INDEX.

ACCRETION.

See RIPARIAN PROPRIETOR.

ASSUMPSIT.

See PLEADING.

BANKRUPT.

1. "Fraud" in the act of Congress, defining the debts from which a bankrupt is not relieved by a discharge in bankruptcy, means positive fraud, or fraud in fact, involving moral turpitude or intentional wrong: citing and affirming previous decisions to the same point. *Ames* v. *Moir*, 306.
2. A. purchased a lot of high-wines, to be delivered to him upon call, between certain dates, and to be paid for on each delivery at a named price per gallon. He made the call at a time when he knew himself to be insolvent, and with the intent to get possession of the wines and convert them to his own use without paying for them. They were delivered at his place of business pursuant to the call, and he shipped part and attempted to ship the balance, without paying for them; *Held*, that, within the meaning of the statute, the debt, in respect of the wines, was not created until the wines were delivered at his place of business under the call, or, at least, until he took possession of them without paying for them, and with the intent not to pay for them. *Ib.*
3. The cases reviewed on the question of what are debts created by a bankrupt while acting in a fiduciary character, so as not to be discharged, under § 33 of the bankruptcy act of March 2, 1867, c. 176 (14 Stat. 533). *Upshur* v. *Briscoe*, 365.
4. The obligation in the present case held to have been discharged. *Ib.*
5. A debt is not created by a person while acting in a "fiduciary character" merely because it is created under circumstances in which trust or confidence is reposed in the debtor, in the popular sense of those terms. *Ib.*
6. In this case it was held that the widow of the bankrupt, who was alleged to be a fraudulent grantee, was entitled to the benefit of his discharge, she having pleaded it. *Ib.*

CASES AFFIRMED.

Douglass v. *Pike County*, 101 U. S. 677, and *Burgess* v. *Seligman*, 107 U. S. 20, affirmed and applied. *Pleasant Township* v. *Ætna Life Ins. Co.*, 67.

York v. *Texas*, 137 U. S. 15, affirmed and applied. *Kauffman* v. *Wootters*, 285.

Comstock v. *Crawford*, 3 Wall. 396, and *McNitt* v. *Turner*, 16 Wall. 352, affirmed and applied. *Simmons* v. *Saul*, 439.

Canal Company v. *Clark*, 113 Wall. 311, quoted, approved and applied. *Lawrence Manufacturing Co.* v. *Tennessee Manufacturing Co.*, 537.

De Saussure v. *Gaillard*, 127 U. S. 216, and *Johnson* v. *Risk*, 137 U. S. 300, affirmed. *Cook County* v. *Calumet and Chicago Canal Co.*, 635.

CASES DISTINGUISHED.

The case of *Union Pacific Railroad Co.* v. *United States*, 99 U. S. 402, distinguished from this case. *United States* v. *Central Pacific Railroad Co.*, 84.

Holland v. *Challen*, 110 U. S. 15, explained and distinguished from this case. *Whitehead* v. *Shattuck*, 146.

CASES LIMITED.

The rule announced in *Queen* v. *Cox*, 14 Q. B. D. 153, should be limited to cases where the party is tried for the crime in furtherance of which the communication is made. *Alexander* v. *United States*, 353.

CENTRAL PACIFIC RAILROAD.

Since the passage of the act of May 7, 1878, 20 Stat. 58, c. 96, § 1, the sums expended by the Central Pacific Railroad for betterments and improvements on its road, its buildings and equipments, whereby the capital of the company invested in its works is increased in permanent value, are not to be regarded as part of its current expenses to be deducted from its gross receipts in reaching and determining the amount of the net earnings upon which a percentage is to be paid to the United States. *United States* v. *Central Pacific Railroad Co.*, 84.

CHATTEL MORTGAGE.

See LOCAL LAW, 1.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. A statute of Virginia, entitled "An act to prevent the selling of unwholesome meat," approved February 18, 1890 (Laws of Virginia 1888–1890, 63, c. 80), declares it to be unlawful to offer for sale, within the limits of that State, any beef, veal or mutton, from animals slaughtered one hundred miles or more from the place at which it is offered for sale, unless it has been previously inspected and approved by local inspectors appointed under that act. It provides that the

inspector shall receive as his compensation one cent per pound to be paid by the owner of the meats. The act does not require the inspection of fresh meats from animals slaughtered within one hundred miles from the place in Virginia at which such meats are offered for sale. *Held*, that the act is void, as being in restraint of commerce among the States, and as imposing a discriminating tax upon the products and industries of some States in favor of the products and industries of Virginia. *Brimmer* v. *Rebman*, 78.

2. The owner of meats from animals slaughtered one hundred miles or over from Virginia has the right to compete in the markets of that State upon terms of equality with the owner of meats from animals, slaughtered in that state or elsewhere, within one hundred miles from the place at which they are offered for sale. *Ib.*
3. The principle reaffirmed that, independently of any question of intent, a state enactment is void, if, by its necessary operation, it destroys rights granted or secured by the Constitution of the United States. *Ib.*
4. On December 12, 1883, the city of Sioux City, in Iowa, by ordinance, conferred on a street railway company, incorporated December 6, 1883, under the general laws of Iowa, the right of operating a street railway, with the requirement that it should pave the street between the rails. Subsequently, under an act of 1884, the city, by ordinance, required the company also to pave the street for one foot outside of the rails, and assessed a special tax against it for the cost of the paving outside of the rails: *Held*, that there was no contract between the company and the State or the city, the obligation of which was impaired by the laying of the tax. *Sioux City Street Railway Co.* v. *Sioux City*, 98.
5. Under section 1090 of the Code of Iowa, which was in force when the company was incorporated, its franchise was subject to such conditions as the legislature should thereafter impose as necessary for the public good. *Ib.*
6. The provision in Article 3 of the Constitution of the United States as to crimes "not committed within any State" that "the trial shall be at such place or places as the Congress may by law have directed" imposes no restriction as to the place of trial, except that the trial cannot occur until Congress designates the place, and may occur at any place which shall have been designated by Congress previous to the trial; and it is not infringed by the provision in the act of March 1, 1889, 25 Stat. 783, c. 333, conferring jurisdiction upon the Circuit Court in the Eastern District of Texas to try defendants for the offence of murder committed before its passage. *Cook* v. *United States*, 157.
7. The Sixth Amendment to the Constitution, providing for the trial in criminal prosecutions by a jury "of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law," has reference only to offences against the United States committed within a State, and is not infringed by the act of March 1, 1889, 25 Stat. 783, c. 333. *Ib.*

8. The act of March 1, 1889, 25 Stat. 783, c. 333, although it subjects persons charged with murder committed in a place under the exclusive jurisdiction of the United States, but not within any State, to trial in a judicial district different from the one in which they might have been tried at the time the offence was committed, is not repugnant to Art. I, Sec. 9 of the Constitution of the United States as an *ex post facto* law; since an *ex post facto* law does not involve, in any of its definitions, a change of the place of trial of an alleged offence, after its commission. *Ib.*

9. State legislation simply forbidding the defendant to come into court and challenge the validity of service upon him in a personal action, without surrendering himself to the jurisdiction of the court, but which does not attempt to restrain him from fully protecting his person, his property and his rights against any attempt to enforce a judgment rendered without due process of law, is not in violation of the Fourteenth Amendment. *Kauffman* v. *Wootters*, 285.

10. When the highest court of a State holds a judgment of an inferior court of that State to be final, this court can hardly consider it in any other light in exercising its appellate jurisdiction. *Wheeling and Belmont Bridge Co.* v. *Wheeling Bridge Co.*, 287.

11. A ferry connecting Wheeling with Wheeling Island was licensed at an early day in Virginia. Subsequently a general law of that State prohibited the courts of the different counties from licensing a ferry within a half a mile in a direct line from an established ferry. Afterwards defendant purchased the ferry and its rights. *Held*, (1) That the general law of Virginia had in it nothing in the nature of a contract; (2) That the transfer of the existing rights from the vendor to the vendee added nothing to them. *Ib.*

12. An alleged surrender or suspension of a power of government respecting any matter of public concern must be shown by clear and unequivocal language; it cannot be inferred from any inhibitions upon particular officers, or special tribunals, or from any doubtful or uncertain expressions. *Ib.*

13. The constitutional provision that full faith and credit shall be given in each State to the judicial proceedings of other States does not preclude inquiry into the jurisdiction of the court in which a judgment is rendered over the subject matter or the parties affected by it, nor into the facts necessary to give such jurisdiction. *Simmons* v. *Saul*, 439.

14. The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed; and here the validity of the authority was not primarily denied, and the denial made the subject of direct inquiry. *Cook County* v. *Calumet & Chicago Canal Co.*, 635.

15. A decision by the highest court of a State that the land commissioner had no authority to vacate an entry, and that any order that he might

have made did not affect the rights of the party making the entry, is not a decision against a title specially set up or claimed under an authority exercised under the United States, nor against the validity of such an authority. *Ib.*

See EQUITY, 2.

