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ADMIRALTY.

1. A court of admiralty has no equity power to wind up a trust concerning a licensed vessel, or to enforce an alleged contract of sale of it. *The Eclipse*, 599.
2. When an intervener in an admiralty suit *in rem* seeks a remedy concerning the vessel which is not maritime in its nature, the court is without jurisdiction over his claim, and the intervention should be dismissed. *Ib.*
3. A power was given to sell a vessel then lying in a dangerous position locked up in ice, in care of the master, who was part owner, for a specified sum: *Held*, to have been executed with reference to the then condition of the vessel, and not to apply to a sale purporting to be made under it after it had been brought by the master to a port of safety, and not to warrant a conditional sale after extrication, dependent upon the amount of damage which it might be found to have suffered. *Ib.*
4. A vessel was conveyed to two trustees, one of whom was the master, in equal shares, to hold as trustees for the benefit of all the owners, *cestuis que trust*. *Held*, that the master was half-owner of the legal title, and could not be removed under Rev. Stat. § 4250 on the application of *cestuis que trust*, claiming to be a majority of the equitable owners. *Ib.*

AMENDMENT.

See JURISDICTION, A, 5.

APPEAL.

Cross-appeals in equity must be prosecuted like other appeals; and, although they may be taken and allowed after removal of the cause, on appeal, to this court, yet that cannot be done after the lapse of two years from the date of the decree. *Churchill v. Farrar*, 609.

See HABEAS CORPUS, 1;

JURISDICTION, A, 5.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

1. A court of equity will not lend its aid to enforce a sale of property under execution where the disproportion between the value of the

- property sold and the sum paid for it is so great as to shock the conscience. *Randolph's Executor v. Quidnick Co.*, 457.
2. Where a debtor, having large and scattered properties and being much embarrassed, transfers his property for the benefit of his creditors equally, equity requires that any creditor who is not satisfied with the provisions of such transfer should act promptly in challenge thereof, or else be adjudged to have waived any right of challenge. *Ib.*
 3. When the highest courts of two States arrive at different conclusions respecting the validity of an assignment by an insolvent debtor of all his property for the benefit of creditors, this court is inclined in matters of doubt, to give the preference to the ruling of the court of the State in which the insolvent resided, where the conveyance was executed, and where the bulk of the property is situated. *Ib.*
 4. S., a citizen of Rhode Island engaged in business there, with large properties in that State and with property in Connecticut, being embarrassed, made an assignment in 1873 of all his property for the benefit of his creditors; which assignment, being assailed in the courts of each State, was upheld by the Supreme Court of Rhode Island as to the property there, and invalidated by the Supreme Court of Connecticut as to the property there. Meanwhile in the execution of its provisions, large transactions took place and extensive rights were created. In 1875 a creditor commenced suit against S., and in 1882, attached in that action property to the value of \$500,000 which had belonged to S. before the assignment, and having obtained execution, levied upon it and sold it under execution for the sum of \$275. The purchaser filed a bill in equity to enforce the purchase: *Held*, (1) That the disproportion between the sum paid and the value of the property purchased was too great to warrant a court of equity in enforcing the purchase; (2) That the long delay in attacking a transfer under which great rights had been acquired by other creditors justified a court of equity in refusing to lend its aid to the attack; (3) That if it were necessary (which it was not) to decide whether the assignment was or was not valid beyond challenge, the court would incline to give preference in matter of doubt to the ruling of the Supreme Court of Rhode Island, where S. resided when the conveyance was executed, and where the bulk of the property was situated. *Ib.*

BILL OF REVIEW.

See EQUITY, 7.

CASES AFFIRMED.

1. *Leisy v. Hardin*, 135 U. S. 100, followed in *Lyng v. Michigan*, 161.
2. The rulings in *Hawkins v. Glenn*, 131 U. S. 319, confirmed, and applied to these cases. *Glenn v. Liggett*, 533.

CASES DISTINGUISHED.

United States v. Barlow, 132 U. S. 271, distinguished from this case.

United States v. Voorhees, 550.

Hopkins v. Nichols, 22 Texas, 206, distinguished. *Société Foncière v. Miliken*, 304.

CASES OVERRULED.

Peirce v. New Hampshire, 5 How. 504, overruled. *Leisy v. Hardin*, 100.

CERTIFICATE OF DIVISION IN OPINION.

A certified question : " Does the indictment charge the defendant with any offence ? " is too general to be made the subject of a Certificate of Division. *United States v. Chase*, 255.

CHEROKEE NATION.

1. The Cherokee Nation filed in the court below a bill of complaint, seeking a decree enjoining the Southern Kansas Railway Company from entering upon the lands of that nation for the purpose of constructing its proposed railway, and, if that relief could not be granted, then that its bill might be treated as an original complaint and petition in appeal as provided in § 3, c. 179, act of July 4, 1884, 23 Stat. 73: *Held*, (1) That these two causes of action, one of an equitable and the other of a legal nature, could not be joined in the same suit; (2) That the court below erred in not treating the complaint as a petition or appeal which entitled the petitioners to have a trial *de novo* of the question of damages for the lands and rights proposed to be taken. *Cherokee Nation v. Southern Kansas Railway*, 641.
2. The Cherokee Nation is not sovereign in the sense that the United States or a State is sovereign, but is now, as heretofore, a dependent political community, subject to the paramount authority of the United States. *Ib.*

See CONSTITUTIONAL LAW, 8, 13.

CIRCUIT COURTS.

See CONSTITUTIONAL LAW, 1, 5;

LOCAL LAW, 4.

CLAIMS AGAINST THE UNITED STATES.

An extra allowance to a contractor for carrying the mails, under the provisions of Rev. Stat. § 3961, for an increase of expedition in carrying them, is not invalidated by reason of the fact that, prior to its allowance, the contractor was voluntarily carrying them over the route, with the increased expedition, and at the contract rate of pay. *United States v. Voorhees*, 550.

COMMISSIONER OF PENSIONS.

See JURISDICTION, A, 2.

CONSTITUTIONAL LAW.

1. By virtue of Rev. Stat. §§ 606, 610, the justices of the Supreme Court of the United States are allotted among the nine circuits, to each one of which a judge is assigned; and the latter section makes it the duty of each judge to attend the Circuit Court in each district of the circuit to which he is allotted, and thereby imposes upon him the necessity of travelling from his residence to the Circuit Court which he is to attend, and from each place in that circuit where the court is held to the other places where it is held: *Held*, that, while a judge is thus travelling to or from those places, he is as much in discharge of his duty as when listening to and deciding cases in open court, and is as much entitled to protection in the one case as in the other. *In re Neagle*, 1.
2. While there is no express statute authorizing the appointment of a deputy marshal, or any other officer, to attend a judge of the Supreme Court when travelling in his circuit, and to protect him against assaults or other injury, the general obligation imposed upon the President of the United States by the Constitution to see that the laws be faithfully executed, and the means placed in his hands, both by the Constitution and the laws of the United States, to enable him to do this, impose upon the Executive department the duty of protecting a justice or judge of any of the courts of the United States, when there is just reason to believe that he will be in personal danger while executing the duties of his office. *Ib*.
3. An assault upon a judge of a court of the United States, while in discharge of his official duties, is a breach of the peace of the United States, as distinguished from the peace of the State in which the assault takes place. *Ib*.
4. Under the provisions of Rev. Stat. § 788, it is the duty of marshals and their deputies in each State to exercise, in keeping the peace of the United States, the power given to the sheriffs of the State for keeping the peace of the State; and a deputy marshal of the United States, specially charged with the duty of protecting and guarding a judge of a court of the United States, has imposed upon him the duty of doing whatever may be necessary for that purpose, even to the taking of human life. *Ib*.
5. David Neagle, a deputy marshal of the United States for the District of California, was brought by writ of *habeas corpus* before the Circuit Court of that district upon the allegation that he was held in imprisonment by the sheriff of San Joaquin County, California, on a charge of the murder of David S. Terry. He alleged that the killing of Terry by him was done in pursuance of his duty as such deputy marshal in defending the life of Mr. Justice Field, while in discharge of his duties as Circuit Judge of the ninth circuit. On the trial of this writ in the Circuit Court it entered an order discharging the prisoner, finding that he was in custody for an act done in pursuance of a law

