887, c. 10, establishing a railroad and warehouse commission, being interpreted by the Supreme Court of that State as providing that the rates of charges for the transportation of property, recommended and published by the commission, shall be final and con-

clusive as to what are equal and reasonable charges, and that there can be no judicial inquiry as to the reasonableness of such rates, and a railroad company, in answer to an application for a mandamus, contending that such rates, in regard to it, are unreasonable, and not being allowed by the state court to put in testimony on the question of the reasonableness of such rates; *Held*, that the act is in conflict with the Constitution of the United States, as depriving the company of its property without due process of law, and depriving it of the equal protection of the laws. *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 418.

15. The State had made no irrepealable contract with the company that it should have the right for all future time to prescribe its rates of toll, free from all control by the legislature of the State. *Ib.*

16. The statutory provisions existing in the present case as to the fixing by the railroad company of reasonable charges for the transportation of property, did not constitute such a contract with it, as to deprive the legislature of its power to regulate those charges. *Minneapolis Eastern Railway Co.* v. *Minnesota*, 467.

17. A tax which is imposed by a state statute upon "the corporate franchise or business" of all corporations incorporated under any law of the State or of any other State or country, and doing business within the State, and which is measured by the extent of the dividends of the corporation in the current year, is a tax upon the right or privilege to be a corporation and to do business within the State in a corporate capacity, and is not a tax upon the privilege or franchise which, when incorporated, the company may exercise; and, being thus construed, its imposition upon the dividends of the company does not violate the provisions of the statute exempting bonds of the United States from taxation, 12 Stat. 346, c. 33, § 2, although a portion of the dividends may be derived from interest on capital invested in such bonds. *Home Insurance Company* v. *New York*, 594.

18. Such a tax is not in conflict with the last clause of the first section of the Fourteenth Amendment to the Constitution of the United States declaring that no State shall deprive any person within its jurisdiction of the equal protection of the laws. *Ib.*

19. A judgment by a state court of South Carolina that the will of a resident in North Carolina, who was the donee of a power to appoint by will to receive the fee of real estate in South Carolina, after the expiration of a life estate, was properly admitted to probate in North Carolina, was executed according to the laws of that State, and was properly admitted to probate in South Carolina by proof of an exemplified copy, though not executed according to the laws of that State, but that the donor of the power intended that the appointment should be made by a will valid under the laws of South Carolina, which this will was not, does not refuse to give full faith and credit to the judgment of the court of North Carolina, admitting the will to probate. *Blount* v. *Walker*, 607.

20. The statute of Tennessee which provides that "not more than two new trials shall be granted to any party in any action at law; or upon the trial by a jury of an issue of fact in equity," Code of 1884, 735, § 3835, having been construed by the courts of that State to refer to a state of case where in the opinion of the court, the verdict should have been otherwise than as rendered, because of the insufficiency of the evidence to sustain it — and not to a case where there is no evidence at all to sustain it — is not in conflict with the Fourteenth Amendment to the Constitution; while the Fifth Amendment has no application to it. *Louisville and Nashville Railroad Co.* v. *Woodson*, 614.

See CORPORATION, 5; JURISDICTION, C, 2; D, 1, 2; EX POST FACTO LAW; TAX AND TAXATION, 1, 2, 3.

CONTEMPT.

See CONSTITUTIONAL LAW, 7.

CONTRACT.

1. Time may be made of the essence of a contract, relating to the purchase of realty, by the express stipulations of the parties; or it may arise by implication from the very nature of the property, or the avowed objects of the seller or the purchaser; and unless its provisions contravene public policy, the court should give effect to them according to the real intention of the parties. *Cheney* v. *Libby*, 68.

2. But even when time is made material by express stipulation, the failure of one of the parties to perform a condition within the particular time limited will not in every case defeat his right to specific performance, if the condition be subsequently performed, without unreasonable delay, and no circumstances have intervened that would render it unjust or inequitable to give such relief. The discretion which the court has to decree specific performance may be controlled by the conduct of the party who refuses to perform the contract because of the failure of the other party to strictly comply with its conditions. *Ib.*

3. When a contract for the purchase of land provides that it shall be forfeited if the vendee fails to pay any instalment of the purchase price at the time limited, the failure of the latter to make a tender of payment, in lawful money, of a particular instalment on the very day it falls due, will not deprive him of the right to have specific performance, if such failure was superinduced by the conduct of the vendor, and if the vendee, without unreasonable delay, tenders payment, in lawful money, after the time so limited. *Ib.*

4. A provision in the contract forbidding its modification or change except by entry thereon in writing signed by both parties, coupled with a provision that no court should relieve the purchaser from a failure to comply strictly and literally with its conditions, has no application when the apparent cause of the failure to perform such conditions was the conduct of the vendor. *Ib.*

5. If the vendor notifies the purchaser that he regards the contract as forfeited, and that he will not receive any money from him, the latter is not required, as a condition of his right to specific performance, to make tender of the purchase price. It is sufficient if he offer in his bill to bring the money into court. *Ib.*
6. A note for the purchase price of land is made payable at a particular time and at a particular bank. The payor is ready at such time and place to pay, and offers to pay, but the bank has not received the note for collection; *Held*, (1) The bank is not authorized to receive the money for the payee by reason simply of the fact that the note is payable there; (2) The tender of payment is not payment; (3) A decree of specific performance should not become operative until the money is brought into court; (4) The payee is not entitled to interest unless it appears that the payor, after the tender, realized interest upon the money. *Ib.*
7. M. contracted with a bridge company to construct the road for a railway, according to specifications and profile, from the end of its bridge to Evansville, about six miles. The road was to run on bottom lands, with an uneven natural surface, and the profile showed part trestle and part embankment. It was contemplated that the material for the embankments was to be taken from borrow-pits along the line. The specifications fixed prices for excavation, for filling and for trestling, and provided that the relative amounts of trestle and earthwork might be changed at the option of the engineer without prejudice. During the progress of the work the company decided to modify the plan by abandoning the trestling in the line of the road, substituting for it a continuous embankment, and by making a draining ditch along the whole line, running through the borrow-pits. In order to serve its intended purpose this ditch was required to be of a regular downward grade, with properly sloping sides. Some of the borrow-pits were found to be too deep, and others too shallow, and it was found that they had been excavated without reference to the slope at the sides. There were highways and private roads crossing the line at grade. The contract did not indicate how the approaches of these roads were to be constructed; but when the change was determined on, it was decided to make them of trestle. This work was more expensive than the trestle provided for in the contract. The company directed its engineer to have these modifications carried out, and the contractor was notified of this. He made no objection to the substitution of embankment for trestling; but as to the ditch, he objected that it was not in the contract. A conversation followed, in which the contractor understood the engineer to say that it would be paid for at excavation prices from the surface down, but the company claimed that it was only intended as an expression of the opinion of the engineer, which, it said, was made without authority. As to the trestle approaches the contractor was informed that he would be paid what was right.

