INDEX.

ADMIRALTY.

1. A collision occurred, in Vineyard Sound, between the steam yacht A., at anchor, owned by V. of New York, and the steamship D., owned by a Massachusetts corporation. The A. sank. The corporation filed a libel against V., to limit its liability in the District Court for Massachusetts, under §§ 4283 and 4284 of the Revised Statutes, alleging that the D. was lying at Boston, and averring no negligence in the D., and negligence in the A., and praying for an appraisement of the value of the D. and her pending freight at the time of the collision, and offering to give a stipulation therefor. It was alleged that the A. was worth over $250,000, and that the value of the D. and her freight was less than $150,000. The court appointed three appraisers, who made the appraisement *ex parte*, and reported the value of the D. at $80,000 and of her freight at $2395.33, and a stipulation was given for those amounts. A monition was then issued for notice to V. and all persons concerned to prove their claims for loss by a day named. The monition was duly published but was not personally served on V. in the Massachusetts District. The court made an order enjoining V. and all other persons from suing the corporation or the D. in respect of any claims arising out of the collision "except in these proceedings." Afterwards, M., the master of the A. filed a libel in the District Court for the Southern District of New York, against the corporation, the D., V., and all persons claiming damages from the collision for apportionment of limited liability, charging the fault wholly on the D., alleging that the loss of V. was $305,000, and that of M. over $1300; and that the value of the D. was over $200,000. Under process the D. was attached, and it was served on the corporation, and V. duly appeared. On motion of the D. and the corporation the District Court in New York, on a hearing of all parties made an order vacating the process issued on the libel of M., setting aside the service thereof on the corporation, releasing the D. from the attachment, and dismissing the libel. The court held that M. had notice, before he filed his libel, of the proceedings in Massachusetts, and of the injunction order issued there. On applications by M. to this court, for a mandamus to the District Court in New York, to vacate its order and reinstate the libel of M., and for a prohibition to the District Court

in Massachusetts from proceeding further on the libel filed there; *Held*, (1) The District Court in New York dismissed the libel of M. on a hearing on the merits; (2) If the jurisdiction of that court was in issue before it, the remedy of M. was by a direct appeal to this court, on that question, under § 5 of the act of March 3, 1891, c. 517, 26 Stat. 827; (3) If otherwise, the remedy of M., as against the order dismissing the libel, was by an appeal to the Circuit Court of Appeals, for the Second Circuit, under § 6 of the same act; (4) The mandamus is refused; (5) The District Court in Massachusetts acquired prior jurisdiction of the proceedings; (6) That court did not lose its jurisdiction by the fact that the D. subsequently went to New York; (7) In order to sustain the proceeding it was not necessary that M. or V. should have been personally served with notice thereof within the District of Massachusetts, or that the D. should have been taken and held by the Massachusetts Court; (8) The filing of the libel by the corporation, with the offer of a stipulation, gave jurisdiction, and no subsequent irregularity in procedure could take it away; (9) The *ex parte* appraisement was not void; (10) The District Court in Massachusetts can order the giving of a new or further stipulation, and, on a failure to comply with such order, can stay the further proceedings of the corporation, deny it all relief, and dismiss its libel; (11) The provision of Rule 54 in Admiralty, for the giving of a stipulation, instead of making a transfer to a trustee, is valid, and the value involved may be judicially ascertained primarily without a hearing of the persons interested adversely. *In re Morrison*, 14.

2. In construing the act of February 16, 1875, 18 Stat. 315, c. 77, so far as it relates to admiralty suits, it is settled: (1) That the facts found by the court below are conclusive; that a bill of exceptions cannot be used to bring up the evidence for a review of the findings; that the only rulings upon which this court is authorized to pass are such as might be presented by a bill of exceptions prepared as in an action at law; and that the findings have practically the same effect as the special verdict of a jury; (2) That it is only the ultimate facts which the court is bound to find; and that this court will not take notice of a refusal to find the mere incidental facts, which only amount to evidence from which the ultimate fact is to be obtained; (3) That if the court below neglects or refuses to make a finding one way or the other, as to the existence of a material fact which has been established by uncontradicted evidence, or if it finds such a fact when not supported by any evidence whatever, and an exception be taken, the question may be brought up for review in that particular. *The City of New York*, 72.

3. Applying these rules to the findings in the present case, *Held*, (1) That there was gross negligence on the part of the steamship in failing to run at moderate speed in a fog, and in failing to take the proper precautions when the proximity of the sailing vessel became known;

(2) That so far as the barque was concerned there was evidence to support the findings of the Circuit Court, and that these findings justify the conclusion that its change of course was made *in extremis*. *Ib.*

4. The probability that a steamer or a vessel sailing with a free wind will pursue the course customarily pursued in that vicinity by vessels bound from and to the same port is so strong, that a deviation from that course without apparent cause will not be considered as established without a clear preponderance of testimony. *Ib.*
5. There is no such certainty of the exact position of a horn blown in a fog, as will justify a steamer in speculating upon the probability of avoiding it by a change of helm, without taking the additional precaution of stopping until its location is definitely ascertained. *Ib.*
6. Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. *Ib.*

See JURISDICTION, A, 5.

ADVERSE POSSESSION.

See UNITED STATES, 5.

APPEAL.

See MANDAMUS.

APPRAISERS.

See EMINENT DOMAIN, 6, 7, 8.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

An assignment of all his property, made for the benefit of his creditors with preferences, by a citizen of Utah to another citizen of Utah which is valid by the laws of Utah and valid at the common law, is valid in Idaho against an attaching creditor, as to property in Idaho of which the assignee has taken possession, notwithstanding the provision in the Revised Statutes of Idaho that no assignment by an insolvent debtor otherwise than as therein provided is binding on creditors, and that creditors must share *pro rata*, without priority or preference. *Barnett* v. *Kinney*, 476.

ATTACHMENT.

See JURISDICTION, A, 6.

BANKRUPT.

A creditor of a bankrupt caused execution to be levied, before the bankruptcy, on goods of the bankrupt to satisfy the debt. The levy

was afterwards set aside, as an illegal preference within the purview of the bankrupt act, in consequence of knowledge of the debtor's condition by the plaintiff's attorney. *Held*, that the creditor was not thereby precluded from proving his debt against the bankrupt; and that an endorser of the note of the bankrupt to the creditor, on which the judgment was founded, was not discharged from his liability as endorser by reason of the levy being declared in fraud of the provisions of the bankrupt law, Rev. Stat. § 5084, and § 5021, as amended by the act of June 22, 1874, 18 Stat. 178, 181. *Streeter* v. *Jefferson County Bank*, 36.

See MARRIED WOMAN, 3.

BOUNDARY.

See INTERSTATE BOUNDARY.

CASES AFFIRMED.

See CONSTITUTIONAL LAW, 1;
COSTS, 9, 14, 23.

CASES DISTINGUISHED.

1. The cases of *Manhattan Life Ins. Co.* v. *Smith*, 44 Ohio St. 156; *Whitehead* v. *New York Life Ins. Co.*, 102 N. Y. 143; and *Garner* v. *Germania Life Ins. Co.*, 110 N. Y. 266, distinguished. *Miles* v. *Connecticut Mutual Life Insurance Co.*, 177.
2. *Huse* v. *Glover*, 119 U. S. 543, and *Sands* v. *Manistee Improvement Co.*, 123 U. S. 288, each distinguished from this case. *Harman* v. *Chicago*, 396.
3. *Gardner* v. *Risher*, 35 Kansas, 93, distinguished from *Kennett* v. *Fickel*, 41 Kansas, 211. *Clement* v. *Field*, 467.

See UNITED STATES, 3.

CHARITY.

See EXECUTOR AND ADMINISTRATOR.

CIRCUIT COURTS OF APPEALS.

See JURISDICTION, A, 5;
MANDAMUS.

CLAIMS AGAINST THE UNITED STATES.