of the United States, and was imprisoned in violation of the Constitution and laws of the United States. The case being brought up to the Supreme Court by appeal, this court, on examining the voluminous testimony, arrived at the conviction that there was a settled purpose on the part of Terry and his wife, amounting to a conspiracy, to murder Mr. Justice Field, on his official visit to California in the summer of 1889; that this arose from animosity against him on account of judicial decisions made in the Circuit Court of the United States for the Northern District of California in a suit or suits to which they were parties; that the purpose which they had of doing Mr. Justice Field an injury became so well and so publicly known, that a correspondence ensued between the marshal and the District Attorney of that District and the Attorney General of the United States, the result of which was that Neagle was appointed a deputy marshal for the express purpose of guarding Mr. Justice Field against an attack by Terry and his wife which might result in his death; that such an attack did take place; that Neagle, being there for the said purpose of affording protection, had just reason to believe that the attack would result in the death of Mr. Justice Field unless he interfered; and that he did justifiably interfere by shooting Terry while in the act of assaulting Mr. Justice Field, whom he had already struck two or three times: *Held*, (1) That Neagle was justified in defending Mr. Justice Field in this manner; (2) That in so doing he acted in discharge of his duty as an officer of the United States; (3) That having so acted, in that capacity, he could not be guilty of murder under the laws of California, nor held to answer to its courts for an act for which he had the authority of the laws of the United States; (4) That the judgment of the Circuit Court, discharging him from the custody of the sheriff of San Joaquin County, must therefore be affirmed. *Ib.*

6. A statute of a State, prohibiting the sale of any intoxicating liquors except for pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county court of the State is, as applied to a sale by the importer, and in the original packages or kegs, unbroken and unopened, of such liquors manufactured in and brought from another State, unconstitutional and void, as repugnant to the clause of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States. *Leisy v. Hardin*, 100.
7. Following *Leisy v. Hardin*, ante, 100, the judgment of the court below in this case is reversed. *Lyng v. Michigan*, 161.
8. The act of Congress of July 4, 1884, 23 Stat. 73, c. 179, granting a right of way through the Indian Territory to the Southern Kansas Railway Company, for a railroad, telegraph and telephone line, is a valid exercise of the power of Congress to regulate commerce among the several States and with the Indian tribes. *Cherokee Nation v. Southern Kansas Railway*, 641.

9. The United States may exercise the right of eminent domain in respect to lands in the Territories, as in any of the States, for purposes necessary to the execution of the powers belonging to the General Government, such an exercise being essential to their independent existence and perpetuity. *Ib.*
10. All lands held by private persons within the limits of the United States are held subject to the authority of the General Government to take them for such objects as are germane to the execution of the powers granted to it, provided only that they are not taken without just compensation being made to the owner. *Ib.*
11. In the execution of the power to regulate commerce Congress may employ, as instrumentalities, corporations created by it or by the States. *Ib.*
12. A railroad is a public highway, established primarily for the convenience of the people, and to subserve public ends, and is subject to governmental control and regulation; and for these reasons the corporation owning it may, under legislative sanction, take private property for a right of way, upon making just compensation to the owner. *Ib.*
13. The act granting a right of way to the Southern Kansas Railway Company through the Indian Territory authorized the company to enter upon the lands taken for right of way after it should have paid into court double the amount of the award of the referees appointed by the President: *Held*, that this was a sufficient provision to secure just compensation; that the Constitution does not require that compensation shall be made in advance of the appropriation of lands for a right of way; that it is sufficient if adequate provision be made to secure just compensation; that the title does not pass from the owner till such compensation is actually received; and that if the railway company fails to pay the amount ascertained it will thereafter be a trespasser, although before the termination of the proceedings instituted to fix the compensation, it may have rightfully entered upon the lands for the purpose of constructing its road. *Ib.*

See HABEAS CORPUS, 3;

VIRGINIA COUPON CASES.

CONTRIBUTORY NEGLIGENCE.

The question of contributory negligence is, as a general rule, one for the jury, under proper instructions by the court; especially where the facts are in dispute, and the evidence in relation to them is such that fair-minded men may draw different conclusions from it. *Washington & Georgetown Railroad v. McDade*, 554.

CORPORATION.

1. An agreement by a director of a corporation to keep another person permanently in place as an officer of the corporation, is void as against

public policy, even though there was not to be any direct private gain to the promisor. *West v. Camden*, 507.

2. By the statute of Virginia the balance of unpaid subscriptions to the stock of a Virginia corporation was payable as called for by the president and directors: *Held*, that the president and directors stand for the corporation; and that as the corporation was a party to a suit in a court of Virginia, making a call, it sufficiently represented the president and directors and the stockholders. *Glenn v. Liggett*, 533.
3. The rights of a stockholder must, in a suit to recover on the call, be adjudicated according to the requirements of the statutes and jurisprudence of Virginia, which State created the corporation, and in reference to whose laws the contract of the stockholders was made. *Ib.*
4. As the suit in the court of Virginia was properly brought, and it had jurisdiction as to subject matter and parties, its adjudication cannot be reviewed or impeached in the collateral suit on the call, except for actual fraud. *Ib.*
5. The making by the court of one call, leaving a balance uncalled, did not prevent the making of a further call by the same court, or by one of competent jurisdiction, to which the cause was transferred. *Ib.*

COSTS.

When the United States are successful in a suit where one of their clerks or officers of the class described in Rev. Stat. § 850 is sent away from his place of business to be a witness for the government, the necessary expenses of such witness, audited by or under the direction of the court upon which he attends as a witness, takes the place, in the bill of costs, of the per diem and mileage which, but for that section, would have been taxed and allowed in their favor. *United States v. Sanborn*, 271.

See PARTNERSHIP, 1 (3).

COURT AND JURY.

- A court may refuse to give a requested instruction when it has already given substantially the same instruction in its own language. *Washington & Georgetown Railroad v. McDade*, 554.

See CONTRIBUTORY NEGLIGENCE;

ERROR;

PATENT FOR INVENTION, 5.

CRIMINAL LAW.

