INDEX.

ADMIRALTY.

1. A steam vessel, the N., backed out from her slip in Jersey City, towards the middle of the Hudson River between Jersey City and New York, preparatory to turning down to go to sea. Another steam vessel, the S., was going down, above the N., and nearer the New York shore, on her way to sea. It was customary and necessary for the N. to back out of her slip to about the middle of the river. The S. knew of such practice of the N. When the N. had reached the middle of the river she stopped her engines and the S. assumed she would go ahead, and herself proceeded without any material change of course, under slow speed, until she got near enough to observe that the N. was continuing to make sternway at considerable speed, and might bring herself in the path of the S. Then the S. stopped her engines, being about 1000 feet away from the N., and one minute after, upon observing that the N. still continued to make sternway at a speed which indicated danger of collision, put her engines at full speed astern and ported. The N., after stopping her engines, waited two minutes before putting her engines at half speed ahead, and two minutes more before putting her engines at full speed ahead. The vessels collided, the N. and the S. both of them making sternway at the time; *held*, that the N. was in fault and the S. not in fault. *The Servia*, 144.
2. The S. was justified in assuming that the N. would pursue her customary course and took timely measures to avert a collision. *Ib.*
3. The statutory steering and sailing rules had little application in the case and it was rather one of "special circumstances." *Ib.*

ALIENS.

See CONSTITUTIONAL LAW, 4 to 9.

CASES AFFIRMED.

1. This case is dismissed upon the authority of *Hohorst* v. *Hamburg-American Packet Co.*, 148 U. S. 262. *Nash* v. *Harshman*, 263.
2. *Scott* v. *Neely*, 140 U. S. 106, affirmed and applied. *Cates* v. *Allen*, 451.

See CUSTOMS DUTIES, 8, 9; DEED, 2; JURISDICTION, A, 4; PATENT FOR INVENTION, 13; PUBLIC LAND, 8.

CASES DISTINGUISHED.

1. *Chicago, Milwaukee & St. Paul Railway* v. *Ross*, 112 U. S. 377, explained and distinguished. *Baltimore & Ohio Railroad* v. *Baugh*, 368.
2. *Holland* v. *Challen*, 110 U. S. 15, and *Whitehead* v. *Shattuck*, 138 U. S. 146, distinguished. *Cates* v. *Allen*, 451.
3. *Irwin* v. *Williar*, 110 U. S. 449, distinguished. *Bibb* v. *Allen*, 481.
4. *Payne* v. *Hook*, 7 Wall. 425, explained and distinguished. *Byers* v. *McAuley*, 608.

See CUSTOMS DUTIES, 8, 9;
DEED, 1;
PUBLIC LAND, 4, 8.

CIRCUIT COURTS OF APPEALS.

This case coming on to be heard before the Circuit Court of Appeals, consisting of the Circuit Judge and two District Judges, one of the judges was found to be disqualified to sit in it, and another was unwilling to sit, whereupon the court certified to this court questions and propositions of law concerning which it desired the instruction of this court, and directed the clerk to transmit with the certificate twenty copies of the printed record in the cause. *Held*,

(1) That the certificate was irregular, as a quorum of the court did not sit in the case;

(2) That it did not comply with rule 37 of this court, inasmuch as it did not contain a proper statement of the facts on which the questions or propositions of law arose;

(3) That the act of March 3, 1891, does not contemplate the certification of questions or propositions of law to be answered in view of the entire record in a cause; although this court may order an entire record to be brought up in order to decide, as if the case had been brought up by writ of error or appeal. *Cincinnati, Hamilton & Dayton Railroad* v. *McKeen*, 259.

COMMON CARRIER.

Where, in an action against a common carrier to recover damages for injuries to a passenger, there is uncertainty as to the existence of either negligence or contributory negligence, the question is not one of law, but of fact, and to be settled by a jury; and this, whether the uncertainty arises from a conflict in the testimony, or because the facts being undisputed, fair-minded men will honestly draw different conclusions from them. *Richmond & Danville Railroad Co.* v. *Powers*, 43.

See RAILROAD, 7.

CONFLICT OF LAW.

1. It is a rule of general application, that where property is in the actual possession of a court of competent jurisdiction, such possession cannot

be disturbed by process issued out of another court. *Byers* v. *McAuley*, 608.

2. An administrator appointed by a state court is an officer of that court; his possession of the decedent's property is the possession of that court: and as such it cannot be disturbed by process issued out of a Federal court. *Ib.*

See LOCAL LAW, 2;
RECEIVER, 1, 2, 3.

CONSTITUTIONAL LAW.

1. In view of the notice actually given of the meetings of the freeholders appointed to estimate the proportionate cost of a sewer in Portland, Oregon, and to assess the proportionate share of the cost thereof upon the several owners of property benefited thereby, and in view of the construction placed upon the ordinance by the City Council, and in view of the approval of the proceedings by the Supreme Court of the State as being in conformity with the laws thereof, *Held*, that, notwithstanding the doubt arising from the lack of express provision for notice, the requirements of the Constitution as to due process of law had not been violated. *Paulsen* v. *Portland*, 30.

2. The statutes of the State of Minnesota, requiring railway companies to fence their roads, are not in conflict with the Constitution of the United States. *Minneapolis & St. Louis Railway* v. *Emmons*, 364.

3. The fact that a court of chancery may summon a jury cannot be regarded as the equivalent of the right of a trial by jury, secured by the Seventh Amendment to the Constitution. *Cates* v. *Allen*, 451.

4. The right to exclude or to expel aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, is an inherent and inalienable right of every sovereign and independent nation. *Fong Yue Ting* v. *United States*, 698.

5. In the United States, the power to exclude or expel aliens is vested in the political departments of the national government, and is to be regulated by treaty or by act of Congress, and to be executed by the executive authority according to the regulations so established, except so far as the judicial department is authorized by treaty or by statute, or is required by the Constitution, to intervene. *Ib.*

6. The power of Congress to expel, like the power to exclude, aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers; or Congress may call in the aid of the judiciary to ascertain any contested facts on which an alien's right to remain in the country has been made by Congress to depend. *Ib.*

7. Congress has the right to provide a system of registration and identification of any class of aliens within the country, and to take all proper means to carry out that system. *Ib.*

8. The provisions of an act of Congress, passed in the exercise of its constitutional authority, must, if clear and explicit, be upheld by the

courts, even in contravention of stipulations in an earlier treaty. *Ib.*

9. Section 6 of the act of May 5, 1892, c. 60, requiring all Chinese laborers within the United States at the time of its passage, "and who are entitled to remain in the United States," to apply within a year to a collector of internal revenue for a certificate of residence; and providing that any one who does not do so, or is afterwards found in the United States without such a certificate, "shall be deemed and adjudged to be unlawfully in the United States," and may be arrested by any officer of the customs, or collector of internal revenue, or marshal, or deputy of either, and taken before a United States judge, who shall order him to be deported from the United States to his own country, unless he shall clearly establish to the satisfaction of the judge that, by reason of accident, sickness, or other unavoidable cause, he was unable to procure his certificate, and also, "by at least one credible white witness," that he was a resident of the United States, at the time of the passage of the act; is constitutional and valid. *Ib.*

See CRIMINAL LAW, 1, 2; JURISDICTION, A, 10, 11
HABEAS CORPUS, 1; RECEIVER, 1, 2.

CONTRACT.

1. If a contracting party absolutely binds himself to perform things which subsequently become impossible of performance, or to pay damages for the nonperformance thereof, and the thing which causes the impossibility might have been foreseen and guarded against in the contract, or arose from the act or default of the promisor, he will be held to the strict performance of his contract; but if the cause of the impossibility be of such a character that it cannot reasonably be supposed to have been in the contemplation of the contracting parties when the contract was made, he will not be held bound by general words, which, though large enough to include it, were not used with reference to the possibility of the particular contingency which afterwards happened. *Chicago, Milwaukee & St. Paul Railway Co.* v. *Hoyt*, 1.