The work was constructed in all respects according to the modified plans. In settling, the contractor claimed to be paid for the ditch as excavation from the surface down. The company claimed that the material taken from the borrow-pits should be deducted from the total. There were about 2800 feet in all of the trestle approaches. The contractor accepted payment for 2100 feet at the contract price, and as to the remaining 700 feet claimed to be paid according to what the trestles were reasonably worth. The company claimed that they should be paid for at the contract price; *Held*, (1) That the construction of the ditch was outside of the original contract; (2) That the fact that it passed through borrow-pits did not modify that fact; (3) That the engineer had authority to agree with the contractors that they should be paid for it as excavation from the surface down; (4) That it was right to leave it to the jury to determine whether such an agreement was made between the contractors and the local engineer, acting for the company; (5) That it was properly left to the jury to decide whether the company agreed to pay for the trestle approaches what they were reasonably worth; (6) That as the agreement was to pay, not a fixed price, but what the trestling was reasonably worth, which the law would have implied, it was immaterial whether the agent of the company had or had not authority to make it. *Henderson Bridge Co.* v. *McGrath*, 260.

8. If a contract of sale is in writing and contains no warranty, parol evidence is not admissible to add a warranty. *De Witt* v. *Berry*, 306.
9. If a contract of sale in writing contains a warranty, parol evidence is inadmissible to show a warranty inconsistent with it. *Ib.*
10. An express warranty of quality in a sale excludes any implied warranty that the articles sold were merchantable. *Ib.*
11. A warranty cannot be implied in a sale when there is an express warranty of quality, accompanied by the delivery and acceptance of a sample, as such. *Ib.*
12. The party who seeks to establish that words are used in a contract in a different acceptation from their ordinary sense must prove it by clear, distinct and irresistible evidence. *Ib.*
13. When parties have reduced their contract to writing, without any uncertainty as to the object or extent of the engagement, evidence of antecedent conversations between them in regard to it is inadmissible. *Ib.*

See CONSTITUTIONAL LAW, 15;
RAILROAD, 1.

CORPORATION.

1. A corporation in debt cannot transfer its entire property by lease, so as to prevent the application of it, at its full value, to the satisfaction of the debts of the company; and when such transfer is made under circumstances like those shown in this case, a court of equity will decree the

payment of a judgment debt of the lessor by the lessee. *Chicago, Milwaukee &c. Railway* v. *Third Nat. Bank*, 276.

2. A misappropriation of money by a corporation being proved, and an equitable claim against the wrongdoer being established, and it appearing that the pleadings raise no issue as to the amount of the misappropriation, and that the officers of the corporation can furnish no information on this point, it is no error to hold that it was in excess of the claim. *Ib.*

3. An officer in a corporation who is leading in its management, who is active in securing the passage of a resolution authorizing an issue of preferred stock, who subscribes for such stock and pays his subscription and takes his certificate and votes upon it at shareholders' meetings for over two years, and induces others to take such stock, cannot, when the company becomes insolvent, recover back the money paid by him on his subscription, on the ground that the statutes of the State only authorized an issue of general shares. *Banigan* v. *Bard*, 291.

4. When, by general law, a lien is given to a corporation upon the stock of a stockholder in the corporation for an indebtedness owing by him to it, that lien is valid and enforceable against all the world; and a sale of the stockholders' stock to any person ignorant of the lien will not discharge it, and thus authorize the purchaser to demand and receive a transfer of it so discharged. *Hammond* v. *Hastings*, 401.

5. A state statute which confers upon a judgment creditor of a corporation, when execution on a judgment against the corporation is returned unsatisfied, the power to summon in a stockholder who has not fully paid the subscription to his stock, and obtain judgment and execution against him for the amount so unpaid, in no way increases the liability of the stockholder to pay that amount; and, inasmuch as he was before then liable to an action at law by the corporation to recover from him such unpaid amount at law, as well as to a suit in equity, in common with other similar stockholders, to compel contribution for the benefit of creditors, no substantial right of the stockholder is violated. *Hill* v. *Merchants' Ins. Co.*, 515.

See CONSTITUTIONAL LAW, 17, 18;
EQUITY, 7.

COURT AND JURY.

1. The only contention between the parties in this action of ejectment was, whether the centre of a street in the village of Hyde Park was the southern boundary line of the plaintiff's land, or whether that line ran twenty-three feet further south. The court in its charge to the jury said: "In 1873 the village of Hyde Park laid out and opened 41st Street sixty-six feet wide from Grand Boulevard to Vincennes Avenue, the centre of which was a line equidistant from the north and south lines of the quarter section, on the theory that this line was the true east and west boundary between the four quarters of the quarter

section and the true southern boundary of the McKey tract;" and then directed the jury thus: "If you believe from the evidence that the centre of the street is the centre east and west line of the quarter section, then you are also instructed that it was and still is the true boundary line, and that the plaintiff is not entitled to the land described in the declaration on the theory that the Greeley survey was correct;" *Held*, that this was erroneous as it in effect directed the jury to find that the plaintiff was not entitled to recover; and, as the evidence was conflicting, that was a question to be determined by the jury. *McKey* v. *Hyde Park*, 84.

2. When there is no evidence to warrant a verdict for the plaintiff, so that if such a verdict were returned it would be the duty of the court to set it aside, a verdict may be directed for the defendant. *Gunther* v. *Liverpool and London Ins. Co.*, 110.
3. It is settled law in this court that when the evidence given at the trial, with all the inferences that the jury could justifiably draw from it, is insufficient to support a verdict for the plaintiff, so that such a verdict, if returned, must be set aside, the court is not bound to submit the case to the jury, but may direct a verdict for the defendant; while, on the other hand, the case should be left to the jury, unless the conclusion follows, as matter of law, that no recovery can be had upon any view which can be properly taken of the facts which the evidence tends to establish. *Louisville & Nashville Railroad Co.* v. *Woodson*, 614.

CRIMINAL LAW.

1. Section 5467 of the Revised Statutes creates two distinct classes of offences: the one relating to the embezzlement of letters, etc.; the other relating to stealing their contents. *United States* v. *Lacher*, 624.
2. Section 3891 and 5467 of the Revised Statutes are to be construed together — the offences of secreting, embezzling or destroying mail matter which contains articles of value being punishable under the one, and like the offences as to mail matter which does not contain such articles being punishable under the other. *Ib.*

See INDICTMENT.

DEDICATION.

In Illinois the inference that an owner of land has dedicated it to the public for use as a street can only be drawn from acts which show an actual intention to so dedicate it, or from acts which equitably estop the owner from denying such intention. *McKey* v. *Hyde Park*, 84.

DEED.

See ACCRETION; HUSBAND AND WIFE, 1, 2; LOCAL LAW, 2; TRUST.

DEMURRER.

See LACHES, 1.