B. OF THE STATES.

1. The act of the legislature of Ohio of April 9, 1880, authorizing townships having a population of 3683 under the census of 1870, "to build railroads and to lease or operate the same," and "to borrow money" "as a fund for that purpose," and "to issue bonds therefor in the name of said township," is repugnant to the provision in article 8, section 6 of the constitution of that State, which provides that "the general assembly shall never authorize any county, city, town or township, by vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation or association whatever; or to raise money for, or loan its credit to or in aid of any such company, corporation or association;" and bonds of such a township, issued under the supposed authority of said act, are void. *Pleasant Township* v. *Ætna Life Ins. Co.*, 67.
2. It appearing that a decision of the highest court of the State of Ohio, made prior to the issue of the bonds in controversy in this action, as to the validity of such municipal bonds, was, argumentatively at least, in conflict with decisions of the same court made after the issue of such bonds, this court, following the rule laid down in *Douglass* v. *Pike County*, 101 U. S. 677, and *Burgess* v. *Seligman*, 107 U. S. 20, in the exercise of its independent judgment, finds the issue here in controversy to be invalid. *Ib.*

CONTRACT.

1. If a contract with a municipal corporation calls for payment for work and labor and materials furnished under it in city warrants, and the municipality accepts a draft for a sum in money from the contractor in favor of the payee or order, without specifying that it is payable in such warrants, it is not necessary to allege, in an action on the acceptance, that demand was made payable in such warrants and was refused. *Superior City* v. *Ripley*, 93.
2. Where a contract with a railroad company for construction work provided for monthly payments to the contractor, "on the certificate of the engineer," and that the determination of the chief engineer should be conclusive on the parties as to quantities and amounts, and where, in executing the contract, each monthly account as made up by the division engineer was sent to the chief engineer, and the monthly payments were made on the certificate of the latter officer; his action in making such certificate was *held* to be a "determination" under the contract, conclusive upon the parties in an action at law, in the absence of fraud, or of such gross error as to imply bad faith. *Chicago, Santa Fé and California Railroad Co.* v. *Price*, 185.

3. The appellant signed and delivered to the appellee a paper in which he said, "I hold of the stock of the Washington and Hope Railway Company $33,250 or 1350 shares, which is sold to Paul F. Beardsley [the appellee], and which, though standing in my name, belongs to him, subject to a payment of $8000, with interest at same rate, and from same date as interest on my purchase of Mr. Alderman's stock." *Held*, that this was an executed contract, by which the ownership of the stock passed to the appellee, with a reservation of title, simply as security for the purchase-money. *Beardsley* v. *Beardsley*, 262.

4. On the second question at issue the court holds that the contested facts establish a joint interest in the parties in the railroad enterprises which form the subject of the controversy, and not a mere stock transaction. *Ib.*

5. Dolph contracted to sell to the plaintiff in error standard Dolph washers at $110 a machine, and the company contracted to take at least 50 machines a year at that price, the contract to last for five years. There was a further clause by which Dolph was to have the option of manufacturing for the company any other machines sold by him at such price as might be bid for them in open competition. The company at the expiration of a year threw up the contract and repudiated its obligations, and Dolph sued to enforce them. *Held*, that the principal object of the contract was the sale and purchase of the Dolph machines; that the sale and purchase of the other machines were subordinate to it; and that the court should have instructed the jury that, as to the latter, there could be none other than a recovery of nominal damages. *Troy Laundry Machinery Co.* v. *Dolph*, 617.

See EQUITY, 5;
RAILROAD, 1–6, 10.

COURT AND JURY.

1. A, the owner of five promissory notes for $100,000 each, being in want of money, empowered B, who knew of his necessities, to sell them at a discount which would net the sum of $380,000, agreeing to give him $10,000 in case of success. B took the notes to New York, and there offered them to C for $380,000. C declined to take them at that price, but offered $350,000 for them. B at first refused to communicate this offer to A; but, on being pressed to do so, said to C that as A was in need of money he would send the offer by telegraph, and he did so send it. At a later hour on the same day B asked C what he would do in case his offer should be refused, to which C replied that he would take the notes at $380,000. B did not communicate this to A. On the following day A received a telegram purporting to come from B: "Please answer my telegram of yesterday." As he received this telegram he was in conversation with D, who thereupon offered to take the notes and pay $380,000 for them. This offer was immediately accepted

by A. A then wired to B, "Cannot accept offer." B replied: "Have made the negotiations on the terms you gave me." This transaction with C not being carried out, B sued A to recover the agreed compensation of $10,000, and recovered judgment therefor in the court below. *Held*, that B was not entitled to compensation under the contract on which he sued, and that the court, having been requested by the defendant to so instruct the jury, should have complied with the request. *Wadsworth* v. *Adams*, 380.

2. When, in the trial of a civil action charging a conspiracy to defraud, it appears in evidence that a loan, charged to have been an instrument in the conspiracy, was not an ordinary business transaction; that the compensation paid for it to the lender was so excessive as to be suspicious; that the purpose on the part of the borrower in taking the loan was the accomplishment of an act criminal in itself and made criminal by statute; and when the surrounding circumstances proved in the case tend to charge the lender with knowledge of the wrongful purpose of the borrower, the case should not be withdrawn from the jury, but it should be submitted in order that they may determine whether the loan was made with intent to consummate the wrong, and whether the lender knowingly assisted in accomplishing it. *Russell* v. *Post*, 425.

COURTS OF PROBATE.

See JURISDICTION, C;
LOCAL LAW, 2, 3, 5, 6.

CRIMINAL LAW.

1. It is the duty of counsel, in a criminal case, to seasonably call the attention of the court to any error in impanelling the jury, in admitting testimony, or in any other proceeding during the trial by which the rights of the accused may be prejudiced, and, in case of an adverse ruling, to note an exception; and if counsel fails in this respect, error cannot be assigned for such causes. *Alexander* v. *United States*, 353.
2. It being shown in a trial on an indictment for murder, that on the day of the disappearance of S. (the murdered man,) and of Mrs. H., her husband and his relatives were seen, armed with guns and pistols, hunting for S. and Mrs. H., who were supposed to have eloped together, the declarations at that time of H. as to his purpose in doing so were part of the *res gestæ;* but this court does not decide whether it was error to rule them out. *Ib.*
3. Statements regarding the commission of a crime already committed, made by the party committing it to an attorney at law when consulting him in that capacity, are privileged communications, whether a fee has or has not been paid, and whether litigation is pending or not. *Ib.*

See JURISDICTION, A, 5, 6, 7.

CUSTOMS DUTIES.

1. It appearing that at the date of the transactions in controversy, more than thirty years ago, it was the custom for importers to pass in protests with the entries, the court may presume that the usual course was pursued in respect of a protest produced under subpœna at the trial from the proper repository, where it had been lying for a long time, and that it was made and served at its date, and before the payment of duties. *Schell's Executors* v. *Fauché*, 562.
2. Two papers attached together by a wafer, and signed on the bottom of the lower one, which when read together make a protest against two exactions of duties, are to be treated as a unit. *Ib.*
3. A protest against the exaction of duties is sufficient if it indicates to an intelligent man the ground of the importer's objection to the duty levied upon the articles, and it should not be discarded because of the brevity with which the objection is stated. *Ib.*
4. When such a protest is in proper form and attached to the invoice, the omission of date is immaterial. *Ib.*
5. The failure of a collector of customs to conform to a treasury regulation requiring him to record protests ought not to prejudice the rights of the importer. *Ib.*
6. A protest, otherwise valid and correct in form, against an exaction of excessive duties upon an importation of goods, which concludes "you are hereby notified that we desire and intend this protest to apply to all future similar importations made by us," having been long and consistently held by the court below to be a sufficient and valid protest against prospective importations, so that that doctrine has become the settled law of that court and the general practice prevailing in the port of New York, this court accepts it as the settled law of this court. *Ib.*

DAMAGES.

See CONTRACT, 5.

DEATH OF A PARTY TO THE RECORD.

See EQUITY, 11, (6), (7).

DEPOSITION.

The heading of a notice to take a deposition in this cause read: "United States of America, State of Illinois, County of Cook, *ss.:* In the Circuit Court of the United States;" and the notice was that the deposition would be taken "before William G. Peckham, Esq., notary public, or some other officer authorized by law to take depositions." The deposition was in fact taken before another notary, so authorized. *Held*, (1) That the heading, though not technically correct, was substantially so; (2) That the taking of the deposition was perfectly regular. *Gormley* v. *Bunyan*, 623.

DOMICIL.

The place where a person lives is taken to be his domicil until facts adduced establish the contrary. *Anderson* v. *Watt*, 694.

A domicil, once acquired is presumed to continue until it is shown to have been changed. *Ib.*

The domicil of the husband is the domicil of his wife, although she may be residing in another place, and even when she may be living apart from her husband without sufficient cause. *Ib.*

EASEMENT.

See RAILROAD, 6.

EQUITY.

1. The bill alleged that the plaintiff was the owner in fee of the premises, but held the title as trustee; that notwithstanding his ownership of the property and his right to its immediate possession and enjoyment, the defendants claimed title to it and were in its possession, holding the same openly and adversely to him; that their claim of title was without foundation in law or equity; and that it was made in fraud of the rights of the plaintiff. To this bill the defendants demurred, on the ground, among others, that it appeared from it that the plaintiff had a plain, speedy and adequate remedy at law, by ejectment, to recover the real property described, and that it showed no ground for equitable relief. The demurrer was sustained. *Held*, that the ruling of the court below was right. *Whitehead* v. *Shattuck*, 146.

