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ACTION.

1. Where it appears by the articles of association of a corporation that the remedy by forfeiture and sale for non-payment of assessments on stock is cumulative, such remedy is not a bar to an action at law for the debt, and such sale or forfeiture is not a condition precedent to the right to recover the assessments. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.
2. Prior to the passage of the act of Congress "to further regulate commerce with foreign nations and among the States" approved February 19, 1903, a District Attorney of the United States under the direction of the Attorney General of the United States given in pursuance of a request made by the Interstate Commerce Commission was without power to commence a proceeding in equity against a railroad corporation to restrain it from discriminating in its rates between different localities. *Held*, therefore, that there was error committed below in refusing to sustain a demurrer of a defendant railroad company to a bill filed by a District Attorney of the United States under the circumstances stated. As, however, the act of February 19, 1903, expressly conferred the power which did not theretofore exist and as that act specifically provided that the new remedies which it created should be applicable to all causes then pending, *Held*, that although the action of the lower court in refusing to sustain the demurrer would be overruled, the case would not be finally disposed of but would be remanded for further proceedings in consonance with the provisions of the act of February 19, 1903. *Missouri Pacific Ry. Co.* v. *United States*, 274.
3. A suit to foreclose a mortgage is not a proceeding *in rem* which will bind persons who are not parties thereto, and the fact that the decree covered the property in question does not conclude strangers to the suit. *Pardee* v. *Aldridge*, 429.

See CONSTITUTIONAL LAW, 4; COURTS, 8; MARITIME LAW, 1, 2; PUBLIC LANDS, 1; STATUTES, 9.

ACTS OF CONGRESS.

See ACTION, 2; APPEAL AND WRIT OF ERROR, 1; ARMY OFFICERS; BANKRUPTCY; EXECUTIVE POWERS; JURISDICTION, 1, D; PRACTICE, 1, 4; PUBLIC LANDS, 1, 2, 8; PUBLIC OFFICERS, 1, 3; PUBLIC RECORDS; RAILROAD LAND GRANTS; STATUTES, 3, 4; STOCKHOLDERS, 4; TAXATION, 2.

ADMIRALTY.

See MARITIME LAW;
STATES, 2;
STATUTES, 8.

ALIENS.

As the existing treaty with Japan expressly excepts from its operation any regulation relating to police and public security, and as the various acts of Congress forbidding aliens of whatever country to enter the United States who are paupers or persons likely to become a public charge, are regulations for police and public security, aliens from Japan of the prohibited class have no right to enter or reside in the United States. *Quære*, Whether, even in the absence of such a provision in the treaty, the "full liberty to enter, reside," etc., clause refers to that class in either country who from habits or conditions are the object of police regulations designed to protect the general public against contact with dangerous or improper persons. *The Japanese Immigrant Case*, 86.

See CONGRESS;
EXECUTIVE OFFICERS.

APPEAL AND WRIT OF ERROR.

1. Where diversity of citizenship does not exist and the jurisdiction of the Circuit Court rests solely on the ground that the cause of action arose under the Constitution of the United States, an appeal lies directly to this court, under section 5 of the Judiciary Act of 1891, and if an appeal should be presented to the Circuit Court of Appeals and there go to decree, this court will reverse the decree, not on the merits, but by reason of want of jurisdiction in that court. It is not the intention of the Judiciary Act of 1891 to allow two appeals in cases of that description. *Union & Planters' Bank* v. *Memphis*, 71.
2. Where a bill is based not only upon diversity of citizenship, but also upon the alleged unconstitutionality of municipal ordinances as impairing the obligation of a contract, an appeal lies to this court and the whole case is opened for consideration. *Davis & Farnum Manuf. Co.* v. *Los Angeles*, 207.
3. The sufficiency of evidence cannot be reviewed by this court on writ of error. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.
4. Where the allowance of an attorney's fee under the provisions of a state statute is the basis of the Federal right asserted, and it appears that one of the assignments of error relied upon before, and considered and expressly decided by, the highest court of the State was that the statute was unconstitutional and void and in conflict with the Fourteenth Amendment for the want of mutuality and deprived the plaintiff in error of the equal protection of the law, the motion to dismiss will be denied. *Farmers' and Merchants' Insurance Co.* v. *Dobney*, 301.

See JURISDICTION.

ARMY OFFICERS.

An officer of volunteers in the United States Army who tenders his resignation and is honorably discharged is not entitled to travel pay and commutation of subsistence, under Rev. Stat. § 1289, as amended by the act of February 27, 1877, c. 69, 19 Stat. 243, from the place of his discharge to where he was mustered in. This decision is in accord with the settled practice of the War Department and the Treasury which has been to deny these allowances when the officer or soldier is discharged at his own request, for his own pleasure or convenience. The weight of a contemporaneous and long continued construction of a statute by those charged with its execution is well recognized in cases open to reasonable doubt. *United States* v. *Sweet*, 471.

ASSUMPSIT.

See EVIDENCE, 2.

ATTORNEY'S FEE.

See CONSTITUTIONAL LAW, 3;
LOCAL LAW (FLORIDA).

ATTORNEY GENERAL.

See ACTION.

BANKRUPTCY.

Payments on a running account, in the usual course of business, by a person whose property had actually become insufficient to pay his debts, where new sales succeeded payments and the net result was to increase his estate, and the seller had no knowledge or notice of the insolvency and no reason to believe an intention to prefer, are not preferences, which must be surrendered as a condition to the allowance of proof of claim, under the bankruptcy act of 1898. *Pirie* v. *Chicago Title and Trust Company*, 182 U. S. 438, in which the decision proceeded on the finding of facts made pursuant to clause 3 of General Orders in Bankruptcy, XXXVI, distinguished. *Jaquith* v. *Alden*, 78.

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1. *Calhoun* v. *Violet*, 173 U. S. 60, explained in *Potter* v. *Hall*, 292.
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3. *Smith* v. *Townsend*, 148 U. S. 490, explained in *Potter* v. *Hall*, 292.

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2. *Hale* v. *Allison*, 188 U. S. 56, followed in *Finney* v. *Guy*, 335.
3. *Hamblin* v. *Western Land Co.*, 147 U. S. 531, followed in *Sawyer* v. *Piper*, 154.
4. *In re Sawyer*, 124 U. S. 200, followed in *Davis & Farnum Manuf. Co.* v. *Los Angeles*, 207.
5. *Mills* v. *Green*, 159 U. S. 651, followed in *Tennessee* v. *Condon*, 64.
6. *Oregon & California R. R. Co.* v. *United States* (*No. 1*), 189 U. S. 103, followed in *Oregon & California R. R. Co.* v. *United States* (*No. 2*), 116.
7. *Osborne* v. *Florida*, 164 U. S. 650, followed in *Pullman Company* v. *Adams*, 420.
8. *Shively* v. *Bowlby*, 152 U. S. 1, followed in *United States* v. *Mission Rock Company*, 391.

CLERKS OF UNITED STATES COURTS.
See PUBLIC RECORDS.

CIVIL RIGHTS.
See JURISDICTION, A, 7, B 2.

COMITY.
See COURTS, 8.

COMMERCE.
See INTERSTATE COMMERCE.

CONGRESS, POWERS OF.

It has been firmly established by numerous decisions of this court that

it is within the constitutional power of Congress to exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law; and commit the enforcement of such provisions, conditions and regulations to executive officers, without judicial intervention. *The Japanese Immigrant Case*, 86.

See STATES, 2.

CONGRESS, ACTS OF.

See ACTION 2;
APPEAL AND WRIT OF ERROR, 1;
ARMY OFFICERS;
BANKRUPTCY;
EXECUTIVE POWERS;
JURISDICTION, A, 1, D;
PRACTICE 1, 4;
PUBLIC LANDS, 1, 2, 8;
PUBLIC OFFICERS, 1, 3;
PUBLIC RECORDS;
RAILROAD LAND GRANTS;
STATUTES, 3, 4;
STOCKHOLDERS, 4;
TAXATION, 2.