2. A railway company and several individuals entered into a contract for the construction of a grain-elevator by the latter, wherein the company agreed "that the total amount of grain received at said elevators shall be at least five million bushels on an average for each year during the term of this lease; and in case it shall fall short of that amount the said party of the first part agrees to pay to the said party of the second part one cent per bushel on the amount of such deficiency, settlements to be made at the close of each year; and whenever it shall appear at the close of any year that the total of grain received during so much of the term of this lease as shall then have elapsed does not amount to an average of five million bushels for each year, the party of the first part shall pay to the parties of the second

part one cent per bushel for the amount of such deficiency; but, in case it shall afterwards appear that the total amount received up to that time equals or exceeds the average amount of five million bushels per annum the amount so paid to the party of the second part shall be refunded or so much thereof as the receipts of the year shall have exceeded five million bushels, so that the whole amount paid on account of deficiency shall be refunded should the total receipts for the entire term equal or exceed fifty million bushels in all, or an average of five million bushels for each year." *Held*, that the railway company only agreed that the quantity of grain which it would deliver at the elevators or tracts connected therewith, in the usual way in cars, for storage and handling, should amount on an average to at least 5,000,000 bushels per annum for a period of ten years, and that, in case the grain so delivered, or brought to the elevators for delivery, fell short of that quantity, it would pay one cent per bushel on the amount of such deficiency. *Ib.*

3. B., an attorney at law, residing at St. Louis, went to Leadville, Colorado, on business of P. While there he obtained knowledge of a mineral tract, and after communicating with P., he acquired a part ownership in it on behalf of P. and himself. P. came to Colorado and took charge of the development of the property by sinking a shaft, the proportionate part of the expense of which was to be borne by B., who then returned to his business. Subsequently a correspondence by mail and by telegraph took place between P. and B., which ended in the acquisition of B.'s interest by P. The property became very valuable. When B. learned this he filed a bill in equity to set aside his conveyance to P., as having been fraudulently obtained, and for an accounting, and for the payment of his share of the profits to him by P. On the correspondence and other facts in evidence, as recited and referred to in the opinion of the court, *Held*, that the evidence showed that the parties had made a complete settlement of their rights under the contract, and that B. had parted with all his interest in the property, and the bill must be dismissed. *Patrick* v. *Bowman*, 411.

4. When an offer is made and accepted, by the posting of a letter of acceptance before notice of withdrawal is received, the contract is not impaired by the fact that a revocation had been mailed before the letter of acceptance. *Ib.*

5. By the agreed use of Shepperson's code, which provided that "unless otherwise stated as agreed, it is distinctly understood that all orders sent by this chapter are to be subject in every respect to the by-laws and rules of the market where executed," and further, that "with every telegram sent by this table the following sentence will be read as a part of the message, viz., this sale has been made subject to all the by-laws and rules of our cotton exchange in reference to contracts for the future delivery of cotton," the rules and regulations which were authorized to be made by the statutes of New York, under which

the exchange was incorporated, entered into and formed a part of the transactions in this case. *Bibb* v. *Allen*, 481.

6. Contracts for the future delivery of personal property which the vendor does not own or possess, but expects to obtain by purchase or otherwise, are valid, if at the time of making the contract an actual transfer of the property is contemplated by at least one of the parties to the transaction. *Ib.*
7. Slip contracts, in the form prescribed by the rules and regulations of the Cotton Exchange, constitute bought and sold notes, which, taken together, as they should be, afford a sufficient memorandum in writing between the brokers or their principal and the vendee of the cotton, to satisfy the requirements of the statute of frauds. *Ib.*
8. The employment of a broker to sell property for future delivery implies not only an undertaking to indemnify the broker in respect of the execution of his agency, but also implies a promise on the part of the principal to repay or reimburse him for such losses or expenditures as may become necessary or result from the performance of the agency.

CORPORATION.

See RECEIVER, 3.

COURT AND JURY.

See COMMON CARRIER;
PUBLIC LAND, 6.

CRIMINAL LAW.

1. The act of March 16, 1878, 20 Stat. 30, c. 37, having provided that a person charged with the commission of a crime may, at his own request, be a competent witness on the trial, but that "his failure to make such request shall not create any presumption against him," all comment upon such failure must be excluded from the jury. *Wilson* v. *United States*, 60.
2. A person indicted in a District Court of the United States for using the mails to give information where obscene and lewd publications could be obtained, offered evidence, through his counsel, of his previous good character, but did not offer himself as a witness. The district attorney, in summing up, said: "I want to say to you, gentlemen of the jury, that if I am ever charged with a crime I will not stop by putting witnesses on the stand to testify to my good character, but I will go upon the stand and hold up my hand before high Heaven, and testify to my innocence of the crime." Defendant's counsel excepted to this, upon which the court said: "Yes, I suppose the counsel should not comment upon the defendant not taking the stand. While the United States court is not governed by the State's statutes, I do not know that it ought to be the subject of comments of counsel." There-

upon the assistant district attorney said: "I did not mean to refer to it in that light, and I do not intend to refer in a single word to the fact that he did not testify in his own behalf." To which counsel for defendant again excepted. Judgment being given against the defendant, and the case being brought here by writ of error; *Held*, (1) That the exceptions and the writ of error properly brought the matter before this court; (2) That the judgment below should be reversed. *Ib.*

See HABEAS CORPUS, 1, 2.

CUSTOMS DUTIES.

1. The action which § 3011 Rev. Stat., as amended by the act of February 27, 1877, 19 Stat. 240, 247, c. 69, authorizes to be brought to recover back an excess of duties paid, cannot be maintained by a stranger, suing solely in virtue of a purchase of claims from those who did not see fit to prosecute them themselves. *Hager* v. *Swayne*, 242.
2. Tomatoes are "vegetables" and not "fruit," within the meaning of the tariff act of March 3, 1883, c. 121. *Nix* v. *Hedden*, 304.
3. The language of commerce, when used in laws imposing duties on importations of goods, and particularly when employed in the denomination of articles, must be construed according to the commercial understanding of the terms employed. *Hedden* v. *Richard*, 346.
4. This rule is equally applicable where a term is confined in its meaning, not merely to commerce, but to a particular trade, and in such case, also, the presumption is that the term was used in its trade signification. *Ib.*
5. In an action against a collector to recover an excess of duties paid under protest, the defendant is entitled to show that words employed in a tariff act have a special commercial meaning in the trade, and to have it submitted to the jury whether the imported goods in question came within them. *Ib.*
6. Old india-rubber shoes, invoiced as "rubber scrap" and entered as "scrap rubber," were exempt from duty, under the similitude clause, § 2499, of Title 33 of the Revised Statutes, as enacted by § 6 of the act of March 3, 1883, (22 Stat. 491,) as being substantially crude rubber, under § 2503, they having lost their commercial value as articles composed of india-rubber, or india-rubber fabrics, or india-rubber shoes. *Cadwalader* v. *Jessup & Moore Paper Co.*, 350.
7. Imported articles, commercially known as ribbons, composed wholly or partly of silk and chiefly used for trimming hats, bonnets or hoods, are dutiable at twenty per centum ad valorem, under Schedule N of the tariff act of March 3, 1883, 22 Stat. 488. *Cadwalader* v. *Wanamaker*, 532.
8. The case of *Hartranft* v. *Langfeld*, 125 U. S. 128, cited and approved. *Ib.*

9. The case *Robertson* v. *Edelhoff*, 132 U. S. 614, cited, distinguished and approved. *Ib.*

10. Trimmings of various styles and materials, some composed entirely of silk, some chiefly of silk, some chiefly of metal, and some being a combination of both silk and metal, used exclusively or chiefly for hat or bonnet trimming, and not suitable for, nor used to any appreciable extent for any other purpose, are dutiable under Schedule N of the act of March 3, 1883, (22 Stat. 512,) at the rate of twenty per centum ad valorem and not under Schedule L at the rate of fifty per centum; as articles composed wholly of silk or of silk as their component material of chief value; or under Schedule C, at the rate of forty-five per centum, as articles composed chiefly of metal. *Walker* v. *Seeberger*, 541.

