INDEX.

ADMIRALTY.

1. Where a person is injured on a vessel, through a marine tort arising partly from the negligence of the officers of the vessel and partly from his own negligence, and sues the vessel in Admiralty, for damages for his injuries, he is not debarred from all recovery because of the fact that his own negligence contributed to his injuries. *The Max Morris*, 1.
2. Whether, in such case, the decree should be for exactly one-half of the damages sustained, or might, in the discretion of the court, be for a greater or less proportion of such damages, *quære*. *Ib.*
3. A bill of lading for goods shipped at Pittsburg for New Orleans, on a barge towed by a steam-tug, stated that the goods were "to be delivered without delay," "the dangers of navigation, fire and unavoidable accidents excepted." The barge was taken safely down the Ohio River to Mt. Vernon, and was then towed up the river and took on cargo at several places not over about three miles above Mt. Vernon. After making the last landing she struck an unmarked, unknown and hidden object below the surface of the water, which caused her to sink, without negligence on her part or that of the tug, and by an unavoidable accident, thereby damaging the shipper's cargo. On a libel in admiralty, *in personam*, by the shipper against the owners of the barge and the tug, the Circuit Court, on an appeal from the District Court, which had dismissed the libel, found the foregoing facts, and that it always had been the general and established usage, in the trade in question for a tug and barges to follow the practice adopted in this case, and that such usage tended to cheapen the cost of transportation, facilitated business and conduced to the safety of the whole tow, and was, therefore, a reasonable usage. The libel having been dismissed by the Circuit Court: *Held*, on appeal, (1) This court is concluded by the facts found by the Circuit Court; (2) The usage in question is to be presumed conclusively to have been known to the shipper, so as to have formed part of the bill of lading, and to control its terms, and to have brought the accident within the exceptions therein; (3) It is no deviation, in respect to a voyage named in a bill of lading, for a vessel to touch and stay at a port out of its course, if such departure is within the general and established usage of the trade, even though such usage be not known to the particular shipper; (4) Parties who

contract on a subject matter concerning which known usages prevail, incorporate such usages by implication into their agreements, if nothing is said to the contrary. *Hostetter* v. *Park*, 30.

4. In a collision, in a dense fog which hung low down over the water, in the Atlantic Ocean off Cape May, between a steamer and a fishing schooner, the steamer was going at half-speed, between six and seven knots an hour, and the schooner about four knots an hour. When so running, the steamer would forge ahead 600 to 800 feet after reversing her engines, before beginning to go backwards. The steamer first sighted the schooner when the latter was about 500 feet distant. The schooner first sighted the steamer when 400 to 500 feet distant. The steamer reversed her engines full speed astern, in about 12 seconds, but did not attain backward motion before the collision. The bow of the steamer struck the port quarter of the schooner about 10 feet from the taffrail, and sank her. The steamer on a north half east course, had overhauled and sighted the schooner, on a north-northeast course, with the wind south-southeast, about an hour before, and had passed to the eastward of her, and heard her fog-horn. Thinking she heard cries of distress to the starboard, the steamer ported and changed her course 13½ points, to south-southeast. The schooner had on deck one man at the wheel, and one man forward as a lookout and blowing the fog-horn, and 14 men below. The schooner kept her course. Her fog-horn was heard by the steamer, before the steamer sighted her: *Held*, (1) Under Rule 21, of § 4233 of the Revised Statutes, the steamer was in fault for not going at a moderate speed in the fog; (2) She was, under the circumstances, bound to observe unusual caution, and to maintain only such a rate of speed as would enable her to come to a standstill, by reversing her engines at full speed, before she should collide with a vessel which she should see through the fog; (3) The schooner was not sailing too fast, and she blew her fog-horn properly, and she was not in fault for keeping her course, her failure to port being not a fault but, at most, an error of judgment *in extremis*, due to the fault of the steamer; (4) As the Circuit Court did not find that the absence of another lookout on the schooner contributed to the collision, and, so far as the findings were concerned, the man forward on her properly discharged his double duties, there was no lack of vigilance on the part of the schooner in the matter of a lookout; (5) The testimony not being before this court, it cannot consider exceptions to the refusals of the Circuit Court to find certain facts; (6) As the District and Circuit Courts found both vessels in fault, and gave to the schooner only one-half of her damages, this court reversed the decree of the Circuit Court, and ordered a decree for the schooner for the full amount of her damages, with interest, and her costs in both of the courts below, and in this court. *The Nacoochee*, 330.

5. The libellant in an Admiralty suit, owner of a barge lost through alleged negligence in the propeller towing it, obtained a decree against

the offending vessel in the Circuit Court on appeal, valuing it at $5300, and adjudging that he recover of the claimants (owners) and also against the sureties on the appeal bond, $2422.28 for his own damages by loss of the barge and freight, and $2877.72 as trustee for the owners of the lost cargo. Claimants appealed to this court. After this appeal was taken claimants commenced a new suit in Admiralty in the District Court, in which a decree was obtained valuing the vessel at $7000 and distributing this amount to the libellant in this suit and to other sufferers. In this new distribution libellant was awarded $4658, instead of $5300. *Held*, (1) That this court had jurisdiction of the appeal in this suit; (2) That this jurisdiction was not affected by the proceedings in the subsequent and independent suit. *The Propeller Burlington*, 386.

6. When a tow suffers injury through improper and unseamanlike conduct on the part of the tug hauling it, the latter is liable. Facts stated which show such improper and unseamanlike conduct in this case. *Ib.*

See JURISDICTION, B, 2.

AFFIRMANCE ON PLEADINGS AND FACTS.

The pleadings and findings in this case fully sustain the judgment of the court below, and it is therefore affirmed. *Egan* v. *Clasbey*, 654.

APPEAL.

See JURISDICTION, B, 3;
PRACTICE, 6.

ARMY OF THE UNITED STATES.

1. An enlistment is a contract between the soldier and the government which involves, like marriage, a change in his status which cannot be thrown off by him at his will, although he may violate his contract. *In re Grimley*, 147.
2. An enlisted soldier cannot avoid a charge of desertion by showing that, at the time when he voluntarily enlisted, he had passed the age at which the law allows enlisting officers to enlist recruits. *Ib.*
3. A recruit who voluntarily goes before a recruiting officer, expresses his desire to enlist, undergoes a physical examination, is accepted by the officer, takes the oath of allegiance before him, signs the clothing rolls, and is placed in charge of a sergeant, has thereby enlisted and has become a soldier in the army of the United States, although the articles of war have not been read to him. *Ib.*
4. The provision in Rev. Stat. § 1117, "that no person under the age of twenty-one years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians: *Provided*, that such minor has such parents or guardians entitled to his custody and control," is for the benefit of the parent or

guardian, and gives no privilege to the minor, whose contract of enlistment is good so far as he is concerned. *In re Morrissey*, 157.

5. The age at which an infant shall be competent to do any acts, or perform any duties, civil or military, depends wholly upon the legislature. *Ib.*

BAILMENT.

1. Gratuitous bailees of another's property are not responsible for its loss unless guilty of gross negligence in its keeping; and whether that negligence existed is a question of fact for the jury to determine; or to be determined by the court where a jury is waived. *Preston* v. *Prather*, 604.
2. The reasonable care required of a bailee of another's property, entrusted to him for safe keeping without reward, varies with the nature, value and situation of the property and the bearing of surrounding circumstances on its security. *Ib.*
3. When bonds originally deposited with a bank for safe-keeping are by agreement of the bailor and bailee made a standing security for the payment of loans to be made by the bank to the owner of the bonds, the bailee becomes bound to give such care to them as a prudent owner would extend to his own property of a similar kind. *Ib.*

See BANK.

BANK.

1. A bank, receiving on deposit from a factor, under the circumstances set forth in this case, moneys which it must have known were the proceeds of property of the factor's principal, consigned to him by the principal for sale on the principal's account, of which moneys the principal was the beneficial owner, cannot, as against the latter, appropriate the deposits to the payment of a general balance due to the bank from the factor; and if it attempts to do so, the remedy of the principal against the bank is in equity and not at law. *Union Stock Yards Bank* v. *Gillespie*, 411.
2. Persons depositing valuable articles with banks for safe keeping without reward have a right to expect that such measures will be taken as will ordinarily secure them from burglars outside and from thieves within; that whenever ground for suspicion arises an examination will be made to see that they have not been abstracted or tampered with; that competent men, both as to ability and integrity, for the discharge of these duties will be employed; and that they will be removed whenever found wanting in either of these particulars. *Preston* v. *Prather*, 604.
3. In this case persons engaged in business as bankers received for safe-keeping a parcel containing bonds, which was put in their vaults. They were notified that their assistant cashier, who had free access to the vaults where the bonds were deposited, and who was a person of scant

means, was engaged in speculations in stocks. They made no examination as to the securities deposited with them, and did not remove the cashier. He stole the bonds so deposited. *Held*, that the bankers were guilty of gross negligence and were liable to the owner of the bonds for their value at the time they were stolen. *Ib.*

See BAILMENT, 3.

CALIFORNIA.

See RIPARIAN OWNERS, 4.

CASES AFFIRMED.

Ex parte Mirzan, 119 U. S. 584, affirmed. *In re Huntington*, 63.

Gibbons v. *Rector*, 111 U. S. 276, affirmed. *Lawrence* v. *Rector*, 139.

Morey v. *Lockhart*, 123 U. S. 56; *Wilson* v. *Nebraska*, 123 U. S. 286; *Sherman* v. *Grinnell*, 123 U. S. 679; and *Railroad Co.* v. *Grant*, 98 U. S. 398, affirmed. *Gurnee* v. *Patrick County*, 141.

Richmond & Danville Railroad Co. v. *Thouron*, 134 U. S. 45, affirmed. *Gurnee* v. *Patrick County*, 141.

McClurg v. *Kingsland*, 1 How. 202, affirmed and applied. *Solomons* v. *United States*, 342.

Fond du Lac County v. *May*, 137 U. S. 395, affirmed. *May* v. *Juneau County*, 408.

Burt v. *Evory*, 133 U. S. 349, and *Florsheim* v. *Schilling*, 137 U. S. 64, affirmed and applied to this case. *Busell Trimmer Co.* v. *Stevens*, 423.

Merritt v. *Cameron*, 137 U. S. 542, affirmed and followed. *Cadwalader* v. *Partridge*, 553.

Baltimore and Potomac Railroad v. *Fifth Baptist Church*, 108 U. S. 317, approved. *Baltimore and Potomac Railroad* v. *Fifth Baptist Church*, 568.