CONSTITUTIONAL LAW.

1. Although this court has never had occasion to determine exactly what the Fourteenth Amendment required in the assessment of ordinary annual taxes upon personal property, such proceedings should be construed with the utmost liberality and while notice may be required at some stage of the proceedings such notice need not be personal, but may be given by publication or by posting notices in public places. Such notices must be suitable and it is only where the proceedings are arbitrary, oppressive or unjust that they are declared to be not due process of law. *Glidden* v. *Harrington*, 255.
2. The statute of Massachusetts which requires that all personal estate within or without the Commonwealth shall be assessed to the owner; that personal property held in trust, the income of which is payable to another person, shall be assessed to the trustee in the city or town in which such other person resides, if within the Commonwealth; and if he resides out of the Commonwealth, shall be assessed in the place where the trustee resides; that the assessors before making the assessment shall give notice by posting in some public place or places; that in case the taxpayer shall fail to make returns they shall ascertain as nearly as possible the particulars of the estate and estimated value, which shall be conclusive upon the owner unless he can show a reasonable excuse for omitting to make the return; also making provision for an application to the assessors for an abatement of taxes and for an appeal to the county commissioners, does not deprive taxpayers of their property without due process of law. *Ib.*
3. Sections 43, 44, 45 of chapter 48 of the laws of Nebraska of 1899, by which the court upon rendering judgment for a total loss sued for against an insurance company upon any policy of insurance against loss on real property by fire, tornado or lightning shall allow the plaintiff a reasonable attorney's fee to be taxed as costs is not repugnant to

the equality clause of the Fourteenth Amendment either because it arbitrarily subjects insurance companies to a liability for such fees when other defendants in other cases are not subjected to such burden, or because the fee is to be imposed on the insurance companies but not on the insured when the suit is successfully defended, or because the statute arbitrarily distinguishes between different classes of policies allowing the fee in certain cases and not in others. *Farmers' & Merchants' Insurance Co.* v. *Dobney*, 301.

4. As decided in *Hale* v. *Allinson*, 188 U. S. 56, a receiver of an insolvent corporation appointed by the courts of Minnesota under the statutes of that State then existing cannot maintain an action outside of that State to enforce the statutory double liability of the stockholders; in refusing to allow such a receiver to maintain such an action, the courts of Wisconsin did not fail to give full faith and credit to the laws and judgments of Minnesota, under the Federal Constitution. *Finney* v. *Guy*, 335.

See CONGRESS;
POLICE POWER;
STATUTES, 8.

CONSTRUCTION.

1. *Of Executive Order.*

In 1899 the President made an order reserving two rocks or islands in San Francisco Bay for naval purposes, and described them as of their actual fractional acreage. *Held*, that in the absence of explicit directions such order could not be construed as appropriating valuable property adjacent to the rocks and islands as being appurtenant thereto. *United States* v. *Mission Rock Company*, 391.

2. *Of Executive Proclamation.*

Where there is a seeming contradiction between two clauses in a proclamation opening lands for settlement, the first clause being a special description of a strip of land, and the second being found in a portion of the proclamation defining the purposes for which the strip is made, the first clause is entitled to preference. *Winebrenner* v. *Forney*, 148.

See PUBLIC LANDS, 4.

3. *Of Spanish Grants.*

See SPANISH LAND GRANTS.

4. *Of Statutes.*

See COURTS, 3;
PUBLIC LANDS, 1;
STATUTES.

5. *Of Written Instruments.*

See COURT AND JURY, 1.

CONTRACTS.

1. Where the highest court of a State has decided that the act of the legislature under which bonds were issued by a county is unconstitutional

and such decision is in conformity with the prior decisions of that court, the bonds, having been illegally issued, do not constitute a contract which is protected by the Constitution of the United States. *Zane* v. *Hamilton*, 370.

2. The Knoxville Water Company was incorporated to construct waterworks near Knoxville with power to contract with the city and inhabitants for a supply of water and "to charge such price for the same as may be agreed upon between said company and said parties;" the general act under which the company was incorporated provided that it should not interfere with or impair the police or general powers of the municipal authorities, and they should have power by ordinance to regulate the price of water supplied by such company. The company in 1882 contracted for an exclusive privilege for thirty years to construct works, and after fifteen years to convey to the city at a price to be agreed upon or fixed by appraisal, and to "supply private consumers at not exceeding five cents per hundred gallons." Subsequently the city passed an ordinance reducing the price of water to private consumers below that rate. In an action to enforce penalties for overcharging the later rate, *Held*, that there was no contract on the part of the city to permit the charge named therein; and that the charter having been accepted subject to the provision of the general act reserving the power in the municipal authorities to regulate the price of water, the subsequent ordinance was not void either as impairing the obligation of a contract, or as depriving the company of its property without due process of law. *Knoxville Water Company* v. *Knoxville*, 434.

See APPEAL AND WRIT OF ERROR, 2;
EQUITY, 3.

CORPORATIONS.

See CONSTITUTIONAL LAW, 4; LOCAL LAW (ALABAMA);
EVIDENCE, 2; PRESUMPTION, 2;
STOCKHOLDERS.

COURT AND JURY.

1. Although the construction of written instruments is one for the court, where the case turns upon the proper conclusions to be drawn from a series of letters, particularly of a commercial character taken in connection with other facts and circumstances, it is a question which is properly referred to a jury. *Rankin* v. *Fidelity Insurance, etc., Co.*, 242.
2. Where a workman was injured by being hit by a spike maul which had been left on the tracks and which was struck and thrown by an engine, the fact that the foreman himself, whose special duty it was to see that the track was unobstructed on the passage of a train, and who is to some extent an interested witness, testifies that he had looked along the track and had seen no obstruction, is not sufficient to take the question of his negligence away from the jury. *Texas & Pacific Railway Co.* v. *Carlin*, 354.
3. In an action for personal injuries sustained by a brakeman by falling

from a car, where the claim was based upon negligence in stopping the car suddenly with knowledge of his position and of the slippery condition of the roof of the car, and also upon the projection of a nail in the roof of the car which increased the danger and contributed to his fall, *held*, there was no error in the court declining to rule that the chance of such an accident was one of the risks assumed by the plaintiff, or that the question whether the defendant was liable depended on whether the freight train was handled in the usual and ordinary way. It was proper for the court to leave it to the jury to say whether the train was handled with due care. *Texas & Pacific Railway Co.* v. *Behymer*, 468.

COURTS.

1. Where a former judgment pleaded has no force or effect in the state courts of Tennessee as exempting a corporation from certain taxes, other than as a bar to the *identical* taxes litigated in that suit, the courts of the United States can accord it no greater efficacy. *Union & Planters' Bank* v. *Memphis*, 71.
2. While this court does not take judicial notice of the decisions of the courts of one State in a case coming from the courts of another State, it may properly refer to the opinion of the highest court of a State as to the construction of a statute of that State when such statute is involved in a case before this court and this applies to a decision rendered after the judgment appealed from was rendered. *Eastern Building & Loan Association* v. *Williamson*, 122.
3. Courts of one State do not take judicial notice of the laws of another State, whether written or unwritten. Statutes and decisions must be proved as facts, but when proved their construction and meaning are for the consideration and judgment of the court, and the fact that an attorney of the enacting State has testified without contradiction as to the construction of a law of that State does not conclude the court and make it its duty to find as a fact that such was the true construction. *Ib.*
4. A postponement or continuance is largely within the discretion of the court, and unless such discretion is shown to have been abused there is no ground for reversal in a refusal to postpone. *Fidelity and Deposit Co.* v. *L. Bucki Lumber Co.*, 135.
5. Where it has been declared by the highest court of a State that liability for counsel fees is a part of the obligation assumed by the obligor in attachment bond, such liability should be enforced in every court in which an action on such bond is brought. Where a liability can be enforced in the state court in which an action is originally brought that liability cannot be taken away by removing the case to a Federal court. *Ib.*
6. The ruling of the Land Department that an entry into prohibited territory of the public domain prior to the time fixed for its opening, by an entryman who had subsequently retired and taken part in the race on an equality with others, did not disqualify him, because such prior entry had given him no particular advantage which he would not

otherwise have possessed, *Held* to be a finding of fact not reviewable by the courts. *Potter* v. *Hall*, 292.