1. By sec. 7 of the act of October 2, 1888, 25 Stat. 505, 523, c. 1069, in regard to the building for the Library of Congress, which provided that all contracts for the construction of the building should be made by the Chief of Engineers of the Army, and repealed so much of the act

of April 15, 1886, 24 Stat. 12, c. 50, as required the construction of the building according to the plan submitted by John L. Smithmeyer, and enacted that "hereafter, until otherwise ordered by Congress, no work shall be done in the construction of said Library except such as is herein provided for, and all contracts for work or materials not necessary for the execution of the work contemplated herein are hereby rescinded," it was provided that "all loss or damage occasioned thereby or arising under said contracts, together with the value of the plan for a Library building," so submitted by Smithmeyer, "may be adjusted and determined by the Secretary of the Interior, to be paid out of the sums heretofore or hereby appropriated." Smithmeyer and his partner afterwards brought a suit in the Court of Claims against the United States, to recover $210,000 as the value of plans and drawings made by them for a building for the Library, which were delivered to and accepted by the United States, and used in constructing the building. The Court of Claims *held*, that the acts of the parties indicated that the services of the plaintiffs should be estimated according to the rule of *quantum meruit*, and not according to the schedule of charges of the American Institute of Architects, and that they were entitled to recover $8000 a year for six years' services. *Held*, that that was a proper and reasonable decision. *Smithmeyer* v. *United States*, 342.

2. The treasury officers have a right to require of a marshal items of expenses incurred in endeavoring to arrest persons charged with the commission of crime. *United States* v. *Fletcher*, 664.

3. When claims against the United States are presented to the proper department for allowance, and the department suspends action until proper vouchers are furnished, or other reasonable requirements are complied with, the courts should not assume jurisdiction until final action is taken. *Ib.*

CLERK OF A CIRCUIT COURT.

See COSTS, 15 to 20, 22, 23, 24, 25 to 29, 31.

CLERK OF A DISTRICT COURT.

See COSTS, 9 to 14, 22, 25, 31.

COLLISION.

See ADMIRALTY, 1, 3, 5.

COMMON CARRIER.

1. In an action against a common carrier to recover damages for personal injuries, if the facts relating to contributory negligence are disputed, that question should be submitted to the jury; and, if the jury find for the plaintiff, the court is not required, in the exercise of judicial

discretion, to set the verdict aside. *Washington & Georgetown Railroad Co.* v. *Harmon*, 571.

2. A railway company being bound to deliver a passenger, its failure to stop long enough to enable him to alight with safety is a neglect of duty which involves liability for injuries resulting therefrom. *Ib.*

3. When the evidence justifies a finding that future damages will result from an accident to a passenger caused by the negligence of a common carrier, the jury may estimate and include such damages in their verdict. *Ib.*

4. Two suits at law against a railroad company, incorporated by New York, were brought in the Circuit Court of Saline County, Missouri, by two different plaintiffs, to recover damages for injury by the company, as a common carrier, through negligence, to live cattle transported by it. The damages occurred from a collision which took place in Ohio. The cattle were being transported from Massachusetts to Missouri. The process of the court was served in St. Louis, Missouri, on a city passenger-agent of the defendant, in its business office there, who had charge of it at the time, no chief officer of the defendant being found in St. Louis at the time. By a petition in each suit by the defendant, which stated that it appeared only for the purpose of making the application, the suit was removed into the Circuit Court of the United States, because of diverse citizenship. The defendant then moved in the latter court, in each suit, to quash the process on the ground that it conferred no jurisdiction on the state court over the defendant. The motion was overruled. Both cases were then tried before the same jury. In one case the verdict was for $8750 damages, and $2362.50 interest thereon at 6 per cent per annum from the time the suit was brought, and in the other case for $44,000 damages, and $11,880 interest thereon. In the first case judgment was entered for $11,112.50, with interest from the date of the verdict, and in the second case for $50,000, and like interest, the plaintiffs having voluntarily remitted $5880, because the petition claimed only $50,000 damages. There was only one bill of exceptions, covering all matters in the two suits, and one writ of error, and one citation, and one supersedeas bond, and one transcript of record. This court took cognizance of the two cases, and *Held*,

   (1) The state court acquired jurisdiction of the cases, under subdivision 4 of § 3489 of the Revised Statutes of Missouri of 1879, and § 3481 of the same Revised Statutes: The cases on that subject in the courts of Missouri reviewed;

   (2) Whether the defendant waived any objection to the service of the process in the state court by appearing therein and filing a petition for the removal of the cause into the Federal court, *quære;*

   (3) A large number of the cattle being cows with unborn calves, which were lost through their premature births, caused by the collision, the defendant was liable for deterioration in the value

of such cows, caused by such abortions, although it was not shown that the defendant knew that the cows were with calf;

(4) The cases having been tried in the court below on the theory that the value of the cattle at their place of destination in Missouri was the proper basis for fixing the damages, the point that their value at the terminus in Ohio of the defendant's road was the proper basis cannot be taken for the first time in this court;

(5) It was proper to show that some of the cattle died, or lost their calves, after their final arrival in Missouri, from the effects of the collision;

(6) The proper rule of damages was the difference between the market value of the cattle, in the condition in which they would have arrived but for the negligence of the defendant, and their market value in the condition in which, by reason of such negligence, they did arrive;

(7) It was not material whether the plaintiffs intended to keep the cattle upon their farms, for breeding purposes, or to sell them upon the market, the depreciation in value of the cattle being the same in either case;

(8) The court having instructed the jury that the burden was upon the plaintiffs to show that the abortions were the direct result of the collision, and the jury having found in favor of the plaintiffs on that question, and the bill of exceptions containing all the evidence in the case on either side, and there being sufficient evidence to sustain the verdict, this court cannot review it on the weight of the evidence;

(9) There is no ground for holding that the plaintiffs ought to have traced each animal and to have shown the amount received for it when sold;

(10) It was improper, under the statutes of, and decisions in Missouri, for the jury to allow interest on the damages from the time suit was brought; and as the jury stated, in each verdict, the amount of interest allowed, this court reduced the judgments by striking out the interest, and ordering judgments to be entered for the amounts of the damages, with interest from the entry, and costs; the costs of this court to be paid one-half by the plaintiffs in error and the other half by the defendant in error. *New York, Lake Erie & Western Railroad Co.* v. *Estill*, 591.

COMPUTATION OF TIME.

See INDIAN.

CONFLICT OF LAW.

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS;
EXECUTOR AND ADMINISTRATOR.

CONSTITUTIONAL LAW.

1. *Bell's Gap Railroad Co.* v. *Pennsylvania*, 134 U. S. 232, affirmed to the point that a provision in a state law for the assessment of a state tax upon the face value of bonds instead of upon their nominal value violates no provision of the Constitution of the United States. *Jennings* v. *Coal Ridge Improvement & Coal Co.* 147.
2. It is within the constitutional power of Congress, in legislating for the creation of a commission charged with public duties, to provide that some members of it shall be appointed by the President, by and with the advice and consent of the Senate, and that other members of it shall consist of officers in the service of the United States, who had been appointed by the President and confirmed by the Senate, when the duties of the new office are germane to those of the offices already held by the latter. *Shoemaker* v. *United States*, 282.
3. Congress may increase the duties of an existing office without rendering it necessary that the incumbent should be again nominated, confirmed and appointed. *Ib.*
4. The ordinance of the city of Chicago, imposing a license tax for the privilege of navigating the Chicago River and its branches upon steam tugs licensed by the United States authorities under the provisions of Rev. Stat. § 4321, is an unconstitutional exercise of municipal authority, and is invalid. *Harmon* v. *Chicago*, 396.
5. The Fifth Amendment to the Constitution operates exclusively in restriction of Federal power and has no application to the States. *Thorington* v. *Montgomery*, 490.
6. A controversy as to the good faith of a transaction by which the title to the property which forms the subject of this litigation was transferred to the plaintiff in error is *held* to involve no Federal question. *Ib.*

See JURISDICTION, A, 3, 4; C, 4;
TAX AND TAXATION, 3, 4.

CONTRIBUTORY NEGLIGENCE.

See COMMON CARRIER, 1, 3.

COSTS.

1. In a suit brought by a marshal against the United States, under the act of March 3, 1887, c. 359, (24 Stat. 505,) to recover $1770.60 as fees and disbursements of the marshal, from March, 1886, to October, 1888, the items having been disallowed by the First Comptroller: *Held*, that the Circuit Court of the United States, had jurisdiction to review items disallowed by the First Comptroller before March 3, 1887, although, by § 2 of the act, jurisdiction was withheld of claims which had theretofore "been rejected, or reported on adversely, by

any court, department or commission authorized to hear and determine the same." *United States* v. *Harmon*, 268.