2. When the right set up by the plaintiff is a title to real estate, and the remedy sought is its possession and enjoyment, that remedy should be sought at law, where both parties have a constitutional right to call for a jury. *Ib.*

3. A litigation existed between the appellants and the appellee, which was embodied in two bills, two cross-bills, their respective answers, and the other proceedings therein. A correspondence ensued which resulted in a proposition for compromise and settlement on the one side, which was accepted by the other. Subsequently it appeared that the appellee intended and considered the agreement of settlement to embrace a complete relinquishment and discharge of all claims of either party against the other, while the appellants claimed that they were to retain their disputed claims against the appellee. The appellees thereupon filed a petition in each of the causes, disclosing to the court the correspondence and agreement of settlement and praying for a decree that all matters in controversy "had been settled and compromised by the parties and are decreed and adjudged to be finally settled, and ordering that all the cases be dismissed." The court below, after hearing the parties, found that there had been a full compromise and settlement by agreement of the parties, and ordered each of the bills

to be dismissed. A motion to vacate these decrees, and grant a rehearing was overruled. *Held*, (1) That the parties intended to make a full compromise and settlement of all claims and demands on either side, and that the decree of the court below was right, and should be affirmed; (2) That, no objection having been raised, until after decision rendered, to the proceeding by petition instead of by supplemental or cross-bill, the decree should not be vacated or disturbed on that account; especially as the appellants had appeared in answer and opposition to the petitions, and had introduced affidavits to support their contentions. *Coburn* v. *Cedar Valley Land and Cattle Co.*, 196.

4. L., a merchant in Dacota, intending to defraud his creditors, sold his entire stock of goods, much of which was of a perishable nature, together with the good will of the business, to N., who was entirely ignorant of his purpose, and who paid an adequate consideration for them. Sundry creditors of L. sued out writs of attachment against him. These were placed in the hands of a sheriff, who seized the goods as the property of L. N. brought this suit against the sheriff to compel him to surrender the property and to restrain him from again levying upon it as the property of L., and a preliminary injunction was issued. The question of the validity of the sale was submitted to a jury, who found in plaintiff's favor. The court thereupon ordered that the preliminary injunction should be made perpetual. The defendant moved for a new trial, claiming that the court had failed to find on certain material issues. The court at a subsequent term denied the motion and made further findings more explicitly responsive to the questions presented by the pleadings, and a further conclusion of law that it was extremely difficult to ascertain the amount of compensation that would afford adequate relief; that it was necessary to restrain the acts done and prevent a multiplicity of suits; and that the plaintiff was entitled to the relief demanded. *Held*, (1) That the findings of fact, taken in connection with the verdict of the jury, entitled N. to the equitable relief sought, and were sufficient to sustain the judgment; (2) That neither an action of trespass nor an action of replevin could have afforded him as complete, prompt and efficient a remedy for the destruction of the business as would be furnished by a court of equity in preventing the injury; (3) That the court below had authority, under the Dacota Code of Civil Procedure, after the term had closed, to make additional findings of fact in support of its judgment, upon a motion for a new trial; (4) That the sheriff was the proper party defendant, and that, in case he exceeded his authority he could be proceeded against at law, if that was a sufficient remedy, or in equity, and it was not necessary to join the plaintiffs in the writs of attachment as defendants in either case, as it did not appear that they had directed the seizure; (5) That the act admitting the two Dacotas, Montana and Washington Territories as

States authorized this court to hear and determine cases of this character from territorial courts. *North* v. *Peters*, 271.

5. Where a certain sum of money is due, and the creditor enters into arrangements with his debtor to take a less sum, provided that sum is secured in a certain way and paid at a certain day, but if any of the stipulations of the arrangement are not performed as agreed upon the creditor is to be entitled to recover the whole of the original debt, such remitter to his original rights does not constitute a penalty, and equity will not interfere to prevent its observance. *United States Mortgage Co.* v. *Sperry*, 313.
6. If, through inadvertence and mistake, a wrong description is placed in a conveyance of real estate by an individual, a court of equity would have jurisdiction to interfere and restore to the party the title which he never intended to convey; and it has a like jurisdiction, when a wrong description from a like cause gets into a patent of public land. *Williams* v. *United States*, 514.
7. If the allegations of a bill point to fraud and wrong, and equally to inadvertence and mistake, and the latter be shown, the bill is sustainable, although the former charge may not be fully established. *Ib.*
8. Unfair and fraudulent competition against the business of another, with intent on the part of the offender to avail himself of the reputation of the other, in order to palm off his goods as the goods of the other, would, in a proper case, constitute ground for relief in equity; but the deceitful representation or perfidious dealing must be made out or be clearly inferable from the circumstances. *Lawrence Manufacturing Co.* v. *Tennessee Manufacturing Co.*, 537.
9. When a party returns to a court of chancery to obtain its aid in executing a former decree of that court, the court is at liberty to inquire whether the decree was or was not erroneous, and if it be of opinion that it was erroneous, it may refuse to execute it. *Lawrence Manufacturing Co.* v. *Janesville Cotton Mills*, 552.
10. When a decree in chancery is the result of the consent of the parties, and not of the judgment of the court, the court may, if its aid in enforcing it is asked by a subsequent bill, refuse to be constrained by the consent decree to decree contrary to what it finds to be the right of the cause. *Ib.*
11. This suit was commenced in August, 1879, and was brought against the city of New Orleans to recover the rents, fruits, revenues and profits of 135 arpents of land, situated in the city, from the year 1837 to the time of the accounting sought. This land had been purchased by the city from one Evariste Blanc in 1834, and afterwards disposed of to various parties, except four or five blocks reserved for city purposes, which were not in question. The city, however, was sought to be charged with all the rents, fruits and revenues of the land, whether in its own possession or in the possession of its grantees. In two previous suits brought by Mrs. Gaines against the parties in

possession, one against P. H. Monsseaux and others, and the other against P. F. Agnelly and others, (said suits being in the nature of ejectments,) decrees were obtained for the recovery of the lands held by the defendants respectively, and references were made to a master to ascertain the amounts of rents and revenues due. The total of these rents and revenues found and reported by the master in the two suits was $517,049.34, which, with interest, calculated up to January 10, 1881, amounted to the sum of $576,707.92. The further bill sought recovery for other and larger amounts; but it was decided that the recovery must be limited to the claims so reported on by the master, and the decree was reversed and the cause remanded for further proceedings in conformity with the opinion of the court. A decree was accordingly made and entered in the Circuit Court, by which it was referred to a master to take testimony and report as to whether the defendant (the city of New Orleans) was entitled to any, and if so, how much, reduction in the said decree of $576,707.92, by reason of any compromises and settlements of the judgments for rents in the said Agnelly and Monsseaux cases, made and entered into by the complainant and any of said defendants in said judgments for any less sums than the face thereof. The result of the inquiry was that settlements had been made, amounting to $220,213.16 which formed part of that gross amount, but that Mrs. Gaines had actually received only $15,394.50. The court below deducted this latter sum, and rendered a decree for $561,313.42. *Held:*

(1) That the right of Mrs. Gaines to pursue the city was an equitable right, arising and accruing to her on the basis of her own claims against the said defendants, and by subrogation to their equity to be protected and indemnified by the city;

(2) That the acts of settlement in this regard amounted to a declaration of the parties that Mrs. Gaines should exercise the equitable right which she possessed, and that the assignment was merely in aid of the equitable right, and might be available in a court of law;

(3) That the judgments were binding on the parties to them, and therefore were binding upon the city of New Orleans, which in most cases had assumed the defence of the suits, and had been represented by counsel therein; that it was right and proper to consider litigation as at an end in those suits; and that the judgments had passed into *res judicata;*

(4) That article 2452 of the Civil Code of Louisiana, which declares that "the sale of a thing belonging to another person is null; it may give rise to damages when the buyer knew not that the thing belonged to another person," does not affect the question here;

(5) That the grantees might be settled with so far as their personal liability was concerned, without discharging the city or other warrantors, provided it was stipulated, or shown to be the intention of the parties, that the city, or other warrantors, should not be discharged, it being

a general rule that discharge of a surety does not discharge a principal; and that rule being applicable here;

(6) That the death of a number of the defendants in the cases of Monsseaux and Agnelly, who died before the remand of this cause from this court to the Circuit Court, on occasion of the former appeal, and before the decree of reference by the Circuit Court upon the mandate from this court, without an attempt at revivor of the alleged decrees against the heirs or representatives of said deceased, cannot benefit the appellant;

(7) That the appellant cannot at this stage of the case raise the objection that one of the judgments for rent was obtained after the death of the defendant in the suit;

(8) That the claim for the price of the lands and the claim for the rents and revenues of them can be prosecuted separately;

(9) That the claimant should have been allowed the costs of the suits against Monsseaux and others and Agnelly and others. *New Orleans* v. *Gaines*, 595.

See Local Law, 1;
Railroad, 7, 12–15;
Res Judicata.

EVIDENCE.

1. In this case the plaintiff having accepted notes of a limited liability company in settlement, set up that the acceptance was made through a misunderstanding. *Held*, that evidence tending to show knowledge that the plaintiff at the time of the acceptance was a limited liability company was admissible. *Case Manufacturing Co.* v. *Soxman*, 431.
2. When in a case in which the facts are found by the court instead of a jury, there is any evidence tending to support the finding, this court will not review it. *Ib.*
3. It appearing from the evidence of one of the plaintiff's witnesses that during the dates of these transactions he was acting as its financial manager, his acts in that capacity cannot be repudiated. *Ib.*
4. The words "received on settlement to this date," where there was a partnership account running through years, may refer to a settlement for the year, or a settlement for the whole period of the partnership; and this ambiguity, being a latent one, may be explained by evidence *aliunde*. *Clay* v. *Field*, 464.
5. In an action brought by an executor to recover on a promissory note made by defendant to his testator, it is not error to exclude evidence offered by defendant to show that the notes were not inventoried by the executor as part of the testator's estate. *Gormley* v. *Bunyan*, 623.

