INDEX.

ADMIRALTY.

1. Vessels engaged in trade between Porto Rican ports and ports of the United States are engaged in the coasting trade in the sense in which those words are used in the New York pilotage statutes; and steam vessels engaged in such trade are coastwise steam vessels under Revised Statutes, section 4444. *Huus* v. *New York & Porto Rico Steamship Co.*, 392.
2. The statutes of New York impose compulsory pilotage on foreign vessels inward and outward bound to and from the port of New York by way of Sandy Hook. *Homer Ramsdell Transportation Co.* v. *La Compagnie Générale Transatlantique*, 406.
3. In an action at common law the ship owner is not liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily. *Ib.*

BANKRUPT.

1. Frank Brothers were adjudged bankrupts in February, 1899. For a long time prior to that Pirie & Co. had dealt with them, selling them merchandise. Within four months prior to the adjudication of bankruptcy Pirie & Co. received from them $1336.79, leaving a balance still due and unpaid of $3093.98. When this payment was made Frank Brothers were hopelessly insolvent to the knowledge of Frank Brothers, but Pirie & Co. and their agents had no knowledge of it, and had no reasonable cause to believe that the bankrupts by such payment intended to give a preference, nor did they intend to do so. Pirie & Co. proved their claim against the estate, and received a dividend thereon, which they still hold. *Pirie* v. *Chicago Title & Trust Co.*, 438.
2. The provisions in the Bankrupt Act of July 1, 1898, c. 541, § 60, that "a person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors, of the same class," means that a transfer of property includes the giving or conveying anything of value, anything which has debt paying or debt securing power; and money is property. If the person receiving such preference did not have cause to believe that it was intended, he may keep the property transferred, but, if it be only a partial discharge of his debt, cannot prove the balance. *Ib.*

3. When the purpose of a prior law is continued, its words usually are, and an omission of the words implies an omission of the purpose. *Ib.*
4. The object of a bankrupt act is, so far as creditors are concerned, to secure equality of distribution among all, of the property of the bankrupt. *Ib.*
5. Subdivision *c* of section 60 of the bankrupt act is applicable to the cases arising under subdivision *b*, and allows a set-off, which might not be otherwise allowed. *Ib.*

CASES AFFIRMED OR FOLLOWED.

De Lima v. *Bidwell*, *ante*, 1, followed by reversing the action of the general appraisers. *Goetze* v. *United States*, 221.
Dooley v. *United States*, *ante*, 222, followed. *Armstrong* v. *United States*, 243.
Lantry v. *Wallace*, *ante*, 536, followed. *Hood* v. *Wallace*, 555.

CASES DISTINGUISHED.

The distinction between *Halderman* v. *United States*, 91 U. S. 584, and *United States* v. *Parker*, 120 U. S. 89, shown. *Jacobs* v. *Marks*, 583.

CONCURRENCE IN JUDGMENT, BUT NOT IN OPINION.

In announcing the conclusion and judgment of the court in *Downes* v. *Bidwell*, MR. JUSTICE BROWN delivered an opinion. MR. JUSTICE WHITE delivered a concurring opinion which was also concurred in by MR. JUSTICE SHIRAS and MR. JUSTICE MCKENNA. MR. JUSTICE GRAY also delivered a concurring opinion. The Chief Justice, MR. JUSTICE HARLAN, MR. JUSTICE BREWER, and MR. JUSTICE PECKHAM dissented. Thus it is seen that there is no opinion in which a majority of the court concurred. Under these circumstances the reporter made headnotes of each of the sustaining opinions, and placed before each the names of the justices or justice who concurred in it, as follows:

I. By MR. JUSTICE BROWN, in announcing the conclusion and judgment of the court.
1. The Circuit Courts have jurisdiction, regardless of amount, of actions against a collector of customs for duties exacted and paid under protest upon merchandise alleged not to have been imported. *Downes* v. *Bidwell*, 244.
2. The island of Porto Rico is not a part of the United States within that provision of the Constitution which declares that "all duties, imposts, and excises shall be uniform throughout the United States." *Ib.*
3. There is a clear distinction between such prohibitions of the Constitution as go to the very root of the power of Congress to act at all, irrespective of time or place, and such as are operative only throughout the United States, or among the several States. *Ib.*
4. A long continued and uniform interpretation, put by the executive and legislative departments of the Government, upon a clause in the Constitution should be followed by the judicial department, unless such interpretation be manifestly contrary to its letter or spirit. *Ib.*

II. By MR. JUSTICE WHITE, with whom MR. JUSTICE SHIRAS and MR. JUSTICE MCKENNA concurred.

1. The government of the United States was born of the Constitution, and all powers which it enjoys or may exercise must be either derived expressly or by implication from that instrument. Ever then, when an act of any department is challenged, because not warranted by the Constitution, the existence of the authority is to be ascertained by determining whether the power has been conferred by the Constitution, either in express terms or by lawful implication, to be drawn from the express authority conferred or deduced as an attribute which legitimately inheres in the nature of the powers given, and which flows from the character of the government established by the Constitution. In other words, whilst confined to its constitutional orbit, the government of the United States is supreme within its lawful sphere. *Ib.*
2. Every function of the government being thus derived from the Constitution, it follows that that instrument is everywhere and at all times potential in so far as its provisions are applicable. *Ib.*
3. Hence it is that wherever a power is given by the Constitution and there is a limitation imposed on the authority, such restriction operates upon and confines every action on the subject within its constitutional limits. *Ib.*
4. Consequently it is impossible to conceive that where conditions are brought about to which any particular provision of the Constitution applies its controlling influence may be frustrated by the action of any or all of the departments of the government. Those departments, when discharging, within the limits of their constitutional power, the duties which rest on them, may of course deal with the subject committed to them in such a way as to cause the matter dealt with to come under the control of provisions of the Constitution which may not have been previously applicable. But this does not conflict with the doctrine just stated, or presuppose that the Constitution may or may not be applicable at the election of any agency of the government. *Ib.*
5. The Constitution has undoubtedly conferred on Congress the right to create such municipal organizations as it may deem best for all the territories of the United States whether they have been incorporated or not, to give to the inhabitants as respects the local governments such degree of representation as may be conducive to the public well-being, to deprive such territory of representative government if it is considered just to do so, and to change such local governments at discretion. *Ib.*
6. As Congress in governing the territories is subject to the Constitution, it results that all the limitations of the Constitution which are applicable to Congress in exercising this authority necessarily limit its power on this subject. It follows also that every provision of the Constitution which is applicable to the territories is also controlling therein. To justify a departure from this elementary principle by a criticism of the opinion of Mr. Chief Justice Taney in *Scott* v. *Sandford*, 19 How. 393, is unwarranted. Whatever may be the view entertained of

the correctness of the opinion of the court in that case, in so far as it interpreted a particular provision of the Constitution concerning slavery and decided that as so construed it was in force in the territories, this in no way affects the principle which that decision announced, that the applicable provisions of the Constitution were operative. *Ib.*

7. In the case of the territories, as in every other instance, when a provision of the Constitution is invoked, the question which arises is, not whether the Constitution is operative, for that is self-evident, but whether the provision relied on is applicable. *Ib.*
8. As Congress derives its authority to levy local taxes for local purposes within the territories, not from the general grant of power to tax as expressed in the Constitution, it follows that its right to locally tax is not to be measured by the provision empowering Congress "To lay and collect Taxes, Duties, Imposts, and Excises," and is not restrained by the requirement of uniformity throughout the United States. But the power just referred to, as well as the qualification of uniformity, restrains Congress from imposing an impost duty on goods coming into the United States from a territory which has been incorporated into and forms a part of the United States. This results because the clause of the Constitution in question does not confer upon Congress power to impose such an impost duty on goods coming from one part of the United States to another part thereof, and such duty besides would be repugnant to the requirement of uniformity throughout the United States. *Ib.*