2. Items for marshal's fees for distributing venires; and for amounts paid for blanks for United States attorney; and for amounts charged for marshal's travel to attend court on days when the courts were held by adjournment over an intervening day, and were not held on consecutive days, and to attend special courts or special terms of court; and for expenses in endeavoring to make an arrest; and for travel to serve precepts, where he had in his hands for service, several precepts against different persons for different causes, and made service of two or more of such precepts in the course of one trip, making one travel to the most remote point of service, but charging full travel on each precept; and for amounts paid for hack hire in transporting prisoners to and from court; allowed. *Ib.*
3. Whether the payment of the amount of the judgment in favor of the marshal will exceed the maximum compensation of the plaintiff as marshal, and the proper expenses of his office, is a matter still open for adjustment at the Treasury Department. *Ib.*
4. A marshal is not entitled to charge "travel in going to serve" process when taking a prisoner, under sentence, to the place of commitment. *United States* v. *Tanner*, 661.
5. When, for convenience in making up accounts, an outgoing marshal relinquishes to his successor his right to expenses incurred in endeavoring to arrest persons for offences against the United States, the incoming marshal may charge these fees in his accounts, and they should be allowed. *United States* v. *Fletcher*, 664.
6. A marshal of a district into which an offender, who has committed a crime in another district, comes, may deputize the marshal of the district in which the offence was committed, or his deputy, to execute the warrant of removal, and relinquish to him the fees therefor. *Ib.*
7. A marshal may charge mileage upon as many writs as he may have in his hands, where the writs are against different persons. *Ib.*
8. Marshals are entitled to per diem fees for attendance when attending under §§ 583, 584, 671, 672 and 2013 Rev. Stat., the same as if the judge were present and business were transacted. *United States* v. *Pitman*, 669.
9. A clerk of a District Court is entitled to charge for entering orders approving marshal's accounts. *United States* v. *Van Duzee*, 140 U. S. 169, approved. *United States* v. *Jones*, 672.
10. He is also entitled to charge for certifying copies of such orders to be forwarded to the department with the accounts, but not for the seals affixed to such copies unless such authentication is required by the Treasury Department. *Ib.*
11. He is also entitled to charge for copies of orders for marshals to pay supervisors of elections, without regard to the necessity for such orders, or the power of the court to make them. *Ib.*

12. He is also entitled to a fee for filing a marshal's accounts with vouchers attached, but not to a separate fee for filing each voucher. *Ib.*
13. He is also entitled to fees for recording, after the determination of a prosecution, all the proceedings relating to it, including the order of commitment. *Ib.*
14. *United States* v. *Harmon*, 147 U. S. 268, affirmed to the point of the power of the Treasury to determine whether the several allowances increase his salary beyond the maximum compensation. *Ib.*
15. A clerk of a Circuit Court is not entitled to a per diem pay for services in selecting juries in connection with the jury commissioner. *United States* v. *King*, 676.
16. When a statute increases the duties of an officer by the addition of other duties germane to the office, he must perform them without extra compensation; but if he is employed to render services in an independent employment, not incidental to his official duties, he may recover for such services. *Ib.*
17. When a clerk of a Circuit Court attends the court personally at one place within the district, and appoints a deputy to attend to it at another place or in a different division of the same judicial district, he is entitled, under Rev. Stat. § 831, to make a per diem charge for attendance at each. *Ib.*
18. A clerk of a Circuit Court is not entitled to charge for docketing and endorsing an order for the removal of a prisoner for trial in another district. *Ib.*
19. Charges by a clerk for making separate reports of the amount of fees due each juror and witness and filing separate orders for their payment are disallowed: also charges for making separate recognizances for witnesses in a criminal case, it not appearing that the witnesses could not have conveniently recognized together. *Ib.*
20. The clerk of a Circuit Court is not entitled to a fee for entering upon the final record the proceedings before a committing magistrate, as, although they may be properly filed, and a fee charged for the filing, they form no part of the record. *Ib.*
21. A District Attorney is entitled to charge a per diem for services before a United States commissioner upon the same day that he is allowed a per diem for attendance upon the court. *United States* v. *Erwin*, 685.
22. A clerk of a Circuit or District Court is entitled to fees for making dockets and indexes, taxing costs, etc., in suits upon manufacturers' bonds under the internal revenue law where issue was joined and testimony given: also for entering orders of court for *alias fi. fa.* and for *venditioni exponas*, one folio each: also for making record entries of recognizances of defendants, or of entering and filing such recognizances, but not for both: also for making docket entries and indexes in cases of *sci. fa.* and other proceedings where issue was joined: also for entering orders approving the accounts of officers of the court, and

filing duplicate accounts: also for entering separate orders of court excusing jurors, entering orders of court to issue subpœnas, and entering an order for *alias capias* when such orders are made by the court and the fees allowed; and also for drawing recognizances of defendants. He is not entitled to fees for filing vouchers: nor for making dockets and indexing where no indictment is found: nor for attendance upon the District Court as a jury commissioner in drawing jurors. *United States* v. *Payne*, 687.

23. On the authority of *United States* v. *Ewing*, 140 U. S. 142, the charges of a commissioner of a Circuit Court for docket fees are disallowed, and the charges for acknowledgments of sureties on recognizances of defendants in prosecutions brought by the United States reduced to a fee for a single acknowledgment. *United States* v. *Hall*, 691.
24. There is no legal objection to the same person holding the offices of clerk and of commissioner of a Circuit Court, and the person so holding them is entitled to the fees and emoluments of both. *United States* v. *McCandless*, 692.
25. The court disallows the following charges by a clerk of a District Court: (1) Docket fees where the grand jury returned "not true bill;" (2) Docket fees where the case is not finally disposed of; (3) A charge for miscellaneous fees, entering orders of court, making copies, certificates, and seals, as being too general; (4) A charge for issuing commitments to jail in addition to copy of order of removal, as being too indefinite; (5) An item for entering orders of court, approving accounts of officers, and copies of certificates and seals. *Ib.*
26. Only one fee is allowed for taking the acknowledgment of a defendant and his sureties unless it be made to appear that it was necessary to take them separately. *United States* v. *Taylor*, 695.
27. A clerk may charge for copies of orders of court directing the marshal to pay witnesses and jurors, but not for affixing seals thereto. *Ib.*
28. No charge can be made for filing orders from the District Attorney discharging witnesses from attendance. *Ib.*
29. A fee may be charged for an affidavit of a witness as to his mileage and attendance; but this affidavit need not be filed. *Ib.*
30. The rule in *United States* v. *King*, *ante*, 676, that proceedings before a commissioner form no part of the record, applies to affidavits. *Ib.*
31. The comptroller cannot prescribe the length of capiases or bonds, or limit a clerk to a certain number of folios. *Ib.*

See COSTS AGAINST THE UNITED STATES.

COSTS AGAINST THE UNITED STATES.

The Circuit Court had a right, under § 15 of the act of March 3, 1887, c. 359, 24 Stat. 505, 508, c. 359, to award certain costs to the plaintiff, considering the frivolous and vexatious nature of the objections taken to the greater part of this claim. *United States* v. *Harmon*, 268.

COURT AND JURY.

It is not reversible error in a judge of a Federal Court to express his own opinion of the facts, if the rules of law are correctly laid down, and if the jurors are given to understand that they are not bound by such expressions of opinion. *Doyle* v. *Union Pacific Railway Co.*, 413.

CUSTOMS DUTIES.

Knit woollen undershirts, drawers and hosiery are subject to duty as "wool-wearing apparel," under paragraph 396 of section 1 of the act of October 1, 1890, 26 Stat. 567, 597, c. 1244, and not as "knit fabrics made on frames," under paragraph 392 of the same act. *Arnold* v. *United States*, 494.

DAMAGES.

A railroad corporation is not liable to exemplary or punitive damages for an illegal, wanton and oppressive arrest of a passenger by the conductor of one of its trains, which it has in no way authorized or ratified. *Lake Shore & Michigan Southern Railway Co.* v. *Prentice*, 101.

See COMMON CARRIER, 3, 4, (4) (6).