1. The knowingly depositing an obscene letter in the mails, enclosed in an envelope or wrapper upon which there is nothing but the name and address of the person to whom the letter is written, is not an offence within the act of July 12, 1876, 19 Stat. 90, c. 186. *United States v. Chase*, 255.

2. A sealed and addressed letter is not a "writing" within the meaning of that act. *Ib.*
3. The words "punishable by imprisonment at hard labor" in the act of March 1, 1889, 25 Stat. 783, c. 333, "to establish a United States court in the Indian Territory, and for other purposes" embrace offences which, although not imperatively required by statute to be so punished, may, in the discretion of the court, be punished by imprisonment in a penitentiary. *In re Mills*, 263.
4. Where a statute of the United States prescribing a punishment by imprisonment does not require that the accused shall be confined in a penitentiary, a sentence of imprisonment cannot be executed by confinement in a penitentiary, unless the sentence is for a period longer than one year. *Ib.*
5. A judgment of a district court sentencing a prisoner who had pleaded guilty to two indictments, for offences punishable by imprisonment, but not required to be in a penitentiary, to imprisonment in a penitentiary, in one case for a year and in the other for six months, is in violation of the statutes of the United States. *Ib.*
6. An indictment was so framed as to permit it to be construed as charging the common law offence of rape, (as it alleged the carnal knowledge to have been without the consent of the woman,) or the statutory offence, (Act of February 9, 1889, 25 Stat. 658, c. 120) of carnally and unlawfully knowing a female under sixteen years of age (as it alleged that the woman was under sixteen years of age). It was not signed by the District Attorney of the United States. No motion was made to compel the prosecuting attorney to elect on which charge he would try the prisoner. The court instructed the jury that the allegations respecting the will of the woman might be rejected as surplusage, and the rest of the indictment be good under the statute. The jury found the prisoner guilty of the statutory offence, and judgment was entered accordingly: *Held*, (1) That there was no error in the ruling of the court; (2) That this conviction could be set up against a pending indictment for the same offence, charged to have been committed in violation of the statute; (3) That the signature of the District Attorney to the indictment was not necessary; (4) That it was immaterial whether there was or was not error in any of these matters, as none went to the jurisdiction. *In re Lane*, 443.

CUSTOMS DUTIES.

Cloth composed partly of silk, partly of cotton and partly of wool, silk being the component material of chief value, and the proportion in value of wool being less than twenty-five per cent, is dutiable as a non-enumerated article under Schedule L, § 2502 of the Revised Statutes as amended by the act of March 3, 1883, 22 Stat. 510; and not as a similar article under Schedule K in that section, 22 Stat. 508. *Hartman v. Meyer*, 237.

DEED.

See EQUITY, 1, 2;

LOCAL LAW, 5, 6.

DIPLOMATIC PRIVILEGE.

1. The Consul General of Guatemala and Honduras in New York, being a citizen of and resident in the United States, was accredited by the government of Honduras as its diplomatic representative here. The Secretary of State declined to receive him as such, on the ground that the immunities and privileges attaching to the office made it inconsistent and inconvenient that a citizen of the United States should "enjoy so anomalous a position." The Consul General then inquired whether the Department would regard him as chargé d'affaires *ad hoc* of Honduras, without relieving him of his duties and responsibilities as a citizen; to which the Department replied that it could not recognize his agency as conferring upon him any diplomatic status. A diplomatic representative was then accredited to the United States from Guatemala, Honduras and Salvador, and was received as such. Three years later, being about to temporarily absent himself from his post, this representative requested the Secretary of State "to allow that the Consul General of Guatemala and Honduras in New York," the same person still holding that office, "should communicate to the office of the Secretary of State any matter whatever relating to the peace of Central America, which should without delay be presented to the knowledge of your Excellency." The reply of the Secretary, directed to "The Consul General of Guatemala and Honduras," stated that he would "have pleasure in receiving any communication in relation to Central America of which you may be the channel as intimated;" and notes were subsequently interchanged between him and the Department, and *vice versa*, until the arrival of an accredited diplomatic representative: *Held*, that the Consul General of Guatemala and Honduras did not thereby become the diplomatic representative of Guatemala, Honduras and Salvador during the absence of the regularly accredited representative, and that, in the absence of a certificate from the Secretary of State that he was such representative, he was not entitled to the immunity from suit except in this court which is granted by the Constitution to such persons. *In re Baiz*, 403.
2. On an application to this court, by a person claiming a diplomatic privilege, for a writ of prohibition or a writ of mandamus, to restrain a district court from the exercise of its ordinary jurisdiction on the ground that the petitioner is a privileged person, the respondent is called upon to produce any evidence that exists to countervail the petitioner's proof of his privilege. *Ib.*
3. When a person claims in this court the rights and privileges of a foreign minister, the court has the right to accept the certificate of the Department of State that he is, or is not, such a privileged person, and

cannot properly be asked to proceed upon argumentative or collateral proof. *Ib.*

DISTRICT OF COLUMBIA.

Under the act of June 11, 1878, 20 Stat. 102, c. 180, the commissioners of the District of Columbia have the power to summarily remove and dismiss from the police force of the District officers and members of that force. *Eckloff v. District of Columbia*, 240.

EJECTMENT.

See LOCAL LAW, 4, 5.

ELEVATED RAILROAD.

An abutter on a street in the city of New York may recover against a company constructing an elevated railroad and station house in front of his building, damages for the discomforts and inconveniences in the occupation of the building, caused by the erection of the defendant's structure, independently of the running of trains thereon. *N. Y. Elevated Railroad v. Fifth National Bank*, 432.

See EVIDENCE.

EMINENT DOMAIN.

See CONSTITUTIONAL LAW, 9, 10.

EQUITY.

1. A bill in equity was filed to set aside a deed made to one of his sons by the grantor as made under undue influence, and to affirm the validity of a will executed by that grantor a short time before the making of the deed. A decree was entered, affirming the deed as to a part of the property conveyed by it as a confirmation of a previously acquired equitable title, and setting it aside as to the remainder. The plaintiff appealed; the defendant took no appeal: *Held*, that, although the decree was apparently incongruous in supporting the deed as to a part and setting it aside as to the remainder on a bill charging undue influence, yet as no appeal had been taken by the defendant, the court would look into the merits, and that, whatever criticism might be made upon its form, the decree was substantially right. *Mackall v. Mackall*, 167.
2. When a husband and wife separate, and one son remains with the father, taking his part, sharing his confidence and affection, and assisting him in his affairs, and the other children go with the mother, taking her part in the family differences, and this state of things continues for years, until terminated by the death of the father, it is natural and reasonable that the father, in disposing of his estate, should desire to specially provide for the son who remained with him and took his part; and a deed made by him with this object, and under the natural influences springing from such relationship will be

sustained, unless it be made further to appear that the son practised upon the father imposition, fraud, importunity, duress or something of that nature, in order to secure its execution. *Ib.*