CASES DISTINGUISHED.

Yick Wo v. *Hopkins*, 118 U. S. 356, distinguished from this case. *Crowley* v. *Christensen*, 86.

The Hesper, 122 U. S. 126; and *The Alaska*, 130 U. S. 201, distinguished. *Steamship Haverton*, 145.

Tyler v. *Pomeroy*, 8 Allen, 480, distinguished. *In re Grimley*, 147.

The case of *Merritt* v. *Welsh*, 104 U. S. 694, distinguished. *Falk* v. *Robertson*, 225.

Kerr v. *Clampitt*, 95 U. S. 188, distinguished. *Montana Railway Co.* v. *Warren*, 348.

Chapman v. *Forsyth*, 2 How. 202, and *Hennequin* v. *Clews*, 111 U. S. 676, distinguished from this case. *Union Stock Yards Bank* v. *Gillespie*, 411.

The case of *Medley, Petitioner*, 134 U. S. 160, distinguished from this case. *Holden* v. *Minnesota*, 483.

Runkle v. *United States*, 122 U. S. 543, distinguished from this case. *United States* v. *Page*, 673.

CASES EXPLAINED.

Westray v. *United States*, 18 Wall. 322, explained. *Merritt* v. *Cameron*, 542.

CHATTEL MORTGAGE.

See LOCAL LAW, 1, 2, 3.

CLAIMS AGAINST THE UNITED STATES.

1. The Court of Claims disallowed the claim of the administrator *de bonis non* of Colonel Francis Taylor, for five years' full pay to Taylor, as a colonel of infantry, under the resolution of the Continental Congress of March 22, 1783, (4 Jour. Cong. 178,) holding that he was not in the military service, in the continental line, to the close of the war of the Revolution in 1783. This court affirms the judgment. *Williams* v. *United States*, 113.
2. Nor was Colonel Taylor entitled to half pay for life under the resolutions of October 3 and 21, 1780, (3 Jour. Cong. 532, 538,) because he was not a "reduced" officer. *Ib.*
3. He was not entitled to recover under the provisions of the act of Congress of July 5, 1832, (4 Stat. 563.) *Ib.*
4. Under § 906 of the Revised Statutes, the decision of the governor of Virginia, made under the act of that State, of March 11, 1834, (Laws of 1834, c. 6, p. 22,) that Colonel Taylor was a "colonel in the continental line from October 1, 1775, to the close of the war," is not either obligatory in law, or conclusive as evidence, against the United States. *Ib.*
5. The Court of Claims did not err in refusing to find that Colonel Taylor "was an officer in the continental service on the 22d day of March, 1783, and continued therein as such officer to the end of the war," whether that was a conclusion of fact or one of law. *Ib.*

COMPUTATION OF TIME.

See PRACTICE, 6.

CONFLICT OF LAWS.

1. Although a judgment in one State against a citizen of another State may be held valid under local laws by the courts of the former, the courts of the latter are not bound to sustain it, if it would be invalid but for the special laws of the State where rendered. *Grover & Baker Sewing Machine Co.* v. *Radcliffe*, 287.
2. B., a citizen of Maryland, having executed a bond, containing a warrant authorizing any attorney of any court of record in the State of New York or any other State, to confess judgment for the penalty, and judgment having been entered against him in Pennsylvania by a prothonotary, without service of process, or appearance in person or by attorney, under a local law permitting that to be done, *Held*, (1) That in a suit upon this judgment in Maryland, the courts of Maryland

were not bound to hold the judgment as obligatory either on the ground of comity or of duty, contrary to the laws and policy of their own State. (2) B. could not properly be presumptively held to knowledge and acceptance of particular laws of Pennsylvania or of all the States other than his own, allowing that to be done which was not authorized by the terms of the instrument he had executed. *Ib.*

See RIPARIAN OWNERS, 1.

CONSTITUTIONAL LAW.

1. The provisions in the Revised Statutes of Texas, Articles 1242–1245, which, as construed by the highest court of the State, convert an appearance by a defendant for the sole purpose of questioning the jurisdiction of the court, into a general appearance and submission to the jurisdiction of the court, do not violate the provision in the Fourteenth Amendment to the Constitution which forbids a State to deprive any person of life, liberty or property without due process of law. *York* v. *Texas*, 15.
2. A title, right, privilege or immunity under the Constitution, or any treaty or statute of the United States, is not properly set up or claimed under Rev. Stat. § 709, when suggested for the first time in a petition for rehearing, after judgment. *Texas & Pacific Railway* v. *Southern Pacific Co.*, 48.
3. The provisions of the Code of Practice of Louisiana in relation to judgments of the Supreme Court of that State, do not require the application of any different rule. *Ib.*
4. Where a decree is entered by a court of the United States, by consent, and in accordance with an agreement, between the parties referred to therein, no title or right claimed under an authority exercised under the United States is decided against by a state court in determining that the validity of a particular article of such agreement was not in controversy or passed upon in the cause in which the decree was rendered; and in the instance of a decree similarly entered by a court of one State, due effect to the final judgment of such court is not refused to be given by a like determination by a court of another State. *Ib.*
5. The sale of spirituous and intoxicating liquors by retail and in small quantities may be regulated, or may be absolutely prohibited, by State legislation, without violating the Constitution or laws of the United States. *Crowley* v. *Christensen*, 86.
6. The ordinances of the city and county of San Francisco, under which a license to the defendant in error to sell intoxicating liquors by retail and in small quantities was refused, having been held by the Supreme Court of California not to be repugnant to the constitution of that State, that decision is binding upon this court. *Ib.*
7. The Guano Islands Act of August 18, 1856, c. 164, reënacted in Rev. Stat. §§ 5570–5578, is constitutional and valid. *Jones* v. *United States*, 202.

8. Section 6 of the Act of August 18, 1856, c. 164, reënacted in Rev. Stat. § 5576, does not assume to extend the admiralty jurisdiction over land, but merely extends the provisions of the statutes of the United States for the punishment of offences upon the high seas to like offences upon guano islands which the President has determined should be considered as appertaining to the United States. *Ib.*

9. Under Rev. Stat. §§ 730, 5339, 5576, murder committed on a guano island which has been determined by the President to appertain to the United States, may be tried in the courts of the United States for the district into which the offender is first brought. *Ib.*

10. By the law of nations, when citizens or subjects of one nation, in its name, and by its authority or with its assent, take and hold actual, continuous and useful possession (although only for the purpose of carrying on a particular business, such as catching and curing fish, or working mines,) of territory unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired. *Ib.*

11. Who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government. *Ib.*

12. Courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of the legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings. *Ib.*

13. In the ascertainment of facts of which judges are bound to take judicial notice, as in the decision of matters of law which it is their office to know, they may refresh their memory and inform their conscience from such sources as they deem most trustworthy, and as to international affairs may inquire of the Department of State. *Ib.*

14. The determination of the President, under the act of August 18, 1856, c. 164, § 1, (Rev. Stat. § 5570,) that a guano island shall be considered as appertaining to the United States, may be declared through the Department of State, whose acts in this regard are in legal contemplation the acts of the President. *Ib.*

15. The Island of Navassa in the Caribbean Sea must, by reason of the action of the President, as appearing in documents of the Department of State, be considered as appertaining to the United States. *Ib.*

16. Under the act of August 18, 1856, c. 164. § 2, (Rev. Stat. § 5574,) a breach of condition of the bond given by the discoverer of a guano island forfeits his private rights only, and does not affect the dominion of the United States over the island, or the jurisdiction of their courts. *Ib.*

17. The 15th section of the act of the legislature of New York, approved June 6, 1885, provides that no action or special proceeding shall thereafter be maintained against the city of Brooklyn, or the Registrar of Arrears of that city, to compel the execution or delivery of a lease upon any sale for taxes, assessments or water rates, made more than eight years prior to the above date, unless commenced within six months after that date, and notice thereof filed in the office of the Registrar of Arrears; also, that that officer shall, upon the expiration of such six months, cancel in his office all sales made more than eight years before the passage of the act, upon which no lease had been given, and no action commenced and notice thereof filed, within the period limited as aforesaid, and that thereupon the lien of all such certificates of purchase should cease and determine. *Held*, (1) That this section is not repugnant to the clause of the Constitution of the United States forbidding a State to pass any law impairing the obligation of contracts, or to the clause declaring that no State shall deprive any person of property without due process of law; (2) That, consistently with those clauses, the legislature may prescribe a limitation for the bringing of suits where none previously existed, as well as shorten the time within which suits to enforce existing causes of action may be commenced, provided, in each case, a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect. *Wheeler* v. *Jackson*, 245.
18. Section 4 of the Minnesota statute of April 24, 1889, (Gen. Laws Minn. 1889, c. 20,) providing that, in case of sentence of death for murder in the first degree, the convict shall be kept in solitary confinement after the issue of the warrant of execution by the governor, and only certain persons allowed to visit him, is an independent provision, applicable only to offences committed after its passage, and is not *ex post facto*. *Holden* v. *Minnesota*, 483.
19. Section 3 of that statute, which requires the punishment of death by hanging to be inflicted before sunrise of the day on which the execution takes place, and within the jail or some other enclosure higher than the gallows, thus excluding the view from persons outside, and limiting the number of those who may witness the execution, excluding altogether reporters of newspapers, are regulations that do not affect the substantial rights of the convict, and are not *ex post facto* within the meaning of the Constitution of the United States, even when applied to offences previously committed. *Ib.*
20. The statutes of Minnesota authorizing the governor to fix by his warrant the day for the execution of a convict sentenced to suffer death by hanging, are not repugnant to the constitutional provision that no person shall be deprived of life without due process of law; it being competent for the legislature to confer either upon the court or the executive the power to designate the time when such punishment shall be inflicted. *Ib.*

21. Congress may authorize a territorial corporation to construct a railroad in a Territory, and may make land grants in aid thereof, which will be valid after a part of the Territory becomes a State. *St. Paul, Minneapolis &c. Railway Co.* v. *Phelps*, 528.

22. A State cannot be deemed guilty of a violation of its obligations under the Constitution of the United States because of a decision, even if erroneous, of its highest court while acting within its jurisdiction. *In re Converse*, 624.