7. Where the law of a foreign jurisdiction has been proved as a fact, the evidence of a witness, stating such law and decisions as to its meaning and effect, does not preclude the court from itself consulting and construing such statute and decisions, and deducing its own opinion in regard thereto, *Eastern Building & Loan Assn.* v. *Williamson*, *ante*, p. 122; nor is the right and duty of the courts to themselves construe statutes and decisions of a foreign jurisdiction altered because such law and decisions are set forth in a pleading which is demurred to instead of being proved as facts on a trial. *Finney* v. *Guy*, 335.
8. Whether, apart from Federal questions the courts of one State should permit an action of this nature to be maintained on the principle of comity is a question exclusively for the state court to decide. *Ib.*

See APPEAL AND WRIT OF ERROR, 1;
EQUITY, 4;
EVIDENCE, 1;
EXECUTIVE OFFICERS, 2;
JURISDICTION;
LAND DEPARTMENT;
PRACTICE, 4;
SPANISH LAND GRANTS;
STATES, 2;
STATUTES, 5, 8;
TERMS OF COURT.

CUMULATIVE REMEDIES.

See ACTIONS, 1.

DAMAGES.

Where as the result of an attachment against a lumber company there was an interruption of business for a certain time, and the plaintiff in the action thereafter refused to deliver materials to the lumber company, the sureties on the attachment bond are liable for the damages directly attributable to attachment, but not for any of the damages caused by the plaintiff's failure to deliver materials or for the reflection on the credit of the lumber company by the bringing of the action in which the attached bond was given. *Fidelity and Deposit Co.* v. *L. Bucki Lumber Co.*, 135.

See MARITIME LAW, 1;
PRIZE;
STATUTES, 9.

DELEGATED POWERS.

See STATUTES, 3.

DISTRICT OF COLUMBIA.

See PRACTICE, 5;
TERMS OF COURT.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 1, 2;
CONTRACTS, 2;
EXECUTIVE OFFICERS, 1;
FEDERAL QUESTION, 1.

EQUAL PROTECTION OF LAWS.

See APPEAL AND WRIT OF ERROR, 4; JURISDICTION, A, 7, B, 2; FEDERAL QUESTION, 1; POLICE POWER.

EQUITY.

1. Even if the making of a government survey, which could be made without any material injury to soil or timber, involved a trespass, it would be of so fugitive and temporary a character as to lack such elements of irreparable injury as would furnish the basis for equity interposition. Nor will a bill of peace lie where the legal remedy is adequate, and where the persons directly interested are not made parties, are not numerous, and assert separate rights. *Kirwan* v. *Murphy*, 35.
2. A bill in equity cannot be maintained to enjoin the officers of the Land Department from surveying land which years before had been omitted from an alleged survey, the complainants having purchased lands under such alleged survey, which did not include that in question. The remedy for any infringement of complainant's rights is at law after the administrative action of the government has been concluded. *Ib.*
3. One who has contracted to deliver gas machinery to a gas and fuel company has no standing in a court of equity to restrain a city from enforcing an ordinance prohibiting the erection of gas works within a portion of the city in which the erection of gas works was not prohibited when the contract was made, on the ground that such ordinances are repugnant to the Federal Constitution as impairing the obligation of a contract, it not appearing that the plaintiff has any contract with the city or that the gas and fuel company would not, or could not, by reason of insolvency, respond to its claim under the contract. *Davis & Farnum Manuf. Co.* v. *Los Angeles*, 207.
4. A court of equity has no general power to enjoin or stay criminal proceedings unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there, or to prohibit the invasion of the rights of property or the enforcement of an unconstitutional law. (*In re Sawyer*, 124 U. S. 200.) *Ib.*

See ACTION, 2.

ESTOPPEL.

To constitute an estoppel by silence there must not only be an opportunity but an obligation to speak. *Wiser* v. *Lawler*, 260.

See MINES;
PRACTICE, 10.

EVIDENCE.

1. The Circuit Court of the United States, sitting in New Hampshire, may receive as evidence, when attached to the deposition of the manager of a corporation, who is an attorney and solicitor of the Supreme Court of Judicature in England of thirty years' standing, intimately acquainted with the English Corporation Laws, what purport to be the

copies of the laws under which such corporation was organized, and which he testifies were issued by authority, being printed by Her Majesty's printer, and as such are by law receivable in evidence without further proof, in the domestic courts of Great Britain. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.

2. Where the statute under which a corporation is organizes provides that moneys payable in pursuance of the articles of the company shall be deemed a debt due by such member, it is not necessary to prove an express promise to pay an assessment. *Ib.*

3. The valuation of property for the purposes of taxation may be considered in determining the reasonableness of water rates fixed by a board of supervisors, especially if such valuation was under oath. *San Diego Land & Town Co.* v. *Jasper*, 439.

See APPEAL AND WRIT OF ERROR, 3; JURISDICTION, 6; PRACTICE, 9; PRESUMPTION, 1.

EXECUTIVE OFFICERS.

1. An administrative officer, when executing the provisions of a statute involving the liberty of persons, may not disregard the fundamental principles of due process of law as understood at the time of the adoption of the Constitution. Nor is it competent for any executive officer, at any time within the year limited by the statute, to arbitrarily cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although illegally here, to be arrested and deported without giving such alien an opportunity, appropriate to the case, to be heard upon the questions involving his right to be and remain in the United States. *The Japanese Immigrant Case*, 86.

2. Where, however, the alien had notice, although not a formal one, the courts cannot interfere with the executive officers conducting it. The objections of the alien to the form of the investigation could have been presented to the officer having primary control of the case, or by an appeal to the Secretary of the Treasury, and the action of the executive officers is not subject to judicial review. *Ib.*

EXECUTIVE ORDER.

See CONSTRUCTION, 1.

EXECUTIVE POWERS.

1. Where Congress creates an office and provides for the removal of the incumbent at any time for inefficiency, neglect of duty, or malfeasance in office, if the removal of the officer is sought to be made for any of those causes he is entitled to 'notice and a hearing'; but if the President removes him without giving him notice and an opportunity to defend himself, it must be presumed that the removal was not made for any of the causes assigned in the statute. *Shurtleff* v. *United States*, 311.

2. In the absence of constitutional or statutory provision the President can,

by virtue of his general power of appointment, remove an officer, even though he were appointed by and with the advice and consent of the Senate. This power (assuming, but not deciding, that Congress could deprive the President of the right to exercise it in such a case as this) cannot be taken away by mere inference or implication, and in the absence of plain language in the statute Congress will not be presumed to have taken it away. Under section 12 of the Customs Administrative Act of June 10, 1890, providing for the appointment of general appraisers and their removal by the President for inefficiency, neglect or malfeasance in office, the President may also remove such officers without any of the causes specified, under his general power of removal. *Ib.*

EXECUTIVE PROCLAMATION.

See CONSTRUCTION, 2;
PUBLIC LANDS, 4.

FEDERAL QUESTION.