3. The fact that a party who has received a parol gift of real estate has entered into possession and has expended money in improvements thereon, presents equitable considerations to uphold a decree establishing a subsequent conveyance as a confirmation of the equitable title. *Ib.*
4. If the decree of sale in a suit for foreclosing a railroad mortgage provides that the purchaser shall pay down a certain sum in cash when the bid is made, and such further portions of the bid in cash as shall be found necessary, in order to meet such other claims as the court shall adjudge to be prior in equity to the debt secured by the mortgage, the purchaser is bound by the decision of the court as to such other claims, and has no appealable interest therein. *Central Trust Co. v. Grant Locomotive Works*, 207.
5. A decree in a suit for foreclosing a railroad mortgage, that the claim by an intervening creditor of an interest in certain locomotives in the possession of the receiver and in use on the road, was just, and entitled to priority over the debt secured by the mortgage, is a final decree, upon a matter distinct from the general subject of the litigation; and it cannot be vacated by the court of its own motion after the expiration of the term at which it was granted. *Ib.*
6. The action of a Circuit Court in refusing to allow an amendment to a petition previously filed in a cause, or to permit it to be filed as a bill of review as of the date of the previous filing, is not subject to review here. *Ib.*
7. A bill of review based upon errors apparent in the record must ordinarily be brought within the time limited by statute for taking an appeal from the decree sought to be reviewed; and if it is based upon matter discovered after the expiration of that time, a neglect to file it promptly on the discovery will be laches. *Ib.*
8. Whether, in the absence of a statute, a judgment under which property has been levied upon and sold, and which has stood unchallenged for nearly two years, can be set aside otherwise than through proceedings in equity, *quere.* *Société Foncière v. Milliken*, 304.
9. A bill in equity was filed by the holder of second mortgage bonds of a railroad company, to rescind the sale of the road, made under a decree of foreclosure, to a committee of the first mortgage bondholders, or to have the sale declared to be in trust for both classes of bondholders, and for other relief. The bill was demurred to. No actual fraud was alleged. No offer was made to redeem. It was not averred that there was any consideration for an alleged agreement that the second mortgage bondholders should share in the purchase; or that the property was sold for less than its actual value. It appeared that the second mortgage bondholders had such notice of

the foreclosure suit that they might have intervened in it. A trust company was the trustee under both mortgages, but no collusion by, or unfaithfulness of, the trustee was alleged. It did not appear that the second mortgage bondholders could have prevented the decree of foreclosure, and the suit was one to foreclose both mortgages. The members of the committee of the first mortgage bondholders, who were alleged to have made the agreement, were not made parties to this suit: *Held*, that the bill could not be sustained. *Robinson v. Iron Railway Co.*, 522.

10. A court of equity will not enforce a sale of property under execution where the disproportion between its value and the sum paid for it is so great as to shock the conscience. *Randolph's Executor v. Quidnick Co.*, 457.

See ADMIRALTY, 1; APPEAL;
ASSIGNMENT FOR BENEFIT OF
CREDITORS;

JURISDICTION, B, 1;
MORTGAGE, 1, 2;
PARTNERSHIP.

ERROR.

- A judgment will not be reversed because of an erroneous instruction to the jury, excepted to by the plaintiff, if the plaintiff could not recover in any event. *West v. Camden*, 507.

EVIDENCE.

In an action by the owner of a building and land abutting on a street in the city of New York, against a company which had constructed an elevated railroad and station-house over and along the street, the plaintiff claimed damages for the injury to the use and enjoyment of his property by obstructing the passage of light and air and diminishing the rents, and also for the permanent injury to the market and rental value of the property. Evidence, offered by the plaintiff, of the value of the building, before and after the construction of the railroad, was excluded by the court upon the defendant's objection. The defendant contended that the plaintiff's damages should be limited to the date of bringing the action. But the court ruled that they might be recovered to the time of the trial; and evidence was introduced in accordance with that ruling without objection or exception by the defendant to the admission of the evidence, or to the ruling under which it came in: *Held*, that the defendant could not except to a subsequent refusal of the court to admit evidence that the value of the plaintiff's property had been increased by the construction of the railroad; nor to an instruction allowing damages to be recovered to the time of trial; nor to the refusal of an instruction, requested by the defendant after the charge, that the recovery should be had only for the permanent injury to the plaintiff's property. *N. Y. Elevated Railroad Co. v. Fifth National Bank*, 432.

See DIPLOMATIC PRIVILEGE, 3.

EXCEPTION.

A party cannot take exception to a ruling under which a trial has been conducted by his procurement or with his acquiescence. *New York Elevated Railroad v. Fifth National Bank*, 432.

See ERROR.

EVIDENCE.

EXECUTOR AND ADMINISTRATOR.

1. In Louisiana, where the heirs of an intestate may take the property and pay the debts, such an heir cannot, after taking a part of the property, hold the administrator and his sureties responsible for loss in respect to it resulting subsequently thereto; and this rule is not affected by the fact that the administrator, in his individual capacity, afterwards obtained title to and possession of the property thus removed from his custody. *Norman v. Buckner*, 500.
2. The proceedings attacked in this case were conducted in good faith, and without fraud or collusion. *Ib.*
3. The facts that the same person was administrator of one estate, and executor of another, and that the testate and the intestate were partners in business, do not affect the right of the creditor of the intestate to have his separate estate applied to the payment of his individual debts, and do not make the sureties on the administrator's bond answerable for waste committed by the executor. *Ib.*

FRAUDULENT ASSIGNMENT.

See LOCAL LAW, 7.

FRAUDULENT REPRESENTATIONS.

See VENDOR AND VENDEE.

HABEAS CORPUS.

1. An appeal from the decision of a Circuit Court of the United States in a *habeas corpus* case, under Rev. Stat. § 764, as amended by the act of March 3, 1885, 23 Stat. 437, c. 353, brings up the whole case, both law and facts, and imposes upon this court the duty of reëxamining it, upon the full record as it was heard in the inferior court. *In re Neagle*, 1.
2. A person who is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process or decree of a court, or judge thereof, or is in custody in violation of the Constitution, or a law or treaty of the United States, may, under the provisions of Rev. Stat. § 753, be brought before any court of the United States, or justice or judge thereof, by writ of *habeas corpus*, for the purpose of an inquiry into the cause of his detention; and the court or justice or judge is required by § 761 to proceed in a summary way to determine the facts of the case, by hearing the testimony and

- arguments, and thereupon to dispose of the party as law and justice require. *Ib.*
3. United States officers and other persons, held in custody by state authorities for doing acts which they were authorized or required to do by the Constitution and laws of the United States, are entitled to be released from such imprisonment; and the writ of *habeas corpus* is the appropriate remedy for that purpose. *Ib.*
 4. This court can issue a writ of *habeas corpus* in the exercise of its original jurisdiction only when the inferior court has acted without jurisdiction, or when it has exceeded its powers to the prejudice of the party seeking relief. *In re Lane*, 443.

HUSBAND AND WIFE.

See EQUITY, 2.

HIGHWAY.

See MUNICIPAL CORPORATION.

IMPRISONMENT AT HARD LABOR.

See CRIMINAL LAW, 3, 4, 5.

INTERNAL REVENUE.