DISTRICT OF COLUMBIA.

1. The proviso in the Maryland act of cession of the District of Columbia, that nothing therein contained should be "so construed to vest in the United States any right of property in the soil, as to affect the right of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States," has no reference to the power of eminent domain which belongs to the United States as the grantee in the act of cession. *Shoemaker* v. *United States*, 282.
2. The United States possess full and unlimited jurisdiction, both of a political and municipal nature, over the District of Columbia. *Ib.*
3. In the District of Columbia a judgment in an action of tort does not bear interest. *Washington & Georgetown Railroad Co.* v. *Harmon*, 571.

EMINENT DOMAIN.

1. Land taken in a city for public parks and squares by authority of law, is taken for a public use. *Shoemaker* v. *United States*, 282.
2. The extent to which such property shall be taken for such use rests wholly in legislative discretion, subject only to the restraint that just compensation must be made. *Ib.*
3. The approval by the President of the price to be paid by the United States for private land, condemned for public use in the exercise of the right of eminent domain, is not a judicial act. *Ib.*

4. An intention expressed by Congress not to go beyond a sum named as the aggregate, in condemning land for a park in Washington, is not a direction to appraisers to keep within any given limit in valuing any particular piece of property. *Ib.*
5. It is competent for the legislature, in providing for the cost of a public park, to assess a proportionate part of it upon property specially benefited. *Ib.*
6. In condemning lands for a public park, it is competent for the court, in the absence of a legislative direction prescribing the form of the oath to be administered to appraisers, to direct them to take an oath to "faithfully, justly and impartially appraise the value or values of said parcels of land, and of the respective interests therein, to the best of their skill and judgment." *Ib.*
7. In determining the values of lands so taken appraisers should exercise their own judgment, derived from personal knowledge and inspection of the lands, as well as their knowledge derived from the evidence adduced by the parties. *Ib.*
8. An appellate court will not interfere with the report of commissioners, (or appraisers,) in such case, to correct the amounts reported, except in case of gross error showing prejudice, corruption or plain mistake. *Ib.*

See ROCK CREEK PARK.

EQUITY.

1. The verdict of a jury upon an issue submitted to it by order of a Court of Chancery is advisory only, and is binding upon the court only so far as it chooses to adopt it. *Kohn* v. *McNulta*, 238.

See FRAUD;
RAILROAD, 2;
TAX AND TAXATION, 2.

ESTOPPEL.

See MUNICIPAL BOND, 10.

EVIDENCE.

1. When the genuineness of a paper sued on is put in issue, papers not otherwise competent may be introduced in Oregon for the purpose of enabling the jury to make a comparison of handwritings. *Holmes* v. *Goldsmith*, 150.
2. A witness who has sworn to the genuineness of a disputed signature to a note, may be further asked if he would act upon it if it came to him in an ordinary business transaction. *Ib.*
3. The admission of evidence of a collateral fact, which might have been rejected by the trial court without committing error, does not consti-

tute error which will of itself justify reversal of the judgment below if the case of the plaintiff in error was not injured by it. *Ib.*

See ADMIRALTY, 6;
COMMON CARRIER, 4 (8).

EXCEPTION.

1. In view of the requirements of Rev. Stat. § 953, respecting the authentication of bills of exceptions, it will be assumed, where a bill is certified by a District Judge holding Circuit Court, that the Circuit Justice and Circuit Judge were not present at the trial, unless the record clearly and affirmatively shows the contrary. *Cooke* v. *Avery*, 375.
2. Detached sentences in a charge to a jury cannot be selected as grounds of objection, but must be read in connection with the whole charge. *New York, Lake Erie & Western Railroad Co.* v. *Estill*, 591.

EXECUTIVE.

1. A decision of the Secretary of the Interior, in exercise of the powers conferred upon him by the act of March 3, 1875, c. 152, 18 Stat. 482, that a designated railroad company is entitled to a right of way over public land, cannot be revoked by his successor in office. *Noble* v. *Union River Logging Railroad Co.*, 165.
2. Whether a railroad company applying for such a grant is a company which the statute authorizes to receive a grant of a right of way is a quasi judicial question, which, when once determined by the Secretary, is finally determined so far as the executive is concerned. *Ib.*

See JURISDICTION, C, 2.

EXECUTOR AND ADMINISTRATOR.

A citizen of Pennsylvania, born in New Jersey, devised and bequeathed the residue of his estate, real and personal, consisting mostly of property in Pennsylvania and in Michigan, with some real estate in New Jersey, to his executors, in trust to sell and invest at their discretion, "and to appropriate and use the principal or income thereof for the purpose of founding and supporting, or uniting in the support of any institution that may be then founded, to furnish a retreat and home for disabled or aged and infirm and deserving American mechanics;" and appointed as his executors H, a citizen of New Jersey, and W, a citizen of Pennsylvania, "and in the event of the death of either or both of them, first, P, and next, N, to supply vacancy." W took out letters testamentary in Pennsylvania, and there administered the property in Pennsylvania and in Michigan, and, with the approval of a Pennsylvania court, appropriated it to found a home for such mechanics, incorporated by the legislature of Pennsylvania to carry

out the testator's charitable intention. H took out letters testamentary in New Jersey, and took care of the real estate there, and died having done nothing beyond obtaining the opinion of counsel that the executors would be authorized, in their discretion, to provide a bed for such mechanics in a hospital, incorporated in New Jersey, for "the care, nurture and maintenance of sick, infirm, aged and indigent persons, and of orphan and destitute children," and whose by-laws provided that patients in a condition to be discharged, or whose disease was incurable, should not remain in the hospital, and that those able to pay for their maintenance should do so. After the deaths of H and W, a son of H took out letters of administration with the will annexed of the unadministered goods, chattels and effects of the original testator in New Jersey; and, after having assured P that he would not dispose of the real estate in New Jersey without giving him an opportunity to show that the Pennsylvania corporation was entitled to it, sold it, and, without any order of court, and without P's knowledge or consent, paid the proceeds to the New Jersey corporation taking a bond of indemnity. *Held*, that P, on taking out letters testamentary in Pennsylvania, was entitled, as executor, and upon filing a copy of those letters, to maintain a bill in equity against the New Jersey administrator in the Circuit Court of the United States for the District of New Jersey to recover those proceeds, with interest, and costs. *Hayes* v. *Pratt*, 557.

FRAUD.

1. Where the defendant in a suit in equity answers under oath denying charges of fraud, and no other evidence is offered, the charges are not sustained. *Monroe Cattle Co.* v. *Becker*, 47.
2. Charges of fraud made upon information and belief and not sustained by proof must be treated as not sustained. *Ib.*

HUSBAND AND WIFE.

See MARRIED WOMAN.

ILLINOIS.

See INTERSTATE BOUNDARY.

INDIAN.

In computing the time during which the alienation of public land acquired by an Indian under the provisions of § 16 of the act of March 3, 1875, c. 131, 18 Stat. 402, is forbidden, the day of the issue of the patent should be included. *Taylor* v. *Brown*, 640.

INJUNCTION.

See JURISDICTION, C, 2;
TAX AND TAXATION, 2.

INSURANCE.

A policy of life insurance was issued, insuring the life of a husband for the benefit of his wife, for $5000, for life, a premium named to be paid annually, and, if not paid, the policy to cease. It was made at the instance of the husband, he paid with his own money all the premiums which were paid, being nine, the policy remained always in his possession, and the wife had nothing to do with it. Before the tenth premium became due, the husband advised the company that he could not pay that premium, and wished to take out a paid-up policy, under a provision therefor. The company advised him not to do so but to have so much of the $5000 released as would enable him, with the sum allowed for such release, to pay what would be due as a premium on the remainder. He agreed to do so, and presented to the company what purported to be a receipt signed by his wife for $82.39, as a consideration for the release of $700 of the $5000, the $82.39 being applied towards the premium on the $4300 policy. Thereupon the husband received a policy for $4300 insurance on his life, for his wife's benefit, bearing the same number as the $5000 policy, with a less annual premium. A year later he advised the company that he could not pay the premium on the $4300 policy, and took a paid-up policy for $1195 on his life for the benefit of his wife, having first given the company what purported to be a receipt signed by his wife for $583.24 as a consideration for all claims on account of "policy No." so and so, released, the $583.24 being applied in payment of a premium on a participating paid-up policy for $1195. The wife's name on both receipts was written by the husband without her assent. In a suit on the $5000 policy brought by the wife, the company set up the non-payment of any premium on it after the date of the $4300 policy. *Held*, that that was a good defence, and that there was nothing to justify the failure to pay the premiums. *Miles* v. *Connecticut Mutual Life Insurance Co.*, 177.