11. Whether the goods in question were trimmings used exclusively or chiefly in the making and ornamentation of hats, bonnets or hoods was a question for the determination of the jury and it was error in the trial court to instruct otherwise. *Ib.*

12. Piece goods, commercially known and designated as "chinas" and "marcelines," which are chiefly used for lining hats and bonnets are dutiable at the rate at twenty per centum ad valorem under Schedule N of the tariff act of March 3, 1883, as materials "used for making . . . hats, bonnets or hoods." *Hartranft* v. *Meyer*, 544.

13. The word "liquors" is frequently, if not generally, used to define spirits or distilled beverages, in contradistinction to those that are fermented. It is so used in Schedule H of the tariff act of March 3, 1883, 22 Stat. 505, c. 121. *Hollender* v. *Magone*, 586.

14. The word "liquors" as used in that section is obviously the result of misspelling, "liqueurs" being intended. *Ib.*

15. The multitude of articles upon which duty was imposed by the tariff act of 1883, are grouped in that act under fourteen schedules, each with a different title, and all that was intended by those titles was a general suggestion as to the character of the articles within the particular schedule, and not any technically accurate definition of them. *Ib.*

16. Generally speaking, a "sound price" implies a sound article. It appearing that the cost of the beer in question at the place of export, was equivalent to $17\frac{70}{100}$ cents per gallon, and that upon being examined in New York much of it was thrown into the streets as worthless, that but little of it was sold, and that for three cents per gallon, it may be assumed that it was a sound article when shipped at the place of export. *Ib.*

DAMAGES.

See PUBLIC LAND, 5.

DEED.

1. When a grantor makes an absolute deed of real estate, for a money consideration paid by the grantee to the grantor, and the grantee at

the same time executes and delivers to the grantor an agreement under seal, conditioned to reconvey the same on the payment of a certain sum at a time stated, and there is no preëxisting debt due from the grantor to the grantee, and no testimony is offered explanatory of the transaction, it is for the jury to determine whether the parties intended the transaction to be an absolute deed with an agreement to reconvey or a mortgage. *Teal* v. *Walker*, 111 U. S. 242, distinguished from this case. *Bogk* v. *Gassert*, 17.

2. *Wallace* v. *Johnstone*, 129 U. S. 58, held to decide that, in the absence of proof, in such case, "of a debt or of other explanatory testimony, the parties will be held to have intended exactly what they have said upon the face of the instruments." *Ib.*

DEMURRER.

See EQUITY, 6, 7.

EQUITY.

1. Specific performance will not be decreed in equity without clean and satisfactory proof of the contract set forth in the bill. *Dalzell* v. *Dueber Watch Case Mfg. Co.*, 315.
2. Where, at the hearing in equity upon a plea and a general replication, the plea, as pleaded, is not supported by the testimony, it must be overruled, and the defendant ordered to answer the bill. *Ib.*
3. Courts of equity in cases of concurrent jurisdiction, consider themselves bound by the statutes of limitation which govern actions at law. *Metropolitan Bank* v. *St. Louis Dispatch Co.*, 436.
4. A suit in equity to enforce a mortgage of the plant and good will of a newspaper published in Missouri, and of the accompanying membership in the Western Associated Press, which is commenced eight years after the right of action accrued, during which period the property had changed hands, and the original plant had been used up and new matter put in its place, is barred by the statute of limitations of that State, so far as it rests upon the theory of conversion of the properties by the defendant; and, so far as it proceeds upon the theory that the plant, the good will and the membership ought on equitable principles to be held subject to the lien of the mortgage, a court of equity must decline to assist a complainant who sleeps so long upon his rights, and shows no excuse for his laches. *Ib.*
5. A contract creditor who has not reduced his claim to judgment has no standing in a Circuit Court of the United States, sitting as a court of equity, upon a bill to set aside and vacate a fraudulent conveyance. *Cates* v. *Allen*, 451.
6. A demurrer lacking the affidavit of defendant and certificate of counsel is fatally defective, and a decree *pro confesso* may be entered unless something takes place between the filing of the demurrer and the

entry of the decree to take away the right. *Sheffield Furnace Co.* v. *Witherow*, 574.

7. The filing of an amended bill after a demurrer, without first obtaining an order of the court therefor, and the withdrawal of it by the complainant's solicitor in consequence, without paying to the defendant the costs occasioned thereby and furnishing him with a copy with proper references, do not take away such right. *Ib.*

See CONSTITUTIONAL LAW, 3; MECHANIC'S LIEN, 2; CONTRACT, 3; RAILROAD, 1, 2, 3, 4. FRAUD;

ESTOPPEL.

See TRUST, 2.

EVIDENCE.

1. When one party has been permitted to state his understanding of the contracts which form the subject of the litigation, there is no error in giving a like license to the other party. *Bogk* v. *Gassert*, 17.
2. In an action by A., a cotton broker doing business on the New York Cotton Exchange, against B. for moneys claimed to be due for advances and commissions on account of various transactions for B. in selling as his agents cotton for future delivery, it was not error to admit in evidence the statutes of New York under which the said Cotton Exchange was organized, together with the rules and regulations of that body in pursuance of which the transactions in question were conducted, it appearing that B. knew that A. & Co., when acting as his agents, would transact the business through that Exchange, and in accordance with its rules and regulations. *Bibb* v. *Allen*, 481.
3. Sundry objections to testimony are held to be without merit. *Union Pacific Railway Co.* v. *Goodridge*, 680.

See JUDICIAL NOTICE; RAILROAD, 5; POSTMASTER GENERAL; TRUST.

EXCEPTION.

1. An exception cannot be taken to "a theory announced throughout" an instruction of the court. *Bogk* v. *Gassert*, 17.
2. A general exception to a refusal of a series of instructions, taken together and constituting a single request, is improper and will not be considered if any one of the propositions be unsound. *Ib.*
3. A bill of exceptions signed after the final adjournment of the court for the term, without an order extending the time for its presentation, or the consent of parties thereto, or a standing rule authorizing it to be done, is improvidently allowed; and when the errors assigned arise upon the bill, the judgment will be affirmed. *United States* v. *Jones*, 262.

EXECUTIVE.

See POSTMASTER GENERAL.

EXECUTOR AND ADMINISTRATOR.

See CONFLICT OF LAW, 2;
JURISDICTION, C, 4;
LOCAL LAW, 3, 4.

FRAUD.

By a contract in writing, A and B agreed that certain lands, for the sale and conveyance of most of which A held agreements of third persons, should be purchased for the mutual interest of A and B, and the legal title taken in A's name, and conveyed by him to B; that B should advance to A the sums required to pay the purchase money, as well as other expenses to be mutually agreed upon from time to time, and be repaid his advances, with interest, out of the net proceeds of sales; that A should attend to preparing the lands for sale, and sell them, subject to B's approval, at prices mutually agreed upon, and retain a commission of five per cent on the gross amount of sales, and, until B was reimbursed for his advances, deposit the rest of the proceeds to B's credit in a bank to be mutually agreed upon; that, when B had been so reimbursed, "then the remainder of the property shall belong sixty per cent to B and forty per cent to A"; and that the property should be prepared for sale "by A or assigns" within a certain time, unless extended by mutual agreement. A fraudulently obtained from B much larger sums of money than were needed to pay for the lands, procured conveyances of the lands to himself, and refused to convey them to B. *Held*, that, whether the contract did or did not create a partnership, (and *it seems* that it did not,) the equitable title in the lands, after reimbursing B for his advances with interest, belonged three fifths to B and two fifths to A; and that A's fraudulent misconduct, while it deprived him of the right to the stipulated commissions, did not divest him of his title in the lands. *Shaeffer* v. *Blair*, 248.