1. The mere averment of the existence of a Federal question is not sufficient to give this court jurisdiction, but as held in *Hamblin* v. *Western Land Company*, 147 U. S. 531, a real, and not a fictitious, Federal question is essential to the jurisdiction of this court over the judgments of state courts. Where the only Federal question alleged is that the refusal of the state court to allow the plaintiff in error to file a supplementary answer in an action in which foreclosure and sale had been decreed and sustained by the highest court of the State, on the ground that it was a taking of property without due process of law, and a denial of equal protection of the laws, and the trial court does not appear to have abused its discretion, there is no real Federal question involved and the writ of error will be dismissed. *Sawyer* v. *Piper*, 154.
2. Where a case turns upon the construction by a state court of a statute of another State, and not upon the validity of such statute, a decision on that question is not necessarily of a Federal character. It depends upon the particular facts of each case and the manner in which they are presented, how far such questions can be regarded as coming under the full faith and credit clause of the Constitution. *Finney* v. *Guy*, 335.
3. Where the plaintiff in error claimed and set up a right under the Constitution of the United States, and the decision of the Supreme Court of the State was tantamount to the denial of that right, there is a Federal question and a motion to dismiss will be denied. *Detroit, Fort Wayne & Belle Isle Ry.* v. *Osborn*, 383.

See JURISDICTION;
PRACTICE, 6, 7.

FELLOW-SERVANT.

1. All the members of the crew of a vessel, except perhaps the master, are, as between themselves, fellow-servants, and hence seamen cannot recover for injuries sustained through the negligence of another member

of the crew beyond the expense of their maintenance and cure. *The Osceola*, 158.

2. Where it is the special duty of the foreman of a gang repairing a bridge to see that the track is unobstructed when a train is about to cross, although it may be the duty of the men to keep their tools off the track, it is the foreman's duty to supervise them, and if, through his negligence, the track is not left unobstructed and one of the gang is injured, such negligence under the statutes of Texas in that regard is that of a vice principal and not of a fellow-servant. *Texas & Pacific Railway Co.* v. *Carlin*, 354.

FOREIGN CORPORATIONS.

See LOCAL LAW (ALABAMA); PRESUMPTION, 2; PLEADING, 1; STOCKHOLDERS.

FOREIGN STATUTES.

See EVIDENCE, 1.

FRAUD.

1. Promoters of mining enterprises, in the preparation of prospectuses, are bound to consider the effect that would be produced upon an ordinary mind by the statements contained in them, and in estimating the probability of persons being misled by them, the court may take into consideration not only the facts stated, but the facts suppressed. Vendors of mining properties are not responsible for false statements made in prospectuses issued by a mining company to whom the properties had been sold, unless they knew or connived in such statements, or were active in putting them in circulation. While they may have known that prospectuses were being issued, they were under no obligation to read them, or contradict their statements or promises, or interfere with their circulation or distribution. If their title be of record, they are not bound to give notice of their rights in the property to the purchasers of stock, or to refuse the money due upon their contract of sale when it is tendered them. To constitute an estoppel by silence there must not only be an opportunity but an obligation to speak, and the purchase must have been in reliance upon the conduct of the party sought to be estopped. A person holding a deed of property which he has placed upon record, is not ordinarily bound to disclose his title to persons contemplating purchasing, or making improvements upon the land, unless his silence be deceptive, or accompanied by an intention to defraud. *Wiser* v. *Lawler*, 260.

2. Where a national bank has sold certain bonds and the vendee has obtained a judgment for the purchase money in a state court on the ground that the sale was induced by false representations of the president of the bank the judgment will not be reversed on the ground that the sale of the bonds was without the authority of the bank and was illegal and void. The fraud is prior to the sale and authorizes a rescission, nor can the bank claim that the fraud was perpetrated by an agent who did not represent it for illegal purposes. The bank must

adopt the whole transaction or no part of it. *National Bank & Loan Co. v. Petrie*, 423.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 4;
FEDERAL QUESTION, 2.

GRANTS.

See PUBLIC LANDS;
RAILROAD LAND GRANTS;
SPANISH LAND GRANTS.

HOMESTEADS.

See PUBLIC LANDS.

IMMIGRATION.

See ALIENS;
CONGRESS, 2;
EXECUTIVE OFFICERS.

INFRINGEMENT OF PATENT.

See PATENT FOR INVENTION.
PRACTICE, 2.

INJUNCTION.

See EQUITY, 2, 4.

INSPECTION OF PUBLIC RECORDS.

See PUBLIC RECORDS.

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See CONSTITUTIONAL LAW, 3.

INTEREST.

See JUDGMENTS.

INTERSTATE COMMERCE.

By sections 3317, 3387, of the Mississippi Code of 1892, a tax is imposed "on each sleeping and palace car company carrying passengers from one point to another within the State, one hundred dollars, and twenty-five cents per mile for each mile of railroad track [in the State] over which the company runs its cars." Section 195 of the state constitution declares sleeping car companies to be common carriers. On the assumption that such companies would be held free to abandon the business taxed if they see fit, the tax is not void as an interference with commerce between the States. *Crutcher* v. *Kentucky*, 141 U. S. 47, distinguished; *Osborne* v. *Florida*, 164 U. S. 650, followed. *Pullman Company* v. *Adams*, 420.

See ACTION, 2.

INVENTION.

See PATENT FOR INVENTION;
PRACTICE, 2;
PRESUMPTION, 1.

JUDGMENTS.

1. In 175 U. S. 187, and 178 U. S. 317, this court held that the collision between the Conemaugh and the New York in the Detroit River was the fault of both vessels and judgment was given in favor of the Conemaugh for one half of her damages less one half of the damages of the New York. In this proceeding, *held*, that the New York against which judgments had been entered for damages to the cargo on the Conemaugh could not in this action recoup or set off any part of such damages against, or shift any part of such judgment upon the owners of the Conemaugh, even though it should result in the New York paying more than fifty per cent of the total loss. *The Conemaugh*, 363.
2. The mandate having provided for interest at the same rate that decrees bear in the courts of the State of Michigan, there was no error in view of the statutory provisions as to interest in Michigan, in computing the interest at seven per cent per annum. *Ib.*

See CONSTITUTIONAL LAW, 4;
PRACTICE, 3;
RES JUDICATA.

JUDICIAL NOTICE.

See COURTS, 2, 3.

JURISDICTION.

A. OF THE SUPREME COURT.

1. Where the contention is that the title to ore taken from a mine depends upon whether the mine was patented under the act of July 26, 1866, or the act of May 10, 1872, and involves the effect of the want of parallelism of the end lines of the location, a Federal question is so presented that this court has jurisdiction. *Kennedy Co.* v. *Argonaut Co.*, 1.
2. Where it appears that the matter in dispute is only the possession of certain public land for which a contested entry has been made and it is clear from the facts that such possession is worth much less than $5000, the judgment of the territorial court will not be reviewed. *McClung* v. *Penny*, 143.
3. It must appear that this court has jurisdiction of the case before it can inquire whether the territorial court has committed any error in its decision or in permitting the action to be maintained, and such jurisdiction does not exist if the value of that which is in controversy does not exceed $5000. *Ib.*
4. A real and not a fictitious Federal question is essential to the jurisdiction of this court over the judgments of state courts, and a mere aver-

ment of the existence of a Federal question is not sufficient. *Sawyer* v. *Piper*, 154.

5. Where no claim of Federal right was specially set up or called to the attention of the state court in any way and that court did not pass upon or necessarily determine any Federal question, this court is without jurisdiction and the writ of error will be dismissed. *Onondaga Nation* v. *Thacher*, 306.
6. Upon a writ of error to a state court this court has no right to review its decision upon the ground that the finding was against evidence or the weight of evidence. *Thayer* v. *Spratt*, 346.
7. Where a negro moves to quash an indictment on the ground that he is denied the equal protection of the laws and his civil rights under the Constitution and the laws of the United States by the exclusion of negroes from the grand jury, but the record does not show that he proved or offered to prove the truth of the allegations on which the motion was based, this court cannot interfere with the judgment. *Brownfield* v. *South Carolina*, 426.