1. Where distillery premises, in the occupancy of a distiller, who is operating the same under a lease to expire at a specified time, are seized and sold by a collector of internal revenue for taxes due from the distiller to the government, a sale of such premises, by the collector, by the summary mode of notice and publication provided in section 3196 of the Revised Statutes, for the taxes so due, will pass to the purchaser only the interest of the delinquent distiller, and will not affect the interest in the premises, either of the owner of the fee or of a third person having a lien thereon, even where the government holds a waiver, executed by the owner of the fee or by such third person having a lien, consenting that the distillery premises may be used by the distiller for distilling spirits subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes shall have priority of any and all interest and claims which the waiver may have to the distillery and premises. *Mansfield v. Excelsior Refining Co.*, 326.
2. In the case of such a waiver, the interest of the owner of the fee or the liens on the premises held by other persons, cannot be affected except by a suit in equity to which they are parties, as provided in section 3207 of the Revised Statutes. *Ib.*

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 6.

VIRGINIA COUPON CASES, 6.

JUDGMENT.

See EQUITY, 5, 8;

JURISDICTION, A, 3;

LACHES, 2.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. A suit was brought to recover from T. possession of a tract of land of about 35 acres, part of a larger tract of 186 acres, which the plaintiff claimed to own. The lessor of T. of the 35 acres was made defendant, and answered, claiming to own the land sued for and also the rest of the 186 acres. The plaintiff recovered a judgment for the 35 acres, their value not exceeding \$2000. The value of the 186 acres was about \$10,000. The lessor having brought the case to this court by a writ of error, it was dismissed, on the ground that the amount involved was not sufficient to give this court jurisdiction, because it did not exceed \$5000, exclusive of costs. *Vicksburg, Shreveport & Pacific Railroad v. Smith*, 195.
2. When the Commissioner of Pensions, in executing an instruction from the Secretary of the Interior to increase a pension, gives a construction to a statute which had not been construed by the Secretary, but which had been left open to the commissioner to construe, mandamus does not lie to compel the commissioner to give a different construction to it. *United States ex rel. Miller v. Raum*, 200.
3. A decree in equity setting aside a conveyance of personalty and of real estate as fraudulently made to hinder, delay and defraud the plaintiff, and appointing a receiver of all the property of both classes, and ordering a sale of all that remained, and an accounting by the defendants of so much of the personalty as they had parted with and of the proceeds thereof, and the payment of arrears of alimony due the plaintiff from the proceeds of the sale, and further ordering that the receiver should hold the balance subject to the order of the court as to alimony subsequently to accrue, is not a final decree from which an appeal can be taken, inasmuch as there still remains to be determined what personal property had been parted with, and what was its value and the amount of the proceeds to be accounted for. *Lodge v. Twell*, 232.
4. In this case, on a writ of error to review the judgment of the Supreme Court of a State, it was held that no federal question was involved, because the case was decided by the state court on a ground broad enough to maintain the judgment independently of any federal question; and the writ was dismissed. *Beatty v. Benton*, 244.
5. An amendment to a complaint in an action pending in a state court, allowed by the court after the evidence was in, by which the *ad damnum* clause was increased from a sum too small to allow the de-

fendant to petition to have the cause removed to the Circuit Court of the United States to a sum in excess of the jurisdictional sum necessary for that purpose, cannot be reviewed here if the defendant, after such allowance, files no petition for such removal. *Northern Pacific Railroad Co. v. Austin*, 315.

6. An appeal, under a state law, from an assessment of taxes to "a county court," which, in respect to such proceedings, acts, not as a judicial body, but as a board of commissioners, without judicial powers, only authorized to determine questions of quantity, proportion and value is not a "suit" which can be removed from the county court into a Circuit Court of the United States, and be heard and determined there. *Upshur County v. Rich*, 467.
7. In decreeing specific performance of a contract for the conveyance of a tract of land in a suit where the defence was that the contract was against public policy and void under the homestead laws of the United States, a state court necessarily passes upon a federal question, although it may put its decision upon other grounds. *Anderson v. Carkins*, 438.
8. A writ of error, the citation and the bond, all of them were dated the day before the judgment sought to be reviewed was rendered, and the writ and the citation were filed on that day in the office of the clerk of the court below: *Held*, on what appeared in the record, that it must be concluded that the allowance of the writ, the signing of the citation, the approval of the bond, and their filing took place after the rendering of the judgment; that any discrepancy must be attributed to clerical errors; and that this court had jurisdiction of the writ. *Glenn v. Liggett*, 533.

See CERTIFICATE OF DIVISION IN OPINION;

EQUITY, 6;

HABEAS CORPUS, 4;

PARTNERSHIP, 1 (2), (3).

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

A statement of facts agreed by the parties, or case stated, in an action at law, (while it waives all questions of pleading or of form of action, which might have been cured by amendment,) does not enable a court of law to assume the jurisdiction of a court of equity. *Willard v. Wood*, 309.

See MUNICIPAL CORPORATION, 2.

LACHES.

1. When the United States makes a long delay in the assertion of its right to recover back money which it is entitled to recover back, without showing some reason or excuse for the delay, interest before the commencement of the action for such recovery is not recoverable; and this is especially true when it does not appear that the defendant has

earned interest upon the money improperly received by him. *United States v. Sanborn*, 271.

2. A delay of two years in commencing proceedings to set aside a judgment for usury is laches, and is fatal. *Société Foncière v. Milliken*, 304.

See EQUITY, 7.

LEX FORI.

See MORTGAGE, 1.

LIEN.

- A contract by a railroad company, chartered to construct a railroad between two points, made with another railroad company for the use of the road of the latter for a part of the distance for a period of years, in order to complete the connection proposed by the charter, and providing that the contract and any damages accruing from a breach of it shall be a continuing lien upon the roads of the two contracting parties, their equipment and income, into whosoever hands they may come, creates no lien on the property of the first company which will take precedence of a mortgage executed after a breach of the contract prior to the expiration of the term has taken place. *Des Moines and Fort Dodge Railroad v. Wabash, St. Louis & Pacific Railway*, 576.

LIMITATION, STATUTES OF.

1. The statute of limitations of Missouri did not bar the present actions. *Glenn v. Liggett*, 533.
2. Statutes of limitation do not run against a *cestui que trust* where the trust is express and clearly established; but when the trustee openly disavows it, and sets up adverse title in himself time begins to run. *Riddle v. Whitehill*, 621.

See PARTNERSHIP, 4, 5.

LOCAL LAW.

1. Section 1373, Rev. Stats. Texas, authorizes the granting of new trials only where the judgment was rendered on service of process by publication. *Société Foncière v. Milliken*, 304.
2. A foreign corporation doing business in the State of Texas may be brought into court by service of process upon its agent there. *Ib.*
3. An affidavit, preliminary to the issue of an attachment in Texas upon a foreign corporation, which recites that the defendant "is not a resident corporation, or is a foreign corporation, or is acting as such," is a sufficient affidavit under Rev. Stats. Texas, Art. 152. *Hopkins v. Nichols*, 22 Texas, 206, distinguished. *Ib.*
4. In Illinois, the unsuccessful party in an action of ejectment is entitled, by statute, upon the payment of all costs, to have the judgment va-

cated and a new trial granted, but no more than two new trials can be granted to the same party under the statute. This statute governs the trial of actions of ejectment in the courts of the United States sitting in Illinois. *Mansfield v. Excelsior Refining Co.*, 326.