23. When a person accused of crime within a State is subjected, like all other persons in the State, to the law in its regular course of administration in courts of justice, the judgment so arrived at cannot be held to be such an unrestrained and arbitrary exercise of power as to be utterly void. *Ib.*

24. The Fourteenth Amendment to the Constitution was not designed to interfere with the power of a State to protect the lives, liberty and property of its citizens, nor with the exercise of that power in the adjudications of the courts of the State in administering the process provided by its laws. *Ib.*

25. In convicting the petitioner of embezzlement under section 9151 of Howell's Annotated Statutes of Michigan, upon his confessing that he had been guilty of embezzlement as attorney-at-law, instead of under section 9152, the Supreme Court of Michigan did not exceed its jurisdiction, or deliver a judgment which abridged his privileges or immunities or deprived him of the law of the land of his domicil. *Ib.*

26. The distribution of and the right of succession to the estates of deceased persons are matters exclusively of State cognizance, and may be dealt with by a Territorial legislature as it sees fit, in the absence of a prohibition by Congress. *Cope* v. *Cope*, 682.

27. No statute of a Territory will be declared void because it may indirectly, or by a construction which is possible but not necessary, be repugnant to an act of Congress annulling legislation of the Territory; but such a result must be direct and proximate in order to invalidate the statute. *Ib.*

28. No State can deprive particular persons or classes of persons of equal and impartial justice under the law, without violating the provisions of the Fourteenth Amendment to the Constitution. *Caldwell* v. *Texas*, 692.

29. Due process of law, within the meaning of the Constitution, is secured when the laws operate on all alike, and no one is subjected to partial or arbitrary exercise of the powers of government. *Ib.*

30. No question of repugnancy to the Federal Constitution can be fairly said to arise when the inquiry of a State court is directed to the sufficiency of an indictment in the ordinary administration of criminal law, and the statutes authorizing the form of indictment do not obviously violate these fundamental principles. *Ib.*

31. An indictment, framed in accordance with the laws of Texas, which

charges that the prisoner at a time and place named did, "unlawfully and with express malice aforethought, kill one J. M. Shamblin by shooting him with a gun, contrary to the form of the statute," *et cet.*, does no violation to the provisions of the Fourteenth Amendment to the Constitution. *Ib.*

CONTRACT.

1. If one party to a contract intends to rescind it on the ground of failure of performance by the other, a clear notice of such intention must be given, unless either the contract dispenses with notice, or it becomes unnecessary by reason of the conduct of the parties. *Hennessy* v. *Bacon*, 78.
2. The mere receipt of a bill on payment of money is not an assent to the proposition that the bill contains the whole contract between the parties; but whether it is so or not is a fact to be determined by the jury. *Bank of British North America* v. *Cooper*, 473.
3. A party receiving moneys from another to be transmitted for him to a named destination, in order that they may be used there to pay his liabilities, cannot change the destination at the desire of the party to whom the money is sent, without becoming liable for the loss, in case loss ensues in consequence of the change. *Ib.*
4. In the relation of principal and agent, strict compliance by the latter with the instructions of the former is an unvarying condition of exemption from liability. *Ib.*
5. C in New York, who had had business relations with M. & Co. of Glasgow, drew upon them for £5000, to mature February 29. On February 26th he bought of plaintiff in error, who had an office in London, a cable transfer of this amount in favor of M. & Co. to be transmitted in a check by post from London to Glasgow, and took from the bank a receipt "for cable transfer on the Bank of British North America, London, in favor of" M. & Co. "Glasgow." The cable message was accordingly sent, but the London office, under previous directions from M. & Co. as to all such matters, but without knowledge of C, instead of forwarding the check to Glasgow, deposited it to the credit of M. & Co. in the Bank of Scotland in London, which action was approved by M. & Co. On the 28th or 29th of February M. & Co. suspended. It was in evidence that on the 28th they applied similar moneys to the payment of similar obligations, and that if the check had been sent by mail as directed, it would have reached Glasgow on the morning of that day in time to be applied to the payment of C's draft. The Bank of Scotland appropriated the £5000 to the payment of the balance due from M. & Co. to it, and C was obliged to meet his draft. In an action by him against the Bank of British North America, *Held*, (1) That whether the bill contained the entire contract between the parties was a question for the jury; (2) That the bank, having received the money with knowledge that it belonged to C, and that it

was to be used in the payment of his liabilities, could not substitute for his instructions the wishes of the party to whom he was remitting the money; (3) That when his instructions were disobeyed and a loss ensued, that loss would *prima facie* fall upon the bank, and the burden was upon it to show that obedience to the instructions would have produced a like result. *Ib.*

See ARMY OF THE UNITED STATES, 1;
EQUITY, 1;
INSURANCE.

CORPORATION.

1. Where a foreign corporation is not doing business in a State, and no officer is there transacting business for the corporation and representing it in the State, it cannot be said that the corporation is within the State so that service can be made upon it; and evidence that the president of a foreign corporation so situated was induced by false representations to come within the jurisdiction for the purpose of obtaining service of process, and that process was there served, is immaterial, inasmuch as the corporation must be held to have known that it could not be brought into court by such a service. *Fitzgerald & Mallory Construction Co.* v. *Fitzgerald*, 98.
2. Where an officer of a railroad construction company has full charge for it of the location and construction of a railroad, and is authorized to draw checks and drafts, and charged with the general management of the business of the company in the absence of contrary instructions by the board of directors, notes given by him for moneys used to pay off indebtedness of the company arising in the construction of the road, cannot be held to be in excess of his powers. *Ib.*
3. It was the duty of the directors to give contrary instructions if they wished to withdraw the general management from the president, and to disaffirm the action of their agents promptly if they objected to it. *Ib.*
4. If the notes were endorsed at the request of the party to whom the general management was confided, the indorsee, if compelled to protect his endorsement, cannot be treated as a volunteer, and if he was the superintendent of the work, and the money was raised and used to pay off sub-contractors and material men employed by him, then upon the refusal of the company to pay, he had the right to take up the notes and have them assigned to him. *Ib.*
5. Compensation for official services rendered in the absence of a specified compensation, fixed or agreed upon, may not be recoverable, but in this case it was properly left to the jury to determine whether the services rendered were of such a character and rendered under such circumstances that compensation could be claimed therefor. *Ib.*
6. At the trial of an action of tort upon a plea of *nul tiel corporation*, evidence that the plaintiff, after filing a defective certificate of incor-

poration under a general corporation law, acted for years as a corporation, and recovered a judgment as such in a similar action against the defendant without any objection made to its capacity to sue, is competent and sufficient to prove it a corporation *de facto*, and therefore entitled to maintain this action. *Baltimore and Potomac Railroad Co.* v. *Fifth Baptist Church*, 568.

7. Misnomer of a corporation plaintiff is pleadable in abatement only, and is waived by pleading to the merits. *Ib.*

COSTS.

See PRACTICE, 3.

COURTS OF THE UNITED STATES.

See PRACTICE, 1, 2.

COURT AND JURY.

At a trial by jury in a court of the United States, the presiding judge may express his opinion upon matters of fact which he submits to their determination. *Baltimore and Potomac Railroad* v. *Fifth Baptist Church*, 568.

See CONTRACT, 2, 5;
CORPORATION, 5;
PRACTICE, 8.

COURT MARTIAL.

The decision of the President confirming or disapproving the sentence of a general court martial in time of peace extending to the loss of life or the dismission of a commissioned officer, or in time of peace or war respecting a general officer, under the provisions of the 65th Article of war, is a judicial act to be done by him personally, and is not an official act presumptively his; but it need not be attested by his sign manual in order to be effectual. *United States* v. *Page*, 673.

See CONSTITUTIONAL LAW, 9.

CRIMINAL LAW.

It is no defence to an indictment under one statute that a defendant might also be punished under another statute. *In re Converse*, 624.

See CONSTITUTIONAL LAW, 23, 25.

CUSTOM.

See ADMIRALTY, 3.

CUSTOMS DUTIES.

1. Cloths popularly known as "diagonals," and known in trade as "worsteds," and composed mainly of worsted, but with a small proportion of shoddy and of cotton, are subject to duty as a manufacture

of worsted, and not as a manufacture of wool, under the act of March 3, 1883, c. 121. *Seeberger* v. *Cahn*, 95.

2. Schedule F of section 2502 of Title 33 of the Revised Statutes, as enacted by section 6 of the act of March 3, 1883, c. 121, (22 Stat. 503,) provided as follows, in regard to duties on imported tobacco: "Leaf tobacco, of which eighty-five per cent is of the requisite size and of the necessary fineness of texture to be suitable for wrappers, and of which more than one hundred leaves are required to weigh a pound; if not stemmed, seventy-five cents per pound; if stemmed, one dollar per pound. All other tobacco in leaf, unmanufactured, and not stemmed, thirty-five cents per pound." Tobacco was imported in bales, each of which contained a quantity of Sumatra leaf tobacco answering the description in the statute of that dutiable at 75 cents per pound, except that it formed only about 83 per cent of the contents of the bale. The rest of the bale consisted of inferior leaf tobacco, called "fillers," which was separated from the 75-cent tobacco by strips of paper or cloth, making the one kind readily separable from the other, on the opening of the bale. More than 85 per cent of the 75-cent tobacco answered the description of tobacco dutiable at that rate: *Held*, that the whole of the 75-cent tobacco was dutiable at that rate, and that the contents of the bale, as a whole, were not dutiable at 35 cents per pound. *Falk* v. *Robertson*, 225.

3. The unit upon which the 85 per cent was to be calculated was not the entire bale. *Ib.*

4. On a reappraisement by a merchant appraiser and a general appraiser, under § 2930 of the Revised Statutes, the valuation of goods entered in March, 1886, was raised, and the importer paid thereon additional duties, for which he sued the collector, after protest and appeal. At the trial, the plaintiff put in evidence chapter 3, part 3, articles 447 to 506, and chapter 5, part 8, articles 1399 to 1410, and 1415 to 1417, of the general regulations under the customs and navigation laws published by the Treasury Department in 1884; and extracts from the instructions issued for the guidance of officers of the customs and others concerned, by the Secretary of the Treasury, under date of July 1, 1885, being instructions of June 9, 1885, and June 10, 1885. The importer had asked for the reappraisement, and the collector selected the merchant appraiser. He took the prescribed oath in regard to the goods in question. The defendant had a verdict in respect of the additional duties, under the direction of the court, and the importer had a judgment in respect of another matter: On a writ of error: *Held*, (1) The instructions of the Treasury Department gave the importer all the rights to which he was entitled, and were not repugnant to that provision of §§ 2902 and 2930 which required the use of "all reasonable ways and means," in appraising, and the proper rights of the importer were accorded to him in this case; (2) The question of the dutiable value of the merchandise was not to be tried before the ap-

praisers as if it were an issue in a suit in a judicial tribunal; (3) In a suit to recover back duties paid under protest, the valuation of merchandise made by the appraisers is, in the absence of fraud, conclusive on the importer, and the question as to the actual value of the merchandise cannot be tried; (4) The merchant appraiser was not an officer, within the meaning of article 2, section 2, of the Constitution, so as to require him to be appointed by the President, or a court of law, or the head of a department; (5) Section 2930 of the Revised Statutes was not unconstitutional in making the decision of the appraisers final. *Auffmordt* v. *Hedden*, 310.