See PRACTICE.

B. OF CIRCUIT COURTS.

1. An averment in a bill that the complainants are "all of Cognac in France, and citizens of the Republic of France," is sufficient to give the Circuit Court of the United States for Nebraska jurisdiction in a controversy where the defendants are citizens of Nebraska. No averment of alienage is necessary. *Hennessy* v. *Richardson Drug Co.*, 25.
2. A Circuit Court of the United States in Alabama has not jurisdiction of an action in equity brought by a colored man, resident in Alabama, on behalf of himself and other negroes to compel the board of registrars to enroll their names upon the voting lists of the county in which they reside under a constitution alleged to be contrary to the Constitution of the United States. *Giles* v. *Harris*, 475.

C. OF COURT OF PRIVATE LAND CLAIMS.

Where the last known occupant of a Spanish grant made in 1728 had been killed by the Indians in 1839, and when the land passed to the United States under the treaty of 1848 with Mexico possession had been abandoned by his descendants for at least nine years and no action was taken by any one in regard to the grant until 1899, and meanwhile the public land surveys were extended over the tract in 1861, homestead and other entries were made, improvements established, patents secured and mines opened and developed, the doctrine of laches is peculiarly applicable, and under the provisions of the statute establishing it, the Court of Private Land Claims could not be called upon to confirm such a grant. *Sena* v. *United States*, 233.

D. OF STATE COURTS.

Under sec. 5328, Rev. Stat., and the provisions of the Criminal Code of California, the state courts of that State have concurrent jurisdiction with the courts of the United States to try a person for extortion where

the basis of the extortion was a threat to accuse a person of having committed an act which is a crime exclusively against the United States and made so by a Federal statute. *Sexton* v. *California*, 319.

E. ADMIRALTY.

See STATUTES, 8.

JURY.

See COURT AND JURY;
MORTGAGE.

LACHES.

See JURISDICTION, C;
SPANISH LAND GRANTS.

LAND DEPARTMENT.

1. The administration of public lands is vested in the Land Department, and its power in that regard cannot be divested by the fraudulent action of a subordinate officer outside of his authority and in violation of the statute. The courts can neither correct nor make surveys. The power to do so is in the political department of the government, and the Land Department must primarily determine what are public lands subject to survey and to disposal, and as it is possessed of this power in general, its exercise of jurisdiction cannot be questioned by the courts before it has taken final action. *Kirwan* v. *Murphy*, 35.
2. In an ordinary contest between two applicants for preëmption, in which the officers of the Land Department have decided upon the testimony in favor of one and against the other, the decision of the Land Department on questions of fact is conclusive upon the courts. When the Secretary of the Interior has made a decision in such a contest the courts will not entertain an inquiry as to the extent of his investigation and knowledge of the points decided, or as to the methods by which he reached his determination. *De Cambra* v. *Rogers*, 119.

See COURTS, 6; PUBLIC LANDS, 8;
EQUITY, 2; STATUTES, 5.

LAND GRANTS.

See JURISDICTION, C;
PUBLIC LANDS;
RAILROAD LAND GRANTS.

LAND PATENTS.

See JURISDICTION, 1.

LIEN ON VESSELS.

See MARITIME LAW, 2.

LOCAL LAW.

Alabama.

The highest court of Alabama has held that under the constitutional and statutory provisions of that State any act in the exercise of its corporate functions is forbidden to a foreign corporation which has not complied with the constitution and the statute in regard to filing instrument designating agent and place of business, and that contracts resulting from such acts are illegal and cannot be enforced in the courts. *Held*, that this applied to a building and loan association of Tennessee making a loan in Tennessee secured by certain shares of its own stock and also by mortgage on certain real estate in Alabama, and that although the association had complied with certain provisions of the law, the fact that it had not designated an agent as required by the constitution and statutes was a bar to the foreclosure of the mortgage in the courts of Alabama. *Chattanooga National Building, etc., Association* v. *Denson*, 408.

California. *See* JURISDICTION, D.

Florida.

Counsel fees incurred in securing the dissolution of an attachment are recoverable in actions upon attachment bonds. *Fidelity and Deposit Co.* v. *L. Bucki Lumber Co.*, 135.

Massachusetts. *See* CONSTITUTIONAL LAW, 2.

Michigan.

Under the laws of the State of Michigan the commissioner of railroads has power to compel a street railroad to install safety appliances in accordance with law, the cost to be shared between it and a steam railroad occupying the same street, notwithstanding that the steam road is the junior occupier of the street. *Detroit, Fort Wayne & Belle Isle Railway* v. *Osborn*, 383.

See JUDGMENTS.

Mississippi. *See* INTERSTATE COMMERCE.
Nebraska. *See* CONSTITUTIONAL LAW, 3.
New York. *See* STATUTES, 7.
Tennessee. *See* COURTS, 1;
RES JUDICATA.
Texas. *See* FELLOW-SERVANTS, 2.
Washington. *See* STATUTES, 8.
Wisconsin. *See* STATUTES, 9.

MANDAMUS.

See PRACTICE, 5.

MARITIME LAW.

1. The law both in England and America is settled as to the following propositions: (*a*) That a vessel and her owners are liable, in case a

seaman falls sick or is wounded in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued. (*b*) That the vessel and her owners are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to such ship. (*c*) That all the members of the crew, except perhaps the master, are, as between themselves, fellow-servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure. (*d*) That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received from negligence or accident. *The Osceola*, 158.

2. It is settled law in this country and England that a lien is given for necessaries furnished a foreign vessel upon the credit of such vessel. No such lien is given for necessaries furnished in the home port of the vessel, or in the port in which the vessel is owned, registered, enrolled or licensed, and the remedy, in such case, though enforceable in the admiralty, is *in personam* only. In this particular the States of the union are treated as foreign to each other. *The Roanoke*, 185.

See STATES, 1;
STATUTES, 8, 9.

MARSHAL.

See PUBLIC OFFICERS.

MASTER AND SERVANT.

See FELLOW-SERVANT.

MEASURE OF DAMAGES.

See DAMAGES;
MARITIME LAW, 1.

MINES.

Where, as the result of an adverse proceeding in the land office and a compromise agreement entered into by applicants for patents for mining claims on the same lode, a common end line crossing the lode at right angles was established and patents were issued according to the adjustment, this fixed the rights of the parties in length on the lode and the extralateral right as between them; and estopped each and its successors from asserting the right to ore body extracted from the vein within the end line of the other. *Kennedy Company* v. *Argonaut Company*, 1.

See JURISDICTION, 1.

MINING COMPANIES.

See FRAUD, 1.

MINING PATENTS.

See MINES.

MORTGAGE.

Where a railroad company mortgages its road including all appurtenances and appendages of said railroad, and the property of said company now acquired, or which may be acquired, used for and pertaining to the operation of said railroad, a sale under such mortgage does not include property acquired by the company after the mortgage for the purpose of subdivision and sale; and it is a question for a jury to determine, whether the land so purchased was to be used for and pertaining to the operation of the railroad or not. *Pardee* v. *Aldridge*, 429.

See ACTION, 3.

NATIONAL BANKS.

See FRAUD, 2; ....
STOCKHOLDERS, 4.

NEGLIGENCE.

See COURT AND JURY, 2, 3;
FELLOW-SERVANT, 2.

OKLAHOMA.

See COURTS, 6;
STATUTES, 5;
TAXATION.

PARTIES.

In a suit against a board of supervisors to have water rates fixed by such board declared void for unreasonableness, the body making the regulation is the usual, proper and sufficient party respondent, and the default of those who set the original proceedings in motion and who were also made parties respondent, is immaterial, so long as the remaining parties defend the suit. *San Diego Land & Town Co.* v. *Jasper*, 439.