See Court and Jury, 1, 2;
Criminal Law, 2, 3;
Customs Duties, 1, 2;
Deposition;
Local Law, 1;
Statute, C.

EXECUTIVE.

See PUBLIC LAND;
SWAMP LAND, 8.

EXECUTOR AND ADMINISTRATOR.

See EVIDENCE, 5.

EX POST FACTO.

See CONSTITUTIONAL LAW, A, 8.

FRAUD, STATUTE OF.

1. A trust may result to him who pays the consideration for real estate where the title is taken out in the name of another, which is not within the statute of frauds, and it may be shown, by parol testimony, whose money was actually paid for it; but such trust must have arisen at the time the purchase was made, and the whole consideration must have been paid or secured at the time of, or prior to, the purchase, and a bill in equity to enforce it must show without ambiguity or equivocation that the whole of the consideration appropriate to that share of the land which the plaintiff claims by virtue of such payment, was paid before the deed was taken. *Ducie* v. *Ford*, 587.
2. Two parties had located and claimed a lode. Plaintiffs were preparing to contest defendant's application for a patent when it was agreed orally that they should relinquish to him such possession as they had, in consideration of his agreeing to purchase the land upon their joint account. He took out a patent and worked the lode. In an action to have him decreed to hold one-half as trustee for the plaintiffs, *Held*, that such taking possession was not part performance of the contract so as to take it out of the statute of frauds. *Ib.*

GUARDIAN AND WARD.

1. The power of a guardian, under the statute of Illinois relating to guardians and wards, approved April 10, 1872, (Rev. Stats. Illinois, 1874, c. 64,) to mortgage the real estate of the ward is subject to these express restrictions: (1) that he obtain the leave of the county court, based upon petition setting out the condition of the estate, the facts and circumstances on which the petition is founded, and a description of the premises to be mortgaged; (2) that the mortgage, if not in fee, must be for a term of years not extending beyond the minority of the ward; and (3) that the time of the maturity of the indebtedness secured by it should not extend beyond the minority of the ward. It is, also, subject to the implied restriction, controlling the discretion and power both of the guardian and the county court, that the indebtedness secured by the mortgage must arise out of, and have some necessary or appropriate connection with, the management of the ward's estate. *United States Mortgage Co.* v. *Sperry*, 313.

2. Mortgages executed in 1872, 1873 and 1876, by a guardian in Illinois, with the leave of the county court, to secure the payment of bonds given by him for moneys borrowed to pay off existing encumbrances upon the ward's real property and to improve such property by replacing thereon buildings that had been destroyed by fire, are sustained as not invalid under the above statute. *Ib.*

3. Such mortgages were not invalid because authorizing an absolute sale, and not expressly recognizing the right of redemption after sale; for such right of redemption exists, by statute, as a rule of property, whether recognized or not in the mortgage. *Ib.*

4. A guardian having obtained leave of the county court to borrow the sum of $95,000 and mortgage the ward's estate to secure its payment, allowed the mortgagee, in the settlement of the loan, (but without the assent of that court,) the sum of $7219.27 in payment of interest on overdue coupons upon previous loans, and received from the mortgagee only $87,780.73. *Held*, (1) That this was not a contract, (within the meaning of the statute,) that the company should receive usurious interest, for no such contract had been attempted to be authorized by the county court; (2) That, as the allowance by the guardian of interest upon interest was under a mistaken view of the obligation of the coupons in that regard, the remedy was to treat the loan as one for only $87,780.73, making the calculation of interest at the contract rate upon that basis, and not to forfeit the interest upon the sum actually received by the guardian from the mortgagee. *Ib.*

5. Where a guardian, in Illinois, with the leave of the county court, contracted on behalf of his ward's estate, for the repayment of money borrowed, with interest at nine per cent per annum, payable semiannually until the principal sum "shall be fully paid" — the principal debt maturing, as required by the statute, before the majority of the ward — interest is to be calculated, after the ward's majority, at the contract rate, and not at the statutory rate of six per cent. In such case, it is the right of the ward, immediately upon attaining full age, to pay off the debt, or, by agreement with the lender, obtain an extension of the time of maturity, and a less rate of interest. *Ib.*

HUSBAND AND WIFE.

The husband of a married woman is a necessary party in Florida to a suit in equity to foreclose a mortgage upon real estate owned by her there; and although he be not named in the bill as defendant, he may appear at the hearing with the consent of all parties, and in this case the objection of want of consent cannot be taken. *Anderson* v. *Watt*, 694.

INDIAN TERRITORY.

1. By the act of March 1, 1889, 25 Stat. 783, c. 333, "to establish a United States court in the Indian Territory, and for other purposes," the strip of public land lying south of Kansas and Colorado, and between the

one hundredth and the one hundred and third meridians, and known as No Man's Land, was brought within the jurisdiction of the court for the Indian Territory so established, and was attached for limited judicial purposes to the Eastern District of Texas. *Cook* v. *United States*, 157.

2. The history of and the legislation concerning the Indian Territory considered and reviewed. *Ib.*
3. By the act of March 1, 1889, 25 Stat. 783, c. 333, the intention of Congress to confer upon the Circuit Court of the United States in the Eastern District of Texas power to try defendants for the offence of murder, committed before its passage, where no prosecution had been commenced, was so clearly expressed as to take it out of the well settled rule that a statute should not be interpreted to have a retroactive operation where vested rights are injuriously affected by it; and it must be construed as operating retroactively. *Ib.*

INFORMER.

Any right which an informer might have had to share in a fine, penalty, or forfeiture under the provisions of the act of July 13, 1866, 14 Stat. 145, was taken away by the act of June 6, 1872, 17 Stat. 256, c. 315, § 9, unless the amount of the fine, penalty or forfeiture was fixed and settled by judgment or compromise, and by payment, before the passage of the latter act. *United States* v. *Connor*, 61.

INTEREST.

1. The United States Mortgage Company, a corporation of New York, being authorized by its charter to lend money on bond and mortgage on real estate situated within the United States, or upon any hypothecation of such real estate, or upon hypothecation of bonds or mortgages on such real estate, for any period of credit, could contract in Illinois to lend money there upon bond and mortgage of real estate, at nine per cent per annum, (which the law of that State permitted,) although the highest rate of interest permitted by the general laws of New York was seven per cent, and although the special charter of the company provided that no loan or advance of money should be made by it "at a rate of interest exceeding the legal rate." *United States Mortgage Co.* v. *Sperry*, 313.
2. In Illinois, overdue coupons, so drawn as to be negotiable securities according to the general commercial law, bear interest after maturity at the rate of six per cent per annum. But an interest warrant signed by a guardian, who has contracted to be exempt from personal liability for the principal debt, or for the interest thereon, practically payable out of particular funds, is not a security of that class, and does not bear interest after maturity. *Ib.*
3. Whatever may be the rate of interest contracted for in Illinois, after

the debt is merged in a judgment or decree the contract ceases to exist, and the rate of interest upon the sum adjudged to be due, is thereafter controlled by the statute. *Ib.*

4. A guardian having obtained leave of the county court to borrow the sum of $95,000 and mortgage the ward's estate to secure its payment, allowed the mortgagee, in the settlement of the loan, (but without the assent of that court,) the sum of $7219.27 in payment of interest on overdue coupons upon previous loans, and received from the mortgagee only $87,780.73. *Held*, That this was not a contract, within the meaning of the statute, that the company should receive usurious interest, for no such contract had been attempted to be authorized by the county court; that, as the allowance by the guardian of interest upon interest was under a mistaken view of the obligation of the coupons in that regard, the remedy was to treat the loan as one for only $87,780.73, making the calculation of interest at the contract rate upon that basis, and not to forfeit the interest upon the sum actually received by the guardian from the mortgagee. *Ib.*
5. Where a guardian, in Illinois, with leave of the county court, contracted on behalf of his ward's estate, for the repayment of money borrowed, with interest at nine per cent per annum, payable semi-annually until the principal sum "shall be fully paid" — the principal debt maturing, as required by the statute, before the majority of the ward — interest is to be calculated, after the ward's majority, at the contract rate, and not at the statutory rate of six per cent. In such case, it is the right of the ward, immediately upon attaining full age, to pay off the debt, or, by agreement with the lender, obtain an extension of the time of maturity, and a less rate of interest. *Ib.*

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. The petition for a writ of error is not part of the record on which this court acts. *Butler* v. *Gage*, 52.
2. When a case is presented for the determination of the highest court of a State without a suggestion that a federal question is involved, and after decision a petition for a rehearing, containing no such suggestion, is presented and denied, a denial of a motion for further oral argument in which such a claim is for the first time set up does not necessarily involve the decision of a federal question. *Ib.*
3. Alleged inadvertence of the state court in entering judgment below for defendant for rents and profits cannot be reviewed here. Any inadvertence of the kind is only matter for consideration by the court below. *Tubbs* v. *Wilhoit*, 134.
4. Where the interest of a plaintiff, whose bill in equity was dismissed on the merits by the Circuit Court, in the subject matter of the suit, did not exceed $5000, her appeal to this court was dismissed for want of jurisdiction. *Miller* v. *Clark*, 223.