5. Philosophical apparatus and instruments, as referred to in Schedule N of the tariff act of March 3, 1883, 22 Stat. c. 121, 513, are such as are more commonly used for the purpose of making observations and discoveries in nature, and experiments for developing and exhibiting natural forces, and the conditions under which they can be called into activity; while implements for mechanical or professional use in the arts are such as are more usually employed in the trades and professions for performing the operations incidental thereto. *Robertson* v. *Oelschlaeger*, 436.

6. Duties were assessed at 45 per cent *ad valorem* and collected on a variety of articles imported into New York, it being claimed that they were manufactures not specially enumerated under Schedule N of the act of March 3, 1883, 22 Stat. c. 121, 501. The importer brought suit to recover an alleged excess of duties, claiming that they should have been assessed at 35 per cent, under Schedule N, as philosophical apparatus and instruments. At the trial a scientific expert was examined as a witness. The court and jury, with the exception of this evidence, had nothing before them to rely upon except the common knowledge which all intelligent persons possess. As a result the court directed the jury (1) to render a verdict for the defendant as to a specified class of the articles: (2) to render a verdict for the plaintiff as to another specified class: and (3) as to the remainder, it left the jury to determine their classification, and they found for the plaintiff as to a part, and for the defendant as to a part. *Held*, that there was no error in these instructions. *Ib.*

7. The ascertainment and liquidation of duties by a collector of customs, under Rev. Stat. § 2931, is the decision of that officer as to what the duties shall be, made after the measurement, weighing or gauging of the merchandise, its inspection and appraisal, the determination of its dutiable value, and the taking of such other steps as the law may call for; and, so far from this being required to be delayed until the importer chooses to withdraw his goods for consumption, it may take place at any time after the original entry of the merchandise, and should follow, in the regular course of business, as soon after the entry as is convenient, just as in the case of merchandise entered for immediate consumption. *Merritt* v. *Cameron*, 542.

8. The ten days referred to in Rev. Stat. § 2931, within which an importer is allowed to protest against the liquidation of duties, begins to run upon their ascertainment and liquidation. *Ib.*

9. A change in the ruling of the Treasury Department whereby merchandise in bond, such as is involved in this case, is held dutiable at a greatly reduced rate, is of no aid to an importer who has not protested against the previous ruling. *Cadwalader* v. *Partridge*, 553.

DAMAGES.

As the writ of error appeared to have been sued out merely for delay, the judgment was affirmed with damages at the rate of ten per cent. *Sire* v. *Ellithorpe Air Brake Co.*, 579.

See ADMIRALTY, 2.

DEED.

See EQUITY, 4, 5;
LOCAL LAW, 6, 7, 8;
SURVEY, 1, 2.

DOMICIL.

See JURISDICTION, B, 5.

DOWER.

The right conferred by the United States, under the Guano Islands Act of August 18, 1856, c. 164, (Rev. Stat. tit. 72,) upon the discoverer of a deposit of guano and his assigns, to occupy, at the pleasure of Congress, for the purpose of removing the guano, an island determined by the President to appertain to the United States, is not such an estate in land as to be subject to dower, notwithstanding the act of April 2, 1872, c. 81, (Rev. Stat. § 5572,) extending the provisions of the act of 1856 "to the widow, heirs, executors or administrators of such discoverer" if he dies before fully complying with its provisions. *Duncan* v. *Navassa Phosphate Co.*, 647.

ENLISTMENT.

See ARMY OF THE UNITED STATES.

EQUITY.

1. A settlement of a disputed claim between parties dealing on terms of equality and having no relations of trust or confidence to each other, each having knowledge, or the opportunity to acquire knowledge, of every fact bearing upon the validity of their respective claims, will be supported by a court of equity in the absence of fraud or of the concealment of facts which the party concealing was bound to disclose. *Hennessy* v. *Bacon*, 78.

2. A New York corporation consigned goods to G., a commission merchant

in New York city, for sale. He advanced to it thereon, in cash and negotiable acceptances, more than the value of the goods, it having the benefit of the acceptances, which passed into the hands of *bona fide* holders. It then transferred the goods to him, as absolute owner, in discharge *pro tanto* of its debt to him. He then sold the goods to his wife, for full value, in part payment of money he owed her, and she resold them and received the proceeds. A creditor who had recovered judgments on some of the acceptances against G. and the corporation, brought a bill in equity against them and the wife of G. to have such proceeds applied on his judgments: *Held*, (1) G. had a lien on the goods, which was foreclosed by the transfer of them to him; (2) G. had a right to treat the goods as his own, so long as the acceptances were outstanding and his lien was unsatisfied; (3) The creditor could not have the relief asked. *Fourth Nat. Bank* v. *American Mills Co.*, 234.

3. A suit in equity to set aside a written compromise between a creditor and a debtor, whereby the former, in consideration of the surrender by the latter of certain real property of much less value than his debt, and of his representation that he was unable to pay such debt in full, discharged the debtor absolutely. The ground of relief was the false and fraudulent representations of the debtor as to his financial condition, and the admissions of the debtor to the creditor, made more than twelve years after the compromise. These admissions constituted the principal evidence of the fraud charged. *Held*, that the relief asked could not be granted, because such admissions were made after the debtor's intellect had become so far impaired, that his statements ought not to be the basis of a decree affecting his rights of property, and because it did not satisfactorily appear from other evidence that he had made false or fraudulent representations to the creditor. *Hoffman* v. *Overbey*, 465.
4. The plaintiff, having averred in his complaint the execution of a deed by him to his father, and having conceded its delivery, and there being no prayer for specific relief as to it, and no averments that would entitle him to have it set aside for want of acknowledgment under the prayer for general relief, he cannot set up that the deed is not operative, even as between the parties, for want of proper acknowledgment and record. *Mackall* v. *Casilear*, 556.
5. When a deed is void on its face the interference of a court of equity is unnecessary. *Ib.*
6. Where the difficulty of doing entire justice by reason of the death of the principal witness or witnesses, or from the original transactions having become obscured by time, is attributable to gross negligence or deliberate delay, a court of equity will not aid a party whose application is thus destitute of conscience, good faith and reasonable diligence. *Ib.*
7. The mere assertion of a claim, unaccompanied by any act to give effect

to it, cannot avail to keep alive a right which would otherwise be precluded. *Ib.*

8. Negotiations for settlement of a disputed matter, which one party hopes may result in a settlement and adjustment, do not operate to bar in equity the defence of laches, when the other party gives no encouragement to such hopes, never promises a settlement, never concedes that his own claims are doubtful, and never recognizes the other's claims. *Ib.*

9. The bill in this case alleged that in a suit in equity in the Supreme Court of the District of Columbia in which the plaintiff here was defendant, the conveyance under which the plaintiff in this suit claims had been decreed to be invalid, from which decree the plaintiffs in that suit had appealed as to other matters involved; and it set up the pendency of that suit as excuse for the delay of nineteen years in bringing this one. *Held*, (1) That, the plaintiff not having appealed, it was difficult to see why that decree was not a bar in this suit; (2) That it furnished no satisfactory explanation of his laches herein. *Ib.*

See BANK; JURISDICTION, C, 4; CONTRACT, 1; RAILROAD, 1, 2, 3, 4.

EVIDENCE.

1. In a proceeding under the right of eminent domain to condemn, for use in the construction of a railroad, an undeveloped "prospect" in mineral land, the testimony of a competent witness, familiar with the country and its surroundings, as to the value of the land taken, may be received in evidence, inasmuch as such property is the constant subject of barter and sale, although its absolute and intrinsic value may be uncertain before development. *Montana Railway Co.* v. *Warren*, 348.

2. As it is difficult to lay down any exact rule as to the amount of knowledge which a witness as to the value of lands condemned for use in the construction of a railroad must possess, the determination of that matter must rest largely in the discretion of the trial judge. *Ib.*

3. The wife of a married man is not a competent witness in Utah against her husband on trial under an indictment for polygamy. *Bassett* v. *United States*, 496.

4. If a witness is to be impeached, in consequence of his having made, on some other occasion, different statements, oral or written, from those which he makes on the witness stand, as to material points in the case, his attention must first be called, on cross-examination, to the particular time and occasion when, the place where, and the person to whom he made the varying statements. *Chicago, Milwaukee &c. Railway Co.* v. *Artery*, 507.

5. The Circuit Court erred in laying it down as a rule, that a written statement signed by a witness and admitted by him to have been so signed, could not be used in cross-examining him as to material points

testified to by him; and in announcing it as a further rule, that the only way to impeach a witness by showing contradictory statements made by him, is to call as a witness the person to whom or in whose presence the alleged contradictory statements were made. *Ib.*

6. The rule of evidence, that if, on cross-examination, a witness admits a letter to be in his handwriting, he cannot be questioned by counsel as to whether statements, such as the counsel may suggest, are contained in it, but the whole letter must be read as the evidence of the existence of the statements, does not apply to the present case, because the opposite party did not take the objection that the whole statement was not, but should have been, read as evidence, and the court, with his assent, excluded it from being read in evidence. *Ib.*

See CLAIMS AGAINST THE UNITED STATES, 4; CONTRACT, 5 (3); CORPORATION, 6; EXCEPTION, 3; LOCAL LAW, 7, 8; PATENT FOR INVENTION, 11.

EXCEPTION.