See PRACTICE, 5.

PATENT FOR INVENTION

Where the patents sued on are not pioneer patents and do not embody a primary invention, but are only improvements on the prior art and defendants' machines can be differentiated the charge of infringement cannot be maintained. In view of the state of the art, and what passed in the Patent Office, this court cannot regard the Kitselman patent of January 18, 1887, for wire fabric machines, as a pioneer patent, but its claims must be limited in their scope to the actual combination of essential parts as shown and cannot be construed to cover other combinations of elements of different construction and arrangement. *Kokomo Fence Machine Co.* v. *Kitselman*, 8.

See PRACTICE, 2;
PRESUMPTION, 1.

PATENT FOR LANDS.

See PUBLIC LANDS, 1.

PATENTS, MINING.

See MINES.

PLEADING.

1. By subscribing to the stock in a foreign corporation, the subscriber subjects itself to the laws of such foreign country in respect to the powers and obligations of such corporation, and if the statute under which the corporation is organized and the by-laws of the corporation provide that the directors may from time to time make such calls as they think fit upon members for all moneys unpaid on shares of stock, it is not necessary for the declaration to contain averments either as to the conditions upon which the corporation can make assessments or that the assessments sued for were necessary. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.
2. A demurrer does not admit as a fact that the construction (in the form of an averment of fact) which the pleader may choose to put upon statutes or decisions is the right conclusion to be drawn from them. *Finney* v. *Guy*, 335.

See JURISDICTION, B;
PRACTICE, 4, 8.

PLEDGEE OF STOCK.

See STOCKHOLDERS, 2, 3.

POLICE POWER.

There is a difference between ordinary vehicles and electric cars which the State may, in the exercise of its police power, recognize without denying the company operating the electric cars the equal protection of the laws. *Detroit, Fort Wayne & Belle Isle Ry.* v. *Osborn*, 383.

See ALIENS.

PRACTICE.

1. Where the Circuit Court dismisses a bill on the ground that it has no jurisdiction because diversity of citizenship did not appear, and certifies this question of jurisdiction, that is the only question for the consideration of this court on an appeal under the first subdivision of section 5 of the Judiciary Act of March 3, 1891, and if jurisdiction is found to exist the case will be remanded to be heard on the merits, notwithstanding the Circuit Court also expressed the opinion that the bill was without equity. *Hennessy* v. *Richardson Drug Co.*, 25.
2. Where in a patent case a preliminary injunction has been granted by a Circuit Court on the strength of a previous adjudication by the same court over the same patent, the case involving questions of fact in respect of

anticipation and infringement, and not being ripe for final hearing, it is error for the Circuit Court of Appeals on an appeal from the interlocutory order to direct a dismissal of the bill. *Mast Foos Company* v. *Stover Manufacturiny Company*, 177 U. S. 485, applied. *Brill* v. *Peckham Motor Truck Co.*, 57.

3. It is the duty of this court to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to delare principles or rules of law which cannot affect the matter in issue in the case before it. When, pending an appeal, it becomes, without any fault on the part of the defendant, impossible for this court to grant any effectual relief to the plaintiff in error even if it should decide the case in his favor, the appeal will be dismissed. *Mills* v. *Green*, 159 U. S. 651, followed. *Tennessee* v. *Condon*, 64.

4. Under section 954, Rev. Stat., the Circuit Court has power in its discretion to allow plaintiff to amend his petition after judgment has been entered in his favor, but while the court still has control of the record, and it is not an abuse of such discretion to permit an amendment setting up plaintiff's citizenship, the fact being established and residence only having been pleaded, and where it appears that had the amendment not been made as it was the Circuit Court of Appeals would have been constrained to reverse and remand with leave to make the amendment. *Mexican Central Railway Co.* v. *Duthie*, 76.

5. Judgment before a justice of the peace of the District of Columbia against Key and Scott, and appeal to the Supreme Court of the District with a Guaranty Company as surety on the undertaking on appeal. Judgment in the latter court in favor of Scott, and against Key and the Guaranty Company. Appeal to the Court of Appeals by Key alone without summons and severance or any equivalent, and motion to dismiss for want of parties, and want of jurisdiction of such an appeal. Dismissed on the latter ground in accordance with previous ruling. *Held:* That an application to this court for a writ of mandamus to the Court of Appeals to reinstate the appeal and decide the case on the merits must be denied. *In re Key*, 84.

6. Under the rule of this court requiring opinions to be sent up with the record, it is a sufficient compliance with the words "specially set up and claimed" that the Federal question was fully considered in the opinion of the court, and ruled against the plaintiff in error. *San José Land & Water Co.* v. *San José Ranch Co.*, 177.

7. Although no Federal right, title or immunity was specially set up or claimed in the complaint, it is sufficient if it appears in the motion for new trial and in the assignment of error in the state supreme court. In this case it also appears from the opinion of the court that the question was whether the plaintiff in error had brought itself within the scope of an act of Congress upon which it relied. *Ib.*

8. Variances between the allegation and proof must be taken when the evidence is offered, and if such evidence be sufficient to support the verdict the defect in the declaration is cured. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.

9. Where the bill of exceptions contains nothing to indicate that the call for assessments was not properly made and does not show that it contains *all* the evidence, this court is at liberty, if the circumstances of the case require it, to infer that there was other evidence to support the verdict. The sufficiency of evidence cannot be reviewed on writ of error. *Ib.*

10. Where the objection that a statute does not provide for notice is taken for the first time in this court, and the record shows that there actually was notice given, it is not open to the plaintiff in error to complain that the statute did not provide for such notice. *Detroit, Fort Wayne & Belle Isle Railway* v. *Osborn*, 383.

See COURTS, 2, 4;
SPANISH LAND GRANTS;
TERMS OF COURT.

PREFERENCES.

See BANKRUPTCY.

PRESIDENT.

See CONSTRUCTION, 1, 2;
EXECUTIVE POWERS.

PRESUMPTION.

1. The presumption from the grant of separate letters patent for improvements on the prior art, is, that there was a substantial difference between the inventions. *Kokomo Fence Machine Co.* v. *Kitselman*, 8.

2. There is a presumption of good faith attaching to foreign as well as to domestic corporations. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.

See EXECUTIVE POWERS, 1;
PUBLIC OFFICERS, 4.

PRIZE.

Where libels were filed by the United States in its own behalf against certain fishing smacks which were taken as prize of war but which were not liable to capture, and the proceeds thereof the prize courts have decreed should be returned to the claimants of such vessels, a decree for damages should be entered against the United States and not against the captors individually. *The Paquete Habana*, 453.

PROCLAMATION.

See CONSTRUCTION, 2;
PUBLIC LANDS, 4.

PUBLIC LANDS.

1. In a suit brought under the act of Congress of March 3, 1887, c. 376, to compel the reconveyance of lands covered by patent issued February 20,

1893, on the ground that it included land to which there were adverse claims of settlers to the land on which they respectively resided and which the United States now claimed for them, *Held:* (1) That under the land grant acts the railroad company did not acquire and could not have acquired an interest in specific sections of land within the indemnity limits specified in the grant before their actual and approved selection under the direction of the Secretary of the Interior, prior to the date of occupancy by the respective settlers. (2) No right of the railroad company attaches or can attach to specific lands within indemnity limits until there is a selection under the direction or with the approval of the Secretary of the Interior. (3) The rights which *bona fide* occupancy gave to the settler under the act of 1866 are not defeated by a mere selection afterwards of the land by the railroad company—the settler having, after the lands were surveyed, promptly taken the necessary steps to protect his rights under the homestead law. In such case, the entry made under these laws relates back to the date of the settlement of the lands. (4) It cannot be claimed that *all* the lands within the indemnity limits were required to supply deficits, when there had been no adjustment and determination of the amount of lieu lands required prior to his *bona fide* occupancy of the land. *Oregon & California R. R. Co.* v. *United States*, 103.