III. By Mr. Justice Gray.

1. The civil government of the United States cannot extend immediately, and of its own force over territory acquired by war. Such territory must necessarily, in the first instance, be governed by the military power under the control of the President as commander in chief. Civil government cannot take effect at once, as soon as possession is acquired under military authority, or even as soon as that possession is confirmed by treaty. It can only be put in operation by the action of the appropriate political department of the Government at such time and in such degree as that department may determine. *Ib.*
2. In a conquered territory, civil government must take effect, either by the action of the treaty-making power, or by that of the Congress of the United States. The office of a treaty of cession ordinarily is to put an end to all authority of the foreign government over the territory; and to subject the territory to the disposition of the Government of the United States. *Ib.*
3. The government and disposition of territory so acquired belong to the Government of the United States, consisting of the President, the Senate, elected by the States, and the House of Representatives, chosen by and immediately representing the people of the United States. *Ib.*
4. So long as Congress has not incorporated the territory into the United States, neither military occupation nor cession by treaty makes the conquered territory domestic territory, in the sense of the revenue laws.

But those laws concerning "foreign countries" remain applicable to the conquered territory, until changed by Congress. *Ib.*

5. If Congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government, which is not subject to all the restrictions of the Constitution. *Ib.*

CONSTITUTIONAL LAW.

1. By the Customs Administrative Act of 1890 an appeal is given from the decision of the collector "as to the rate and amount of the duties chargeable upon imported merchandise," to the Board of General Appraisers, who are authorized to decide "as to the construction of the law and the facts respecting the classification of such merchandise, and the rate of duties imposed thereon under such classification;" but where the merchandise is alleged not to have been imported at all, but to have been brought from one domestic port to another, the Board of General Appraisers has no jurisdiction of the case, and an action for money had and received will lie against the collector to recover back duties assessed by him upon such property, and paid under protest. *De Lima* v. *Bidwell*, 1.
2. With the ratification of the treaty of peace between the United States and Spain, April 11, 1899, the island of Porto Rico ceased to be a "foreign country" within the meaning of the tariff laws. *Ib.*
3. Whatever effect be given to the act of March 24, 1900, applying for the benefit of Porto Rico the duties received on importations from that island after the evacuation by the Spanish forces, it has no application to an action brought before the act was passed. *Ib.*

See CONCURRENCE IN JUDGMENT, BUT NOT IN OPINION; CUSTOMS DUTIES; JURISDICTION, 1; DUE PROCESS OF LAW.

CONTRACT.

See TRUST.

CUSTOMS DUTIES.

1. Duties upon imports from the United States to Porto Rico, collected by the military commander and by the President as Commander-in-Chief, from the time possession was taken of the island until the ratification of the treaty of peace, were legally exacted under the war power. *Dooley* v. *United States*, 222.
2. As the right to exact duties upon importations from Porto Rico to New York ceased with the ratification of the treaty of peace, the correlative right to exact duties upon imports from New York to Porto Rico also ceased at the same time. *Ib.*

See CONCURRENCE IN JUDGMENT, BUT NOT IN OPINION; CONSTITUTIONAL LAW, 1, 2, 3; JURISDICTION.

DISTRICT OF COLUMBIA.

Park street is a public highway in the northwest section of the city of

Washington. For some days before the accident which was the ground of this action, a steam roller had been used in connection with the work of resurfacing the street with macadam. This roller became disabled, and was placed close to the south curb of the street, a canvas cover was placed over it, and it was left there for two days. On the second day the horse of the plaintiff in error, being driven along the street, became restive from the flapping of the canvas cover, reared, and upset the vehicle, and threw out the plaintiff, injuring him. *Held*, that the District of Columbia was not liable for the injuries which the plaintiff so suffered. *District of Columbia* v. *Moulton*, 576.

DUE PROCESS OF LAW.