5. Whether a verdict in a trial for murder was contrary to the evidence cannot be considered in this court, if there was any evidence proper to go to the jury in support of the verdict. *Crumpton* v. *United States*, 361.

6. When the defendant's counsel in a criminal trial fails to at once call the attention of the court to remarks by the prosecuting officer which are supposed to be objectionable, and to request its interposition, and, in case of refusal, to note an exception, an assignment of error in regard to them is untenable. *Ib.*

7. Whether, in a criminal case, a court will grant an application by the prisoner, made during the trial, for process for witnesses, and will delay the trial during the execution of the process, is a matter of discretion with the trial court, not reviewable here. *Ib.*

8. Although a case from the highest court of a State may involve a federal question, yet, if that court proceeds upon another and distinct ground, not involving a federal question, and sufficient in itself to maintain the final judgment, without reference to the federal question involved, its judgment will be affirmed here. *Beaupré* v. *Noyes*, 397.

9. This court is without authority to review an order denying a motion for a new trial. *Ib.*

10. This court has jurisdiction to proceed, in respect to the District Court of the United States for the District of Alaska, by way of prohibition, under Rev. Stat. § 688; and therefore gives leave to file the petition for such a writ, and the accompanying suggestion in this case. *In re Cooper*, 404.

11. When the highest court of a State holds that a judgment of one of its inferior courts, imposing punishment in a criminal case in excess of that allowed by the statutes of the State, is valid and binding to the extent to which the law of the State authorized the punishment, and only void for the excess, there is no principle of federal law invaded in such ruling. *In re Graham*, 461.

12. An action for dower is not exempt from, or excepted out of, the act fixing the jurisdictional amount necessary for an appeal to this court. *Clay* v. *Field*, 464.

13. If several persons be joined in a suit in equity or admiralty, and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction; but where their interests are distinct, and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, but each must stand or fall by itself alone. *Ib.*

14. When the decision of a state court is in favor of a right or privilege claimed under a statute of the United States, this court has no jurisdiction to review it. *Missouri* v. *Andriano*, 496.

15. Some months after the sale of a railroad under foreclosure, and its surrender by the receiver to the corporation organized to receive it, the sale being made with a provision that the purchaser should pay all debts adjudged to be superior in equity to the deeds of trust foreclosed, an order was made giving such priority to the appellee. *Held*, That an appeal lay in favor of the purchaser. *Louisville, Evansville &c. Railway Co.* v. *Wilson*, 501.

16. The granting or refusal of leave to file an additional plea, or to amend one already filed, is discretionary with the court below, and not reviewable by this court, except in a case of gross abuse of discretion. *Gormley* v. *Bunyan*, 623.

17. To give this court jurisdiction of a writ of error to a state court it must appear affirmatively, not only that a federal question was presented for decision by the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it. *De Saussure* v. *Gaillard*, 127 U. S. 216; *Johnson* v. *Risk*, 137 U. S. 300, affirmed. *Cook County* v. *Calumet and Chicago Canal Co.*, 635.

18. Tested by this rule the writ of error cannot be sustained, as the judgment of the state court proceeded wholly upon the construction of the terms and conditions of the grant of the State to the county by the act of 1852, and as amended by the act of 1854, and the validity of those enactments was not drawn in question. *Ib.*

19. Since the passage of the act of March 3, 1875, 18 Stat. 470, if it appear from the pleadings and proofs, taken together, that the defendants are citizens of the United States, and reside, in the sense of having their permanent domicil, in the State of which the complainants are citizens, (or that each of the indispensable adverse parties is not competent to sue or liable to be sued therein,) the Circuit Court cannot maintain cognizance of the suit; and the inquiry is determined by the condition of the parties at the commencement of the suit. *Anderson* v. *Watt*, 694.

See Constitutional Law, A, 10; B, 2;
Criminal Law, 1.

B. Jurisdiction of Circuit Courts of the United States.

1. An acceptance by a municipal corporation of a draft, directing it to pay to the order of the payee a sum of money due to the drawer for work and labor done and materials furnished under a contract, constitutes a new contract between the acceptor and the payee which the latter may enforce in the courts of the United States, if he be a citizen of a different State from the acceptor, and if the amount be sufficient to give jurisdiction, notwithstanding the drawer and the acceptor are both citizens of the same State, and notwithstanding the provisions in the act of August 13, 1888, 25 Stat. 433, c. 866, § 1. *Superior City* v. *Ripley*, 93.

2. The Circuit Court of the United States for the Eastern District of Texas, held at Paris, in that District, at the October Term, in 1889, had jurisdiction of an indictment for murder, charged to have been committed in the country known as "No Man's Land" July 25, 1888. *Cook* v. *United States*, 157.

See RAILROAD, 7.

C. JURISDICTION OF STATE COURTS.

1. In 1872 parish courts in Louisiana were vested with original and exclusive jurisdiction over the administration of vacant and intestate successions. *Simmons* v. *Saul*, 439.
2. The order of the parish court in Louisiana granting letters of administration was a judicial determination of the existence of the necessary facts preliminary to them. *Ib.*
3. The parish court had unquestionable jurisdiction of the intestate estate or succession of Simmons. *Ib.*
4. Whether the person appointed administrator by the parish court was or was not the public administrator, who, under the law of Louisiana then in force, was the only person to whom such administration could be committed, was a matter to be considered by the court making the appointment, and its judgment thereon cannot be impeached collaterally. *Ib.*
5. It was the intent of the legislature of Louisiana in enacting article 1190 of the code that small successions should be granted without previous notice, and that the settlement of them should be done in as summary a manner as possible. *Ib.*
6. It is settled in Louisiana that the purchaser at a sale under the order of a probate court, which is a judicial sale, is not bound to look beyond the decree recognizing its necessity: the jurisdiction of the court may be inquired into, but the truth of the record concerning matters within its jurisdiction cannot be disputed. *Ib.*
7. The judgment of a parish court in Louisiana, within the sphere of its jurisdiction, is binding upon the courts of the several States and of the United States. *Ib.*
8. A court of equity will not entertain jurisdiction to set aside the granting of letters of administration upon a succession in Louisiana on the ground of fraud, and will not give relief by charging purchasers at a sale made by the administrator under order of the court, and those deriving title from them, as trustees in favor of alleged heirs or representatives of the deceased. *Ib.*

LACHES.

1. In this case it was held that a suit in equity, by persons claiming lands in Texas, under a will, to set aside deeds under which the defendants claimed title, through a sale by an administrator of the testator with the will annexed, was barred by the laches of the plaintiffs. *Hanner* v. *Moulton*, 486.

2. The right of a sovereign to enforce all obligations due to it, without regard to statutes of limitations, or to the defence of laches, does not pass to its creditors; and its intervention and appearance in a suit, in the nature of a garnishee process, brought by one of its creditors as against its debtors, does not give to such creditor its sovereign exemptions from liability to such defences. *Cressey* v. *Meyer*, 525.

LIMITATION, STATUTES OF.

1. Without resting this case on the point, the court is of opinion that the claimant's claim was presented to the Secretary of the Treasury, and was finally passed upon and adjudicated by him twelve years before the commencement of this action, and that consequently it is barred by the statute of limitations. Rev. Stat. § 1069. *United States* v. *Connor*, 61.
2. The residence out of the State of New York which operated to suspend the running of the statute of limitations under section 100 of the Code of Civil Procedure of 1849, as originally framed, was a fixed abode, entered upon with the intention to remain permanently, at least for a time, for business or other purposes. *Barney* v. *Oelrichs*, 529.
3. The only way in which statutes of limitation are available as a defence is when they are, at the proper time, specially pleaded. *Gormley* v. *Bunyan*, 623.

See LACHES, 2.

LOCAL LAW.

1. A debtor in Texas mortgaged to a creditor real estate there to secure the payment of debts to various creditors, and on the same day by a separate instrument to the same mortgagee personal property for the same object. Other creditors commenced suit in the Circuit Court of the United States against the debtor and caused the property covered by the chattel mortgage to be seized under writs of attachment, and to be sold and the proceeds applied towards payment of their claims in suit. The grantees in the chattel mortgage sued the marshal and his official sureties at law in the state court to recover the value of the goods seized and sold. This action was removed into the Circuit Court, where the creditors then filed a bill in equity to restrain the further prosecution of the action at law. A temporary injunction was issued. The mortgaged real estate was then sold, and the proceeds applied to the payment of the debts secured thereby, leaving a balance still due. After dismissing the injunction suit, the action at law came on for trial. A motion by the defendant to transfer it to the equity docket was refused. The defendant contended that the chattel mortgage was, under the laws of Texas, an assignment for the benefit of creditors and not a chattel mortgage. The court instructed the jury that the validity of the instrument as a mortgage depended upon whether when it was made the maker was solvent or insolvent. One of the counsel

for the plaintiffs, who was also a creditor, testified that he was present at the execution of the chattel mortgage, at which were also present the mortgagor and certain other creditors for whose security the mortgage was executed, and stated what took place then. His evidence was not objected to by the creditors whose counsel he was. There was a verdict against the marshal and his sureties. *Held*, (1) There was no error in refusing to transfer the action at law to the equity docket; (2) That the instrument in question was not, under the local law of Texas, an assignment for the benefit of creditors, but a chattel mortgage; (3) That the verdict of the jury determined the solvency of the grantor and the validity of the instrument; (4) That it was no error to permit the counsel to testify, as his clients did not object. *Reagan* v. *Aiken*, 109.