1. Action on a motion for new trial is not a subject of exception. *Fitzgerald & Mallory Construction Co.* v. *Fitzgerald*, 98.
2. The original bill of exceptions in this case, signed by the trial judge, certified by the clerk of the trial court, was transmitted to and filed with the record of the case in the Supreme Court of the Territory of Utah. *Held*, that its identification and authentication were perfect and were sufficient to bring the questions raised by the record within the jurisdiction of this court. *Bassett* v. *United States*, 496.
3. The propriety of questions put to a witness cannot be passed upon intelligently unless the bill of exceptions shows the character of the evidence previously put in. *Sire* v. *Ellithorpe Air Brake Co.*, 579.
4. A paper which forms no part of a bill of exceptions, and is signed only by an attorney, and purports to be exceptions to findings of fact and the conclusion of the judge thereon, cannot be regarded as a bill of exceptions, or as part of the bill of exceptions signed by the judge, irrespectively of the point that this court cannot review the findings of fact. *Ib.*

See PRACTICE, 1, 2.

EXECUTIVE.

See COURT MARTIAL.

GARNISHEE PROCESS.

See JURISDICTION, C, 1.

GUANO ISLANDS ACT.

See CONSTITUTIONAL LAW, 7 to 16; DOWER.

HABEAS CORPUS.

1. On the authority of *Ex parte Mirzan*, 119 U. S. 584, the court denies a petition for leave to file a petition for a writ of *habeas corpus*. *In re Huntington*, 63.
2. In the courts of the United States the return to a writ of *habeas corpus* is deemed to import verity until impeached. *Crowley* v. *Christensen*, 86.
3. Civil Courts may inquire, under a writ of *habeas corpus*, into the jurisdiction of the court over the party condemned, but cannot inquire into or correct errors in its proceedings. *In re Grimley*, 147.
4. The petitioners, being indicted in a Circuit Court of the United States and taken into custody, applied to this court for a writ of *habeas corpus* without first invoking the action of the Circuit Court upon the sufficiency of the indictment. *Held*, that this court would not interfere. *In re Lancaster*, 393.

See JURISDICTION, B, 3.

HOT SPRINGS LITIGATION.

1. The court adheres to the views of the law expressed in its opinion delivered at the former trial of this case, (*Rector* v. *Gibbon*, 111 U. S. 276,) and finds that the decree below was made in accordance with them. *Lawrence* v. *Rector*, 139.
2. Under the peculiar circumstances of this case, having reference to the doubt as to title, and to the evident good faith of the parties, the true measure of liability is the actual receipts from the property, and not its rental value; and in that respect the decree below is held to have been erroneous. *Ib.*

INDICTMENT.

See CRIMINAL LAW.

INFANT.

See ARMY OF THE UNITED STATES, 4, 5.

INSURANCE.

A provision in a policy of fire insurance, that "in case differences shall arise touching any loss or damage, after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to impartial arbitrators, whose award in writing shall be binding on the parties as to the amount of such loss or damage, but shall not decide the liability of the company under this policy," cannot be pleaded in bar of an action on the policy, unless the policy further provides that no such action shall be brought until after an award. *Hamilton* v. *Home Ins. Co.*, 370.

INTEREST.

The question of interest is always one of local law. *Massachusetts Benefit Association* v. *Miles*, 689.

See JURISDICTION, B, 14.

INTERNAL REVENUE.

1. The due and regular assessment of a distiller's tax by an internal revenue collector, properly certified, is a sufficient defence to the collector in an action on the case against him by the distiller to recover the value of property, seized and sold for the payment of the tax, upon the ground that, in a subsequent action by the United States against the distiller and the sureties on his bond, to recover the uncollected portion of the same tax, its assessment was adjudged to have been invalid: and this defence may be set up under the general issue without pleading it specially in justification. *Harding* v. *Woodcock*, 43.

2. Under the statute of the State of New York of April 23, 1866, providing for assessing and taxing stockholders in national banks upon the value of their shares, and making it "the duty of every such bank" "to retain so much of any dividend or dividends belonging to such stockholder as shall be necessary to pay any taxes assessed in pursuance of such act," the plaintiff in error having declared dividends, retained therefrom the taxes thereon assessed and due to the State. *Held*, that the several sums so retained were part of "the earnings, income, or gains of the bank," upon which an internal revenue tax was imposed by c. 173, § 120 of the act of June 30, 1864, as amended by the act of July 13, 1866, 14 Stat. 98, 138, c. 184. *Central Bank* v. *United States*, 355.

3. If a national bank, in good faith, but by mistake, declares a dividend or makes an addition to its surplus or contingent funds, when it is not in a condition to do so, the dividend or addition is subject to taxation, and the mistake cannot be corrected by the courts in an action brought to recover the tax. *Ib.*

JURISDICTION.

A. GENERALLY.

If a law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law. *Gurnee* v. *Patrick County*, 141.

B. JURISDICTION OF THE SUPREME COURT.

1. A judgment in a Circuit Court of the United States on a general demurrer to the declaration in an action removed from a State Court, that the demurrer be sustained, and, as the record showed that the court had no jurisdiction, that the cause be remanded to the State Court, is not a judgment to which a writ of error from this court can be maintained. *Gurnee* v. *Patrick County*, 141.

2. In a collision case in admiralty the valuation of the sunken vessel and effects was $6057, for which amount the District Court gave judgment. The Circuit Court, on appeal, awarded one-half the valuation, viz.: $3028.50. *Held*, that this court had no jurisdiction on appeal. *Steamship Haverton*, 145.
3. This case is rightfully brought here by appeal, and not by writ of error. *In re Morrissey*, 157.
4. In order to enable this court to entertain jurisdiction of a writ of error to the Supreme Court of the District of Columbia upon the ground that the validity of an authority exercised under the United States was drawn in question in the case, the validity of the authority must have been denied directly and not incidentally. *United States* v. *Lynch*, 280.
5. Domicil generally determines the particular territorial jurisprudence to which the individual is subjected. *Grover & Baker Sewing Machine Co.* v. *Radcliffe*, 287.
6. Where, in an action pending in a state court, two grounds of defence are interposed, each broad enough to defeat a recovery, and only one of them involves a federal question, and judgment passes for the defendant, the record must show, in order to justify a writ of error from this court, that the judgment was rested upon the disposition of the federal question: and if this does not affirmatively appear, the writ of error will be dismissed unless the defence which does not involve a federal question is so palpably unfounded, that it cannot be presumed to have been entertained by the state court. *Johnson* v. *Risk*, 300.
7. In this case the record contained the pleadings and a motion for a new trial, which motion was authenticated by the trial judge and set forth at length all the proceedings at the trial, including the evidence, the exceptions to testimony, the instructions to the jury, the exceptions to those instructions, a bill of exceptions in due form, properly certified by the presiding judge, the verdict, and the judgment on the verdict. This proceeding was in accordance with the practice authorized by the Statutes of Montana. *Held*, that it was sufficient for the purposes of review here. *Kerr* v. *Clampitt*, 95 U. S. 188, distinguished from this case. *Montana Railway Co.* v. *Warren*, 348.
8. In this court inquiry is limited to matters presented to and considered by the court below, unless the record presents a question not passed upon by that court, which is vital, either to the jurisdiction, or to the foundation of right, and not simply one of procedure. *Ib.*
9. Facts contested in a trial before a jury must be taken in this court to be as determined by the verdict. *Bank of British North America* v. *Cooper*, 473.
10. The allowance of an amendment to an application for the removal of a cause from a State Court, if allowable at all, is a matter of discretion, to which error cannot be assigned. *Ayers* v. *Watson*, 584.

11. A writ of error does not lie for granting or refusing a new trial. *Ib.*
12. When an instruction asked for has been substantially given, with proper qualifications, it is no error to refuse it. *Ib.*
13. When a case is heard, on stipulation of the parties, by the court without the intervention of a jury, and its special findings cover all the disputed questions of fact, and there is in the record no bill of exceptions taken to rulings in the progress of the trial, the correctness of the findings on the evidence is not open for consideration here. *Preston* v. *Prather*, 604.
14. This court has jurisdiction over a judgment entered in a Federal Court in Pennsylvania in favor of the plaintiff and against the defendant on the verdict, when interest on the verdict antecedent to the judgment appealed from is included in such judgment, and the amount, with the added interest, exceeds $5000. *Mass. Benefit Ass'n* v. *Miles*, 689.

See HABEAS CORPUS, 4; EXCEPTION, 2; JURISDICTION, C, 5; JURISDICTIONAL VALUE; PRACTICE, 5.

C. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Where jurisdiction has been obtained by service of garnishee process in a proceeding *in rem*, the court has power to proceed notwithstanding defect in service on the person. *Fitzgerald and Mallory Construction Co.* v. *Fitzgerald*, 98.
2. In such case, objection to jurisdiction over the person, to be availing, must not be raised in connection with denial of jurisdiction over the subject matter. *Ib.*
3. The defendant below having denied the power of the court to proceed at all, and upon decision against it having joined issue and gone to trial on the merits, as jurisdiction existed over the subject matter, it was properly maintained over the person, even though the service on the person might have been set aside. *Ib.*
4. A bill filed by a defendant, on leave, in order to a complete decree upon the whole matter in dispute, is properly styled a cross-bill; and where on the bill of the original complainant possession of property has been taken by a Circuit Court of the United States, the jurisdiction of the court in passing upon such a cross-bill in the disposition of the property does not depend upon the citizenship of the parties. *Morgan's Co.* v. *Texas Central Railway Co.*, 171.
5. Upon a bill in equity by creditors of an insolvent corporation, whose claims amounted to more than $2000, against the corporation and stockholders therein, to compel sums, due from them to the corporation for unpaid subscriptions to stock to be paid in and administered as a trust fund, and distributed among all creditors of the corporation who should come in and contribute to the expense of the suit, the Circuit Court referred the case to a master to receive proofs of claims, and, upon the return of his report, adjudged that claims severally

less than $5000, but together exceeding that sum, were just debts of the corporation, and that, in order to pay them, the stockholders should pay the amount of their subscriptions to a receiver. Stockholders so charged with more than $5000 each appealed to this court. *Held*, that the sums in dispute were sufficient to give the Circuit Court jurisdiction of the case, and this court jurisdiction of the appeal. *Handley* v. *Stutz*, 366.

6. The provision in the act of March 3, 1887, 24 Stat. c. 373, § 1, pp. 552, 553, that no Circuit or District Court shall "have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action, in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer, and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made," does not apply to an action of trespass brought by an assignee of the claim, to recover damages for cutting down and removing timber from the land of the assignor. *Ambler* v. *Eppinger*, 480.

See REMOVAL OF CAUSES.

D. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

See JURISDICTION, C, 6.

E. JURISDICTION OF STATE COURTS.

See CONFLICT OF LAWS.

JURISDICTIONAL VALUE.