5. In an action of ejectment, in Illinois, where the title of one of the parties depends upon a deed made by a trustee, invested with the legal title, and with power to sell and convey to the purchaser upon advertisement and sale, it is not material to inquire — the deed from the trustee not appearing upon its face to be void — whether the trustee conformed to all the terms of his advertisement for sale. *Ib.*
6. By the statute of Illinois, all deeds, mortgages and other instruments of writing, authorized to be recorded, take effect and are in force from and after the time of filing the same for record, and not before, as to creditors and purchasers without notice; and all such deeds and title papers must be adjudged void as to such creditors and subsequent purchasers, until the same be filed for record: *Held*, That although a grantee in a quitclaim deed is a purchaser within the meaning of the statute, and the prior recording of such a deed will give it a preference over one previously executed but not recorded until after the quitclaim deed, yet the grantee in the latter deed is charged with notice of what may be done under a trust deed conveying the same lands, filed for record before the quitclaim deed, and his rights are, therefore, subject to those of the grantee in a deed from the trustee, not filed for record until after the quitclaim was recorded. Whatever is sufficient notice to put a purchaser of land on inquiry is sufficient notice of an unrecorded deed. *Ib.*
7. D., a resident of New Orleans, being at the time insolvent, transferred to M. certain goods in a warehouse as a *dation en paiement*. M. pledged these goods to E. to secure \$15,000, of which \$5000 was loaned in cash, and \$10,000 in two notes for \$5000 each, which notes were executed in all respects in the manner required by the Civil Code of Louisiana, §§ 3157, 3158, in order to secure a privilege and preference under those sections. A creditor of D. commenced an action at law against him and caused these goods to be sequestered, and subsequently filed a bill in equity to set aside the whole transaction as fraudulent. Pending the proceedings the two notes matured and were paid by E.: *Held*, (1) That these instruments were sufficient under the laws of Louisiana; (2) That they were not simulated, but that the transaction was *bona fide*. *Freyburg v. Dreyfus*, 478.

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS, 3;

MORTGAGE, 1.

District of Columbia.

See DISTRICT OF COLUMBIA;
MORTGAGE, 2.

Louisiana.

See EXECUTOR AND ADMINISTRATOR.

Michigan.

See MUNICIPAL CORPORATION.

Missouri.

See LIMITATION, STATUTES OF, 2.

New York.

See ELEVATED RAILROAD;
EVIDENCE.

Virginia.

See CORPORATION, 2, 3, 4, 5;
VIRGINIA COUPON CASES.

MANDAMUS.

See JURISDICTION, A, 2.

MARSHAL AND DEPUTY MARSHALS.

See CONSTITUTIONAL LAW, 2, 4, 5.

MASTER AND SERVANT.

1. An employer of labor in connection with machinery is not bound to insure the absolute safety of the machinery or mechanical appliances which he provides for the use of his employes, nor is he bound to supply for their use the best and safest or newest of such appliances; but he is bound to use all reasonable care and prudence for the safety of those in his service, by providing them with machinery reasonably safe and suitable for use, and if he fails in this duty, he is responsible to them for any injury which may happen to them through a defect of machinery which was, or ought to have been known to him, and which was not known to the employes; but if an employe, who is injured by reason of a defect in such machinery, knew of the defect which caused it, and remained in the service of his employer, and continued to use the defective machinery without giving notice thereof to him, he must be deemed to have assumed the risk of all danger reasonably to be apprehended from such use. *Washington & Georgetown Railroad v. McDade*, 554.
2. When a person employed by another to labor in connection with machinery, is wanting in such reasonable care and prudence as would have prevented the happening of an accident, and is injured by the machinery, he is guilty of contributory negligence, and his employer is thereby absolved from responsibility for the injury, although it was occasioned by defect in the machinery and through the negligence of the employer. *Ib.*

MINERAL LAND.

1. A lode patent, issued subsequently to the issue of a placer patent of a tract within whose metes and bounds the lode patent is located, is not conclusive evidence that the lode was so known at the time of the issue of the placer patent as to authorize the issue of the lode patent. *Iron Silver Mining Co. v. Campbell*, 286.
2. Where two parties have patents for the same tract of land, and the question in a judicial proceeding is as to the superiority of title under those patents, and the decision depends upon extrinsic facts not shown by the patents, it is competent to establish it by proof of those facts. *Ib.*

3. The provisions in Rev. Stat. §§ 2325, 2326, as to adverse claims to a lode, for which a patent is asked, do not apply to a person who, before the publications first required, had himself gone through all the regular proceedings required to obtain a patent for mineral land from the United States; had established his right to the land claimed by him; and had received his patent therefor. *Ib.*

MISTAKE OF FACT.

See PAYMENT.

MORTGAGE.

1. The question whether the remedy of a mortgagee against a grantee of the mortgagor, to enforce an agreement of such grantee, contained in the deed to him, to pay the mortgage debt, is at law or in equity, is governed by the *lex fori*. *Willard v. Wood*, 309.
2. In the District of Columbia, a mortgagee can enforce an agreement of the grantee of the mortgagor, contained in the deed to him, to pay the mortgage debt, by bill in equity only, although by the law of the place where the land is, and where the mortgage and the subsequent deed were made, he might sue the grantee at law. *Ib.*

See EQUITY, 4, 5;

LOCAL LAW, 6.

MUNICIPAL CORPORATION.

1. It is settled law in Michigan that the failure of a municipal corporation to keep in repair a sidewalk in a public street, when the duty to do so is imposed upon it by statute, does not confer upon a person injured by reason of a defect in such sidewalk caused by neglect of the corporation to perform that duty, a right of action against the corporation to recover for the injury caused thereby. *Detroit v. Osborne*, 492.
2. The local law of a State concerning the right to recover from a municipal corporation for injuries caused by defects in its highways and streets is binding upon courts of the United States within the State. *Ib.*

NEGLIGENCE.

See CONTRIBUTORY NEGLIGENCE;
MASTER AND SERVANT.

OBSCENE LETTER.

See CRIMINAL LAW, 1.

OKLAHOMA.

At the time when the indictment in this case was found Oklahoma was not a territory with an organized system of government, in the sense in which the word "territories" is used in the act of February 9, 1889, 25 Stat. 658, § 120. *In re Lane*, 443.

PARTNERSHIP.

1. The plaintiffs filed a bill in equity to dissolve a copartnership with the defendants on the ground of violation of the contract of partnership and mismanagement, and to wind up its affairs in equity, and commenced the proceedings by attaching the defendants' property. A receiver was appointed by consent, and defendants answered, assenting to the dissolution on the ground of violations of the contract by the plaintiffs. It was referred to a master to hear and report on the issues of fact, to take an account of the dealings between the parties, and of all claims for damages arising out of the transactions, and to report. A copy of the report was furnished both parties before filing. The defendants took no exceptions. The report found that no misconduct or negligence was established on either side, and that the dealings between the parties resulted in a balance due the plaintiffs. A decree was entered accordingly. In taxing the costs, the plaintiffs were allowed their proportionate part of the costs of preserving the personal property attached: *Held*, (1) That the defendants' assent to the dissolution of the partnership, and the winding up of its affairs in chancery, made it unnecessary to make proof of the special grounds for dissolution set forth in the bill, or for the court to decree a dissolution; (2) That it was not open to the defendants to object for the first time in this court to the report of the master that it proceeded upon erroneous views of the contract of partnership; (3) That there was nothing in this case to take it out of the operation of the rule that this court will not ordinarily review a decree for costs merely in equity. *Burns v. Rosenstein*, 449.
2. The right of one partner to have the affairs of the firm wound up at once, upon the assignment by the other partner before the expiration of the term of all his property for the benefit of his creditors, is subject to modification according to circumstances. *Riddle v. Whitehill*, 621.
3. When one of two partners purchases real estate with partnership funds, but takes title in his own name, and takes possession, his possession is the possession of both, and a trust results in favor of his partner. *Ib.*
4. Where partnership affairs are being wound up in due course, without antagonism between the parties, or cause for judicial interference; assets are being realized and debts extinguished; and no settlement has been made between the partners; the statute of limitations has not begun to run. *Ib.*
5. When the right of action accrues between partners after a dissolution of the partnership, so as to set the statute of limitations in motion, depends upon the circumstances of each case, and cannot be held as matter of law to arise at the date of the dissolution, or to be carried back by relation to that date. *Ib.*

PATENT FOR INVENTION.