2. Under the laws of the Territory of New Mexico, a judgment of a probate court, in 1867, admitting a will to probate, cannot be annulled by the same court, in a proceeding instituted by an heir more than twenty years after the judgment was rendered and more than four years after the heir became of age. *Bent* v. *Thompson*, 114.

3. Under the "laws of Velarde," which, under the provisions of the Kearny Code, remained in force in that Territory until modified by statute, the practice and procedure of the probate courts were matters of statutory regulation, the probate judge had jurisdiction to admit wills to probate by receiving the evidence of witnesses, and his judgment was valid, and, although reviewable on appeal, was conclusive unless appealed from and reversed. *Ib.*

4. The provision in the Code of Iowa that "an action to determine and quiet the title to real property may be brought by any one having or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto, though not in possession," although construed by the courts of that State as authorizing a suit in equity to recover possession of real estate from the occupant in possession of it, does not enlarge the equity jurisdiction of federal courts in that state, so as to give them jurisdiction over a suit in equity in a case where a plain, adequate and complete remedy may be had at law. *Whitehead* v. *Shattuck*, 146.

5. The general principles of probate jurisdiction and practice as settled by a long series of decisions in the state courts and in the courts of the United States, are applicable to the powers and proceedings of the parish courts of Louisiana. *Simmons* v. *Saul*, 439.

6. The court directed an inventory of the estate, and appointed an administrator, in the same order, and the inventory was filed upon the following day. *Held*, That this was a sufficient compliance with the requirements of the Louisiana Code, Art. 1190. *Ib.*

7. In Illinois payments by the mortgagee for taxes and redemption of tax certificates made after the sale, may be taken out of the proceeds of the sale of the property. *Gormley* v. *Bunyan*, 623.

California. *See* SWAMP AND OVERFLOWED LAND, 9.
Florida. *See* HUSBAND AND WIFE.
Louisiana. *See* EQUITY, 11;
JURISDICTION, C.
Illinois. *See* GUARDIAN AND WARD;
INTEREST;
RIPARIAN PROPRIETORS, 2, 3.
New York. *See* INTEREST, 1;
LIMITATION, STATUTES OF, 2.

LONGEVITY PAY.

The plaintiff was a commander in the navy of the United States, with the following record of entry and promotion: in the volunteer service, acting master's mate, May 7, 1861; acting ensign, November 27, 1862; acting master, August 11, 1864:—in the regular service, master, March 12, 1868; lieutenant, December 18, 1868; lieutenant-commander, July 3, 1870; commander, March 6, 1887. He had never received any benefit of longevity pay under that clause in the act of March 3, 1883, 22 Stat. 473, c. 97, providing that "all officers of the navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular navy in the lowest grade having graduated pay held by such officer since last entering the service. *Held*, That, as he was a lieutenant during some days succeeding June 30, 1870, when the act of July 15 took effect, the lowest grade he held having graduated pay was that of lieutenant. *United States* v. *Green*, 293.

MARINE CORPS.

A private in the Marine Corps of the United States, discharged from the service as a person of bad character and unfit for service by order of the Secretary of the Navy through the Commandant of the Corps, without court martial or other competent military proceeding, forfeits thereby his retained pay under the provisions of Rev. Stat. § 1281; but he may claim and recover his transportation and subsistence from the place of his discharge to the place of his enlistment, enrollment or original muster into the service, under the provisions contained in Rev. Stat. § 1290. *United States* v. *Kingsley*, 87.

MASTER AND SERVANT.

The owners of a mine are not liable to an action for the falling of the roof of a tunnel upon a miner who, knowing that the roof is shattered and dangerous, voluntarily assists in removing a supporting timber, and, before another has been put in its place, sits down to rest at that spot. *Bunt* v. *Sierra Butte Gold Mining Co.*, 483.

MORTGAGE.

See GUARDIAN AND WARD; HUSBAND AND WIFE; INTEREST, 1; LOCAL LAW, 7; RAILROAD, 11–15.

MUNICIPAL CORPORATION.

1. The implied power of a municipal corporation to borrow money to enable it to execute the powers expressly conferred upon it by law, if it exists at all, does not authorize it to create and issue negotiable securities, to be sold in the market and to be taken by a purchaser freed from equities that might be set up by the maker. *Merrill* v. *Monticello*, 673.
2. To borrow money, and to give a bond or obligation therefor which may circulate in the market as a negotiable security freed from any equities that may be set up by the maker of it are essentially different transactions in their nature and legal effect. *Ib.*
3. A municipal corporation in Indiana issued its negotiable bonds having ten years to run, to the amount of $20,000, the proceeds to be used to aid in the construction of a school house, and sold them in open market. When they matured, a new issue of like bonds to the amount of $21,000 was made, which were sold in open market, and a part of the proceeds converted by a trustee of the corporation to his own use. *Held*, That the new issue was void for want of authority, and that the municipality was not estopped from setting up that defence. *Ib.*

See CONSTITUTIONAL LAW, A, 4; CONTRACT, 1; JURISDICTION, B, 1.

NULLUM TEMPUS OCCURRIT REGI.

See LACHES, 2.

NO MAN'S LAND.

See CONSTITUTIONAL LAW, 6, 7, 8; INDIAN TERRITORY; JURISDICTION, B, 2.

PARTNERSHIP.

1. The surviving partner in the management of a plantation in Tennessee which belonged to the deceased partner, retained possession of it after his partner's death, and of the slaves upon it, and continued to operate the plantation in good faith, and for what he thought were the best interests of the estate of the deceased as well as his own. When the war came, the plantation was in the theatre of the conflict, and at at its close the slaves became free. *Held*, That, under the circumstances, the surviving partner in a general settlement was not accountable for the value of the slaves, but was accountable for the fair rental

value of the property, including that of the slaves while they were slaves. *Clay* v. *Field*, 464.

PATENT FOR INVENTION.

1. Claim 1 of letters patent No. 228,525, granted June 8, 1880, to William D. Gray, for an improvement in roller grinding-mills, namely, "1. In a roller grinding-mill, the combination of the counter-shaft provided with pulleys at both ends and having said ends mounted in vertically and independently adjustable bearings, the rolls C E having pulleys connected by belts with one end of the counter-shaft, and the rolls D F independently connected by belts with the other end of the counter-shaft, as shown," is invalid, because, in view of the state of the art, it does not embody a patentable invention. *Consolidated Roller Mill Co.* v. *Walker*, 124.
2. The combination set forth in that claim evinces only the exercise of ordinary mechanical or engineering skill. *Ib.*
3. That claim is not infringed by the use of a roller mill made in accordance with letters patent No. 334,460, granted January 19, 1886, to John T. Obenchain. *Ib.*
4. An agreement, by which the owner of a patent for an invention grants to another person "the sole and exclusive right and license to manufacture and sell" the patented article throughout the United States, (not expressly authorizing him to use it,) is not an assignment, but a license, and gives the licensee no right in his own name to sue a third person, at law or in equity, for an infringement of the patent. *Waterman* v. *Mackenzie*, 252.
5. The mortgagee of a patent, by assignment recorded within three months from its date in the patent office, is the party entitled (unless otherwise provided in the mortgage) to maintain a bill in equity against an infringer of the patent. *Ib.*

PLEADING.

C lent money to the plaintiffs in error and took their notes payable to their own order endorsed in blank. He held the notes at the time of his death, and they came into possession of his executors who filled in the blank endorsement with a direction to pay to the order of B and M, executors of C, and sued in assumpsit to recover on them. The declaration contained a special count on the notes describing them as having been endorsed and delivered to C, and the usual common counts in which the transactions were all alleged to have taken place with C. *Held*, That, as to the special count the variance could be cured by amendment, and as to the general counts the notes offered conformed in legal effect to the allegations set forth in them. *Gormley* v. *Bunyan*, 623.

See LIMITATION, STATUTES OF, 3.

PRACTICE.

1. The Attorney General having, by his brief, confessed, as it was his duty to do, that there was error in an important ruling in the court below, entitling the defendants to a reversal, this court reverses the judgment of that court, and remands the case for a new trial. *Cook* v. *United States*, 157.
2. The court refuses to permit a plaintiff in error, at whose motion the cause has been dismissed at his cost, to withdraw the transcript of the record from the files of this court. *Cheney* v. *Hughes*, 403.
3. Counsel should use respectful language, both in brief and in oral arguments. *Kneeland* v. *American Loan and Trust Co.*, 509.
4. Ordinary courtesy and temperance of language are due from members of the bar in discussions in this court. *New Orleans* v. *Gaines's Administrator*, 595.

See CRIMINAL LAW, 1; JURISDICTION, A, 1, 2, 6; REMOVAL OF CAUSES, 1; RES JUDICATA; WRIT OF ERROR.

PRINCIPAL AND AGENT.

It is a condition precedent to the right of an agent to the compensation agreed to be paid to him that he shall faithfully perform the services he undertook to render; and if he abuses the confidence reposed in him, and withholds from his principal facts which ought, in good faith, to be communicated to the latter, he will lose his right to any compensation under the agreement; being no more entitled to it than a broker would be entitled to commissions who, having undertaken to sell a particular property for the best price that could be fairly obtained for it, becomes, without the knowledge of the principal, the agent for another, to get it for him at the lowest possible price. *Wadsworth* v. *Adams*, 380.

See COURT AND JURY, 1.

PRINCIPAL AND SURETY.