1. When the demand in controversy is not for money, but the nature of the action requires the value of the thing demanded to be stated in the pleadings, affidavits will not be received here to vary the value as appearing in the face of the record. *Red River Cattle Co.* v. *Needham*, 632.
2. The filing of affidavits as to value will not ordinarily be permitted where evidence of value has been adduced below on both sides, and the proofs have been transmitted, either with or without the announcement of a definite conclusion deduced therefrom. *Ib.*
3. Where a writ of error is brought, or an appeal taken, without question as to the value, and the latter is nowhere disclosed by the record, affidavits may be received to establish the jurisdictional amount, and counter affidavits may be allowed if the existence of such value is denied in good faith. *Ib.*
4. If there be a real controversy as to the value of the demand in controversy, it should be settled below in the first instance, and on due notice; not here upon *ex parte* opinions. *Ib.*
5. The value of the property in dispute in this case was alleged in the petition, but was not an issuable fact. The Circuit Court allowed

the writ of error on the *prima facie* showing made by the defendant. The plaintiffs subsequently presented evidence to the contrary, but that court declined to decide the controversy and referred it to this court. *Held*, (1) That, under such circumstances it was not proper to allow affidavits as to value to be filed here; (2) That the jurisdictional value was not made out by a preponderance of evidence. *Ib.*

KENTUCKY.

See LOCAL LAW, 4.

LACHES.

See EQUITY, 7, 8, 9;
PRACTICE, 11 (5).

LIS PENDENS.

See LOCAL LAW, 2.

LOCAL LAW.

1. In Utah an action under the statute (§ 3460 Compl. Laws Utah, 1888) to foreclose a chattel mortgage, if commenced while the lien of the mortgage is good as against creditors and purchasers, keeps it alive, and continues it until the decree and sale perfect the plaintiff's rights, and pass title to the purchaser. *Broom* v. *Armstrong*, 266.
2. Under § 3206 of the Compiled Laws of Utah, the rule of *lis pendens* applies to an action to foreclose a mortgage of personal property. *Ib.*
3. The enforcement of a mortgagee's rights under a chattel mortgage by a suit for foreclosure is commended as affording a safer and more adequate remedy than is afforded by actual seizure and sale of the mortgaged property, or by an action of replevin, detinue or trover. *Ib.*
4. Statutes of Kentucky, of 1869, 1870, 1872 and 1873, construed, in reference to the duty of the judge of a county court to levy an annual tax to pay the interest on bonds of the county issued in aid of the Cumberland and Ohio Railroad Company, and to appoint a collector of the tax. *Bass* v. *Taft*, 458.
5. Section 7 of the Minnesota statute of April 24, 1889, (Gen. Laws Minn. c. 20,) which repeals all acts or parts of acts inconsistent with its provisions, does not repeal the previous statute which prescribes the punishment of murder in the first degree by death by hanging, and that the execution should take place only after the issue of a warrant of execution. *Holden* v. *Minnesota*, 483.
6. When the monuments and other landmarks upon a tract of land in Texas correspond in part with the field notes of the survey, and in part either do not conform to it or cannot be found, the footsteps of the original surveyor may be traced backward as well as forward, and any ascertained monument in the survey may be adopted as a starting point for its recovery. *Ayers* v. *Watson*, 584.
7. A memorandum made by a public surveyor in Texas at the time of the

survey and deposited in the General Land Office at the time when the title was deposited there, is admissible in evidence to aid in proving the actual footsteps of the surveyor when making the survey. *Ib.*

8. Original field notes of a public surveyor deposited in the General Land Office of Texas are held by the highest court of that State to be competent evidence to identify the granted premises; and this court, if it doubted as to their admissibility for that purpose, would be largely influenced by such decisions. *Ib.*
9. The statute of Utah of 1852, (Compiled Laws of Utah, 1876, sec. 677,) which provides that "illegitimate children and their mothers inherit in like manner from the father, whether acknowledged by him or not, provided it shall be made to appear to the satisfaction of the court that he was the father of such illegitimate child or children," was an act of legislation within the powers conferred upon the Territorial legislature by Congress by the act of September 9, 1850, 9 Stat. 453, c. 51, § 6; and was not abrogated, annulled or repealed by the act of July 1, 1862, 12 Stat. 501, c. 126, to prevent the practice of polygamy and annulling certain acts of that Territory. *Cope* v. *Cope*, 682.

See CONSTITUTIONAL LAW, 25, 28, 31; RAILROAD, 5, 6, 7; JURISDICTION, B, 14; RIPARIAN OWNERS, 4, 5.

MANDAMUS.

1. Where the relator in an application for mandamus seeks to compel the Fourth Auditor and the Second Comptroller to audit and allow a claim for mileage upon the ground that the statute provides for such mileage in terms so plain as not to admit of construction; that this court has so decided; and that hence the duty to be performed is purely ministerial; he does not thereby directly question the validity of the authority of the auditor to audit his account, and of the comptroller to revise and pass upon it. *United States* v. *Lynch*, 280.
2. A mandamus to the county judge to compel him to levy such annual tax and cause it to be collected, refused, because it appeared that he had levied the tax and appointed a person to collect it. *Bass* v. *Taft*, 458.
3. Cases cited in which it has been decided that a person holding public office may be compelled by writ of mandamus to perform the duties imposed upon him by law. *Redfield* v. *Windom*, 636.
4. When the duty which the court is asked to enforce by mandamus is plainly ministerial, and the right of the party applying for the writ is clear, and he is without other adequate remedy, the writ may issue; but, where the effect of the writ is to direct or control the head of an Executive Department in the discharge of a duty involving the exercise of judgment or discretion, it should not issue. *Ib.*
5. Cases cited and referred to in which a writ of mandamus will not be issued to compel the performance of even a purely ministerial act. *Ib.*
6. M. furnished material and performed labor for the United States under

a contract, and, when the work was done and the materials furnished, he presented his account to the proper officer for adjustment and settlement. The balance was found to be correct so far as the labor and material were concerned, but it was also found that, through penalties and forfeitures, that balance was liable to be materially reduced. It also appeared that M. was indebted to mechanics, sub-contractors, laborers and material men in a large amount for work done and materials furnished under the contract. The treasury officials agreed with M. that this account should be adjusted without enforcing the penalties and forfeitures, if he would consent that his said indebtedness should be paid out of the sum so allowed, and that the control of the money should not be given up until those claims were satisfied. He assented, and a draft was prepared accordingly. M. did not comply with those conditions, but instead thereof applied to the Supreme Court of the District of Columbia for leave to file an application for a writ of mandamus, to compel the Secretary of the Treasury to deliver the draft to him, without first making the agreed payments. That officer made a return to the petition, setting forth the foregoing facts. *Held*, (1) That the return showed disputed questions of law and fact, which ought not to be tried in a proceeding for a mandamus, and that this was sufficient cause for the discharge of the rule and the refusal to issue the writ; (2) That the agreement between M. and the accounting officers was lawful, and, if carried out, would have been proper. *Ib.*

MASTER AND SERVANT.

See RAILROAD, 5, 6, 7.

MICHIGAN.

See CONSTITUTIONAL LAW, 25.

MINERAL LAND.

See EVIDENCE, 1, 2.

MINNESOTA.

See LOCAL LAW, 5.

MORTGAGE.

See RAILROAD, 1, 2, 3, 4.

MOTION FOR NEW TRIAL.

See EXCEPTION, 1;
PRACTICE, 1, 2.

MOTION PAPERS.

See PRACTICE, 4.

MOTION TO DISMISS.

See PRACTICE, 7, 11 (2).

NAVIGABLE STREAM.

See RIPARIAN OWNERS.

NEGLIGENCE.

See ADMIRALTY, 1;
RAILROAD, 5, 6, 7.

NUISANCE.

In an action for the continuance of a nuisance, the jury cannot, for the purpose of reducing the damages, take into consideration judgments recovered for the earlier maintenance of the same nuisance. *Baltimore and Potomac Railroad* v. *Fifth Baptist Church*, 568.

PATENT FOR INVENTION.

1. The claims of letters patent No. 274,264, granted to Theodore H. Butler, George W. Earhart, and William M. Crawford, March 20, 1883, for an "improvement in bretzel-cutters," are invalid, because, in view of the state of the art, it required no invention to make a single die to cut dough, on a flat surface, into any particular shape desired, whether the shape of a bretzel or any other shape. *Butler* v. *Steckel*, 21.
2. All that it was necessary to do was to take the bretzel as a pattern and make a die to correspond in shape with it, the bretzel presenting all the lines and creases, points and configurations, that were required in the die. *Ib.*
3. Reasons stated, why the unsuccessful results of prior attempts to make a machine to cut bretzels do not show the existence of invention in the claims of the patent. *Ib.*
4. The act of March 3, 1839, c. 88, § 7, authorized persons in whose building a machine was put up by the inventor thereof, and with his knowledge and consent, while he was in their employment, and before his application for a patent, to continue to use the specific machine, without paying compensation to him or his assigns, although asked for after obtaining the patent; and is not unconstitutional as depriving him of his property without compensation. *Dable Grain Shovel Co.* v. *Flint*, 41.
5. In view of the previous condition of the art, the claim patented to Abraham Shenfield by letters patent No. 169,855, dated November 9, 1875, for an improvement in suspender button straps, involved no invention. *Shenfield* v. *Nashawannuck Manufacturing Co.*, 56.
6. The claims in letters patent No. 238,100 granted to Simon Florsheim and Thomas H. Ball, February 22, 1881, for "an improvement in corsets," and claims 1 and 2 in letters patent No. 238,101 granted to the same grantees on the same day for "an improvement in elastic gores,

gussets, and sections for wearing apparel," are invalid by reason of their long prior use as inventions secured by patents which cover every feature described in those claims; and the combination of those features in No. 238,100 is not a patentable invention. *Florsheim* v. *Schilling*, 64.