INTEREST.

See COMMON CARRIER, 4, (10); PRACTICE;
DISTRICT OF COLUMBIA, 3; ROCK CREEK PARK, 3.

INTERSTATE BOUNDARY.

1. The true line, in a navigable river between States of the Union which separates the jurisdiction of one from the other, is the middle of the main channel of the river. *Iowa* v. *Illinois*, 1.
2. In such case the jurisdiction of each State extends to the thread of the stream, that is, to the "mid-channel," and, if there be several channels, to the middle of the principal one, or rather, the one usually followed. *Ib.*
3. The boundary line between the State of Iowa and the State of Illinois

is the middle of the main navigable channel of the Mississippi River. *Ib.*

4. As the two States both desire that this boundary line be established at the places where the several bridges mentioned in the pleadings cross the Mississippi River, it is ordered that a commission be appointed to ascertain and designate at said places the boundary line between the two States, and that such commission be required to make the proper examination, and to delineate on maps prepared for that purpose, the true line as determined by this court, and report the same to the court for its further action. *Ib.*

IOWA.

See INTERSTATE BOUNDARY.

JUDGMENT.

The extent to which a judgment record should go in its recital of the proceedings depends largely upon the purpose for which it is to be used; but generally anything not necessary to support the validity of the judgment is presumptively no part of the record, however material it may have been in the progress of the case. *United States* v. *Taylor*, 695.

See JUDICIAL SALE;
JURISDICTION, A, 2, 8;
RES JUDICATA.

JUDICIAL SALE.

A sale of real estate under judicial proceedings concludes no one who is not a party to those proceedings. *United Lines Telegraph Co.* v. *Boston Safe Deposit and Trust Co.*, 431.

JURISDICTION.

A. OF THE SUPREME COURT.

1. A writ of error does not lie to a judgment of the Supreme Court of the District of Columbia, denying a writ of mandamus to the Postmaster General to compel him to readjust the salary of a postmaster when the additional amount to become due him would be less than $5000; and this is not affected by the fact that many similar claims for relief exist, in which the aggregate amount involved is over $100,000. *Trask* v. *Wanamaker*, 149.

2. An order of the Circuit Court of the United States, appointing commissioners to assess damages for land in New Jersey taken by the North River Bridge Company for the approaches to a bridge across the North or Hudson River between New York and New Jersey, under the act of July 11, 1890, c. 669, § 4, is not a final judgment, upon which a writ of error will lie. *Luxton* v. *North River Bridge Co.*, 337.

3. The mere construction by the highest court of a State of a statute of another State, without questioning its validity, does not deny to it the full faith and credit which the Constitution and laws of the United States demand, in order to give this court jurisdiction on writ of error. *Glenn* v. *Garth*, 360.

4. This is especially true when there are no decisions of the highest court of the latter State in conflict with the construction made by the court of the former State. *Ib.*

5. This court cannot, by mandamus, review the judicial action of a Circuit Court of Appeals in refusing to receive further proofs offered by an appellant, in an admiralty cause pending in that court on appeal. *In re Hawkins*, 486.

6. A statute of the State of Nebraska authorizes a creditor in certain cases to bring an action on a claim before it is due and to have an attachment against the property of the debtor. A citizen of Ohio brought an action in the Circuit Court of the United States for the district of Nebraska against a citizen of Nebraska, to recover $530.09 which was overdue, and $1664.04 which was to become payable in the following month, and an attachment was issued under the statute against the defendant's property. The Circuit Court sustained its jurisdiction and gave judgment in plaintiff's favor for both sums. *Held*, (1) That the Circuit Court had jurisdiction, notwithstanding the fact that a part of the sum sued for was not due and payable when the action was commenced, and the amount actually due and payable was less than $2000; (2) That if there were any error in the decision, on which this court expresses no opinion, the defendant, if desiring to have it reviewed should have taken the case to the Circuit Court of Appeals. *Schunk* v. *Moline, Milburn & Stoddart Co.*, 500.

7. There must be at least color of ground for the averment of a Federal question in a case brought here by writ of error to the highest court of a State, in order to give this court jurisdiction. *Hamblin* v. *Western Land Co.*, 531.

8. In executory process, according to the Civil Code of Louisiana, in the Circuit Court of the United States, an order, made without previous notice, for the seizure and sale of mortgaged land to pay the mortgage debt, under which the sale cannot take place until the debtor has had notice and opportunity to interpose objections, is not, at least when he does interpose within the time allowed, a final decree, from which an appeal lies to this court. *Fleitas* v. *Richardson*, No. 1, 538.

See COMMON CARRIER, 4; MANDAMUS;
CONSTITUTIONAL LAW, 6; UNITED STATES, 1, 6.

B. OF CIRCUIT COURTS OF APPEAL.

See MANDAMUS.

C. Of Circuit Courts of the United States.

1. The maker of a promissory note signed it entirely for the benefit of the payee, who was really the party for whose use it was made. The maker and the payee were citizens of the same State. A citizen of another State discounted the note, and paid full consideration for it to the payee, who endorsed it to him. The note not being paid at maturity, the endorsee, who had not parted with it, brought suit upon it against the maker in the Circuit Court of the United States. *Held*, that the court had jurisdiction, notwithstanding the provision in the act of August 13, 1888, 25 Stat. 433, 434, c. 866, that such court shall not have cognizance of a suit to recover the contents of a promissory note in favor of an assignee or subsequent holder, unless such suit might have been prosecuted in such court if no assignment had been made. *Holmes* v. *Goldsmith*, 150.
2. The general rule is that the judicial power will not interpose, by mandamus or injunction, to limit or direct the action of departmental officers in respect of matters pending, within their jurisdiction and control. *New Orleans* v. *Paine*, 261.
3. A Circuit Court of the United States has no jurisdiction over a bill in equity to enjoin the collection of taxes from a railroad company, when distinct assessments, in separate counties, no one of which amounts to $2000, and for which, in case of payment under protest, separate suits must be brought to recover back the amounts paid, are joined in the bill and make an aggregate of over $2000. *Walter* v. *Northeastern Railroad Co.*, 370.
4. When it appears that some title, right, privilege or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case is one arising under the Constitution or laws of the United States. *Cooke* v. *Avery*, 375.
5. When a party, on the first trial of a cause in a Circuit Court sets up such a right as the ground of Federal jurisdiction, and the jurisdiction is sustained, he cannot be permitted, on the second trial to oust the jurisdiction by contending that no such right is in controversy. *Ib.*
6. Where a plaintiff's title rests upon the validity of a lien claimed to have been acquired under a judgment of a Circuit Court of the United States, the disposition of the issue depends upon the laws of the United States and the rules of its courts, and a Federal court has jurisdiction. *Ib.*

See Claims against the United States, 3;
Public Land, 4;
United States, 1, 6.

D. Jurisdiction of the Court of Claims.

Although the United States did not appeal, this court considered the question of the jurisdiction of the Court of Claims, and *held*, that as the

right of action of the plaintiffs accrued in 1886, and the Court of Claims from that time had full jurisdiction over it, under its general jurisdiction, and as the general jurisdictional act of that court was not repealed by the act of 1888, to the extent of this case, the plaintiffs could waive the benefit of the additional method of adjustment provided by the act of 1888, and the general jurisdiction of that court and such additional method could both of them well stand together. *Smithmeyer* v. *United States*, 342.

See CLAIMS AGAINST THE UNITED STATES.

LANDLORD AND TENANT.

1. An agreement between a railroad company and an individual that the latter shall occupy a section-house of the company, and shall board there the section-hands and other employés of the company at an agreed rate, the company to aid in collecting the payment out of the wages of the employés, does not create the relation of master and servant between the company and the individual, but does create a tenancy terminable at the will of the company. *Doyle* v. *Union Pacific Railway Co.*, 413.
2. In the absence of fraud, misrepresentation or deceit, a landlord is not responsible for injuries happening to his tenant by reason of a snow-slide or avalanche. *Ib.*

LIBRARY OF CONGRESS.