See EQUITY, 11, (5).

PROBATE COURTS.

See COURTS OF PROBATE.

PUBLIC LANDS.

The provision in the second section of the act of June 16, 1880, 21 Stat. 287, c. 245, requiring the approval of the Secretary of the Interior to the act of the state authorities of Nevada in selecting lands under the grant made by that act, while it did not vest in him an arbitrary authority, to be exercised at his discretion, empowered him to withhold his approval when it became necessary to do so, in order to pre-

vent such a monstrous injustice as was sought to be accomplished by these proceedings. *Williams* v. *United States*, 514.

See EQUITY, 6;
INDIAN TERRITORY;
PUEBLO LANDS OF SAN FRANCISCO;
SWAMP AND OVERFLOWED LANDS;
TIDE-LANDS.

PUEBLO LANDS OF SAN FRANCISCO.

1. The attorney of the city and county of San Francisco has no authority to relinquish rights reserved for the benefit of the public by the Van Ness ordinance, the city and county having succeeded to the property and become subject to the liabilities of the city. *San Francisco* v. *Le Roy*, 656.
2. The confirmation of the pueblo lands to San Francisco was in trust for the benefit of lot-holders, under grants from the pueblo, town or city of San Francisco, or other competent authority, and, as to the residue, in trust for the benefit of the inhabitants of the city; and the title of the city rests upon the decree of the court, recognizing its title to the four square leagues and establishing their boundaries, and the confirmatory acts of Congress. *Ib.*
3. The exercise of this trust, as directed by the Van Ness ordinance, was authorized both by the legislature of the State and by act of the Congress of the United States. *Ib.*
4. That ordinance having reserved from the grant all lands then occupied or set apart for public squares, streets and sites for school houses, city hall and other buildings belonging to the corporation a decree in a suit against the city and county to quiet a title derived through the ordinance should except from its operation the lands thus reserved, unless the fact that there were no such reservations be proved in the case by the public records of the city and county. *Ib.*
5. It is doubtful whether there were any lands within the limits of the pueblo which could be considered to be tide-lands; but whether there were or not, the duty and the power of the United States under the treaty, to protect the claims of the city of San Francisco as successor to the pueblo, were superior to any subsequently acquired rights or claims of California over tide-lands. *Ib.*

QUIET TITLE.

See EQUITY, 1;
LOCAL LAW, 4.

RAILROAD.

1. In this case it was held that, under two agreements made August 11, 1875, one between the St. Louis County Railroad Company and the

St. Louis, Kansas City and Northern Railway Company, and the other called the "tripartite agreement," between the Commissioners of Forest Park in the city of St. Louis, the said County company and the said Kansas City company, and a deed of the same date from the former company to the latter company, the Wabash, St. Louis and Pacific Railway Company was bound to permit the St. Louis, Kansas City and Colorado Railroad Company to use its right of way from the north line of Forest Park, through the park, to the terminus of the Wabash company's road, at Union Depot, on Eighteenth Street, in St. Louis, for a fair and equitable compensation. *Joy* v. *St. Louis*, 1.

2. The covenants in paragraph 9 of the tripartite agreement, as to the use of the right of way by other railroad companies, are binding upon subsequent purchasers, with notice, from the Kansas City company. *Ib.*
3. That agreement being a link in the chain of title of the appellants, they must be held to have had notice of its covenants, and are bound by them, whether they be or be not strictly such as run with the land. *Ib.*
4. Paragraph 9 of the tripartite agreement created an easement in the property of the County company and the Kansas City company, for the benefit of the public, which might be availed of, with the consent of the public authorities, properly expressed, by other railroad companies which might wish to use not only the right of way through the park, but also that between the park and the Union Depot. *Ib.*
5. The two agreements and the deed constituted a single transaction, and should be construed together, and liberally in favor of the public. *Ib.*
6. Such easement covered the tracks through the park and the tracks east of the park to the Union Depot. *Ib.*
7. The Circuit Court had power to enforce the specific performance of the agreement by enjoining the appellants from preventing the Colorado company from using the right of way; and to fix the amount of compensation by its use. *Ib.*
8. A remedy at law would be wholly inadequate. *Ib.*
9. The rights of the public in respect to railroads should be fostered by the courts. *Ib.*
10. The object of protecting the park, and that of preserving and fostering the commerce of the city, were set forth in the tripartite agreement, and the city of St. Louis, a plaintiff in the suit, as charged with those duties, was not merely a nominal party to this suit. *Ib.*
11. When a railroad company is incorporated to construct a railroad between two cities named as its termini, a mortgage given by it which, as expressed, is upon its line of railroad constructed, or to be constructed, between the named termini, together with all the stations, depot grounds, engine-houses, machine-shops, buildings, erections in any way now or hereafter appertaining unto said described line of railroad, creates a lien upon its terminal facilities in those cities, and is not limited to so much of the road as is found between the city limits of those places. *Central Trust Co.* v. *Kneeland*, 414.

12. When a railroad mortgage contains the "after-acquired property" clause, the mortgage is made thereby to cover not only property then owned by the company and described in it, but also property coming within the words of description and subsequently acquired, whether by a legal title or by a full equitable title; and there are no equities here to set aside that rule. *Ib.*

13. The term "wages of employés," as used in an order directing the payment of certain classes of debts out of the proceeds of the sale of a railroad under foreclosure, in preference to the secured liens, does not include the services of counsel employed for special purposes. *Louisville, Evansville &c. Railroad Co.* v. *Wilson*, 501.

14. Services of an attorney in securing payment to the receiver of a railroad of rent due for property of the railroad company and the return of the property, are entitled to priority of payment over the secured liens on a sale of the road under foreclosure of a mortgage upon it. *Ib.*

15. The other claims of the appellee, not being rendered for the benefit of the security holders, are not entitled to such priority. *Ib.*

See CENTRAL PACIFIC RAILROAD;
JURISDICTION, A, 15.

RECEIPT.

See EVIDENCE, 4.

REMOVAL OF CAUSES.

1. When an issue of fact is raised upon a petition for the removal of a cause from a state court to a Circuit Court of the United States, that issue must be tried in the Circuit Court. *Kansas City & Memphis Railroad Co.* v. *Daughtry*, 298.

2. The statutes of the United States imperatively require that application to remove a cause from a state court to a federal court should be made before the plea is due under the laws and practice of the State; and if the plaintiff does not take advantage of his right to take judgment by default for want of such plea, he does not thereby extend the time for application for removal. *Ib.*

3. The statutes of Tennessee require the plaintiff to file his declaration within the first three days of the term to which the writ is returnable and the defendant to appear and demur or plead within the first two days after the time allotted for filing the declaration. After due service of the writ, the plaintiff's declaration was filed within the prescribed time. The defendant three days later pleaded the general issue, and, after the lapse of four terms, filed a petition in the state court for removal on the ground of diverse citizenship. This was denied, and exceptions taken. The Supreme Court of the State upheld the refusal, passing upon the question of citizenship as an issue of

fact. *Held*, (1) That that court had no jurisdiction over that issue of fact; (2) But that, as the application for removal was made too late, its denial was right as matter of law, and the judgment of that court should be affirmed. *Ib.*

4. A large number of taxpayers in Muhlenburgh County, Kentucky, filed their bill against the officers of the county, and against two holders of bonds of the county, one holding "original" bonds issued to pay a county subscription to stock in a railway company, the other holding "compromise" bonds issued in lieu of some of the "original" bonds. The relief sought was to restrain the sheriff from levying a tax already ordered, and to restrain the county judge from making future levies, and to have both classes of bonds declared invalid, and the holders enjoined from collecting principal or interest, and that notice might be given to unknown bondholders, and for general relief. A large number of the bonds of each class were held by citizens of Kentucky. The two bondholders, defendants, (who were taxpayers in the county,) declined to make defence. Bondholders, citizens of Tennessee, then voluntarily appeared and asked to be made parties, and, their prayer being granted, petitioned in August, 1885, for the removal of the cause to the Circuit Court of the United States on the ground that there was a controversy that was wholly between citizens of different States, and which could be fully determined as between them, that the defendants, the ministerial officers of the county, had no interest in the controversy, that the two bondholders were acting in concert with the plaintiffs, and that the petitioners were the only parties that had a real interest in the controversy adverse to the plaintiffs. The cause was removed to the Circuit Court, and, a motion to remand having been denied, the bill was dismissed. *Held*, (1) That the amount involved was sufficient to give jurisdiction; (2) That the motion to remand should have been granted; (3) That the removal could not be sustained under the first clause of the act of March 3, 1875, 18 Stat. 470, then in force, because the controversy was not between citizens of different States, as the parties could not be so arranged on the opposite sides of the matter in dispute as to bring about that result; nor, under the second clause of the section, because there did not exist a separable controversy wholly between citizens of different States and which could be fully determined between them. *Brown* v. *Trousdale*, 389.

RES JUDICATA.

The decree in this case in the court below, founded on the report of a master, awarded to the complainant the recovery of rental for five months, separately stated. In this respect the decree was sustained here, (136 U. S. 89,) but it was reversed and the cause remanded, in order to have the computation made, after inquiry into special subjects indicated in the mandate. The Circuit Court, after determining the

special matters, regarded the matter of the time and amounts of the rental as settled by the former decree and as sustained by this court, and awarded interest on the amounts from the date of the former decree. *Held*, that there was no error in this; that the remanding of the cause did not reopen the whole subject of the accounts, but, on the contrary, contemplated no new investigation as to past matters. *Kneeland* v. *American Loan & Trust Co.*, 509.