DISTRICT OF COLUMBIA.

The Supreme Court of the District of Columbia at special term confirmed a sale of real estate by a trustee without notice having been given to interested parties. Those parties subsequently appeared, and on their motion, after notice and hearing, the sale was vacated and the trustee at whose request it was made was removed; *Held*, that an appeal lay from that decree to the general term of the court. *Kenaday* v. *Edwards*, 117.

See JURISDICTION, A, 2.

EMBEZZLEMENT.

See CRIMINAL LAW, 1, 2;
INDICTMENT.

EQUITY.

1. Where, in a court of equity, an apparent legal burden on property is challenged, the court has jurisdiction of a cross bill to enforce, by its own procedure, such burden. *Chicago, Milwaukee & St. Paul Railway* v. *Third National Bank*, 276.
2. The court which denies legal remedies, may enforce equitable remedies for the same debt; and an application for the latter is not foreign to a bill for the former. *Ib.*
3. A cross bill may be amended so as to work a change in the ground of the relief sought, when the proofs which make it necessary are furnished by the original complainant in support of allegations in his bill. *Ib.*
4. A lessee of a railroad, receiving money to be expended on the leased property, and misappropriating it by spending it on another property, cannot, by afterwards spending an equal amount of its own money on the leased property, deprive a creditor of the lessor of an equitable right growing out of the misappropriation. *Ib.*
5. When a Circuit Court of the United States in Illinois obtains jurisdiction in equity of a proceeding to establish title to real estate under the act of the legislature of that State of April 9, 1872, known as the "Burnt Records Act," in a case within the provisions of the act, it may, following the decisions of the courts of the State, proceed to adjudicate and determine in equity all the issues between the parties relating to the property, as well those at law as those in equity; and it is entirely within its discretion whether it will or will not send the issues at law to be determined by a jury. *Gormley* v. *Clark*, 338.
6. It is no error in a court of equity to order buildings removed from a tract of land over which a party to the record has a right of way for ingress to and egress from his own property. *Ib.*
7. An insolvent corporation, with large properties scattered in different States, having, for the purpose of keeping those properties together as a whole, assented to the filing of a creditors' bill by three creditors,

(the debts of two of them not having matured and no execution having been issued on that of the third,) and having assented to the appointment of a receiver under that bill, and having for nine months lain inactive while the receiver was managing the property and assuming liabilities in reducing it to possession, cannot at the expiration of that time, when the great majority of its creditors have become parties to the suit, and its property is about to be ratably distributed by the court among all its creditors, interpose the objection of want of jurisdiction on the ground that a court of equity could not obtain jurisdiction when the plaintiff's creditors had plain, adequate and complete remedies at the common law, or that their debts had not been converted into judgments, or that no execution had issued and been returned *nulla bona* — whatever weight might have been given to those defences if interposed in the first instance. *Brown* v. *Lake Superior Iron Co.*, 530.

8. The maxim that "he who seeks equity must do equity" is applicable to the defendant as well as to the complainant. *Ib.*
9. Good faith and early assertion of rights are as essential on the part of a defendant in equity as they are on the part of the complainant. *Ib.*
10. When a mortgagee of real estate asserts in equity his rights as against a tax-sale of the estate alleged by him to have been made collusively in conjunction with the mortgagor for the purpose of getting rid of the mortgage for the benefit of the mortgagor, he may either proceed against the purchaser alone, or against the purchaser and the mortgagor: and in any event it is not necessary for him to make tender of the payment of the amount of the tax for which the estate was sold. *Mendenhall* v. *Hall*, 559.
11. In Illinois, a decree against a minor is subject to attack, by an original bill, for error apparent on the record, for want of jurisdiction, or for fraud. *Kingsbury* v. *Buckner*, 650.
12. In Illinois, the rule is that a decree against an infant is absolute in the first instance, subject to the right to attack it by original bill, but until so attacked, and set aside or reversed, on error or appeal, it is binding to the same extent as any other decree or judgment. The right to so attack it may be exercised at any time before the infant attains his majority, or at any time afterwards within the period in which he may prosecute a writ of error for the reversal of such decree. *Ib.*
13. A decree is subject to attack by original bill for fraud, even after judgment in the appellate court; but a party, whether an infant or adult, against whom a decree is rendered by direction of the appellate court, cannot impeach it, by bill filed in the court of first instance, merely for errors apparent on the record, that do not involve the jurisdiction of either court. *Ib.*
14. In Illinois, a cross-bill is regarded as an adjunct or part of the original suit, the whole together constituting one case; and process against the plaintiff is not necessary upon a cross-bill, even where he is an infant. *Ib.*

15. The plaintiff, by his bill, claimed to own certain real estate, by inheritance from his father, to whom the defendants had conveyed it by deed, absolute in form, and prayed for a decree confirming and establishing his title. The defendants, by cross-bill, alleged that the deed was made and accepted for the purpose of placing the title in trust for the benefit of one of the defendants, and asked a decree to that effect; *Held*, That the subject matter of the cross-bill was germane to that of the original bill. *Ib.*

See JURISDICTION, A, 12; QUIET TITLE; LACHES; TRUST, 1, 2.

EVIDENCE.

1. In the trial before a jury of an issue made up in a Probate Court as to the incompetency of a deceased person, from unsoundness of mind or undue influence, to make a will, declarations made by the deceased to a witness that he received the bulk of his estate by breaking the will of his grandfather, who was also the ancestor of the caveators, and that his estate consisted in a great degree of that property and its accumulations; and also declarations of one of the legatees, made about, or after the date of the execution of the alleged will, that she had knowledge at that time of the execution of the will and of its provisions, should be excluded from the jury. *Ormsby* v. *Webb*, 47.

2. On the trial of that issue it was proper for the jury to consider whether the undue influence alleged to have been exercised by a particular legatee in respect to other matters extended to or controlled the execution of the will, and give it such weight as they might deem proper. *Ib.*

3. An instruction to the jury, at such trial, that if they should believe the evidence of a witness named, they must find for the will, while apparently objectionable, as giving undue prominence to the testimony of that witness, was held, in view of the scope of her evidence, not to have been erroneous. *Ib.*

See RAILROAD, 5.

EX POST FACTO LAW.

1. A state statute, (enacted after the commission of a murder in the State,) which adds to the punishment of death, (that being the punishment when the murder was committed,) the further punishment of imprisonment by solitary confinement until the execution, is, when attempted to be enforced against the person convicted of that murder, an *ex post facto* law, and a sentence inflicting both punishments upon him is void; and the same is the case with a statute which confers upon the warden of the penitentiary the power to fix the day of execution, and compels him to withhold the knowledge of it from the offender, when neither of those provisions formed part of the law of the State when the offence was committed. *Medley, Petitioner*, 160.