FRAUDS, STATUTES OF.

1. Under a statute of frauds which requires the consideration of a promise to answer for the debt of another to be expressed in writing, a guaranty by a third person of the payment of a negotiable promissory note need not itself express any consideration, if written upon the note before it is delivered and first takes effect as a contract; but must, if written afterwards. *Moses* v. *Lawrence County Bank*, 298.
2. The statute of frauds of a State, even as applied to commercial instruments, is a rule of decision in the courts of the United Stated. *Ib.*
3. The defence of the statute of frauds cannot be set up against an executed contract. *Bibb* v. *Allen*, 481.

See CONTRACT, 7.

FRAUDULENT CONVEYANCE.

See EQUITY, 5.

GUARANTY.

See FRAUDS, STATUTE OF, 1.

HABEAS CORPUS.

1. When a prisoner, convicted of crime in a state court and sentenced there to punishment, complains that his rights under the Constitution or laws of the United States have been thereby violated, he may seek relief in the Federal courts by an application either to the proper Circuit Court for a writ of *habeas corpus*, or to a justice of this court for a writ of error to the state court. *In re Frederich*, 70.
2. The remedy by *habeas corpus* should be limited to cases in which the judgment or sentence attacked is clearly void by reason of its having been rendered without jurisdiction, or by reason of the court's having exceeded its jurisdiction in the premises; and the general rule and better practice, in the absence of special facts and circumstances, is to require the prisoner to seek a review by writ of error instead of resorting to the writ of *habeas corpus*. *Ib.*
3. The writ of *habeas corpus* is not to be used to perform the office of a writ of error or of an appeal. *In re Tyler, Petitioner*, 164.
4. When no writ of error or appeal will lie, if a petitioner for a writ of *habeas corpus* be imprisoned under a judgment of a Circuit Court which had no jurisdiction of the person or of the subject matter, or authority to render the judgment complained of, then relief may be accorded by writ of *habeas corpus*. *Ib.*

INTEREST.

See RAILROAD, 3, 4.

INTOXICATING LIQUORS.

See NUISANCE.

INTERNAL REVENUE.

The lien imposed upon the real estate of a manufacturer of tobacco, snuff or cigars, by Rev. Stat. § 3207, to secure the payment of internal revenue taxes, is not subject to the laws of the State in which the real estate is situated respecting recording or registering mortgages or liens. *United States* v. *Snyder*, 210.

INTERSTATE COMMERCE COMMISSION.

See JURISDICTION, A, 5.

JUDGMENT.

See PARTNERSHIP;
TRUST.

JUDICIAL NOTICE.

The court takes judicial notice of the ordinary meaning of all words in our tongue; and dictionaries are admitted, not as evidence, but only as aids to the memory and understanding of the court. *Nix* v. *Hedden*, 304.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. When the record contains special findings of fact, but no bill of exceptions, the errors of law relied upon by a plaintiff in error must be considered and determined upon the findings. *Chicago, Milwaukee & St. Paul Railway Co.* v. *Hoyt*, 1.
2. A judgment of a Circuit Court to which a writ of error had been sued out, with a supersedeas bond given, being affirmed here and remanded to the trial court in the usual way, that court, on motion, summoned in the sureties, and, although they proposed to interpose a plea of partial payment, proceeded to render judgment against them and the principal for the full amount of the original judgment with interest and costs. An appeal to the Circuit Court of Appeals having been dismissed for nonjoinder of the original defendant, they applied to this court for a writ of mandamus, commanding the court below to vacate its judgment in so far as it was rendered against the sureties, and to execute the mandate by entering judgment and ordering execution against the principal only. *Held*, that that judgment was rendered in the exercise of judicial determination, and not in the discharge of a ministerial duty, and that the petitioners' remedy, if they deemed themselves aggrieved, was by a writ of error. *In re Humes*, 192.
3. The refusal by the trial court, during the progress of the trial, of leave to file a plea on the question of the plaintiff's citizenship and to permit issue to be joined thereon is within the discretion of that court and is not reviewable here. *Mexican Central Railway Co.* v. *Pinkney*, 194.
4. On the authority of *Cameron* v. *United States*, 146 U. S. 533, this case is dismissed because it does not appear that the jurisdictional amount is involved. *Abadie* v. *United States*, 261.
5. No appeal now lies to this court from decisions of the Interstate Commerce Commission. *Interstate Commerce Commission* v. *Atchinson, Topeka & Santa Fé Railroad Co.* 264.
6. If, pending a writ of error to reverse a judgment for the defendant in an action by a State to recover sums of money for taxes, the defendant offers to the plaintiff, and deposits in a bank to its credit, the amount of those sums, with penalties, interest and costs, which by a statute of the State have the same effect as actual payment and receipt of the money, the writ of error must be dismissed. *California* v. *San Pablo and Tulaire Railroad Co.*, 308.
7. A writ of error will not lie to review an order of the highest court of a

State overruling a motion to quash a *fieri facias*. The refusal to quash a writ is not a final judgment within the contemplation of the judiciary acts of the general government. *Loeber* v. *Schroeder*, 580.

8. It is settled that the attempt, for the first time, to raise a Federal question after judgment and on petition for rehearing, comes too late. The motion in this case, to quash the *fieri facias* on the ground that the order of the court directing it to issue was void, stands upon no better footing in such respect than a petition for rehearing would have done. *Ib.*
9. The decision of the Supreme Court of California that McNulty should be punished under the law as it existed at the time of his conviction, involved no Federal question. *McNulty* v. *California*, 645.
10. It was settled in *Hurtado* v. *California*, 110 U. S. 516, that the words "due process of law" in the Fourteenth Amendment do not necessarily require an indictment by a grand jury in a prosecution by a State for murder, whose constitution authorizes such prosecution by information. *Ib.*
11. When the record in a case brought by writ of error from a state court fails to show that a right, privilege or immunity claimed under the constitution or a treaty or statute of the United States was set up or claimed, and was denied in the state court, this court is without jurisdiction to review the judgment of the state court in that respect. *Ib.*
12. An appeal or writ of error lies to this court from the judgments or decrees of the Supreme Courts of the Territories, except in cases where the judgments of the Circuit Courts of Appeal are made final. *Shute* v. *Keyser*, 649.

See CIRCUIT COURTS OF APPEALS;
HABEAS CORPUS, 1, 2;
NEW TRIAL.

B. JURISDICTION OF CIRCUIT COURTS OF APPEALS.

1. A Circuit Court of Appeals cannot review by writ of error the judgment of a Circuit Court of the United States, in execution of a mandate of this court, when the action of the Circuit Court conforms to the mandate, and there are no proceedings subsequent thereto, not settled by the terms of the mandate itself. *Texas & Pacific Railway Co.* v. *Anderson*, 237.
2. The mandate in this case having stated that the receiver, against whom the action was originally brought, had been discharged and had died, and that the Railway Company had been made the party plaintiff in error, and having ordered that the plaintiff recover against the Railway Company her costs expended herein and have execution therefor, further ordered "that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had." Execution accordingly issued against the company for the amount of the judgment with interest at the rate

which obtained in Texas when the judgment was rendered. *Held*, that this action conformed to the mandate, and was not subject to review by the Circuit Court of Appeals. *Ib.*

See CIRCUIT COURTS OF APPEALS;
JURISDICTION, A, 2.

C. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. To give a Circuit Court of the United States jurisdiction on the ground of diverse citizenship, the facts showing the requisite diverse citizenship, must appear in such papers as properly constitute the record of the case. *Mexican Central Railway Co.* v. *Pinkney*, 194.
2. A claim by a person asserting title in land under tide water, for damages for the use and occupation thereof by the United States for the erection and maintenance of a light-house, without his consent and without compensation to him, but not showing that the United States have acknowledged any right of property in him as against them, is a case sounding in tort of which the Circuit Court of the United States has no jurisdiction under the act of March 3, 1887, c. 359. *Hill* v. *United States*, 593.
3. The jurisdiction of the Federal courts is a limited jurisdiction, depending either upon the existence of a Federal question or the diverse citizenships of the parties; and where these elements of jurisdiction are wanting, it cannot proceed, even with the consent of the parties. *Byers* v. *McAuley*, 608.
4. Federal courts have no original jurisdiction in respect to the administration of decedents' estates, and they cannot by entertaining jurisdiction of a suit against the administrator, which they have the power to do in certain cases, draw to themselves the full possession of the *res*, or invest themselves with the authority of determining all claims against it. *Ib.*
5. A citizen of another State may proceed in the Federal courts to establish a debt against the estate, but the debt thus established must take its place and share in the estate as administered by the probate court; it cannot be enforced by direct process against the estate itself. *Ib.*
6. Therefore a distributee, citizen of another State, may establish his right to a share in the estate, and enforce such adjudication against the administrator personally or his sureties, or against other persons liable therefor, or proceed in any way which does not disturb the actual possession of the property by the state court. *Ib.*
7. In this case it was reversible error for the Circuit Court to take any action or make any decree looking to the mere administration of the estate, or to attempt to adjudicate as between themselves the rights of the litigants who were citizens of the State of Pennsylvania, the *res* being in the possession of a court of that State. *Ib.*

See FRAUDS, STATUTES OF, 2;
MECHANICS' LIEN, 2.

LACHES.

See TRUST.

LIMITATION, STATUTES OF.

An assignee in bankruptcy brought a suit in equity, in September, 1886, to set aside transfers of property made by the bankrupt in 1874, in fraud of creditors, and recorded prior to June, 1875. He had been declared a bankrupt in August, 1878, and the assignment in bankruptcy had been made in February, 1879. The answers set up the statute of limitations of the State of six years, and the bankruptcy statute limitation of two years. Judgment creditors of the bankrupt, included in his schedules in bankruptcy, brought a suit in the Supreme Court of the State in July, 1875, against the present defendants to set aside as fraudulent the conveyances in question, and duly filed a *lis pendens*, in which suit the same charges were made as in the present suit. The bill alleged that a decree was made in that suit, in favor of the plaintiffs, in November, 1885, and that it was not until the assignee in bankruptcy was informed of that decree, in July, 1886, that he received knowledge or information of the transfers of the property, or of any facts or circumstances relating thereto, or tending to show, or to lead to inquiry to, any fraudulent transfer. The bill did not set forth what were the impediments to an earlier prosecution of the claim, how the plaintiff came to be so long ignorant of his rights, the means, if any, used by the defendants fraudulently to keep him in ignorance, or how and when he first obtained knowledge of the matters alleged in the bill. *Held*, that the case was a clear one in favor of the bar of limitation, both by the state statute and by the bankruptcy statute. *Pearsall* v. *Smith*, 231.

See EQUITY, 3, 4;
PUBLIC LAND, 9, 10.

LOCAL LAW.

1. A person in charge of a joint railroad warehouse in a railroad centre in Texas, the property of one of several companies which unite in bearing the expense of maintaining it and in selecting its employés and in controlling its expenses, who makes no contracts and handles no moneys on behalf of another railroad centring there, but not participating in the selection of the employés and in controlling expenses, and who is not on the pay-roll of the latter company, is not its "local agent" upon whom process may be served under the provisions of the statutes of that State (Sayles Rev. Civ. Stats. Art. 1223*a*). *Mexican Central Railway Co.* v. *Pinkney*, 194.
2. The provisions of the Texas statutes which give to a special appearance made to challenge the court's jurisdiction, the force and effect of a general appearance, so as to confer jurisdiction over the person of the

defendant, are not binding upon Federal courts sitting in that State, under the rule of procedure prescribed by the fifth section of the act of June 1, 1872, as reproduced in Rev. Stat. § 914. *Ib.*

3. The Supreme Court of Louisiana having decided that under the positive law of that State, as contained in the code and statutes, nothing supplies the place of the registry of a mortgage or dispenses with it, so far as those who are not parties to it are concerned; and when ten years have elapsed from the date of inscription without reinscription the mortgage is without effect as to all third persons; and further, that the failure to reinscribe a mortgage within the statutory period is not remedied or supplied by the pendency of a suit to foreclose the same; such decisions establish a rule of property binding upon the Federal courts. *Pickett* v. *Foster*, 505.

4. In a suit brought in December, 1873, by the heirs of P. in the name of L. the public administrator, to foreclose a mortgage on property in Carroll Parish, Louisiana, given to secure three notes dated January 1, 1866, and payable one, two and three years after date, it appeared that L. had not previously to the institution of the suit, as required by the statute, been appointed by the parish judge to administer the estate of P. F., who had been joined as a party defendant in the suit as third possessor of the land, pleaded an exception to such omission, and no action having been taken upon such pleading by the plaintiffs, in December, 1875, the suit was dismissed. Prior to such dismissal, in April, 1875, L. had ceased to be public administrator, and F. had been appointed in his place. *Held*, that in the absence of proof of actual fraud on the part of F. the mere fact that he had accepted the office of public administrator, did not impose upon him the duty of causing the mortgage referred to to be reinscribed, and further, the notes secured by the mortgage having become prescribed by lapse of time sixteen months before his acceptance of the office, such acceptance did not place him in any fiduciary relation to the holders of such notes. *Ib.*

General. *See* FRAUDS, STATUTES OF, 2.
General. *See* MASTER AND SERVANT, 1.
Colorado. *See* RAILROAD, 8.
Illinois. *See* MUNICIPAL BOND.
Louisiana. *See* INTERNAL REVENUE.
Minnesota. *See* CONSTITUTIONAL LAW, 2.
Montana. *See* PRACTICE, 1.
Washington. *See* NUISANCE.

MANDATE.

See JURISDICTION, A, 2; B, 1, 2.

MASTER AND SERVANT.

1. Whether the engineer and fireman of a locomotive engine, running alone on a railroad and without any train attached, are fellow-ser-

vants of the company, so as to preclude the latter from recovering from the company for injuries caused by the negligence of the former, is not a question of local law, to be settled by the decisions of the highest court of the State in which a cause of action arises, but is one of general law, to be determined by a reference to all the authorities, and a consideration of the principles underlying the relations of master and servant. *Baltimore & Ohio Railroad Co.* v. *Baugh*, 368.

2. Such engineer and such fireman, when engaged on such duty are, when so considered, fellow-servants of the railroad company, and the fireman is precluded by principles of general law from recovering damages from the company for injuries caused, during the running, by the negligence of the engineer. *Ib.*

MECHANICS' LIEN.

1. When one party contracts to erect a building for another party on land of the latter, and a law of the State gives a mechanics' lien upon the land upon which the building stands, the parties may contract that the lien shall extend to other adjoining land. *Sheffield Furnace Co.* v. *Witherow*, 574.
2. When the state law gives either an action at law or a remedy in equity to enforce a mechanics' lien, proceedings in a Federal court to enforce it may be had in equity. *Ib.*

MORTGAGE.

1. The "after acquired property" clause in a railroad mortgage covers not only legal acquisitions, but also all equitable rights and interests subsequently acquired either by or for the railroad company, the mortgagor. *Wade* v. *Chicago, Springfield & St. Louis Railroad*, 327.
2. A railroad company contracted with a construction company to build and complete its railroad on a line designated on a map of the same, and to furnish and equip it, agreeing to pay for the same in stock and mortgage bonds, to be issued from time to time as sections should be completed. A mortgage was made of the road and property then existing and afterwards to be acquired. The construction company began work and completed a small section, for which it received the stipulated pay in stock and bonds. It parted with the latter for a good consideration, and they eventually came by purchase into the possession of W. No further section was completed, but work was done at various points on the line, and the construction company acquired for the railroad company rights of way through nearly or quite the entire route. Subsequently another railroad company acquired these properties through the construction company, and completed the road. *Held*, that W., being a *bona fide* holder of the bonds secured by the first mortgage, who had purchased the bonds in good faith, had through the mortgage a prior lien on the whole line

for the full amount of the face of his bonds, which was not affected by the fact that the new company acquired its rights and property, not directly from the first company, but through intervening conveyances. *Ib.*

See EQUITY, 4;
LOCAL LAW, 3, 4.