7. The substitution in a manufactured article of one material for another, not involving change of method or developing novelty of use, is not necessarily a patentable invention, even though it may result in a superior article. *Ib.*
8. A new arrangement or grouping of parts or elements of a patented article, which is the mere result of mechanical judgment, and the natural outgrowth of mechanical skill, is not invention. *Ib.*
9. The combination of old devices into a new article, without producing any new mode of operation, is not invention. *Ib.*
10. Letters patent No. 244,224, granted to Hamline Q. French, July 12, 1881, for an improvement in "roofs for vaults" are invalid, in view of the state of the art, for want of patentable invention, it requiring only mechanical skill to pass to the patented device from what existed before, the question being one of degree only, as to the size of the component stones. *French* v. *Carter*, 239.
11. A prior foreign publication is competent as evidence in regard to the state of the art, and as a foundation for the inquiry whether it required invention to pass from a structure set forth in the publication to the patented structure. *Ib.*
12. A reissue of letters patent is an amendment, and cannot be allowed to enlarge the claims of the original by including matter once intentionally omitted. *Dobson* v. *Lees*, 259.
13. Such intentional omission may be shown by conduct, and the inventor cannot be permitted to treat deliberate and long continued acts of his attorney as other than his own. *Ib.*
14. In this case there is no room for the contention that there was any inadvertence, accident or mistake attending the issue of the original patent, and the reissue was correctly held to be invalid. *Ib.*
15. When a person in the employ of the United States makes an invention of value and takes out letters patent for it, the government, if it makes use of the invention without the consent of the patentee, becomes thereby liable to pay the patentee therefor. *Solomons* v. *United States*, 342.
16. If a person in the employ and pay of another, or of the United States, is directed to devise or perfect an instrument or means for accomplishing a prescribed result, and he obeys, and succeeds, and takes out letters patent for his invention or discovery, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. *Ib.*
17. When a person in the employ of another in a certain line of work devises an improved method or instrument for doing that work, and

uses the property of his employer and the services of other employés to develop and put in practicable form his invention, and explicitly assents to the use by his employer of such invention, a jury, or a court trying the facts, is warranted in finding that he has so far recognized the obligations of service flowing from his employment and the benefits resulting from his use of the property, and the assistance of the coemployés, of his employer, as to have given to such employer an irrevocable license to use such invention. *Ib.*

18. Letters patent No. 25,662, granted to Edwin May, October 4, 1859, for an "improvement in the construction of prisons," are invalid. *Fond du Lac County* v. *May*, 395.
19. The novel idea set forth in the patent was to interpose a grating between the jailer and the prisoners at every stage of opening and shutting a door. The mechanism of the patent, except the grating, was old. *Ib.*
20. As to claim 1, the angle door being old, its combination with a lock or bolt was not new or patentable. *Ib.*
21. As to claims 3 and 4, the mechanical devices were old, and operated in the same way, either with or without the grating. *Ib.*
22. Introducing the grating did not make a patentable combination, but only an aggregation. *Ib.*
23. The decision in *County of Fond du Lac* v. *May*, 137 U. S. 395, as to the invalidity of letters patent No. 25,662, granted to Edwin May, October 4, 1859, for an "improvement in the construction of prisons," affirmed. *May* v. *Juneau County*, 408.
24. Want of patentability is a defence to a suit for the infringement of a patent, though not set up in an answer or plea. *Ib.*
25. Letters patent No. 238,303, granted to William Orcutt, March 1, 1881, for improvements in rotary cutters for trimming the edges of boot and shoe soles, although the patented claim shows great industry on the part of the patentee in acquiring a thorough knowledge of what others had done in the attempt to trim shoe soles in a rapid and improved mode, by the various devices perfected by patents for that purpose, good judgment in selecting and combining the best of them, with no little mechanical skill in their application, are nevertheless invalid for want of patentable invention, as the claim presents no discoverable trace of the exercise of original thought, and is only an improvement in degree upon previous cutters, and therefore not patentable. *Busell Trimmer Co.* v. *Stevens*, 423.
26. There is no substantial difference between the improved cutter for cutting the teeth of gear wheels, etc., patented to Joseph Brown by letters patent No. 45,294, dated November 29, 1864, and the patent in controversy in this suit, except in the configuration of their molded surfaces, and this is not a patentable difference, even though the Brown cutter was used in the metal art and the Orcutt cutter in the leather art. *Ib.*

27. The first claim in letters patent No. 11,208, granted May 27, 1879, to the New York Belting and Packing Company for a new and useful design for rubber mats, viz.: "1. A design for a rubber mat, consisting of corrugations, depressions or ridges in parallel lines, combined or arranged relatively, substantially as described, to produce variegated, kaleidoscopic, moire, stereoscopic or similar effects, substantially as set forth," covers things which were then well known and were not new; and is therefore too broad to be sustained. *New York Belting Co.* v. *New Jersey Car Spring and Rubber Co.*, 445.

28. Claims 2 and 3 in those letters patent, viz.: "2. A design for a rubber mat, consisting of a series of parallel corrugations, depressions, or ridges, the lines of the said corrugations being deflected at one or more points, substantially as set forth: 3. A design for a rubber mat, consisting of a series of parallel corrugations, depressions or ridges arranged in sections, the general line of direction of the corrugations in one section making angles with or being deflected to meet those of the corrugations in the contiguous or other sections, substantially as described:" may fairly be regarded as confining the patentee to the specific design exhibited in his patent and shown in the drawing. *Ib.*

PENNSYLVANIA.

See JURISDICTION, B, 14.

PLEADING.

See CORPORATION, 6, 7.

POLYGAMY.

The several acts of Congress respecting polygamy considered. *Cope* v. *Cope*, 682.

See EVIDENCE, 3;
LOCAL LAW, 9.

PRACTICE.

1. In regard to motions for new trial and bills of exceptions, courts of the United States are independent of any statute or practice prevailing in the courts of the State in which the trial was had. *Fishburn* v. *Chicago, Milwaukee &c. Railway Co.*, 60.

2. The overruling of a motion for a new trial is not a subject of exception, according to the practice of the courts of the United States. *Ib.*

3. The court dismisses without costs to either party an appeal, the subject matter of which has been settled elsewhere, leaving only the disposition of costs involved. *Washington Market Co.* v. *District of Columbia*, 62.

4. Motion papers should contain enough of the record to enable the court to act understandingly: but when they are deficient in that

respect, the court may, if it pleases, examine the record. *Texas Land and Cattle Co.* v. *Scott*, 436.

5. When a trial by jury in a Circuit Court is waived by agreement, and the case is tried by the court, no questions are open for revision here, unless the record shows a finding of facts in accordance with the provisions of Rev. Stats. § 649, 700; and in such case, when brought here, the judgment of the Circuit Court will be presumed to be right and will be affirmed, if it appears that that court had jurisdiction of the subject matter and of the parties. *Lloyd* v. *McWilliams*, 576.
6. The day of the entry of judgment or decree must be excluded in computing the time for taking an appeal or bringing a writ of error to review it. *Smith* v. *Yale*, 577.
7. In this case, on a motion to dismiss a writ of error, for want of jurisdiction in this court, or to affirm the judgment, it was held that, though this court had jurisdiction, there was sufficient color for the motion to dismiss to warrant this court in considering the motion to affirm, and that the latter motion must be granted. *Sire* v. *Ellithorpe Air Brake Co.*, 579.
8. The case having been tried by the court without a jury, it was held that the facts found justified the conclusion of law. *Ib.*
9. The transcript of the record of the court below may be filed at any day during the term succeeding the taking the appeal or bringing the writ of error, if the appellee or defendant in error has not in the meantime had the cause docketed and dismissed; but this cannot be done after the expiration of that term, except on application to the court where a remedy may be found if the applicant was prevented from obtaining the transcript by fraud or contumacy, and is not guilty of laches. *Green* v. *Elbert*, 615.
10. When a return is made and the transcript deposited seasonably in the clerk's office, jurisdiction is not lost by not docketing the case before the lapse of the term; but it may still be docketed if in the judgment of the court it is a case to justify it in exercising its discretion to that effect. *Ib.*
11. The judgment in the court below in this case was entered July 27, 1887. The writ of error was dated October 3, 1887. It was filed that day in the court below, and was returnable here to October term, 1887, which closed May 14, 1888. The transcript reached the clerk May 10, 1888, but the fee required by the rules was not paid to the clerk. On January 13, 1890, the fee being paid, the transcript was filed and the cause was docketed, and the appearance of the plaintiff in error, who was a member of the bar of this court was entered. On the 17th of November, 1890, the defendant in error moved to dismiss the writ of error on the ground of failure to file the transcript or docket the cause within the prescribed period, and notified the plaintiff in error that it would be submitted December 15. *Held*, (1) That the defendant in error was not bound to have the case docketed and dismissed

if he did not choose to do so; (2) That the motion to dismiss for this cause could be made at any time before hearing, or the court could avail itself of the objection *sua sponte;* (3) That, as the plaintiff in error was a member of this bar, and notified the clerk in transmitting the transcript, that the case was one of his own, the appearance was properly entered; (4) That the plaintiff in error, being such a member, was bound to know the rules of this court with regard to giving security or making a deposit with the clerk as a condition precedent to the filing of the record and docketing of the case; (5) That the laches of the plaintiff in error were too gross to be passed over, and that the writ of error must be dismissed. *Ib.*

12. It is the duty of this court to keep its records clean and free from scandal; and in accordance therewith the court orders the brief of the plaintiff in error to be stricken from the files. *Ib.*

See DAMAGES; JURISDICTION, B, 1, 2, 3, 7, 13; EXCEPTION, 3, 4; JURISDICTIONAL VALUE.

PRINCIPAL AND AGENT.

See BANK; CONTRACT, 3, 4, 5.

PUBLIC LAND.

1. Officers, stockholders and employés of a private corporation formed a scheme whereby they made entries in their individual names but really for the benefit of such corporation, of vacant coal lands of the United States. The scheme was carried out, and patents were issued to such individuals, who immediately conveyed the legal title to the corporation, which bore all the expenses and cost of obtaining the lands, and some of the members of which had previously taken the benefit of the statute relating to the disposal of the public coal lands: *Held*, (1) That such a transaction was in violation of sections 2347, 2348 and 2350 of the Revised Statutes; (2) That it was not necessary to the right of the United States to maintain a suit to set aside such patents as void, that the government should offer to refund to the corporation the moneys advanced by it to the patentees in order to obtain the lands, and which the latter paid to the officers of the United States; (3) That the rule that a suitor, asking equity, must do equity, should not be enforced in such a case as this; (4) That if the corporation be entitled, upon a cancellation of the patents so obtained, to a return of such moneys, it must be assumed that Congress will make an appropriation for that purpose when it becomes necessary to do so; (5) That a private corporation is an association of persons within the meaning of those sections. *United States* v. *Trinidad Coal and Coking Co.*, 160.