2. Any law passed after the commission of the offence for which a person

accused of crime is being tried which inflicts a greater punishment on the crime than the law annexed to it at the time when it was committed, or which alters the situation of the accused to his disadvantage, is an *ex post facto* law within the meaning of that term as used in the Constitution of the United States. *Ib.*

3. No one can be criminally punished in this country except according to a law prescribed for his government by the sovereign authority before the imputed offence was committed, or by some law passed afterwards by which the punishment is not increased. *Ib.*
4. There being no error in the proceedings of the court below on the trial and the verdict by which the party was convicted, and the error commencing only when the sentence or judgment of the court on the verdict is entered, the court, after deliberation, determines that the Attorney General of the State shall be notified by the warden of the penitentiary, of the precise time when he will release the prisoner from his custody, at least ten days beforehand, and after doing this, and at that time, he shall discharge the prisoner. *Ib.*

FEES.

See COMMISSIONERS OF CIRCUIT COURTS.

GUARDIAN AD LITEM.

Various charges of fraud and collusion upon the part of a guardian *ad litem* examined and held not to be outlawed. *Kingsbury* v. *Buckner*, 650.

See INFANT, 1, 3;
JURISDICTION, D, 3.

HABEAS CORPUS.

1. The writ of *habeas corpus* cannot be used as a writ of error to inquire into all the errors committed by the court below. *In re Wight*, 136.
2. In a proceeding for a *habeas corpus* to release from confinement a letter carrier charged with embezzling letters delivered to him for carriage, this court will not inquire into the motives with which the letter was put into the mail, even though the object was to detect or entrap the party into criminal practices. *Ib.*

HUSBAND AND WIFE.

1. The rule obtains in New York, and is recognized by this court, that even a voluntary conveyance from husband to wife is good as against subsequent creditors, unless it was made with the intent to defraud such subsequent creditors; or, unless there was secrecy in the transaction, by which knowledge of it was withheld from such creditors who dealt with the grantor, upon the faith of his owning the property transferred; or, unless the transfer was made with a view of entering into some new and hazardous business, the risk of which the grantor

intended should be cast upon the parties having dealings with him in the new business. *Schreyer* v. *Scott*, 405.

2. When real estate is acquired by a husband in his own name by the use of the separate property of his wife, a subsequent conveyance of it by him to her is not a voluntary conveyance, but the transfer of the legal title to the equitable owner. *Ib.*
3. Case stated in which a husband is held not to be an incompetent witness, under the statutes of Illinois, in support of his wife's claim to property. *Kingsbury* v. *Buckner*, 650.

See LOCAL LAW, 2.

INDICTMENT.

1. An indictment against a letter carrier of the United States Postal Service, charging that "he did wrongfully secrete and embezzle a letter which came into his possession in the regular course of his official duties, and which was intended to be carried by a letter carrier, which letter then and there contained five pecuniary obligations and securities of the government of the United States," is a sufficient charge that the letter embezzled was intended to be carried by a letter carrier of the United States. *In re Wight*, 136.
2. In an indictment against a letter carrier for the embezzlement of a letter received by him in his official character to carry and deliver, it is not necessary to aver that "the letter has not been delivered" if an embezzlement of it is charged. *Ib.*

INFANT.

1. An infant, by his *prochein amy*, having elected to prosecute an appeal to the Supreme Court of Illinois from the decree rendered in the original suit brought by him, and having appeared by guardian *ad litem* to the appeal of the cross-plaintiffs in the same suit, is as much bound by the action of that court in respect to mere errors of law, not involving jurisdiction, as if he had been an adult when the appeal was taken. *Kingsbury* v. *Buckner*, 650.
2. The statutes of Illinois, relating to suits by infants, are not to be interpreted to mean that no suit in the name of an infant, by next friend, can be entertained, unless such next friend is selected by the infant. Nor does the right to bring such a suit depend upon the execution by the next friend of a bond for costs; though he may be required to give such bond before the suit proceeds to final judgment and execution. *Ib.*
3. While a guardian *ad litem* or *prochein amy* of an infant cannot, by admissions or stipulations in a suit in equity, surrender substantial rights of the infant, he may, by stipulation, assent to arrangements which will facilitate the trial and determination of the cause in which such rights are involved, and the infant will be bound thereby. *Ib.*

See EQUITY, 11, 12, 14;
JURISDICTION, D, 3.

INSURANCE.

A policy of insurance on a building and its contents against fire, containing a printed condition by which "kerosene or carbon oils of any description are not to be stored, used, kept, or allowed on the above premises, temporarily or permanently, for sale or otherwise, unless with written permission endorsed on this policy, excepting the use of refined coal, kerosene, or other carbon oil for lights, if the same is drawn and the lamps filled by daylight; otherwise this policy shall be null and void," is avoided if kerosene or other carbon oil is drawn upon the premises near a lighted lamp by any person acting by direction or under authority of the assured's lessee; although there was attached to the policy at the time of its issue a printed slip, signed by the insurer, "privileged to use kerosene oil for lights, lamps to be filled and trimmed by daylight only;" and although the insurer has since written in the margin of the policy, "privileged to keep not exceeding five barrels of oil on said premises." *Gunther* v. *Liverpool and London and Globe Ins. Co.*, 110.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 6, 8, 9.

JURISDICTION.

A. OF THE SUPREME COURT.

1. An order remanding a cause from a Circuit Court of the United States to the state court from which it was removed is not a final judgment or decree, and this court has no jurisdiction to review it. *Richmond & Danville Railroad Co.* v. *Thouron*, 45.
2. An order in the Supreme Court of the District of Columbia, at special term, admitting a writing to probate and record as the will of a deceased person, in conformity with the findings of the jury empanelled, in the same court, to try the issue of will or no will, is one involving the merits of the proceeding, and may be reviewed by the same court in general term, and such review will bring before the general term all the questions arising upon bills of exceptions taken at the trial before the jury: and if the value of the matter in dispute be sufficient, this court has jurisdiction to reëxamine a final order of the Supreme Court of the District of Columbia affirming the order of the Probate Court, and to pass upon the questions of law raised by such bills of exceptions. *Ormsby* v. *Webb*, 47.
3. The value of the property in litigation determines the jurisdiction of this court. *Kenaday* v. *Edwards*, 117.
4. In an appeal from a decree removing a trustee of real estate, and denying him commissions, the jurisdiction of this court is to be determined, not by the amount of the commissions only, but by the value of the real estate as well. *Ib.*

5. This court has jurisdiction over judgments of a territorial court: (1) denying an application for a writ of mandamus to compel the secretary of the Territory to record certain proceedings as part of the proceedings of a session of the legislature of the Territory; and (2) denying an application for a like writ to compel the chief clerk of the House of Representatives of the Territory to bring his minutes and journals into the court in order that they may be there corrected in the presence of the court; and it is *held* that there was no error in denying applications for such writs of mandamus, when they were not asked for by one claiming to have a beneficial interest in sustaining or defeating the measures which it was sought to have incorporated into the official records. *Clough* v. *Curtis*, 361.