MUNICIPAL BOND.

In accordance with a previous resolution of the city counsel of Cairo, Illinois, an election was duly held there on the 28th of May, 1867, "for the purpose of voting upon the question of the city's issuing $100,000 in twenty-year bonds, drawing eight per cent interest, as a subscription to the capital stock of the Cairo and Vincennes Railroad"; and it was, by a vote of 695 to 1, "declared to be the wish of the people that the said sum of $100,000 be so subscribed." Such subscription was accordingly made. In November following the railroad company and the city further agreed that the railroad company should commence work within six months and push it with dispatch; that the city should issue its bonds to the amount of $50,000, when the road should be completed to the boundary line between Alexander and Pulaski Counties, and a like amount when it should be completed to the boundary line between Pulaski and Johnson Counties, and that each amount when issued should be delivered to the railroad company in exchange for a like amount of its stock; and that the city should, as each issue of stock was made, sell it to the railroad company for the sum of $2500 in bonds of the city. In July, 1871, an ordinance was passed authorizing this contract to be carried out; and in December, 1872, the city, by its trustee, delivered to the railroad company bonds to the amount of $100,000 the company delivered to the trustee for the city certificates of stock to the like amount and bonds of the city to the amount of $5000, and the trustee thereupon transferred the certificates of stock to the company. The mayor of the city then, on the 14th of December, 1872, reported to the auditor of the State of Illinois an issue of bonds of the city to the amount of $95,000 for subscriptions to the stock of the railroad company, and the bonds were certified by the auditor as registered pursuant to the laws of Illinois, "to fund and provide for paying the railroad debts of counties, townships, cities and towns." The bonds were sold by the company and passed into the hands of innocent holders for value. The city having failed to pay the coupons on said bonds as maturing, one of the holders brought suit to recover the same. *Held*, (1) That the executed agreement on the part of the city to subscribe for stock, and on the part of the company to receive bonds in payment therefor, was not affected by the further act of the city in parting with its stock to the company in consideration of a return of a portion of the bonds; and that whatever wrong might have been committed by the city council

in the latter transaction, did not vitiate the bonds issued under the former, after they had passed into the hands of a *bona fide* holder; (2) That, as the statute of the State had provided for the registry of municipal bonds in such cases and a certificate thereof, such certificate should be held to be sufficient evidence to a purchaser of the existence of the facts, upon which alone the bonds could be registered; (3) That the bonds were valid in the hands of a *bona fide* holder; (4) That under the laws of Illinois, governing the issue, the city had the power to make the bonds payable in New York; (5) That under the settled rule in Illinois the coupons drew interest after maturity. *Cairo* v. *Zane*, 122.

MUNICIPAL CORPORATION.

The city of St. Louis is authorized by the Constitution and laws of Missouri, to impose upon a telegraph company putting its poles in the streets of the city, a charge in the nature of rental for the exclusive use of the parts so used. *St. Louis* v. *Western Union Tel. Co.*, 465.

NEGLIGENCE.

See COMMON CARRIER;
RAILROAD, 5.

NEGOTIABLE PAPER.

Where negotiable paper has been put in circulation, and there is no infirmity or defence between the antecedent parties thereto, a purchaser of such securities is entitled to recover thereon, as against the maker, the whole amount, irrespective of what he may have paid therefor. *Wade* v. *Chicago, Springfield & St. Louis Railroad Co.*, 327.

NEW TRIAL.

An affidavit made by one of plaintiff's attorneys, he having been represented in the progress of the case by two, for use on a motion for a new trial setting forth that an order of continuance had been vacated and the case set down for trial in his absence and without notice either to plaintiff or affiant, whereby plaintiff was prevented from presenting his evidence to the jury and deprived of a fair trial, cannot be considered in this court on writ of error, because: (1) Such affidavit is no portion of the record, — it not having been incorporated in a bill of exceptions; (2) There is nothing to show that it was the only affidavit bearing upon the point in the files of the case; (3) Even if it were shown to have been the only affidavit it would not be sufficient to overthrow the recitals of the record that the parties appeared by their attorneys. *Evans* v. *Stettnisch*, 605.

NUISANCE.

A railroad corporation cannot, by the general principles of equity jurisprudence, or by the provisions of the Code of Washington Territory, main-

tain a suit for an injunction, as for a nuisance, against the keepers of saloons near the line of its road, at which its workmen buy intoxicating liquors and get so drunk as to be unfit for work. *Northern Pacific Railroad Co.* v. *Whalen*, 157.

PARTIES.

See PARTNERSHIP.

PARTNERSHIP.

B. and H. being sued as partners, and it appearing from the proof that H. was not a partner but merely a clerk, no objection to the misjoinder having been made by either of the defendants, judgment for the whole amount was properly entered against B., a substantial cause of action having been established. *Bibb* v. *Allen*, 481.

See FRAUD.

PATENT FOR INVENTION.

1. Claims 3, 4, 5, and 6 of reissued letters patent No. 10,806, granted February 8, 1887, to the National Meter Company, as assignee of Lewis Hallock Nash, for improvements in water-meters, on the surrender of original letters patent No. 211,582, granted to said Nash, January 21, 1879, are not infringed by water-meters constructed according to letters patent reissued to the Hersey Meter Company, No. 10,778, November 2, 1886, as assignees of James A. Tilden, and to letters patent No. 357,159, granted to James A. Tilden, February 1, 1887, and to letters patent granted to said company, as assignee of said Tilden, No. 385,970, July 10, 1888. *National Meter Co.* v. *Yonkers*, 48.
2. The Nash piston has a side-rocking movement across the centre of the cylinder, upon successive bearing points made by the contact of a projection on the piston with the recess in the cylinder, or conversely, and the piston rotates upon its own axis, so that each projection comes successively into each recess of the cylinder. But in the defendant's structure, there is no side-rocking, nor any rotary motion, and each projection in the piston always operates in connection with one particular corresponding recess in the cylinder, and never leaves that recess. *Ib.*
3. The inventions protected by letters patent No. 203,604, granted to Charles E. Dobson, May 14, 1878, or by letters patent No. 249,321, granted to Henry C. Dobson, November 8, 1881, both for improvements in banjos, exhibit patentable novelty; but they are not infringed by instruments constructed according to the specification and claims in letters patent 253,849, granted to Edwin I. Cubley, February 21, 1882. *Dobson* v. *Cubley*, 117.
4. The invention claimed in letters patent No. 262,977, issued August 22, 1882, to Morris L. Orum for an improvement in locks for furniture, in

view of the previous state of the art, had no patentable novelty. *Duer* v. *Corbin Cabinet Lock Co.*, 216.

5. The mere fact that a patented article is popular and meets with large and increasing sales is unimportant when the alleged invention is without patentable novelty. *Ib.*

6. In a suit in equity brought on letters patent No. 348,073, granted August 24, 1886, on an application filed March 22, 1886, to John T. Underwood and Frederick W. Underwood, for a "reproducing surface for type-writing and manifolding," the claim being for "A sheet of material or fabric coated with a composition composed of a precipitate of dye-matter, obtained as described, in combination with oil, wax or oleaginous matter, substantially as and for the purposes set forth," it appeared that letters patent No. 348,072, had been granted to the plaintiffs August 24, 1886, on an application filed March 22, 1886, the claim of which was for "The coloring composition herein described for the manufacture of a substitute for carbon-paper, composed of a precipitate of dye-matter, in combination with oil, wax or oleaginous matter, substantially as set forth." The suit was not brought on No. 348,072. The only difference in the two patents was that No. 348,073 was for spreading upon paper the composition described in No. 348,072. *Held* that, in view of earlier patents and publications, there was no novelty in taking a coloring substance already known and applying it to paper; that the omission to claim in No. 348,073, the composition of matter described in it was a disclaimer of it, as being public property; and that there was no invention in applying it to paper, as claimed in No. 348,073. *Underwood* v. *Gerber*, 224.