See CLAIMS AGAINST THE UNITED STATES.

LICENSE TAX.

See CONSTITUTIONAL LAW, 4.

LIEN.

1. The courts of the United States enforce grantor's and vendor's liens, if in harmony with the jurisprudence of the State in which the action is brought. *Fisher* v. *Shropshire*, 133.
2. The doctrine of a vendor's lien, arising by implication, seems to have been generally recognized in the State of Iowa. *Ib.*
3. If a suit to enforce a vendor's lien upon land in Iowa is pending at the time when the vendee conveys the land to a third party, no presumption can arise that that lien has been waived, as against the grantee of the vendee, whatever may be the general rule in that State as to the presumption of the waiver of a vendor's lien, in case of a conveyance of the tract by the vendee. *Ib.*
4. The filing of the petition in this case to assert and enforce a vendor's lien was notice of its assertion and prevented third parties from

acquiring an interest in the subject-matter against and superior to the lien. *Ib.*

5. It does not appear to be necessary in Iowa to exhaust the remedy at law before proceeding to enforce a vendor's lien. *Ib.*
6. Under the circumstances of this case, as detailed in the opinion; *held*, (1) That a vendor's lien existed on the property for the complainants' benefit which could be enforced by them for the balance due them on the purchase money; (2) That George Lyle was not a necessary party to the proceedings to enforce it; (3) That there was an error in the master's computation, which made it necessary to remand the case. *Ib.*

LIMITATION, STATUTES OF.

1. The construction given by the Supreme Court of a State to a statute of limitations of the State will be followed by this court, even in a case decided the other way in the Circuit Court before the decision of the state court. *Bauserman* v. *Blunt*, 647.
2. The statute of limitations of Kansas, as construed by the Supreme Court of the State, does not run while the debtor is personally absent from the State, although he retains a usual place of residence therein, where a summons upon him might be served. *Ib.*
3. The statute of limitations of Kansas, as construed by the Supreme Court of the State, stops running at the death of the debtor, but for such a reasonable time only as will enable the creditor to have an administrator appointed. *Ib.*

See UNITED STATES, 4.

LIMITED LIABILITY.

See ADMIRALTY, 1.

LOCAL LAW.

1. During the ninety days allowed by the statutes of Texas concerning the purchase of school lands to a purchaser to make his first payment, (Laws of 1879, special session, p. 23, Laws of 1881, p. 119,) it is not competent for the surveyor to permit a person who had filed an application for a designated tract to treat the application as withdrawn and abandoned, and to make another application for the same tract in the name of a different person. *Monroe Cattle Co.* v. *Becker*, 47.
2. During that period of ninety days the land is in the position of reserved lands under railroad grant acts, to which it is well settled that the grant does not attach if the land is in any way segregated from the public lands. *Ib.*
3. Under the laws of Texas regulating the sale of the school lands, a purchaser who makes the first payment called for, who executes the obligations for subsequent payments as called for, and complies with those obligations as they mature, is protected against forfeiture. *Ib.*

4. The act of the legislature of Texas of April 14, 1883, concerning purchases of school lands, had no effect upon the vested rights of the plaintiff in this case. *Ib.*
5. An index to an abstract of judgments in Texas, made under its laws for acquiring judgment liens, is sufficient, which gives the defendant's name or names correctly, and the names of the plaintiffs by a partnership title. *Cooke* v. *Avery*, 375.
6. In Texas, in trespass to try title, the defendant cannot question the validity of his grantor's title at the time of the conveyance to him when the plaintiff claims under the same grantor, unless he claims under a paramount title. *Ib.*
7. If the defendant in such an action pleads his title specially, he waives the general issue, and is confined to the defence specially pleaded. *Ib.*
8. The defendant in such an action, not having been in possession of the land in dispute for twelve months next before the commencement of the action under written evidence of title, offered to show that immediately after concluding his bargain for the property he entered into possession, and commenced making improvements, and erected improvements of great value on the property before he knew of the plaintiff's lien. This was done in order to enable him to get the benefit of the provisions in the Texas statutes relating to improvements. *Held*, that the offer was too vague. *Ib.*
9. A married woman was codefendant in an action of trespass to try title in Texas. Her interest was a community interest in the property by virtue of a conveyance to her husband. *Held*, that a personal judgment in damages for use and occupation, and for costs, could not be rendered against her. *Ib.*

Idaho: *See* ASSIGNMENT FOR BENEFIT OF CREDITORS.
Iowa: *See* LIEN.
Kansas: *See* LIMITATION, STATUTES OF, 2, 3; RES JUDICATA.
Louisiana: *See* JURISDICTION, A, 8; MARRIED WOMAN, 3.
Missouri: *See* COMMON CARRIER, 4 (1), (10); MUNICIPAL BOND, 5, 9; RAILROAD, 2.
Nebraska: *See* JURISDICTION, A, 6.
Ohio: *See* MARRIED WOMAN, 1, 2.
Oregon: *See* EVIDENCE, 1.
Texas: *See* LOCAL LAW, 9; PATENT FOR INVENTION, 3.

LOTTERY.

1. Certain bonds issued by the government of Austra, *held* to represent a "lottery or similar scheme," within the meaning of § 3894 of the Revised Statutes, as enacted by the act of September 19, 1890, c. 908,

26 Stat. 465; and a given circular *held* to be a "circular concerning any lottery, so-called gift, concert or other similar enterprise offering prizes dependent upon lot or chance," within the meaning of said § 3894; and the said circular *held* to constitute a "list of the drawings at any lottery or similar scheme," within the meaning of said § 3894. *Horner* v. *United States*, 449.

2. What is a lottery, considered. *Ib.*
3. Cases in the United States and England, considered. *Ib.*
4. Although, by the bonds in question, Austria attempted to obtain a loan of money, she also undertook to assist her credit by an appeal to the cupidity of those who had money, and offered to each holder of a bond a chance of obtaining a prize dependent upon lot or chance, the element of certainty going hand in hand with the element of lot or chance, but the former not destroying the existence or effect of the latter. *Ib.*

MANDAMUS.

Under § 7 of the act of March 3, 1891, c. 517, 26 Stat. 826, 828, which provides for an appeal to the Circuit Court of Appeals from an interlocutory order or decree granting or continuing an injunction on a hearing in equity, the granting of a stay of the operation of the injunction during the pendency of the appeal, by the court which granted or continued it, is not a matter of right, but is a matter of discretion; and such discretion of that court cannot be controlled by a writ of mandamus from this court. *In re Haberman Manufacturing Co.*, 525.

See ADMIRALTY, 1;
JURISDICTION, A, 5; C, 2.

MARRIED WOMAN.

1. In Ohio the separate property of a married woman is not charged, either in law or in equity, by her contracts executed previous to its existence. *Ankeney* v. *Hannon*, 118.
2. The cases in Ohio, in New York, and in England on this subject, examined. *Ib.*
3. The liability of a husband to his wife for her paraphernal property, secured by legal mortgage of his estate, under the law of Louisiana, is extinguished by his discharge in bankruptcy; her mortgage, therefore, cannot attach to land acquired by him after the discharge; and a subsequent mortgagee from the husband may set up the discharge in bankruptcy against the wife. *Fleitas* v. *Richardson*, (No. 2,) 550.

See LOCAL LAW, 9.

MARSHAL.

See CLAIMS AGAINST THE UNITED STATES, 2;
COSTS, 1, 2, 3, 4, 5, 6, 8.

MASTER AND SERVANT.

See LANDLORD AND TENANT, 1;
RAILROAD, 1.

MORTGAGE.

The question of priority between two mortgages on lines of telegraph, considered. *United Lines Telegraph Co.* v. *Boston Safe Deposit & Trust Co.*, 431.

See MARRIED WOMAN, 3.

MUNICIPAL BOND.