1. The essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied, the court is governed by the substance of things and not by mere form. *Simon* v. *Craft*, 427.
2. A person charged with being of unsound mind is not denied due process of law by being refused an opportunity to defend, when, in fact, actual notice was served upon him of the proceedings, and when, if he had chosen to do so, he was at liberty to make such defences as he deemed advisable. *Ib.*
3. The due process clause in the Fourteenth Amendment to the Constitution does not necessitate that the proceedings in a state court should be by a particular mode, but only that there shall be a regular course of proceedings, in which notice is given of the claim asserted, and an opportunity afforded to defend against it. *Ib.*
4. This court accepts as conclusive the ruling of the supreme court of Alabama that the jury which passed upon the lunacy proceeding considered in this case was a lawful jury, that the petition was in compliance with the statute, and that the asserted omissions in the recitals in the verdict and order thereon were at best but mere irregularities which did not render void the order of the state court, appointing a guardian. *Ib.*

EVIDENCE.

See PRACTICE.

INDIAN TERRITORY COMMISSIONERS.

1. In 1896, commissioners, appointed by Judges of the United States Court in the Indian Territory were inferior officers, not holding their offices for life, or by any fixed tenure, but subject to removal by the appointing power. *Reagan* v. *United States*, 419.
2. Commissioners appointed by that court prior to the act of March 1, 1895, were entitled to reappointment under that act, but were removable at pleasure unless at that date, or at the date of removal, causes for removal were prescribed by law. *Ib.*
3. As no causes for removal had been prescribed by law at the date of removal of claimant in 1896, he was subject to removal by the judge of his district, and the action of that judge in removing him was not open to review in an action for salary. *Ib.*

JUDGMENT.

1. The question whether the record and judicial proceedings in the Michigan court received full faith and credit in the courts of Illinois is one for this court to consider and determine; and it holds that, upon the facts disclosed in the record, the courts of Illinois did give to the judgment and judicial proceedings of the state court of Michigan full faith and credit, within the meaning of the Constitution. *Jacobs* v. *Marks*, 583.
2. The judgment in question in this case did not necessarily import that the plaintiff had received satisfaction of her claim. *Ib.*

JURISDICTION.

1. The Court of Claims, and the Circuit Courts, acting as such, have jurisdiction of actions for the recovery of duties illegally exacted upon merchandise, alleged not to have been imported from a foreign country. *Dooley* v. *United States*, 222.
2. Under the circumstances set forth in its opinion this court thinks that the rule respecting appeals to the Court of Appeals of the District of Columbia must receive the interpretation here which was given to it by the Court of Appeals. *United States* v. *Alvey*, 456.

MANDATE OF THIS COURT.

The action of the Supreme Court of Illinois in this case on April 17, 1901, was a full compliance with the mandate of this court in this case, reported 177 U. S. 51. *Lake Street Elevated Railroad Co.* v. *Farmers' Loan and Trust Co.*, 417.

MINERAL LANDS.

1. The rights conferred upon the locators of mining locations by Rev. Stat. section 2322, are not subject to the right of way expressed in § 2323, and are not limited by § 2336. *Calhoun Gold Mining Co.* v. *Ajax Gold Mining Co.*, 499.
2. As to § 2336, by giving to the oldest or prior location, where veins unite, all ore or mineral within the space of intersection, and the vein below the point of union, the prior location takes no more, notwithstanding that § 2322 gives to such prior location the exclusive right of possession and enjoyment of all the surface included within the limits of the location, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward, vertically. *Held*, that § 2336 does not conflict with § 2332, but supplements it. *Ib.*
3. A locator is not confined to the vein upon which he based his location, and upon which the discovery was made. *Ib.*
4. A patent is not simply a grant for the vein, but a location gives to the locator something more than the right to the vein which is the subject of the location. *Ib.*
5. Patents are proof of the discovery. They relate back to the location of the claims, and cannot be collaterally attacked. *Ib.*

NATIONAL BANK.