7. The second claim in reissued letters patent No. 5785, granted March 10, 1874, to Edward W. Leggett for an improvement in lining oil barrels with glue, viz.: "for a barrel, cask, etc., coated or sized by the material and by the mode or process whereby it is absorbed into and strengthened the wood fibre, substantially as herein described" is void as it is an expansion of the claim in the original patent so as to embrace a claim not specified therein. *Leggett* v. *Standard Oil Co.*, 287.

8. The first claim therein, viz: "the within described process of coating or lining the inside of barrels, casks, etc., with glue, wherein the glutinous material, instead of being produced by reduction from a previously solid state, is permitted to attain only a certain liquid consistency and is then applied to the package and permitted to harden thereon for the first time, substantially as herein set forth and described," is void: (1) because it was a mere commercial suggestion, and not such a discovery as involved the exercise of the inventive faculties; and, (2), by reason of such prior use as to prevent the issue of any valid patent covering it. *Ib.*

9. The invalidity of a new claim in a reissued patent does not affect the validity of a claim in the original patent, repeated in the reissue. *Ib.*

10. The poverty or pecuniary embarrassment of a patentee is not sufficient

excuse for postponing the assertion of his rights, or preventing the application of the doctrine of laches. *Ib.*

11. An oral agreement for the sale and assignment of the right to obtain a patent for an invention is not within the statute of frauds, nor within section 4898 of the Revised Statutes requiring assignments of patents to be in writing; and may be specifically enforced in equity, upon sufficient proof thereof. *Dalzell* v. *Dueber Watch Case Mfg. Co.*, 315.
12. A manufacturing corporation, which has employed a skilled workman, for a stated compensation, to take charge of its works, and to devote his time and services to devising and making improvements in articles there manufactured, is not entitled to a conveyance of patents obtained for inventions made by him while so employed, in the absence of express agreement to that effect. *Ib.*
13. An assignee for Michigan, of a patent for an improvement in pipes, made, sold and delivered in Michigan, pipes made according to the patent, knowing that they were to be laid in the streets of a city in Connecticut, a territory the right for which the seller did not own under the patent, and they were laid in that city: *Held*, under *Adams* v. *Burke*, 17 Wall. 453, that the seller was not liable, in an action for infringement, to the owner of the patent for Connecticut. *Hobbie* v. *Jennison*, 355.
14. Letters patent No. 301,720, issued July 8, 1884, to Albert L. Ide for new and useful improvements in steam-engine governors are void for want of novelty in the invention claimed in the specification. *Ide* v. *Ball Engine Co.*, 555.
15. Letters patent No. 283,057, issued August 14, 1883, to Frank E. Aldrich, for an improvement in rubber cloths or fabrics, are void for want of novelty. *Brigham* v. *Coffin*, 557.

PLEADING.

See EQUITY, 6, 7.

POSTMASTER GENERAL.

An order of the Postmaster General, made in the exercise of the discretion given him by the act of June 17, 1878, 20 Stat. 140, c. 259, § 1, withholding commissions from a postmaster, and allowing a stated compensation in place thereof, in consequence of alleged false returns in the postmaster's accounts, is not final and conclusive in an action by the United States against the postmaster and the sureties on his bond, to recover moneys alleged to be illegally withheld; but it is competent evidence on the part of the government, which may be explained or contradicted by the defendants. *United States* v. *Dumas*, 278.

PRACTICE.

1. Under the practice in Montana a defendant may move for a non-suit upon the ground that the plaintiff has failed to prove a sufficient

case for the jury; but, if he proceed to put in testimony, he waives this right. *Bogk* v. *Gassert*, 17.

2. Motions to suppress depositions for irregularities should be made before the case is called for trial, so that opportunity may be afforded to correct the defects or to retake the testimony. *Bibb* v. *Allen*, 481.
3. A variance between the notice and the commission to take depositions such as misspelling the commissioner's name in the latter, affords no valid ground for the suppression of the depositions. *Ib.*

See EQUITY, 6, 7; LOCAL LAW, 2;
EXCEPTION, 1, 2, 3; NEW TRIAL.
JURISDICTION, A, 1;

PRINCIPAL AND AGENT.

Where a principal sends an order to a broker doing business in an established market or trade, for a deal in that trade, he thereby confers upon the broker authority to deal according to any well-settled usage in such trade or market, especially when such usage is known to the principal, and is fair in itself, and does not change any essential particular of the contract between the principal and the broker, or involve any departure from the principal's instructions; provided the transaction for which the broker is employed be lawful in character and is not violative of good morals or public policy. *Bibb* v. *Allen*, 481.

See CONTRACT, 7, 8.

PROMISSORY NOTE.

1. A negotiable promissory note, even if not purporting to be "for value received," imports a consideration; and the endorsement of such a note is itself *prima facie* evidence of having been made for value. *Moses* v. *Lawrence County Bank*, 298.
2. A promissory note payable to the maker's own order first takes effect as a contract upon endorsement and delivery by him. *Ib.*

See FRAUDS, STATUTES OF, 1;
NEGOTIABLE PAPER.

PUBLIC LAND.

1. Swamp lands in Michigan which were not embraced in the list of such lands, made by the Surveyor General February 12, 1853, as coming within the provisions of the grant to the State of September 28, 1850, 9 Stat. 514, c. 84, which list was approved by the Secretary of the Interior January 11, 1854, and which lands were patented to the State March 3, 1856, as so listed and approved, were not included within the said grant of September 28, 1850. *Chandler* v. *Calumet & Hecla Mining Co.*, 79.
2. These several official acts by the proper officers operated as an adjudi-

cation as to what were swamp lands within the grant of September 28, 1850, and to exclude contradictory parol evidence. *Ib.*

3. The grant by the State, May 25, 1855, of the lands in controversy here, operated to convey it to the grantee, whether the State's title was acquired under the swamp land act, or under the grant of August 6, 1852, 10 Stat. 35, c. 92, for the purpose of building a ship canal. *Ib.*
4. *Railroad Co.* v. *Smith*, 9 Wall. 95, explained, qualified and distinguished from this case. *Ib.*
5. When the defendant in an action of trespass brought by the United States against him for cutting and carrying away timber from public lands admits the doing of those acts, the plaintiffs are entitled to at least nominal damages in the absence of direct evidence as to the value of the standing trees. *United States* v. *Mock*, 273.
6. It is not to be presumed in such case as matter of course that the government permitted the trespass, and any instruction by the court pointing that way is error. *Ib.*
7. Lands within the exterior limits of a Mexican grant, *sub judice* at the date of the definite location of the Central Pacific within that location, and not required to satisfy the quantity granted by Mexico as determined by the United States, were not reserved, but inured to the road as a portion of its land grant and were properly patented to it as such. *Carr* v. *Quigley*, 652.
8. *Newhall* v. *Sanger*, 92 U. S. 761, explained. *United States* v. *McLaughlin*, 127 U. S. 428, approved. *Ib.*
9. When, in a suit in equity brought by the United States to set aside and cancel patents of public land issued by the Land Department, no fraud being charged, it appears that the suit is brought for the benefit of private persons and that the government has no interest in the result, the United States are barred from bringing the suit if the persons for whose benefit the suit is brought would be barred. *Curtner* v. *United States*, 662.
10. When a land-grant railroad company conveys a part of its grant without having received a patent from the United States, and it appears that the United States had issued a patent of the tract to a State, as part of a land grant to the State, and the State parts with its title to an individual, the relative rights of the parties can be determined by proceedings in the courts on behalf of the grantees of the company, against the grantees of the State. *Ib.*

RAILROAD.