1. Reissued letters patent No. 10,137, granted June 13, 1882, to the Com-

- mercial Manufacturing Company, Consolidated, for an improvement in treating animal fats, the original patent, No. 146,012, having been granted December 30, 1873, to Hyppolyte Mége, as inventor, expired by the expiration in April, 1876, of a Bavarian patent, and in May, 1876, of an Austrian patent, granted to Mége for the same invention. *Commercial Manufacturing Co. v. Fairbank Canning Co.*, 176.
2. The question of the identity of the United States patent with the Bavarian and Austrian patents considered. *Ib.*
 3. The application of an old process or machine or apparatus to a similar or analogous subject, with no change in the manner of application, and no result substantially distinct in its nature, will not sustain a patent, although the new form of result may not have before been contemplated. *St. Germain v. Brunswick*, 227.
 4. Letters patent No. 72,969, granted to Emmanuel Brunswick, January 7, 1868, for a revolving cue-rack, are void for want of novelty. *Ib.*
 5. At the trial of an action at law for the infringement of a patent, the plaintiff having introduced testimony on the question of infringement, the defendant demurred to the evidence without putting in any of his own. The court sustained the demurrer and directed a verdict for the defendant: *Held*, that the question of infringement ought to have been submitted to the jury under proper instructions; that it was not a matter of mere judicial knowledge that the mechanical differences between the two machines were material, in view of the character of the patented invention, and of the claims of the patent; and that the case was not one where, if the jury had found for the plaintiff, it would have been proper for the court to set aside the verdict. *Royer v. Schultz Belting Co.*, 319.
 6. Claim 3 of reissued letters patent No. 7947, granted November 13, 1877, to James Sargent, for an "improvement in combined time-lock, combination lock and bolt-work for safes," the original patent, No. 195,539, having been granted to Sargent, September 25, 1877, namely, "3. The combination, with the bolt-work of a safe or vault-door, of a combination or key lock controllable mechanically from the exterior of said door, with a time-lock having a lock-bolt or obstruction for locking and unlocking controllable from the interior of the door, both of said locks being arranged so as to rest against or connect with the bolt-work, the time-lock being automatically unlocked by the operation of the time-movement, both of said locks being independent of each other, and arranged to control the locking and unlocking of the bolt-work, so that said safe or vault-door cannot be opened when locked until both of said locks have been unlocked or have released their dogging action, to enable the door to be opened, substantially as described," is invalid, because the specification of the original patent was not defective or insufficient, and the patent was not inoperative; and the sole object of the reissue was to obtain claim 3 as an enlarged claim; and the proceedings in the Patent Office prior to the

granting of the original patent show that Sargent abandoned that claim; and because, although the reissue was applied for only 13 days after the granting of the original patent, there was not a clear mistake, inadvertently committed, in the wording of a claim. *Yale Lock Manufacturing Co. v. Berkshire National Bank*, 342.

7. Claims 1 and 7 of reissued letters patent No. 8550, granted to the Yale Manufacturing Company, January 21st, 1879, for an "improvement in time-locks," the original patent, No. 146,832, having been granted to Samuel A. Little, as inventor, January 27th, 1874, and having been reissued as No. 7104, to that company, May 9th, 1876, and again reissued to it, as No. 8035, January 8th, 1878, namely, "1. The combination of independent multiple bolt-work with the time mechanism and locking or dogging mechanism of a time-lock, automatically both dogging and releasing the bolt-work at predetermined times, substantially as described." "7. In a time-lock, the combination, substantially as above set forth, of the time movements and two adjustable devices, one for determining the time of locking, and the other of unlocking," are invalid, because the original patent was not inoperative or invalid by reason of a defective or insufficient specification, within the terms of the statute, so as to warrant the reissues; and because the claims are enlarged; and because of the unexcused delay of more than two years in applying for a reissue; and because the claims were formally abandoned during the proceedings in the Patent Office. *Ib.*
8. The invention covered by the claim in letters patent No. 107,611, granted to James W. Haines on the 20th September, 1870, for an improvement in chutes for delivering timber, covers chutes, whether constructed with lapped joints or abutted joints, and was anticipated by several constructions for similar purposes described in the opinion; and the letters patent therefor are void. *Haines v. McLaughlin*, 584.
9. A claim in letters patent cannot be enlarged by construction beyond a fair interpretation of its terms. *Ib.*
10. Several alleged errors of the court in its rulings and instructions examined and found to contain no error. *Ib.*

PAYMENT.

The payment made by the United States to Sanborn, which is the subject of this action, was made in consequence of a misrepresentation by the defendant to the Secretary of the Treasury, which created a misapprehension, on his part, of the nature of the defendant's services; and the amount so paid ought, in equity and good conscience, to be returned to the United States. *United States v. Sanborn*, 271.

PENSION.

See JURISDICTION, A, 2.

POST-OFFICE DEPARTMENT.

See CLAIMS AGAINST THE UNITED STATES.

PRACTICE.

The court takes notice of the facts that in this case no assignment of errors was annexed to the transcript of the record as required by law, and that no specification of errors was made in the brief of counsel as required by the rule, and expresses the hope that there will be no recurrence of such omissions. *Farrar v. Churchill*, 609.

<i>See</i> APPEAL;	COURT AND JURY;
CERTIFICATE OF DIVISION IN	ERROR;
OPINION;	PARTNERSHIP, 1 (3).

PUBLIC LAND.

A contract by a homesteader to convey a portion of the tract when he shall acquire title from the United States is against public policy and void; and it cannot be enforced, although a valuable consideration may have passed to the homesteader from the other party. *Anderson v. Carkins*, 483.

See JURISDICTION, A, 7.

PUBLIC POLICY.

See CORPORATION, 1;
PUBLIC LAND.

PUBLIC STREET.

See MUNICIPAL CORPORATION.

RAILROAD.

See CONSTITUTIONAL LAW, 9, 12, 13;
ELEVATED RAILROAD;
EQUITY, 4, 5, 9;
LIEN.

SALE.

See VENDOR AND VENDEE.

STATUTE.

See TABLE OF STATUTES CITED IN OPINIONS.