1. This was an action, brought by the receiver of a national bank under Rev. Stat. § 5151, providing that shareholders of every such association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association to the amount of their stock therein, at the par value thereof, in addition to the amount invested in such share. *Lantry* v. *Wallace*, 536.
2. Assuming that the defendant became a shareholder in a national bank in consequence of fraudulent representations of the bank's officers, two questions are presented for determination: 1, Whether such representations, relied upon by defendant, constituted a defence in this action, brought by the receiver only for the purpose of enforcing the individual liability imposed by § 5151, Rev. Stat., upon shareholders of national banking associations? which question is answered in the negative; and, 2, Can the defendant, because of frauds of the bank whereby he was induced to become a purchaser of its stock, have a judgment against the receiver, on a counterclaim for money paid by him for stock, to be satisfied out of the bank's assets and funds in his control and possession? which question is also answered in the negative. *Ib.*
3. The present action is at law, its object being to enforce a liability created by statute for the benefit of creditors who have demands against the bank of which the plaintiff is receiver. If the defendant was entitled, under the facts stated, to a rescission of his contract of purchase, and to a cancellation of his stock certificate, and to be relieved from responsibility as a shareholder of the bank, he could obtain such relief only by a suit in equity, to which the bank and the receiver were parties. *Ib.*
4. If the defendant was entitled, under the facts stated, to a rescission of his contract of purchase, and to a cancellation of his stock certificate, and consequently to be relieved from all responsibility as a shareholder of the bank, he could obtain such a relief only by a suit in equity, to which the bank and the receiver were parties. *Ib.*
5. Whether a decree based upon the facts set forth in the answer, even if established in a suit in equity, would be consistent with sound principles, or with the statutes regulating the affairs of national banks, and securing the rights of creditors, is a question upon which the court does not express an opinion. *Ib.*
6. The purchase of this stock by the bank under the circumstances was *ultra vires*, but that did not render the purchase void. *Ib.*
7. As the constitution of Utah distinguished between stock and credits in determining the amount of property of a national bank subject to taxation, shares of stock were not credits, and resident and non-resident shareholders were not entitled to deduct *bona fide* indebtedness from their shares of stock. *Commercial Bank* v. *Chambers*, 556.
8. The assessed value of real estate owned by a bank in other States than that in which the bank is located, is not to be deducted in determining the amount of assessable property of the bank, unless authorized by the laws of the State in which the bank is situated. *Ib.*

NEW TRIAL.

1. The court below, of original jurisdiction in this case, had authority, upon newly discovered evidence, to grant to the railway company a new trial, after the final decision of this case, in an action at law in that court. *Fuller* v. *United States*, 562.
2. It was competent for Congress to confer upon such court, established under the authority of the United States, the power to grant a new trial in an action at law upon grounds discovered after the expiration of the term at which the verdict or decision was rendered. *Ib.*
3. The statute does not declare that the right to apply for a new trial upon newly discovered evidence after the term shall be any the less when the original term is superseded; nor that a new trial of an action at law shall not be applied for or granted, while the case is pending in the appellate court. *Ib.*
4. The statute of Arkansas in question is applicable only to actions and proceedings at law in the courts of that State, as distinguished from suits or proceedings in equity; and as application under that statute, within the time prescribed, for a new trial in an action at law, upon grounds discovered after the term at which the verdict or decision was rendered, was a matter of right, it did not require the leave of any court. *Ib.*

PATENT FOR INVENTION.

This was an action at law against the United States upon an alleged implied contract to pay for the use of a patented invention belonging to the plaintiffs in error, in rifles used by the Government which had been purchased under contract from a Norwegian Company. It was conceded that a contract must be established in order to entitle appellants to recover, as the Court of Claims has no jurisdiction of demand against the United States founded on torts. *Held*, that on the facts proved in this case no such contract was proved against the United States, and that if the petitioners have suffered injury, it has been through the infringement of their patent, and not by a breach of contract. *Russell* v. *United States*, 516.

PRACTICE.

In this case this court holds, (1) that it was not error in the court below to try the case on the amended petition; (2) that the report to the Government of a person employed by the Attorney General in this case was properly rejected as evidence; (3) that there was no error in the rulings of the court below. *District of Columbia* v. *Talty*, 510.

PUBLIC SEWER.