6. The courts of the United States cannot be required, in a case not involving the private interests of parties, to determine whether particular bodies, assuming to exercise legislative functions, constitute a lawful legislative assembly. *Ib.*

7. A stipulation was filed in this cause to the effect that the court should consider the cause as if the general issue and other named pleas had been pleaded and issue joined; that the cause should be heard upon "an agreed statement of facts annexed with leave to refer to exhibits filed therewith; and that the cause might be submitted to the court to decide on such statement, exhibits and pleadings. No bill of exceptions was taken, there was no finding of facts by the court below, nor was any case stated by the parties, analogous to a special verdict, stating the ultimate facts, and presenting questions of law only; *Held*, that this stipulation could not be regarded as taking the place of a special verdict, or a special finding of facts, and that this court had no jurisdiction to determine the questions of law thereon arising. *Glenn* v. *Fant*, 398.

8. Where a case is tried by the Circuit Court without a jury, and it makes a special finding of facts, with conclusions of law, alleged errors of fact are not, on a writ of error, subject to revisions by this court, if there was any evidence on which such findings could be made. *Hathaway* v. *Cambridge Bank*, 494.

9. Where the Circuit Court finds ultimate facts, which justify the judgment rendered, its refusal to find certain specified facts, and certain propositions of law based on those facts, will not be reviewed by this court, on a writ of error, if they were either immaterial facts or incidental facts amounting only to evidence bearing on the ultimate facts found. *Ib.*

10. *Gibson* v. *Shufeldt*, 122 U. S. 27, affirmed as to the point that "in a suit in equity brought in the Circuit Court by two or more persons on several and distinct demands, the defendant can appeal to this court as to those plaintiffs only, to each of whom more than $5000 is decreed." *Wheeler* v. *Cloyd*, 537.

11. The voluntary payment of a municipal tax while a suit is pending in

this court between the party taxed and the officers of the corporation, to determine whether it was legally assessed, leaves no existing cause of action, and requires the dismissal of the writ of error. *Little* v. *Bowers*, 547.

12. When one of two defendants in a suit in equity demurs to the bill and the demurrer is sustained, and the other defendant answers, and the bill is then dismissed, and the plaintiff appeals, and files an appeal bond running to "the defendants," and the appeal is duly entered here within the prescribed time, this court has jurisdiction of the appeal; and, if the defendant as to whom the bill was dismissed on demurrer does not appear, he may be cited in, and the court may then proceed to hear and determine the cause. *Mendenhall* v. *Hall*, 559.
13. To give this court jurisdiction of a writ of error to a state court it must appear affirmatively, not only that a federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it. *Blount* v. *Walker*, 607.
14. The disregard by the highest court of a State of an opinion of this court in another case in which no judgment has been entered, gives this court no jurisdiction on error. *Giles* v. *Little*, 645.
15. The refusal of the highest court of a State, in a suit to quiet title, to give effect to a judgment of the circuit court of the United States against the present plaintiff and in favor of a grantee of the present defendant, gives this court no jurisdiction on error. *Ib.*

See Appeal, 3, 4, 5;
Certificate of Division in Opinion;
Constitutional Law, 19;
Tax and Taxation, 1.

B. Of Circuit Courts of the United States.

1. When the jurisdiction of a Circuit Court of the United States is founded upon any of the causes specially mentioned in section 1 of the act of March 3, 1887, as amended by the act of August 13, 1888, 25 Stat. 433, c. 866, (except the citizenship of the parties,) the action must be brought in the district of which the defendant is an inhabitant; but where the jurisdiction is founded solely upon the fact that the parties are citizens of different States, the suit may be brought in the district in which either the plaintiff or the defendant resides. *McCormick Harvesting Machine Co.* v. *Walthers*, 41.
2. In an action against a national bank in a Circuit Court of the United States, if all the parties are citizens of the district in which the bank is situated, and the action does not come under section 5209 or section 5239 of the Revised Statutes, the Circuit Court has no jurisdiction;

and, if it has taken jurisdiction and dismissed the bill upon another ground, its decree will be reversed and the cause remanded with a direction to dismiss the bill for want of jurisdiction. *Whittemore* v. *Amoskeag Bank*, 527.

See ADMIRALTY, 1, 2;
EQUITY, 1;
JURISDICTION, A, 2, 6.

C. OF TERRITORIAL COURTS.

1. The jurisdiction of the several courts of the Territory of Idaho is a rightful subject of legislation by the territorial legislature. *Clough* v. *Curtis*, 361.
2. An act of the territorial legislature conferring upon the Supreme Court of the Territory original jurisdiction to issue writs of mandate, review, prohibition, *habeas corpus* and all writs necessary to its appellate jurisdiction is not inconsistent with the Constitution of the United States, or with any act of Congress. *Ib.*
3. Section 1910 of the Revised Statutes does not forbid a territorial legislature from conferring original jurisdiction upon the Supreme Court of the Territory in such cases. *Ib.*

D. OF STATE COURTS.

1. The courts of a State have no jurisdiction of a complaint for perjury in testifying before a notary public of the State upon a contested election of a member of the House of Representatives of the United States; and a person arrested by order of a magistrate of the State on such a complaint will be discharged by a writ of *habeas corpus*. *In re Loney*, 372.
2. The courts of a State have jurisdiction of an indictment for illegal voting for electors of President and Vice-President of the United States; and a person sentenced by a state court to imprisonment upon such an indictment cannot be discharged by writ of *habeas corpus*, although the indictment and sentence include illegal voting for a representative in Congress. *In re Green*, 377.
3. Appeals and writs of error may be taken to the Supreme Court of Illinois held in the grand division in which the case is decided, or, by consent of the parties, to any other grand division. A guardian *ad litem* or next friend of an infant may consent that the case, in which the infant is a party, be heard in some other grand division than the one in which it was decided, or at a term of the Supreme Court earlier than such appeal or writ of error would be ordinarily heard, and may waive the execution of an appeal bond by the opposite party. *Kingsbury* v. *Buckner*, 650.
4. An appeal bond is not essential to the jurisdiction of the Supreme Court of Illinois, any more than in this court, where the appeal is allowed and a transcript of the record is filed in due time; although

the appeal may be dismissed, if such bond is not executed in accordance with the rules or the order of the court. *Ib.*

LACHES.