A. STATUTES OF THE UNITED STATES.

<i>See</i> ADMIRALTY, 4;	CUSTOMS DUTIES;
CHEROKEE NATION, 1;	DISTRICT OF COLUMBIA;
CLAIMS AGAINST THE UNITED STATES;	HABEAS CORPUS, 1, 2;
CONSTITUTIONAL LAW, 1, 2, 4, 8, 13;	INTERNAL REVENUE, 1, 2;
COSTS;	MINERAL LAND, 3;
CRIMINAL LAW, 1, 3, 5;	OKLAHOMA.

B. STATUTES OF STATES AND TERRITORIES.

- Illinois.* See LOCAL LAW, 6.
Iowa. See CONSTITUTIONAL LAW, 6.
Louisiana. See LOCAL LAW, 7.
Texas. See LOCAL LAW, 1, 2, 3.
Virginia. See VIRGINIA COUPON CASES, 1, 2, 4, 5, 6, 7.

SUPREME COURT OF THE UNITED STATES.

- See CONSTITUTIONAL LAW, 1, 2, 3, 4, 5;
 HABEAS CORPUS, 4.

TAX AND TAXATION.

- See JURISDICTION A, 6;
 VIRGINIA COUPON CASES.

TRUSTEE.

- See LIMITATION, STATUTES OF, 2.

UNDUE INFLUENCE.

- See EQUITY, 1.

UNITED STATES.

- See COSTS;
 LACHES, 1;
 PAYMENT.

USURY.

- See LACHES, 2.

VENDOR AND VENDEE.

If a purchaser of real estate, to whom representations of the character and value of the property are made by the vendor, visits the property itself prior to the sale, and makes a personal examination of it touching those representations, he will be presumed to rely on his own examination, in making the purchase, and not upon the representations of the vendor, and in the absence of fraud or concealment, cannot have the sale set aside: applying this rule to the present case, the bill must be dismissed. *Farrar v. Churchill*, 609.

VIRGINIA COUPON CASES.

1. The decisions *Hartman v. Greenhow*, 102 U. S. 672; *Antoni v. Greenhow*, 107 U. S. 769; *Virginia Coupon Cases*, 114 U. S. 269; *Barry v. Edmunds*, 116 U. S. 550; *Chaffin v. Taylor*, 116 U. S. 567; *Royall v. Virginia*, 116 U. S. 572; *Sands v. Edmunds*, 116 U. S. 585; *Royall v. Virginia*, 121 U. S. 102; *In re Ayers*, *In re Scott* and *In re McCabe*, 123 U. S. 443, are reviewed; and, without committing the court to all

- that has been said, or even all that has been adjudged in those cases, on the subject of the act of the legislature of Virginia of March 30, 1871, to provide for the funding and payment of the public debt, and the issue of coupon bonds of the State under its provisions, it is now *Held*,
- (a) That the provisions of the act of 1871 constitute a contract between the State of Virginia and the lawful holders of the bonds and coupons issued under and in pursuance of said statute;
 - (b) That the various acts of the assembly of Virginia passed for the purpose of restraining the use of said coupons for the payment of taxes and other dues to the State, and imposing impediments and obstructions to that use, and to the proceedings instituted for establishing their genuineness, do in many respects materially impair the obligation of that contract, and cannot be held to be valid or binding in so far as they have that effect;
 - (c) That no proceedings can be instituted by any holder of said bonds or coupons against the Commonwealth of Virginia, either directly by suit against the Commonwealth by name, or indirectly against her executive officers to control them in the exercise of their official functions as agents of the State;
 - (d) That any lawful holder of the tax-receivable coupons of the State issued under the act of 1871 or the subsequent act of 1879, who tenders such coupons in payment of taxes, debts, dues and demands due from him to the State, and continues to hold himself ready to tender the same in payment thereof, is entitled to be free from molestation in person or goods on account of such taxes, debts, dues or demands, and may vindicate such right in all lawful modes of redress — by suit to recover his property, by suit against the officer to recover damages for taking it, by injunction to prevent such taking where it would be attended with irremediable injury, or by a defence to a suit brought against him for his taxes or the other claims standing against him; that no conclusion short of this can be legitimately drawn from the series of decisions reviewed by the court without wholly overruling that rendered in the *Coupon Cases* and disregarding many of the rulings in other cases, which the court would be very reluctant to do; and that to this extent the court feels bound to yield to the authority of its prior decisions whatever may have been the former views of any member of the court. *McGahey v. Virginia*, 662.
2. In *Bryan v. Virginia*, *Cooper v. Virginia* and *McGahey v. Virginia*, it is *Held*, (1) That the provision in the act of the General Assembly of Virginia of January 26, 1886, which imposes upon the taxpayer the duty of producing the bond from which the coupons tendered by him in payment of taxes were cut, at the time of offering the coupons in evidence in court, is an unreasonable condition, in many cases impossible to be performed, so onerous and impracticable as not only to affect, but to destroy the value of the instruments in the hands of the holder who had purchased them; and is repugnant to the Constitution

of the United States; (2) That the provision in the act of that Assembly of January 21, 1886, which prohibits expert testimony in establishing the genuineness of coupons so offered in evidence, is in like manner unconstitutional; (3) That it is questionable whether the act of that Assembly of May 8th, 1887, which authorizes and requires a suit to be brought against the taxpayer who tenders payment of his taxes in coupons as well as the acts which require their rejection are not laws impairing the obligation of the contract. *Bryan v. Virginia*, 662, 685.

3. In *Ellett v. Virginia* it is *Held*, that in tendering coupons in payment of a judgment recovered by the State for taxes and costs of suit the taxpayer is entitled to tender coupons in payment of the costs as well as of the taxes. *Ellett v. Virginia*, 662, 696.
4. In *Cuthbert v. Virginia* it is *Held*, that the special license required by the act of March 15, 1884, as amended by the act of May 23, 1887, for the right to offer tax-receivable coupons for sale was a material interference with their negotiability, and impaired the contract. *Cuthbert v. Virginia*, 662, 698.
5. In *Brown's Case* it is *Held*, that whether the passage of a new statute of limitations, giving a shorter time for the bringing of actions than had existed before, as applied to actions which had accrued, so affected the remedy as to impair the obligation of the contract, within the meaning of the Constitution, depends upon whether a reasonable time is given for bringing such actions; that no one rule can be laid down for determining, as to all cases alike, whether the time allowed was or was not reasonable; that that fact must depend upon the circumstances in each case; and that under the circumstances of this case, and the peculiar condition of the securities in question, the limitation prescribed by § 415 of the Code of Virginia of 1887, with regard to the obligations of the State, is unreasonable and impairs the obligation of the contract. *In re Brown*, 662, 701.
6. In *Hucless v. Childrey* it is *Held*, that the requirement of the laws of Virginia that the tax for a license to sell, by retail, wine, spirits and other intoxicating liquors shall be paid in lawful money of the United States does not impair the obligation of the contract made by the State with the holders of the coupons of its bonds, that they shall be received in payment of taxes. *Hucless v. Childrey*, 662, 709.
7. In *Vashon v. Greenhow* it is *Held*, that the statute of Virginia requiring the school tax to be paid in lawful money of the United States was valid, notwithstanding the provision of the act of 1871, and was not repugnant to the Constitution of the United States. *Vashon v. Greenhow*, 662, 713.