1. When negotiable bonds of a municipality, issued in aid of a railroad company, are void as between the railroad company and the municipality, the burden is upon the holder to show that he, or some one through whom he obtained title to them, was a *bona fide* purchaser for a valuable consideration. *Lytle* v. *Lansing*, 59.
2. The settled rule in equity that a purchaser without notice, to be entitled to protection, must not only be so at the time of the contract or conveyance, but also at the time of the payment of the purchase money, applies to the purchase of negotiable municipal bonds. *Ib.*
3. It is the duty of one who purchases municipal bonds, knowing that the municipality is contesting its liability on them, to make inquiries, and the failure to do so will be held to be a wilful closing of his ears to information. *Ib.*
4. The several holdings of the bonds which form the subject of this litigation since they passed out of the railroad company, examined, and *held* to be either as collateral for a debt which has been paid, or as fictitious, for a real owner who is affected with notice of their invalidity. *Ib.*
5. The question under what statute of Missouri the bonds were issued which form the subject of this controversy was properly determinable in a suit on the bonds. *Knox County* v. *Ninth National Bank*, 91.
6. Decisions of state courts upon the requirements of state statutes for validating issues of municipal bonds in the State, when made subsequent to an issue of such bonds, are not controlling in litigations in Federal courts, involving the validity of such issue. *Ib.*
7. When the matter in dispute is whether a particular issue of municipal bonds was made under one statute of the State in which the municipality is situated or under another, the whole conduct of the municipality, both before, at the time, and after the issue of the bonds, may be shown to aid in determining the question. *Ib.*
8. In a subscription by a municipal corporation to aid in the construction of a railroad, it is sufficient if the route is designated, leaving to the municipal authorities to designate the particular corporation to be the recipient of the subscription. *Ib.*

9. The bonds issued by Knox County, Missouri, to the Missouri and Mississippi Railroad Company, were issued in pursuance of the general laws of the State, and not under the act of the legislature of Missouri, of February 20, 1865, to incorporate that company, and the county powers of taxation are not limited by the provisions of section 13 of the act incorporating the company. *Ib.*

10. Where the constitution and a statute of a State forbid any county to issue bonds to such an amount as will make its aggregate indebtedness exceed a certain proportion of the assessed valuation of taxable property in the county; and the statute requires the county commissioners to publish, and to enter on the public records of the county, semi-annual statements showing the whole amount of the county debt; a purchaser for value and before maturity, of a bond issued in excess of the constitutional and statutory limit, is charged with the duty of examining the record of indebtedness; and the county is not estopped, by a recital in the bond that all the provisions of the statute have been complied with, to prove, by the record of the assessment and the indebtedness, that the bonds were issued in violation of the constitution. *Sutliff* v. *Lake County Commissioners*, 230.

NAVIGABLE RIVER.

See INTERSTATE BOUNDARY.

NEGLIGENCE.

See COMMON CARRIER, 1, 3.

OATH.

See EMINENT DOMAIN, 6.

OFFICER.

See CONSTITUTIONAL LAW, 2, 3.

PATENT FOR INVENTION.

1. A patent for an invention issued to the inventor, "his heirs or assigns," after his death, is a valid patent, and should be construed in the alternative as a grant to him, or his heirs or assigns. *De la Vergne Refrigerating Machine Co.* v. *Featherstone*, 209.

2. Such a construction would include a grantee or grantees in being capable of taking the patent and to whose benefit the grant would enure. *Ib.*

3. In such case an executor *de son tort* may, in Texas, make an assignment of an interest in the patent which will convey a valid title to the assignee, if not repudiated by the executor or administrator of the inventor when duly appointed, or by his children. *Ib.*

4. An inventor agreed with an associate to give him an interest in a patent for the invention when issued, and the associate agreed to procure its issue. The patent was issued after the inventor's death to the inventor by name, "his heirs or assigns." His administratrix conveyed to the associate the promised interest, and subsequently the remaining interest, and all persons interested in the estate acquiesced in the conveyances. *Held*, that the patent should be construed as a grant to the associate as assignee, and should be held to have been obtained by the authority of the administratrix as well as of the associate. *Ib.*
5. Failure, in such case, to record title papers in the Patent Office, it appearing that the administratrix and the in-part equitable owner had obtained the patent, cannot make the patent void. *Ib.*
6. When an inventor makes oath to an application for a patent, filed in his lifetime, an amendment to it within the scope of the original oath and of the invention described in the original specification, made after his death without filing a new oath or a new power of attorney, is valid, and does not render the patent void. *Ib.*
7. Claims 1 and 3 of letters patent No. 213,323 granted to William Coupe, March 18, 1879, for an improvement in hide-stretching machines, construed. *Weatherhead* v. *Coupe*, 322.
8. The principal feature of the Coupe machine, covered by claim 1, and of his method of stretching hides, covered by claim 3, is, that the hide is stretched longitudinally and transversely at the same time; and a single passage of the hide through the machine is supposed to give it sufficient stretching transversely as well as longitudinally. *Ib.*
9. The defendant's machine has no stretcher bar, substantially such as that of the patent, giving a transverse stretch to the hide simultaneously with the giving of the longitudinal stretch; and, therefore, does not infringe the patent. *Ib.*
10. Letters patent No. 116,266, granted to Alanson Cary, as inventor, June 27, 1871, for an improvement in modes of tempering springs, are invalid, in view of the state of the art, for want of patentable invention. *Lovell Manufacturing Co.* v. *Cary*, 623.
11. The invention appears, from the specification, to be a method of restoring steel wire which has been mechanically strained, by subjecting it to a temperature of 600°, more or less, and the claim limits the method to its application to "furniture or other coiled springs;" but the process, as applied to those springs, was not different, in method or effect, from the same process when applied to any mechanically strained wire, or to steel made in straight pieces or strips, or otherwise. *Ib.*
12. The invention was anticipated by the prior use of New England wire clock-bells and of blued hair springs, used in marine clocks. The treatment to which those articles were subjected was in all respects the same in the prior use, as in the patented process. *Ib.*
13. It does not amount to invention to discover that an old process is better in its results, when applied to a new working, than would have

been expected, the difference between its prior working and the new working being only one of degree and not one of kind. *Ib.*

14. There was nothing more than mechanical skill in arriving at the alleged invention, in view of the state of the art. *Ib.*
15. The point considered that no one had used the former processes for the manufacture of furniture springs, and that as soon as Cary's process was made known, the art of making furniture springs was revolutionized. *Ib.*
16. The cases in this court on the subject of double use, considered as to whether it is a patentable invention to apply old and well-known devices and processes to new uses, in other and analogous arts. *Ib.*

PLEADING.

It is bad pleading to describe a party by the initials only of his Christian name, but, when no advantage is taken of the defect in the court below, it will not be considered here. *Monroe Cattle Co.* v. *Becker*, 47.

PRACTICE.

In this case the only error being in an allowance of interest, the court orders the judgment to be affirmed if the interest be remitted; otherwise to be reversed for that error. *Washington & Georgetown Railroad Co.* v. *Harmon*, 571.

See ADMIRALTY, 1 (11);
EXCEPTION, 1;
JURISDICTION, C, 5;
LOCAL LAW, 7, 8;
PLEADING;
PRESUMPTION;
PUBLICATION;
UNITED STATES, 2.

PRECIOUS METALS.

See ROCK CREEK PARK, 1.

PRESUMPTION.

Where an act is done which can be done legally only after the performance of some prior act, proof of the later carries with it a presumption of the due performance of the prior act. *Knox County* v. *Ninth National Bank*, 91.

See EXCEPTION.

PROHIBITION, WRIT OF.

See ADMIRALTY, 1.

PROMISSORY NOTE.

See JURISDICTION, C, 1.

PUBLICATION.

An order of court, directing a notice of an election which was to take place in thirty-four days to be given by publication in a designated newspaper for five weeks, must be construed to mean a publication in each of the five weeks. *Knox County* v. *Ninth National Bank*, 91.

PUBLIC LAND.