RIPARIAN PROPRIETORS.

1. In this case certain land formed by accretion, on the Illinois side of the Mississippi River, in St. Clair County, Illinois, was held to belong to the plaintiff, as part of certain surveys in the common fields of Prairie du Pont, in Illinois, and not to belong to the city of St. Louis, Missouri, as an accretion to, and part of, an island in that city, called "Arsenal Island" or "Quarantine Island," on the Missouri side of the river, which island was originally more than a mile higher up the river than said surveys. *St Louis* v. *Rutz*, 226.
2. By the law of Illinois the title of the plaintiff extended to the middle of the main channel of the Mississippi River. *Ib.*
3. It is a rule of property in Illinois, that the fee of the riparian owner of lands in that State bordering on the Mississippi River extends to the middle line of the main channel of the river. *Ib.*
4. The terms of the deed which conveyed title to the plaintiff construed as not limiting him to the line of low water mark on the river. *Ib.*
5. The sudden and perceptible loss of land on the premises conveyed to the plaintiff, which was visible in its progress, did not deprive the grantor of the plaintiff of his fee in the submerged land, nor change the boundaries of the surveys on the river front, as they existed when the land commenced to be washed away. *Ib.*
6. If the bed of a stream changes imperceptibly by the gradual washing away of the banks, the line of the land bordering upon it changes with it; but, if the change is by reason of a freshet, and occurs suddenly, the line remains as it was originally. *Ib.*
7. If an island or dry land forms upon that part of the bed of a river which is owned in fee by the riparian proprietor, the same is his property. *Ib.*
8. The right of accretion to an island in the river cannot be so extended lengthwise of the river as to exclude riparian proprietors above or below such island from access to the river, as such riparian proprietors. *Ib.*
9. The law of title by accretion can have no application to a movable island, travelling for more than a mile, and from one State to another, for its progress is not imperceptible, in a legal sense. *Ib.*

SAN FRANCISCO.

See PUEBLO LANDS OF SAN FRANCISCO.

STATUTE.

A. Construction of Statutes.

In all cases of ambiguity the contemporaneous construction not only of the courts but of the departments, and even of the officials whose duty it is to carry the law into effect, is controlling. *Schell's Executors* v. *Fauché*, 562.

B. Statutes of the United States.

See Bankrupt, 1, 3;
Central Pacific Railroad;
Constitutional Law, 6, 7, 8;
Indian Territory, 1, 3;
Informer;
Jurisdiction, A, 10, 18, 19; B, 1;
Limitation, Statutes of, 1;
Longevity Pay;
Marine Corps;
Public Land;
Swamp and Overflowed Land, 1, 2, 3, 6, 10, 11.

C. Statutes of States and Territories.

The courts of the United States take judicial notice of all the public statutes of the several States. *Gormley* v. *Bunyan*, 623.

California. *See* Swamp Land, 9.
Dacota. *See* Equity, 4.
Illinois. *See* Guardian and Ward, 1, 4; Interest.
Iowa. *See* Constitutional Law, A, 4, 5; Local Law, 4.
Louisiana. *See* Equity, 11, (4); Jurisdiction, C, 5; Local Law, 6.
New Mexico. *See* Local Law, 2, 3.
New York. *See* Interest, 1; Limitation, Statutes of, 2.
Ohio. *See* Constitutional Law, B, 1, 2.
Tennessee. *See* Removal of Causes, 3.
Texas. *See* Local Law, 1; Constitutional Law, A, 9.
Virginia. *See* Constitutional Law, A, 1, 2, 3, 11.

STATUTE OF FRAUDS.

See Frauds, Statute of.

STATUTES OF LIMITATION.

See Limitation, Statutes of.

SWAMP AND OVERFLOWED LAND.

1. The swamp land grant of September 28, 1850, to the several States was *in præsenti*, and upon identification of the lands thereunder in lawful

mode, title thereto related back to the date of the grant. *Tubbs* v. *Wilhoit*, 134.

2. The identification originally prescribed by the action of the Secretary of the Interior was changed as to such lands in California by the act of July 23, 1866, 14 Stat. 219, section four thereof prescribing new and additional modes of identification. *Ib.*
3. That act provided, among other things, that (1) all lands represented as swamp and overflowed on township plats, the surveys and plats of which townships had been made under the authority of the United States and approved, were to be certified to the State by the commissioner of the general land office within prescribed periods; and (2) existing state segregation maps and surveys of such lands found by the United States Surveyor General to conform to the existing system of the United States were directed to be made the basis of township plats, to be thereafter constructed and approved by that officer, and forwarded to the commissioner of the general land office for approval. *Ib.*
4. In 1864, United States subdivisional survey of the township embracing the land in controversy in this suit was made and approved by the United States surveyor general, and a copy of the plat thereof, also approved by him, was filed in the proper local land office. On such approved plat certain parts were colored green, and marked "swamp and overflowed land," and excluded from the estimated aggregate area of public lands shown thereon, and were included in the estimated area of swamp and overflowed land in that township. In August and September, 1864, under authority of state law, one Kile applied to purchase the land in controversy from the State under the swamp land grant, secured the requisite survey and the approval thereof by the state surveyor general; and in August, 1865, having made full payment to the State received the state's patent therefor. *Held*, that the title of the State was confirmed by the act of 1866, by the return of the land as swamp and overflowed on the survey of the United States and the township plat, approved by the United States surveyor general and filed in the local land office in 1864. *Ib.*
5. Prior to executive instructions of April 17, 1879, the commissioner's approval of the public surveys and plats was not required before filing thereof in the local offices of sale by the United States surveyor general, and on such filing the land became subject to sale, selection and disposal. Power to correct fraud or error therein existed in the commissioner, but where the survey and plat were correct they became final and effective when approved and filed in the local land office by the surveyor general. *Ib.*
6. Temporary withdrawal of the township plat prior to the passage of the act of 1866, did not defeat the confirmation prescribed by that act in the present case, a certified copy of such plat having been substituted in its place and the survey thereof never having been disapproved nor

changed otherwise than by the erasure of the words "swamp and overflowed" as to this and other tracts and the substitution on the plat of the words "public lands," under direction of the commissioner of the general land office given after his control over the matter had ceased. Official acceptance of the survey by the commissioner may be inferred from its adoption in making sales and issuing patents, if such approval be in fact necessary. *Ib.*

7. The homestead entry of plaintiff in error made subsequent to the making of the survey and filing of such township plat thereof in the local office, and subsequent to the state segregation survey, sale and patent of the land to Kile, and subsequent to the confirmatory act of 1866, was ineffectual against the right acquired by the State and its patentee. *Ib.*
8. The question whether or not lands returned as "subject to periodical overflow" are "swamp and overflowed lands" is a question of fact, properly determinable by the Land Department, whose decisions, on matters of fact, within its jurisdiction, are, in the absence of fraud or imposition, conclusive and binding on the courts of the country, and not subject to review here. *Heath* v. *Wallace*, 573.
9. Whether or not a survey made by an officer of the State of California is a "segregation survey" as defined by the act of the legislature of that State, approved May 13, 1861, is question on which this court will follow the decision of the highest court of that State. *Ib.*
10. The acts of the general assembly of the State of Illinois of June 22, 1852, and of March 4, 1854, with reference to swamp lands, were in entire harmony with the acts of Congress, and the intention of the legislation was, as the Supreme Court of Illinois held, to protect the title of purchasers from the United States, after the passage of the act of September 28, 1850, which took effect as a grant *in præsenti*, while it was sought by the Illinois acts to secure to the counties the right to receive the money paid for the lands, as well as to the purchasers the title of the State. *Cook* v. *Calumet & Chicago Canal Co.*, 635.
11. The swamp land act of 1850, 9 Stat. 519, c. 84, was not intended to apply to lands held by the United States, charged with equitable claims of others which the United States were bound by treaty to protect, and consequently does not affect the pueblo lands which were acquired oy the pueblo before its passage. *San Francisco* v. *Le Roy*, 656.

TRADEMARK.

1. An exclusive right to the use of words, letters or symbols, to indicate merely the quality of the goods to which they are affixed, cannot be acquired. *Lawrence Manufacturing Co.* v. *Tennessee Manufacturing Co.*, 537.
2. If the primary object of a trademark be to indicate origin or ownership, the mere fact that the article has obtained such a wide sale that it has

also become indicative of quality, is not of itself sufficient to make it the common property of the trade, and thus debar the owner from protection; but, if the device or signal was not adopted for the purpose of indicating origin, manufacture or ownership, but was placed upon the article to denote class, grade, style or quality, it cannot be upheld as technically a trademark. *Ib.*

TIDE-LANDS.

The tide-lands which passed to California on its admission were not those occasionally affected by the tide, but those over which the tide-water flowed so continuously as to prevent their use and occupation. *San Francisco* v. *Le Roy*, 656.

WILL.

See LOCAL LAW, 2, 3.

WRIT OF ERROR.

It is to be presumed that when a writ of error is filed here from Colorado, signed (the Chief Justice being absent) by a judge who styles himself "Presiding judge of the Supreme Court" of that State, that he acts in that capacity in the absence of the Chief Justice, and in accordance with the provisions of the Constitution of the State, and that the writ was properly allowed. *Butler* v. *Gage*, 52.

See JURISDICTION, A, 1.