1. Whether the construction of a public sewer by assessments upon adjoining property entitles the owners of such property to the free use of such sewer, or only to the right to a free entrance to their particular sewers, is a question of local policy. *Carson* v. *Brockton Sewerage Commission*, 398.

2. Notwithstanding that such sewer was built by assessments upon the property benefited, it is competent for the legislature to require persons making use of it to pay a reasonable sum for such use. *Ib.*
3. Where an ordinance fixes the charges that shall be paid for the use of a common sewer, no notice is required to be given to the property owners of an assessment for that purpose. *Ib.*

SALARIED OFFICES.

1. When an office with a fixed salary has been created by statute, and a person duly appointed to it has qualified and entered upon the discharge of his duties, he is entitled, during his incumbency, to be paid the salary prescribed by statute. *Glavey* v. *United States*, 595.
2. Such an appointment is complete when duly made by the President and confirmed by the Senate, and the giving of a bond required by law is a mere ministerial act for the security of the Government, and not a condition precedent to his authority to act in performance of the duties of the office. *Ib.*
3. As the act of 1882 created a distinct, separate office, with a fixed annual salary for the incumbent, to be paid by the Secretary of the Treasury; as the plaintiff was legally appointed thereto, by the Secretary under and by virtue alone of that act; and as he entered upon the discharge of the duties appertaining to that position, he was entitled to demand the salary attached by Congress to the office. *Ib.*

STATUTES.

A. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 1; BANKRUPT, 4, 5; CONSTITUTIONAL LAW, 1, 3; INDIAN TERRITORY COMMISSIONERS, 2; MINERAL LANDS, 1, 2; NATIONAL BANK, 1.

B. STATUTES OF THE STATES AND TERRITORIES.

Illinois. *See* BANKRUPT, 2; TRUST, 6.
New York. ADMIRALTY, 2.

TREATIES.

See CONSTITUTIONAL LAW.

TAX AND TAXATION.

See NATIONAL BANK, 7, 8.

TRUST.

1. As the governing committee of the stock exchange had no personal interest to the fund in question in this suit, which was placed in its possession in the trust and confidence that it would see that the purposes of the deposit were fulfilled, and that the moneys were paid out only in accordance with the terms of the trust under which it was deposited,

there can be no question that the fund became thereby a trust fund in the possession of the governing committee, and the disposition of which, in accordance with the trust, they were called upon to secure. The committee occupied, from the time of the deposit of the fund, a fiduciary relation towards the parties depositing it, and became a trustee of the fund, charged with the duty of seeing that it was applied in conformity with the provisions creating it. *Clews* v. *Jamieson*, 461.

2. The jurisdiction of the court below was plainly established, because, under the circumstances, the complainant had no adequate and full remedy at law. *Ib.*
3. It plainly appears in this case from the pleadings that the sales and purchases of stock were in fact made subject to the rules of the stock exchange, and all the transactions regarding the sales and purchases must be regarded as having taken place with direct reference and subject to those rules. *Ib.*
4. A principal can adopt and ratify an unauthorized act of his agent, who in fact is assuming to act in his behalf, although not disclosing his agency to others, and when it is so ratified, it is as if the principal had given an original authority to that effect, and the ratification relates back to the time of the act which is ratified. *Ib.*
5. A contract which is, on its face one of sale, with a provision for future delivery is valid, and the burden of proving that it is invalid, as being a cover for the settlement of differences, rests with the party making the assertion. *Ib.*
6. There is nothing in these contracts which shows that they were gaming contracts, and in violation of the statutes of Illinois; and there is no evidence that they were entered into pursuant to any understanding whatever that they should be fulfilled by payments of the difference between the contract and the market price at the time set for delivery. *Ib.*
7. The sales were made subject to the rules of the exchange, but those rules do not assume to exclude the jurisdiction of the courts, or to provide an exclusive remedy which the parties must follow. *Ib.*
8. The complainants were justified in the course which they pursued, and the price at which the stock sold was a fair basis upon which to determine the amount of damages. *Ib.*

WAR-POWER.

See CUSTOM DUTIES, 1.