1. The issue of a patent of public land to a person who is not equitably entitled to it does not preclude the owner of the equitable title from enforcing it in a court of equity against claimants under the patent. *Monroe Cattle Co.* v. *Becker*, 47.
2. When a person makes a homestead entry of a tract of public land, and enters into occupation of it with his family, and dies a widower, and without acquiring a patent, the right to complete the proofs and acquire the patent passes, under Rev. Stat. § 2291, to all his children equally as well those who are adults as those who are infants; and not, under Rev. Stat. § 2292, to such children only as are minors at the time of his death, to the exclusion of those who had then attained their majority. *Bernier* v. *Bernier*, 242.
3. Section 2292 of the Revised Statutes was only intended to give to infant children the benefit of the homestead entry and to relieve them, because of their infancy, from the necessity of proving the conditions required when there are only adults, or adults and minors, mentioned in § 2291, and to allow a sale of the land within a prescribed period for their benefit. *Ib.*
4. While the location of the boundary lines of a land grant is pending before the Land Department, and the proper officers are bringing to bear upon it their own judgment and discretion, the courts have no right to interfere with their action by injunction. *New Orleans* v. *Paine*, 261.
5. When a line of a land grant railroad as located does not satisfy the terms of the granting act, whether the Land Department may not consider it as a temporary and provisional one, *quære*. *Hamblin* v. *Western Land Co.*, 531.
6. A valid homestead entry could not be made upon indemnity lands of the Sioux City & St. Paul Railroad Company after the patent from the United States to the State of Iowa, issued June 17, 1873, under the act of May 12, 1864, 13 Stat. 72, c. 84. *Ib.*
7. A reservation of public land from entry, made by the Department of the Interior, as coming within the limits of a railroad grant, operates to withdraw the land from homestead entries, even if found afterwards not to come within such limits. *Ib.*

See EXECUTIVE, 1;
INDIAN.

PUNITIVE DAMAGES.

See DAMAGES.

RAILROAD.

1. A servant of a railroad company, employed in coupling freight cars together, who is well acquainted with the structure of the freight cars of his employer, and also with those of other companies sending freight cars over his employer's road differing from his employer's cars in structure and in the risk run in coupling them, assumes, by entering upon the service, all ordinary risks run from coupling all such cars. *Kohn* v. *McNulta*, 238.
2. A bill was filed against a railroad company in Missouri by the owner of a building on a public street in St. Louis, on which the company was about, under competent municipal authority, to lay down tracks at grade for use in running cars drawn by steam power. The bill prayed to restrain and enjoin the company from commencing or carrying out the proposed construction, or from taking possession of the street for that purpose. The injuries to result to the complainant's building from the proposed construction were set forth, but without any demand for compensation other than that contained in the prayer for general relief. The statutes of Missouri provide for the assessment of compensation for the taking of property for public use, but not for such assessment where property is merely damaged. *Held*, that the complainant had an adequate remedy at law for the injuries complained of, and was not entitled to the relief prayed for. *Osborne* v. *Missouri Pacific Railway*, 249.

See COMMON CARRIER; DAMAGES; LANDLORD AND TENANT, 1; MUNICIPAL BOND, 1, 4.

REMOVAL OF CAUSES.

See COMMON CARRIER, 4, (2).

REPLEVIN.

See RES JUDICATA.

RES JUDICATA.

In Kansas, in an action of replevin to enforce a chattel mortgage of a machine sold to the defendant by the plaintiff, and mortgaged back to secure the purchase money, the defendant may set up, as a defence, failure of the machine to do the work guaranteed and damage to him from delay in the delivery; and if the jury pass upon these issues, the judgment on their verdict is a bar to a subsequent action by the purchaser of the machine against the vendor, to recover damages for such failure and such delay. *Clement* v. *Field*, 467.

See EXECUTIVE, 1.

ROCK CREEK PARK.

1. If there were any deposits of gold in the land condemned for the Rock Creek Park in Washington, those deposits were the property of the United States. *Shoemaker* v. *United States*, 282.
2. The filing of a map of the land proposed to be taken for the Rock Creek Park, made under § 3 of the act of September 27, 1890, 26 Stat. 492, c. 1001, was not a finalty, and did not commit the commissioners to taking all the tracts included in it. *Ib.*
3. The owners of the tracts condemned for that park are not entitled to interest upon the respective sums assessed as damages for the taking. *Ib.*

SERVICE OF PROCESS.

See ADMIRALTY, 1 (7);
COMMON CARRIER, 4, 2.

SECRETARY OF THE INTERIOR.

See EXECUTIVE.

SET OFF.

See RES JUDICATA.

STREET.

See RAILROAD, 2.

STATUTE.

A. CONSTRUCTION OF STATUTES.

The construction given to an act by the Department charged with the duty of enforcing is material only in case of doubt. *United States* v. *Tanner*, 661.

See INDIAN.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 1, (2), (3), 2;
BANKRUPT;
CLAIMS AGAINST THE UNITED STATES, 1;
CONSTITUTIONAL LAW, 4;
COSTS, 1, 8, 17;
COSTS AGAINST THE UNITED STATES;
CUSTOMS DUTIES;
EXCEPTION, 1;
EXECUTIVE, 1;
INDIAN;
JURISDICTION A, 2; C, 1; D;
LOTTERY, 1;
MANDAMUS;
PUBLIC LAND, 2, 3, 6;
ROCK CREEK PARK, 2.

C. STATUTES OF STATES AND TERRITORIES.

Idaho: *See* ASSIGNMENT FOR THE BENEFIT OF CREDITORS.
Illinois: *See* TAX AND TAXATION, 3.
Kansas: *See* LIMITATION, STATUTES OF, 2, 3.
Maryland: *See* DISTRICT OF COLUMBIA, 1.
Missouri: *See* COMMON CARRIER, 4 (1);
MUNICIPAL BOND, 5, 9.
Texas: *See* LOCAL LAW, 1, 3, 4.

TAX AND TAXATION.

1. When a statute requires property to be assessed for taxation at its cash value, a bill to enjoin the collection of a tax solely on the ground that the property of other persons is assessed below its cash value cannot be maintained by a person whose property is also assessed below that value. *Albuquerque Bank* v. *Perea*, 87.
2. In order to procure an injunction restraining the collection of a tax, it is necessary to pay, or offer to pay, such parts of the sum assessed as are not disputed. *Ib.*
3. The provisions in Section 22 of the act incorporating the Illinois Central Railroad Company, (Private Laws, Ill. 1851, 61, 72,) exempting it from taxation, do not exempt it from the payment of a municipal assessment upon its land within a municipality in the State, laid for the purpose of grading and paving a street therein. *Illinois Central Railroad Company* v. *Decatur*, 190.
4. An exemption from taxation is to be taken as an exemption from the burden of ordinary taxes, and does not relieve from the obligation to pay special assessments, imposed to pay the cost of local improvements, and charged upon contiguous property upon the theory that it is benefited thereby. *Ib.*

TEXAS.

See LOCAL LAW.

TIME.

See INDIAN.

TORT.

See DISTRICT OF COLUMBIA, 3.

TRESPASS TO TRY TITLE.

See LOCAL LAW, 6, 7, 8.

TRUST.

See EXECUTOR AND ADMINISTRATOR.

UNITED STATES.

1. For purposes of jurisdiction there is no distinction between suits against the government directly, and suits against its property. *Stanley* v. *Schwalby*, 508.
2. Where property of the United States is involved in a litigation to which they are not technically parties under authority of an act of Congress, the attorney for the United States may intervene by way of suggestion, and in such case the court will either stay the suit or adjust its judgment according to the rights disclosed on the part of the government. *Ib.*
3. *United States* v. *Lee*, 106 U. S. 196, distinguished from this case. *Ib.*
4. When the United States becomes a party defendant to an action brought by a citizen the bar of the statute of limitations is a valid defence, if set up and maintained. *Ib.*
5. The defence of adverse possession may be set up by the United States in an action to try title to real estate, and, if supported by the proof, is a valid defence. *Ib.*
6. When an officer of the United States, in possession under their authority of real estate claimed by them, is sued in a state court in trespass to try title to the real estate, and sets up that claim and that authority as a defence in the action, an adverse judgment in the highest court of the State draws in question the validity of an authority exercised under the United States, and gives this court jurisdiction to review that decision on writ of error. *Ib.*

See EMINENT DOMAIN;
ROCK CREEK PARK.

VENDOR'S LIEN.

See LIEN.

VESSEL.

See ADMIRALTY.

WILL.

See EXECUTOR AND ADMINISTRATOR.

WRIT OF MANDAMUS.

See ADMIRALTY, 1;
JURISDICTION A, 1, 5; C, 2;
MANDAMUS.

WRIT OF PROHIBITION.

See ADMIRALTY, 1.