1. The defence of laches on the part of a plaintiff seeking relief in equity may be set up under a general demurrer. *Bryan* v. *Kales*, 126.
2. The granting or refusing relief in equity on the ground of laches in applying for it must depend upon the special circumstances of each case. *Ib.*
3. A bill in equity alleged that on the 24th of September, 1883, letters of administration upon the estate of a deceased person were granted to one of his creditors whose several debts were secured by mortgages upon the estate of which he died seized; that on the 28th day of the same month, the administrator, though having in his possession money sufficient to discharge those claims, proceeded to foreclose the mortgages, and did on the 16th of the next October take judgment in his individual name against himself as administrator for the amount of the claims and for attorney's fees, and in the following December caused the various parcels to be sold; that the property brought much less than its real value, or than it would have brought at an open sale; that one of the tracts was bought by the administrator and assigned by him to the judge by whom the decree was rendered; that the wife of the deceased survived him; that all the property was acquired during marriage and was common property of the husband and wife, and, at the decease of the husband, descended to the wife; and that on the 20th of June, 1887, she conveyed her rights to the plaintiff. The bill which was filed July 18, 1887, made the several purchasers, the administrator, and the judge who rendered the decree, defendants, and asked to have the decree of sale and the sales thereunder set aside, and for further relief. To this complaint the defendants demurred, and the demurrer was sustained. *Held*, that the circumstances set forth in the complaint were of so peculiar a character, that a court of equity should be slow in denying relief upon the mere ground of laches in bringing the suit. *Ib.*

LOCAL LAW.

1. In section 90 of the New York Code of Civil Procedure it is provided that "where a cause of action . . . accrues against a person who is not then a resident of the State, an action cannot be brought thereon in a court of the State, against him or his personal representative after the expiration of the time limited by the laws of his residence for bringing a like action, except by a resident of the State, and in one of the following cases: . . . 2. Where before the expiration of the time so limited, the person, in whose favor it originally accrued, was, or became, a resident of the State, etc.;" *Held*, following the decisions of the courts of the State of New York in parallel cases, that this stat-

ute contemplates that the plaintiff shall be an actual resident in the State, and that he does not become such by sending his family to the State of New York from another State, in which he and they were residing, with the intent that they should reside there, but remaining himself in the other State. *Penfield* v. *Chesapeake, Ohio &c. Railroad*, 351.

2. In determining the rules applicable to conveyances of real estate from a husband to his wife, reference should be had not only to the decisions of this court, but also to those of the State where the parties lived, and where the transactions took place. *Schreyer* v. *Scott*, 405.

See MUNICIPAL CORPORATION, 6.

District of Columbia. *See* JURISDICTION, A, 2.
Illinois. *See* DEDICATION;
EQUITY, 5, 11, 12, 14;
INFANT, 1, 2;
JURISDICTION, D, 3, 4.
Louisiana. *See* TAX TITLE;
MORTGAGE, 5.
Minnesota. *See* CONSTITUTIONAL LAW, 14, 15, 16.
Missouri. *See* MUNICIPAL CORPORATION, 1, 3;
RAILROAD, 2;
TAX AND TAXATION, 2.
Nebraska. *See* QUIET TITLE.
New York. *See* CONSTITUTIONAL LAW, 17;
HUSBAND AND WIFE, 1;
MUNICIPAL CORPORATION, 5.
Pennsylvania. *See* TAX AND TAXATION, 2.
South Carolina. *See* CONSTITUTIONAL LAW, 19;
WILL.
Tennessee. *See* CONSTITUTIONAL LAW, 20.
Texas. *See* PARTNERSHIP, 1, 2, 3, 4, 5.

MAIL MATTER.

See CRIMINAL LAW.

MANDAMUS.

See JURISDICTION, A, 5.

MECHANIC'S LIEN.

See MORTGAGE, 2.

MORTGAGE.

1. A recorded mortgage, given by a railroad company on its roadbed and other property, creates a lien whose priority cannot be displaced thereafter either directly by a mortgage given by the company, or indi-

rectly by a contract between the company and a third party for the erection of buildings or other works of original construction. *Toledo, Delphos and Burlington Railroad* v. *Hamilton*, 296.

2. Whether a mechanic's lien could, under the statutes of Ohio in force at the time of the attempted filing of a lien in this case, be placed upon a railroad, *quære*. *Ib.*
3. The priority of a mortgage debt upon a railroad has been sometimes displaced in favor of unsecured creditors, when those debts were contracted for keeping up a railroad, already built, as a going concern; but those cases have no application to a debt contracted for original construction. *Ib.*
4. A mortgage with words of general description conveys land held by a full equitable title as well as that held by a legal title. *Ib.*
5. In foreclosing a mortgage in Louisiana, the mortgagor is entitled in making up the amount of the judgment, to be credited with judgments against the mortgagee in another State which have been acquired by the mortgagor. *Mendenhall* v. *Hall*, 559.

See APPEAL, 4;
RAILROAD, 1, 6.

MOTION TO DISMISS OR AFFIRM.

See TAX AND TAXATION, 1, (2).

MUNICIPAL CORPORATION.

1. A power conferred by statute on a municipal corporation to subscribe for stock in a railway corporation does not include the power to create a debt, and to issue negotiable bonds representing it, in order to pay for that subscription: and this doctrine prevails in Missouri. *Hill* v. *Memphis*, 198.
2. All grants of power to a municipal corporation to subscribe for stock in railways are to be construed strictly and not to be extended beyond the term of the statute. *Ib.*
3. The provisions in the general railroad law of Missouri, which went into effect June 1, 1866, respecting the loan of municipal credit to a railroad company, and of the act of the State of March 24, 1868, respecting the funding of the debts of municipalities, are to be construed in subordination to the provision of the constitution of the State then in force, prohibiting the legislature from authorizing any town to loan its credit to any corporation, except with the assent of two-thirds of the qualified voters, at a regular or special election. *Ib.*
4. Where a majority of the taxpayers of a town are authorized by statute to encumber the property of all, in aid of a railroad or other corporation, the record must show that the statutory authority has been pursued. *Rich* v. *Mentz Township*, 632.
5. The statute of New York of May 18, 1869, 2 Sess. Laws of 1869, 2303,

authorized a county judge, on the petition of a "majority of the taxpayers of any municipal corporation," verified by the oath of one of the petitioners, for the issue of bonds of the corporation in aid of a railroad, to take jurisdiction and to proceed, as provided under the act, to determine whether the bonds should be issued. In 1871 this statute was amended, 2 Sess. Laws 1871, 2115, so as to confer that jurisdiction only when the application was made by "a majority of the taxpayers" of the municipal corporation, "not including those taxed for dogs or highway tax only." The town of Mentz issued its bonds for such a purpose on an application made after the act of 1871 took effect, but which in language complied with the act of 1869 only. The Court of Appeals of the State of New York held these bonds to be void for non-compliance with the provisions of the act of 1871; and following the decisions of that court it is now *Held*, that the bonds sued upon by the plaintiff in error are void. *Ib.*

6. Upon questions similar to the issues in this suit the decisions of the highest judicial tribunal of a State are entitled to great, and ordinarily decisive weight. *Ib.*

7. There being on the face of the bonds sued upon an entire want of power to issue them, no reference need be made to the doctrine of estoppel. *Ib.*

NATIONAL BANK.

See JURISDICTION, B, 2.

NON-RESIDENT.

See QUIET TITLE.