2. On the authority of the preceding case, *Held*, that where a duly qualified entryman made a *bona fide* settlement upon lands within the indemnity limit of the grant made by act of Congress of May 4, 1870, with the intention, whenever the way was opened by a survey, to enter the lands under the homestead laws, his rights were superior to those acquired, or that could have been acquired, by the railroad company under any selection by it of indemnity lands made after the date of such settlement. *Oregon & California R. R. Co.* v. *United States*, 116.
3. The relinquishment of rights under a homestead or preëmption entry opens the land to entry by another; and a second entryman may, if there has been no contest, perfect a title, but if the records show that there has been a contest and the successful contestant relinquishes, a party subsequently entering the land is charged with notice of the equitable rights of the unsuccessful contestant which can be enforced whenever the title passes from the government. *McClung* v. *Penny*, 143.
4. The strip of land referred to in the President's proclamation of August 19, 1893, "one hundred feet in width around and immediately within the outer boundaries of the entire tract of country to be opened to settlement," ran around and immediately within the outer boundaries of the body of lands opened for settlement, and not around the outer boundaries of the entire tract specified in the cession and relinquishment of the Cherokee Indians. *Winebrenner* v. *Forney*, 148.
5. A party who, on complying with the provisions of an act of Congress would have the right to purchase lands, part of the public domain, but who has not complied with the requirements of the act, is not entitled, upon the mere showing of such right to purchase, to demand that its title be adjudged good and valid, and that another party who is in pos-

session be adjudged to have no estate or interest in the land, or that such other person be enjoined from asserting any adverse claim, or that the claimant recover the possession of the land with the right of ousting the defendant from the improvements made thereon by its predecessors. *San José Land & Water Co.* v. *San José Ranch Co.*, 177.

6. An entry into prohibited territory and subsequent retirement therefrom prior to its opening for settlement did not disqualify such entryman from participating in the race for the land when no manifest advantage over his competitors resulted from such prior entry. *Potter* v. *Hall*, 292.
7. On proceedings to cancel an entry which has been transferred, where the Land Department has notice thereof, and the records show the name and address of the transferee, the transferee has a right to notice. *Thayer* v. *Spratt*, 346.
8. It appearing from the facts that at the time of making their entries entrymen were entitled to purchase lands under the act of Congress of June 3, 1878, for the sale of timber lands in Washington Territory and elsewhere, and that in the purchase of the land they fully complied with the laws of the United States and the rules and regulations of the Land Department; that the applications were allowed and certificates duly issued as applied for, and the lands included in the entries were at all times chiefly valuable for timber thereon and at that time unfit for cultivation; and that thereafter based upon a misconstruction of the act of 1878 the land office cancelled the entries on the ground that as the land could be cultivated after the removal of the timber it was not subject to entry as timber land: *Held*, that the original entries were valid and that the conveyances of the original entrymen passed a good title to their grantee for which he was entitled to a patent from the United States. *Ib.*

See CONSTRUCTION, 2;
LAND DEPARTMENT, 1, 2;
RAILROAD LAND GRANTS.

PUBLIC OFFICERS.

1. Under sec. 829, Rev. Stat., a United States marshal may elect to be reimbursed his actual travelling expenses incurred in serving writs, but there is no authority in law for allowing him mileage in excess of the distance from the place of arrest to the place of receiving the writs, even if the travel is in a new and unsettled Indian country and there are exceptional difficulties to overcome. *United States* v. *Nix*, 199.
2. Where a United States court is opened for business by order of the judge, it is the duty of the marshal to attend and he is entitled to his per diem fee therefor whether the judge be present or not. *Ib.*
3. A general act is not to be construed as applying to cases covered by a prior special act on the same subject. The marshal for the District of Oklahoma is entitled to fees for transportation of prisoners arrested under warrants issued by United States commissioners as fixed by the statute providing a temporary government for the Territory of Oklahoma, notwithstanding the provisions of the act of Congress of Au-

gust 19, 1894, applicable to marshals generally throughout the country. The fact that a marshal's accounts have been approved by a district judge is sufficient to cast upon the government the burden of showing any error of fact in his account. *Ib.*

4. Where the marshal charged for travel in transporting a prisoner who escaped from his custody, and there was no finding, either by the district judge in approving his accounts, or by the Court of Claims, of due diligence on the part of the officer to prevent the escape, the item was held to be properly disallowed, the presumption being that the prisoner escaped by negligence. *Ib.*

See EXECUTIVE POWERS.

PUBLIC RECORDS.

Under section 828, Rev. Stat., and section 2 of the act of August 1, 1888, a corporation engaged in the business of insuring titles to real estate has the right, during office hours, to inspect and examine the indices and cross indices of the judgment records kept by the clerks of the Circuit and District Courts when such inspection and examination relate to current and depending transactions and are made at such times and under such circumstances that they do not interfere with the clerk or his assistant in the discharge of their duties or with the exercise of the right of other persons to have access to such indices and cross indices. *Bell* v. *Commonwealth Title Insurance Co.*, 131.

RAILROADS.

See LOCAL LAW (MICHIGAN).
MORTGAGE.

RAILROAD LAND GRANTS.

Under the act of March 3, 1871, c. 122, 16 Stat. 573, the rights of the Southern Pacific Railroad Company were subordinate to those of the Texas Pacific Railroad Company. When the Texas Pacific grant was declared forfeited by the act of February 28, 1885, the forfeiture did not vest the Southern Pacific with the lands forfeited but the forfeiture enured to the benefit of the United States. *Southern Pacific R. R. Co.* v. *United States*, 447.

See PUBLIC LANDS, 1.

RECEIVER.

See CONSTITUTIONAL LAW, 4.

RECORDS.

See PUBLIC RECORDS.

REMOVAL OF CAUSES.

See COURTS, 5.

REMOVAL FROM OFFICE.

See EXECUTIVE POWERS.

REPRESENTATIONS.

See FRAUD, 1, 2.

RES JUDICATA.

The doctrine of *res judicata* under the decisions of the highest court of Tennessee is not applicable to taxes for years other than those under consideration in the particular case. The effect of a prior judgment of a state court as *res judicata* is a question of state, and not of Federal, law. *Union & Planters' Bank* v. *Memphis*, 71.

See LAND DEPARTMENT, 2.

RIPARIAN RIGHTS.

1. The State of California upon its admission into the Union acquired absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject to the paramount right of navigation over the waters, so far as such navigation might be required for the necessities of commerce with foreign nations or among the several States, the regulation of which is vested in the general government. (*Shively* v. *Bowlby*, 152 U. S. 1.) The State of California pursuant to an act of legislature issued its patent in 1872 for certain submerged lands in San Francisco Bay, about fourteen acres and upwards, which the patentee's grantees improved by filling in and building docks and warehouses. Within the boundaries were two small rocks or islands one fourteen one hundredths of an acre, and the other one one hundredth of an acre in area. In 1899 the President made an order reserving the two rocks and describing them as of the above mentioned fractional acreage for naval purposes. The United States demanded possession of the original islands and of the adjacent property appurtenant thereto. *Held*, That as to all the premises except the two rocks or islands, which were awarded to the United States, the grantee under the state patent had good title and could not be ejected. *Held*, that in the absence of explicit directions the President's order could not be construed as appropriating such valuable property as that adjacent to the rocks and islands as being appurtenant thereto. *United States* v. *Mission Rock Company*, 391.

SEAMEN.

See FELLOW-SERVANT, 1;
MARITIME LAW;
STATUTES, 9.

SPANISH LAND GRANTS.