2. The grant of lands to the Territory of Minnesota by the act of March 3, 1857, 11 Stat. 195, c. 99, and the grant to the State of Minnesota by the act of March 3, 1865, 13 Stat. 526, c. 105, were grants *in præsenti*,

and took effect by relation upon the sections of land as of the date of the grant, when the railroads were definitely located, both as to so much of the grants as was found within the limits of the State of Minnesota as defined by the act admitting it as a State, and as to so much thereof as was within the limits of the Territory of Minnesota under the territorial organization of 1857, but was not within the limits of the State when admitted as a State. *St. Paul, Minneapolis &c. Railway Co.* v. *Phelps*, 528.

3. It cannot be safely asserted that it has been the general policy of the United States government to restrain a grant of land made to a State in aid of railways, to lands within such State, when a part of the line of road extends into one of the Territories. *Ib.*

4. The various land grant statutes reviewed and shown to be in harmony with the decision of the court in this case. *Ib.*

5. Lands within Indian Territory, covered by the grant of March 3, 1857, passed on the extinguishment of the Indian title. *Ib.*

See CONSTITUTIONAL LAW, 21; HOT SPRINGS LITIGATION; LOCAL LAW, 6, 7, 8; RIPARIAN OWNERS; SURVEY, 2.

RAILROAD.

1. When a mortgage of a railroad provides that the principal shall become due for the purposes of foreclosure upon a default in interest continuing for sixty days, the trustees in the mortgage may proceed for the collection of the whole amount of principal and interest by bill in equity, without a formal declaration of the maturity of such principal. *Morgan's Co.* v. *Texas Central Railway Co.*, 171.

2. If a mortgage contains a power of sale by advertisement at public auction for cash upon the request of the holder or holders of seventy-five per cent in the amount of the bonds secured thereby, that remedy is cumulative, and the restriction does not operate upon the right to foreclose by bill in equity, especially when in a separate clause it is provided that nothing in the mortgage contained shall be held or construed to prevent or interfere with the foreclosure of the instrument by any court of competent jurisdiction. *Ib.*

3. The mere fact that money loaned to a railroad corporation was expended in payment of interest on its first mortgage bonds or of operating expenses, does not entitle the lender to preference over the first mortgage bonds by way of subrogation, or on the ground of superior equities. *Ib.*

4. Although advances may have enabled a railroad company to maintain itself as a going concern, that fact alone does not give such advances priority over first mortgage bonds upon the theory that the interests of the public and of the bondholders were subserved by such advances. *Ib.*

5. Section 1307 of the Code of Iowa of 1873 in regard to the liability of a

railway corporation for damages to its employés in consequence of the neglect of their coemployés, in connection with the use and operation of the railway, construed. *Chicago, Milwaukee &c. Railway Co.* v. *Artery*, 507.

6. The decisions of the Supreme Court of Iowa as to the statute, reviewed. *Ib.*
7. An injury sustained by an employé while riding on a car propelled by hand power, through the negligence of a coemployé riding on the same car, is one sustained in connection with the use and operation of the railway, within section 1307. *Ib.*

See CONSTITUTIONAL LAW, 21;
EVIDENCE, 1, 2;
PUBLIC LAND, 2.

REMOVAL OF CAUSES.

1. In a petition for the removal of a cause from a state court on the ground of diverse citizenship, the failure to state the existence of such citizenship at the commencement of the suit as well as when the removal was asked is a fatal defect. *La Confiance Compagnie d'Assurance* v. *Hall*, 61.
2. The power which this court had before the passage of the act of March 3, 1887, 24 Stat. 552, c. 373, (reënacted August 13, 1888, 25 Stat. 433, c. 866,) to afford a remedy by mandamus when a cause, removed from a state court is improperly remanded to the state court, was taken away by those acts. *In re Pennsylvania Co.*, 451.
3. Under the act of March 3, 1887, 24 Stat. 552, c. 373, and the act of August 13, 1888, 25 Stat. 433, c. 866, the matter in dispute in a case removed from a state court on the ground of prejudice or local influence must exceed the sum of two thousand dollars in order that the Circuit Court may take jurisdiction. *Ib.*
4. Since the passage of those statutes, when a cause is removed from a state court on the ground of prejudice or local influence, the Circuit Court must be legally satisfied, by proof suitable to the nature of the case, of the truth of the allegation that by reason of those causes the defendant will not be able to obtain justice in the state court; the amount and manner of such proof being left, in each case, to the discretion of the court. *Ib.*

RIPARIAN OWNERS.

1. The undoubted rule of the common law that the title of owners of land bordering on navigable rivers above the ebb and flow of the tide extends to the middle of the stream, having been adopted in some of the States, and not being recognized in other States, Federal courts must construe grants of the general government without reference to the rules of construction adopted by the States for such grants by them. *Packer* v. *Bird*, 661.

2. Whatever incidents or rights attach to the ownership of property conveyed by the United States bordering on navigable streams, will be determined by the States in which it is situated subject to the limitation that their rules do not impair the efficacy of the grant, or the use and enjoyment of the property by the grantee. *Ib.*

3. The legislation of Congress for the survey of the public lands recognizes the general rule as to the public interest in waters of navigable streams, without reference to the existence or absence of tides in them. *Ib.*

4. The highest court of California having decided that the Sacramento River, being navigable in fact, a title upon it extends no farther than to the edge of the stream, this court accepts that decision as expressing the law of the State. *Ib.*

5. The plaintiff claimed land in California under a Mexican grant which was confirmed by a decree of the District Court of the United States for the Northern District of California, in which the land was described as follows: "Commencing at the northerly boundary of said rancho, at a point on the Sacramento River just two leagues northerly from the rancheria called Lojot, and running southerly on the margin of said river to a point," etc. The survey under that decree was incorporated into the patent, and described the eastern boundary of the tract as commencing at a certain oak post "on the right bank of the Sacramento River," and thence "traversing the right bank of the Sacramento River down stream" certain courses and distances. *Held*, that the title under this patent did not extend beyond the edge of the stream, and that it did not include an island opposite the tract, and separated from it by a channel of the river which lay between it and the principal channel. *Ib.*

SETTLEMENT.

See CONTRACT, 1.

SERVICE OF PROCESS.

See CORPORATION, 1;
JURISDICTION, C, 1, 2, 3.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. The provisions of a statute cannot be regarded as inconsistent with a subsequent statute merely because the latter reënacts or repeats those provisions. *Holden* v. *Minnesota*, 483.

2. Where the language of a series of statutes is dubious, and open to different interpretations, the construction put upon them by the Executive Department charged with their execution, has great and generally controlling force with this court: but where a statute is free from all ambiguity, the letter of it is not to be disregarded in favor of a presumption as to the policy of the government, even though it may be

the settled practice of the department. *St. Paul, Minneapolis &c. Railway Co.* v. *Phelps*, 528.

3. A construction of a doubtful or ambiguous statute by the Executive Department charged with its execution, in order to be binding upon the courts, must be long continued and unbroken. *Merritt* v. *Cameron*, 542.
4. Annulments of statutes by implication, like repeals by implication, are not favored by the courts. *Cope* v. *Cope*, 682.

See JURISDICTION, A;
LOCAL LAW, 5.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 4;
ARMY OF THE UNITED STATES, 4;
CLAIMS AGAINST THE UNITED STATES, 1, 2 3, 4;
CONSTITUTIONAL LAW, 2, 7, 8, 9, 14, 16;
COURT MARTIAL;
CUSTOMS DUTIES, 1, 2, 4, 5, 6, 7, 8;
DOWER.
JURISDICTION, C, 6;
LOCAL LAW, 9;
PATENT FOR INVENTION, 4;
PUBLIC LAND, 1, 4;
REMOVAL OF CAUSES, 2, 3.

C. STATUTES OF STATES AND TERRITORIES.

California. *See* CONSTITUTIONAL LAW, 6.
Iowa. *See* RAILROAD, 5, 6, 7.
Kentucky. *See* LOCAL LAW, 4.
Louisiana. *See* CONSTITUTIONAL LAW, 3.
Michigan. *See* CONSTITUTIONAL LAW, 25.
Minnesota. *See* LOCAL LAW, 5; PUBLIC LAND, 2.
New York. *See* CONSTITUTIONAL LAW, 17; INTERNAL REVENUE, 2.
Texas. *See* CONSTITUTIONAL LAW, 1.
Utah. *See* LOCAL LAW, 1, 2, 9.
Virginia. *See* CLAIMS AGAINST THE UNITED STATES, 4.

SUCCESSION.

See CONSTITUTIONAL LAW, 27;
LOCAL LAW, 9.

SURVEY.

1. In seeking to trace a survey on the ground, the corner called for in the grant as the "beginning" corner does not control more than any other corner equally well ascertained, and it is not necessary to follow the calls of the grant in the order in which they stand in the field notes; but they may be reversed, and should be when by doing it the land embraced would most nearly harmonize all the calls and objects of the grant. *Ayers* v. *Watson*, 584.
2. If an insurmountable difficulty is met with in running the lines of a sur-

vey of public land in one direction, and all the known calls of the survey are obviated by running them in the reverse direction, it is only a dictate of common sense to follow the latter course. *Ib.*

See LOCAL LAW, 6, 7, 8.

TAX AND TAXATION.

See INTERNAL REVENUE;
LOCAL LAW, 4;
MANDAMUS, 2.

TEXAS.

See CONSTITUTIONAL LAW, 1, 31;
LOCAL LAW, 6, 7, 8.

UNITED STATES.

See PATENT FOR INVENTION, 15, 16.

UTAH.

See LOCAL LAW, 1, 2, 3, 9.

WILL.

A testator bequeathed to four daughters the sum of $20,000 apiece, to be invested in public securities and held in trust by his executors for his said daughters respectively, and the income, as it accrued, applied to their several use and benefit; and directed that "from and after the intermarriage of any of them," the executors should hold the securities "belonging to the said daughter so marrying, in trust for the following purposes," namely, for the maintenance of her and her husband and the survivor of them for life, and after the death of both "for such issue as she may leave at the time of her death; and in case she shall die without leaving such issue," then for her surviving sisters and the issue of any deceased sister; and declared his intention that both principal and income should be free from the control of any husband; "and the better to secure the payment of these my daughters' fortunes," directed that, if a fund appropriated to the payment of debts and legacies should be insufficient, his whole estate should be charged "to make up the deficiency to my said daughters." *Held*, that the principal of the sum bequeathed to a daughter, who never married, vested in her absolutely, and passed by her will. *Wellford* v. *Snyder*, 521.

WITNESS.

See EVIDENCE, 3.

WRIT OF ERROR.

See JURISDICTION, B, 3, 11;
PRACTICE, 6.