PARTIES.

See EQUITY, 10.

PARTNERSHIP.

1. The third section of the act of the legislature of Texas entitled "An act in relation to assignments for the benefit of creditors, and to regulate the same and the proceedings thereunder," passed March 25, 1879, provides that "any debtor, desiring so to do, may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate, and discharge him from their respective claims, and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto; the debtor shall thereupon be and stand discharged from all further liability to such consenting creditors on account of their respective claims, and when paid they shall execute and deliver to the assignee for the debtor a release therefrom." That section was amended by an act passed April 7, 1883, so as to provide that "such debtor shall not be discharged from liabilities to a creditor who does not receive as much as one-third of the amount due, and allowed in his favor as a

valid claim against the estate of such debtor;" *Held*, that this legislation applied to limited partnerships formed under chapter 68 of the Revised Civil Statutes of Texas, adopted by an act passed March 17, 1879. *Tracy* v. *Tuffly*, 206.

2. An assignment by a limited partnership consisting of one general partner and one special partner, for the benefit of its creditors, may be executed by the general partner; and such assignment need not embrace the individual property of the special partner. *Ib.*
3. An assignment by a limited partnership for the benefit of its creditors is not void because the verified schedule attached to the assignment embraces a debt of the special partner, which cannot, under the statute, be paid ratably with the claims of other creditors. *Ib.*
4. The only effect of the failure of a limited partnership to state fully in the published notice the terms of the partnership is that the partnership shall be deemed general. *Ib.*
5. Circumstances stated under which creditors may be estopped to deny the existence of a partnership as a limited partnership. *Ib.*

PATENT FOR INVENTION.

1. Under § 4887 of the Revised Statutes, which provides that "every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years," a United States patent runs for the term for which the prior foreign patent was granted, without reference to whether the latter patent became lapsed or forfeited in consequence of the failure of the patentee to comply with the requirements of the foreign patent law. *Pohl* v. *Anchor Brewing Co.*, 381.
2. There was no novelty or invention in "the combination of a griping chuck, by which an article can be so held by one end as to present the other free to be operated upon, with a rest preceding the cutting tool, when it is combined with a guide cam, or its equivalent, which modifies the movement of the cutting tool, all operating together for the purpose set forth," which was patented to Charles Spring and Andrew Spring by letters patent, dated May 10, 1859, and extended for seven years from May 10, 1873; and the letters patent therefor are therefore invalid. *Howe Machine Co.* v. *National Needle Co.*, 388.

PENAL STATUTES.

See STATUTE, A, 4.

POWER.

See WILL.

PRACTICE.

The fact that there is no controversy between the parties may be shown at any time before the decision of the case; and there is no laches in delaying to bring it before the court until after argument heard on the merits. *Little* v. *Bowers*, 547.

See APPEAL, 1, 2, 3; EX POST FACTO LAW, 4; CERTIFICATE OF DIVISION IN OPINION; JURISDICTION A, 11, 12.

PUBLIC LAND.

A rule in force for the subdivision of public lands for disposal under the public land law does not necessarily apply to the subdivision of private lands by their owners after they have been granted by the government without having first made official subdivisions. *McKey* v. *Hyde Park*, 84.

See ACCRETION.

QUIET TITLE.

1. A State may provide by statute that the title to real estate within its limits shall be settled and determined by a suit in which the defendant, being a non-resident, is brought into court by publication. *Arndt* v. *Griggs*, 316.
2. The well-settled rules, that an action to quiet title is a suit in equity; that equity acts upon the person; and that the person is not brought into court by service by publication alone do not apply when a State has provided by statute for the adjudication of titles to real estate within its limits as against non-residents, who are brought into court only by publication. *Ib.*

RAILROAD.

1. A railroad company made a mortgage to secure an issue of 3000 bonds of $1000 each. It contracted with a contractor for the construction of 31 miles of its road, and as part consideration therefor agreed to give him 310 of these bonds. Before any further issues were made it agreed with a banking house in New York, as a part consideration for their acquiring these bonds, that it would only issue bonds to the extent of $10,000 a mile on its constructed road, and on the faith of this the New York house bought and paid for the bonds, and the 31 miles of road were constructed. Subsequently, and without constructing any additional miles, it issued 147 more bonds which were mostly used in the settlement of debts to parties who had notice of the agreement with the New York house. Default having been made in payment of interest a bill in equity was filed to foreclose the mortgage; *Held*, (1) That as to all persons acquiring any part of the 147 bonds with notice of the agreement with the New York house, the 310 bonds held by the latter were entitled to priority; (2) That holders who

took them without notice of it, whether taking originally from the company, or by purchase from one who took with knowledge, were entitled to share with the New York house in the distribution. *McMurray* v. *Moran*, 150.

2. A consolidation of railroad companies in Missouri, under the act of Missouri of March 24, 1870, § 1, held valid. *Leavenworth County Commissioners* v. *Chicago, Rock Island &c. Railway*, 688.
3. A provision for the filing with the Secretary of State, by each of the consolidating companies, of a resolution accepting the provisions of the act, passed by a majority of the stockholders, at a meeting called for the purpose, was not observed, but its non-observance did not render the consolidation void. *Ib.*
4. The object of the statute was to prevent the consolidation of competing roads, and to confine it to roads forming a continuous line.
5. A certified copy from the office of the Secretary of State of the copy of the articles of consolidation filed there, under the statute, is conclusive evidence of the consolidation in every suit except one brought by the State to have the consolidation declared void. *Ib.*
6. A foreclosure of a mortgage on a railroad, and its sale under a decree, held valid, in a suit attacking them for fraud, because of the trust relations of the parties, when there was no collusion or fraud in fact. *Ib.*

See APPEAL, 4; EQUITY, 4; CONTRACT, 7; MORTGAGE, 1, 2, 3, 4.

RESIDENT.

See LOCAL LAW, 1.

RULES OF PROPERTY.

See STATUTE, A, 2.

SERVICE OF PROCESS.

See LOCAL LAW, 1; QUIET TITLE.

SPECIFIC PERFORMANCE.

See CONTRACT, 3, 4, 5.

STATUTE.

See TABLE OF STATUTES CITED IN OPINIONS.

A. CONSTRUCTION OF STATUTES.

1. While repeals of statutes by implication are not favored by the courts, it is settled that, without express words of repeal, a previous statute will be held to be modified by a subsequent one, if the latter

was plainly intended to cover the whole subject embraced by both, and to prescribe the only rules in respect to that subject which are to govern. *Tracy* v. *Tuffly*, 206.