1. A debt due from a railroad company to a car company for rental of cars prior to the commencement of a suit to foreclose a mortgage on the road and the appointment of a receiver, is held not to be a preferred debt, having priority over the mortgage debt. *Thomas* v. *Western Car Co.*, 95.

2. A similar debt accrued during the receivership is examined, and is settled as to amount and allowed. *Ib.*
3. The car company in such case is not allowed interest. *Ib.*
4. After property of an insolvent passes into the hands of a receiver or of an assignee in insolvency, interest is not allowed on the claims against the fund. *Ib.*
5. On the trial of an action by a coupler and switchman of a railroad company, whose wages were $1.50 per day, against another company, to recover for injuries received while in the discharge of his duties from the explosion of the boiler of a locomotive, he was asked, as a witness, what were his prospects of advancement in the service of the company, and answered that he thought by staying he would be promoted; that he had been several times, in the absence of the yard-master, called upon to discharge his duties; that there was a "system by which you go in there as coupler or train-hand, or in the yard, and if a man falls out you stand a chance of taking his place"; and that the average yard-conductor obtained a salary of from $60 to $75 a month. *Held*, that there was error in admitting this testimony. *Richmond & Danville Railroad* v. *Elliott*, 266.
6. If a railway company, in purchasing a locomotive from a manufacturer of recognized standing makes such reasonable examination of it as is possible without tearing the machinery in pieces, and subjects it fully to all the ordinary tests which are applied for determining the efficiency and strength of completed engines, and such examination and tests disclose no defect, it cannot, in an action by a stranger, be adjudged guilty of negligence on account of a latent defect which subsequently caused injury to such party. *Ib.*
7. It is no proper business of a railway company as common carrier to foster particular enterprises or to build up new industries; but, deriving its franchises from the legislature, and depending upon the will of the people for its very existence, it is bound to deal fairly with the public, to extend them reasonable facilities for the transportation of their persons and property, and to put all its patrons upon an absolute equality. *Union Pacific Railway Co.* v. *Goodridge*, 680.
8. It is no defence to an action against a railway company under the statute of Colorado of 1885 to recover triple damages for an unjust discrimination in freight, to set up a contract for a rebate in case of furnishing a certain amount for transportation, without also alleging and showing that such an amount was furnished. *Ib.*
9. An unexplained, indefinite and unadjusted claim for damages arising from a tort, which though put forward had never been pressed, is no defence in such an action. *Ib.*

See COMMON CARRIER; CONTRACT, 2; LOCAL LAW, 1; MASTER AND SERVANT; MORTGAGE, 1, 2; NUISANCE.

RECEIVER.

1. Property within a State, which is in the possession of a receiver by virtue of his appointment as such by a Circuit Court of the United States, is not subject to seizure and levy under process issuing from a court of the State to enforce the collection of a tax assessed upon its owner under the laws of the State. *In re Tyler, Petitioner*, 164.
2. The exclusive remedy of the state tax collector in such case is in the Circuit Court which appointed the receiver, where the question of the validity of the tax may be heard and determined, and where the priority of payment of such amount as may be found to be due which is granted by the laws of the State will be recognized and enforced. *Ib.*
3. After a state court has appointed a receiver of all the property of a corporation, and while the receivership exists, stockholders of the corporation cannot bring a suit against the officers in a court of the United States for fraudulent misappropriation of its property, without making the receiver, as well as the corporation, a party to the suit; although the state court has denied a petition of the receiver for authority to bring the suit, as well as an application of the stockholders for leave to make him a party to it. *Porter* v. *Sabin*, 473.

See RAILROAD, 1, 2, 3, 4.

RULE OF DECISION.

See FRAUDS, STATUTES OF.

ST. LOUIS.

See MUNICIPAL CORPORATION.

SERVICE OF PROCESS.

See LOCAL LAW, 1.

STATUTE.

A. CONSTRUCTION OF STATUTES.

See JUDICIAL NOTICE.

B. STATUTES OF THE UNITED STATES.

See CONSTITUTIONAL LAW, 9;
CRIMINAL LAW, 1;
CUSTOMS DUTIES, 1, 2, 6, 7, 10, 12, 13, 15;
INTERNAL REVENUE;
JURISDICTION, C, 2;
LIMITATION, STATUTES OF;
PATENT FOR INVENTION, 11;
POSTMASTER GENERAL;
PUBLIC LAND, 1, 2, 3, 7.

C. STATUTES OF STATES AND TERRITORIES.

Alabama.	*See* FRAUDS, STATUTES OF, 1, 2
Colorado.	*See* RAILROAD, 8, 9.
Illinois.	*See* MUNICIPAL BOND.
Louisiana.	*See* LOCAL LAW, 3, 4.
Minnesota.	*See* CONSTITUTIONAL LAW, 2.
Missouri.	*See* MUNICIPAL CORPORATION.
New York.	*See* CONTRACT, 5; LIMITATION, STATUTES OF.
Oregon.	*See* CONSTITUTIONAL LAW, 1.
Texas.	*See* LOCAL LAW, 1, 2.
Washington Territory.	*See* NUISANCE.

TAX AND TAXATION.

See RECEIVER, 1, 2.

TELEGRAPH COMPANY.

See MUNICIPAL CORPORATION.

TENDER.

See JURISDICTION, A, 6.

TRADE-MARK.

1. Irrespective of any question of trade-marks, rival manufacturers have no right, by imitative devices, to beguile the public into buying their wares under the impression that they are buying those of their rivals. *Coats* v. *Merrick Thread Co.*, 562.
2. The proofs establish that there was no intention on the part of the appellees to impose their thread upon the public as that of the plaintiff in error, or to mislead the dealers who purchased of them. *Ib.*
3. When the letters patent to Hezekiah Conant, protecting "a new design for embossing the ends of sewing-thread spools" expired, the public became entitled to use them for the purpose for which the assignee of Conant used them. *Ib.*

TRIAL BY JURY.

See CONSTITUTIONAL LAW, 3.

TRUST.

M. subscribed to the capital stock of a company about to be formed a large sum on his own account, and $60,000 as trustee. B., who was the *cestui que trust*, subsequently asked him to acknowledge that he held it in trust for S. who had purchased it of B. M. thereupon wrote under date of November 22, 1869, "To whom it may concern: I hereby acknowledge to hold in the Southern Railroad Association as trustee for S. under an arrangement with B. an original subscription

of $60,000 on which 70 per cent has been paid. This motion is in conformity with an arrangement made some two months ago between B., S. and myself. (Signed) M." In 1875 S. commenced an action at law against M. in a state court of Massachusetts to recover on an alleged contract by M. to invest for S. the sum of $45,000 then in M.'s hands, in the stock of that association, and such proceedings were had that it was finally determined there that no such contract as charged existed, or if it existed, was broken. Subsequently facts were disclosed which showed a breach of trust by M. His administrator and administratrix filed this bill. *Held*,

(1) That the paper given by M. to S. in 1869 was an absolute and unqualified declaration of trust, for the amount of the subscription so far as it had been paid;

(2) That one essential to an estoppel by judgment is identity of cause of action, and that examination of the pleadings and proceedings in the case in Massachusetts showed that the cause of action there was not identical with the cause of action here;

(3) That in view of the fact that M. when called as a witness in the action at law testified that the stock stood as it always had stood, and of the further fact that no breach of trust was discovered until just before the commencement of this suit, the plaintiffs had not been guilty of laches;

(4) That in view of the circumstances detailed in the opinion of the court the decree of the court below awarding a return of the amount for which M. acknowledged himself as trustee with interest reached, as nearly as possible, what justice demanded. *McComb* v. *Frink*, 629.