2. Upon the construction of the constitution and laws of a State this court, as a general rule, follows the decisions of the highest court of the State, unless they conflict with, or impair the efficacy of some provision of the federal constitution, or of a federal statute, or a rule of general commercial law; and this is especially the case when a line of such decisions have become a rule of property, affecting title to real estate within the State. *Gormley* v. *Clark*, 338.
3. When there is an ambiguity in a section of the Revised Statutes, resort may be had to the original statute from which the section was taken, to ascertain what, if any, change of phraseology there is, and whether such change should be construed as changing the law. *United States* v. *Lacher*, 624.
4. Penal statutes, like all others, are to be fairly construed according to the legislative intent, as expressed in the act. *Ib.*

B. Statutes of the United States.

See Admiralty, 1;
Commissioners of Circuit Courts, 1;
Constitutional Law, 10, 17;
Criminal Law, 1, 2;
Jurisdiction, B, 1; C, 3;
Patent for Invention, 1.

C. Statutes of States and Territories.

Colorado. *See* Ex post facto Law.
Idaho. *See* Jurisdiction, C, 1, 2.
Illinois. *See* Equity, 5.
Iowa. *See* Constitutional Law, 6.
Louisiana. *See* Constitutional Law, 12; Tax Title.
Michigan. *See* Corporation, 4.
Minnesota. *See* Constitutional Law, 14, 15, 16.
Missouri. *See* Municipal Corporation, 1, 3; Railroad, 2, 3, 4; Tax and Taxation, 2.
Nebraska. *See* Quiet Title, 1.
New York. *See* Constitutional Law, 17, 18; Local Law, 1; Municipal Corporation, 5, 6.
Ohio. *See* Mortgage, 2.
Pennsylvania. *See* Tax and Taxation, 1.
South Carolina. *See* Constitutional Law, 19.
Tennessee. *See* Constitutional Law, 20.
Texas. *See* Partnership, 1.

TAX AND TAXATION.

1. The plaintiff in error failed to make a return of its loans to the state authorities as required by law, whereupon the auditor general, under direction of state law, made out an account against it containing the following charge: "Nominal value of scrip, bonds and certificates of indebtedness held by residents of Pennsylvania, $539,000 — tax three mills — $1617.00." The company appealed from this court to the Court of Common Pleas, which decided in its favor, and the Commonwealth from thence to the Supreme Court of the State, which rendered a judgment in favor of the Commonwealth for $666. Among the grounds for the appeal was, that the tax was in violation of section one of the Fourteenth Amendment, because the assessment was for the nominal value, and not for the real value of the bonds; because the owners of the bonds had no notice, and no opportunity to be heard; because the company was taxed for property that it did not own; and because the deduction of the tax from the interest due the bondholders in Pennsylvania took their property without due process of law, and denied to them the equal protection of the laws. The case being brought to this court from the state court by writ of error, a motion was made to dismiss for want of jurisdiction; to which was united a motion to affirm; *Held*, (1) That there was clearly a federal question raised, and the writ could not be dismissed for want of jurisdiction; (2) That although it was doubtful whether, under the rules, there was sufficient color for the motion to dismiss to justify the court in considering the motion to affirm, yet, as the Supreme Court of Pennsylvania, in its opinion, did not seem to have expressly passed upon the federal question, which was clearly in the record, the court could consider that there was color for making that motion; (3) That the provision for the assessment of the tax upon the nominal or face value of the bonds, instead of upon their actual value, was a part of the state system of taxation, authorized by its constitution and laws, and violated no provision of the Constitution of the United States; (4) That the failure to give personal notice to the owners of the bonds involved no violation of due process of law, when executed according to customary forms and established usages, or in subordination to the principles which underlie them; (5) That it was not true, in point of fact, that the corporation was taxed for property which it did not own. *Bell's Gap Railroad Co.* v. *Pennsylvania*, 232.

2. The power conferred by the statutes of Missouri upon counties within the State, to levy and collect annually a tax of one-half of one per cent upon all the taxable wealth of the county for county revenue, is not exhausted by a levy of thirty cents on every one hundred dollars of taxable property for county purposes, and the levy of twenty cents on the same by the board of townships for township and bridge purposes; and a judgment creditor of such a county has a right to require

it to impose further taxation within the limit of the unexhausted power, for his benefit. *Macon County* v. *Huidekoper*, 332.

3. The validity of a state tax upon corporations created under its laws, or doing business within its territory, can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. *Home Ins. Co.* v. *New York*, 594.

See CONSTITUTIONAL LAW, 17, 18;
EQUITY, 10;
JURISDICTION, A, 11.

TAX-TITLE.

The provision in the constitution of Louisiana declaring a tax-title to be *prima facie* valid is intended to be applied to cases in which the tax-title is attacked for alleged informalities in the proceedings; but not to cases in which it is attacked for fraud and collusion in effecting the sale. *Mendenhall* v. *Hall*, 559.

See EQUITY, 10.

TENDER.

See EQUITY, 10.

TRUST.

1. A trustee of real estate, after a court of equity, on his own motion, has discharged him and relieved him of his trust and appointed another trustee in his place, has no remaining interest in the property which he can convey by deed. *Kenaday* v. *Edwards*, 117.
2. A trustee of real estate, appointed by the court, subject to its control and order, cannot give good title to the trust estate by a deed made without the consent of the court. *Ib.*

TRUSTEE.

See APPEAL 4.

VOLUNTARY CONVEYANCE.

See HUSBAND AND WIFE, 1, 2.

WARRANTY.

See CONTRACT, 8, 9, 10, 11.

WILL.

A testatrix, residing in South Carolina, who died in July, 1866, left a will made by her in 1863, by a codicil to which, made in January, 1866, she bequeathed to her daughter, then married to C., three-fourths of her interest in a bond and mortgage debt, to be vested in a trustee, who was appointed, and to be enjoyed by the daughter during her life,

power being given to the daughter, to dispose of such "bequest" as she pleased, "by a last will and testament duly executed by her." In September, 1875, the daughter died, leaving a will executed in September, 1871, which recited that she was "entitled to legacies" under the will of her mother, and to a distributive share in the estates of a sister and a brother, "and notwithstanding my coverture, have full testamentary power to dispose of the same," and then bequeathed to her husband, C., "the entire property and estate to which I am now in any wise entitled and which I may hereafter acquire, of whatever the same may consist," "absolutely and in fee simple;" *Held*, (1) The court is authorized to put itself in the position occupied by the daughter when she made her will, in order to discover from that standpoint, in view of the circumstances then existing, what she intended; (2) The will of the daughter was intended by her to be, and was, a full execution of the power, because it referred expressly to the subject matter of the power; (3) The statement in it as to "full testamentary power" referred to the fact that, although she was a married woman, she had power to "dispose of the same" by a will, such power being given to her by the will of her mother, and did not refer to the provision of the constitution of 1868 of South Carolina, and the legislation consequent thereon, enabling married women to dispose of their own property by will; (4) Outside of her interest in the bond and mortgage, she had practically no property. *Lee* v. *Simpson*, 572.

See EVIDENCE, 1, 2, 3;
JURISDICTION, A, 2.

WITNESS.

See HUSBAND AND WIFE, 3.