Where the boundaries of a Spanish grant made in 1728, are defined with accuracy they will not be controlled by vague and practically unintelligible terms as to quantity. While, owing to the loose manner in

which they were made and the boundaries described, this court has been extremely liberal in construing Spanish grants, such grants must still be construed favorably to the government, and the grantee is bound to show not only the grant itself, but that its boundaries were fixed with reasonable certainty; and where the Court of Private Land Claims has held that the evidence of settlement, occupation, continuity of possession, cultivation, etc., is so vague, contradictory and uncertain as to be almost wanting, this court in the absence of clear evidence to the contrary will adopt the opinion of the court below in that particular. Where the last known occupant of a Spanish grant made in 1728 had been killed by the Indians in 1839, and when the land passed to the United States under the treaty of 1848 with Mexico possession had been abandoned by his descendants for at least nine years and no action was taken by any one in regard to the grant until 1899, and meanwhile the public land surveys were extended over the tract in 1861, homestead and other entries were made, improvements established, patents secured and mines opened and developed, the doctrine of laches is peculiarly applicable, and under the provisions of the statute establishing it, the Court of Private Land Claims could not be called upon to confirm such a grant. *Sena* v. *United States*, 233.

See JURISDICTION, C.

STATES.

1. By the maritime law, as administered in England and in this country, a lien is given for necessaries furnished a foreign vessel upon the credit of such vessel; and in this particular the several States of the Union are treated as foreign to each other. *The Roanoke*, 185.
2. It is competent for the States to create liens for necessaries furnished to domestic vessels, and such liens will be enforced by the courts of admiralty under their general jurisdiction on the subject of necessaries; but where Congress has dealt with a subject within its exclusive power, or where such exclusive power is given to the Federal courts, as in cases of admiralty and maritime jurisdiction, it is not competent for the States to invade the domain of such jurisdiction and enact laws which in any way trench upon the power of the Federal courts. *Ib.*

See MARITIME LAW, 2;
POLICE POWER;
RIPARIAN RIGHTS.

STATUTES.

A. CONSTRUCTION OF.

1. In the case of all acts of Congress, such interpretation ought to be adopted as, without doing violence to the import of the words used, will bring them into harmony with the Constitution. An act of Congress must be taken to be constitutional unless the contrary plainly and palpably appears. *The Japanese Immigrant Case*, 86.
2. A general act is not to be construed as applying to cases covered by a prior special act on the same subject. *United States* v. *Nix*, 199.
3. Where the statute of a State delegates powers to a city, the ordinances

of the municipality are the acts of the State, and their unconstitutionality is the unconstitutionality of a state law within the meaning of section 5 of the Circuit Court of Appeals Act. *Davis & Farnum Manuf. Co.* v. *Los Angeles*, 207.

4. The expression in section 721, Rev. Stat. (the "laws of the several States") in regard to the authentication of foreign statutes applies not only to statutes of the States but to the decisions of their highest courts. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.
5. The Land Department charged with the execution of the act of March 2, 1889, opening for settlement the territory of Oklahoma having in many rulings held that prior entry did not disqualify provided the one who had so entered had returned and taken part in the race with the others, unless the prior entry conferred some manifest advantage, which would not otherwise have been possessed, *Held*, that as this construction of the statute was in accord with the spirit and intent of the act it should not be disregarded by the courts upon the ground that it was in conflict with the mere letter of the statute. *Potter* v. *Hall*, 292.
6. The weight of a contemporaneous and long continued construction of a statute by those charged with its execution is well recognized in cases open to reasonable doubt. *United States* v. *Sweet*, 471.
7. The construction given by the Supreme Court of South Carolina and by the Court of Appeals of New York to the building and loan law of New York to the effect that it does not relieve a building and loan association from an obligation to pay the full par value of certificates at a date stated therein whether earned or not commends itself to this court as a correct construction thereof. *Eastern Building & Loan Association* v. *Williamson*, 122.
8. The statutes of the State of Washington, sections 5953, 5954, 2 Ballinger's Code, giving an absolute lien upon foreign vessels for work done or material furnished at the request of a contractor or sub-contractor, and making no provision for the protection of the owner in case the contractor has been paid the full amount of his bill before notice of the claim of the sub-contractor is received, in so far as it attempts to control the administration of the maritime law by creating and superadding conditions for the benefit of a particular class of creditors, and thereby depriving the owners of vessels of defences to which they would otherwise have been entitled, is an unlawful interference with the exclusive jurisdiction of all admiralty and maritime cases which is vested by the Constitution in the Federal courts, and to that extent such statute is unconstitutional and void. *The Roanoke*, 185.
9. Section 3348, Rev. Stat. of 1898 of Wisconsin, providing that every ship, boat or vessel used in navigating the waters of that State shall be liable for all damages arising from injuries done to persons or property thereby, and that the claim therefor shall constitute a lien upon such ship, boat or vessel, is confined to cases where the damage is done by those in charge of a ship, with the ship as the "offending thing." Cases of damages done *on board* the ship are not, within the meaning of the act, damages done *by the ship*. Such statute does not create a lien which can be enforced *in rem* for injuries received by a seaman by

the falling of a gangway, resulting as alleged from the master negligently ordering the same to be hoisted while a head wind was blowing. *The Osceola*, 158.

See COURTS, 7;
PUBLIC LANDS, 1.

B. JUDICIAL NOTICE OF.

See COURTS, 3.

C. PROOF OF.

See EVIDENCE, 1.

D. OF UNITED STATES.

See ACTION, 2;
APPEAL AND WRIT OF ERROR, 1;
ARMY OFFICERS;
BANKRUPTCY;
EXECUTIVE POWERS;
JURISDICTION, 1, D;
PRACTICE, 1, 4;
PUBLIC LANDS, 1, 2, 8;
PUBLIC OFFICERS, 1, 3;
PUBLIC RECORDS; .....
RAILROAD LAND GRANTS;
STATUTES, 3, 4; ...
STOCKHOLDERS, 4;
TAXATION, 2.

E. OF STATES AND TERRITORIES.

Alabama. *See* LOCAL LAW.
California. *See* JURISDICTION, D.
Florida. *See* LOCAL LAW.
Massachusetts. *See* CONSTITUTIONAL LAW, 2.
Michigan. *See* LOCAL LAW;
JUDGMENTS.
Mississippi. *See* INTERSTATE COMMERCE.
Nebraska. *See* CONSTITUTIONAL LAW, 3.
New York. *See* STATUTES, 7.
Oklahoma. *See* TAXATION, 2.
Tennessee. *See* COURTS, 1;
RES JUDICATA.
Texas. *See* FELLOW-SERVANT, 2.
Washington. *See* STATUTES, 8.
Wisconsin. *See* STATUTES, 9.

STOCKHOLDERS.

1. By subscribing to stock in a foreign corporation the subscriber subjects itself to the laws of such foreign country in respect to the powers and obligations of such corporation. *Nashua Savings Bank* v. *Anglo-American Co.*, 221.
2. Where it was shown that a trust company loaned on shares of a then solvent and dividend paying national bank, and accepted its stock as collateral, and subsequently the pledgor failed, and the trust company caused the stock to be transferred to one of its employés, paid an assess-

ment subsequently levied upon the stock, and charged it to the pledgor, and frequently wrote to ascertain if there was any market for the stock, stating that it was held as collateral, *Held*, that the pledgee is not bound by statements made without its knowledge by the assignees of the pledgors upon the schedules of liability to the effect that the pledgee had converted the stock. *Rankin* v. *Fidelity Insurance, etc.*, 242.

3. Stockholders of record are liable for unpaid installments, though in fact they may have parted with their stock, or held it for others. A mere pledgee, however, who receives from his debtor a transfer of shares, surrenders the certificate to the bank and takes out new ones in his own name, in which he is described as "pledgee," and holds them afterwards in good faith, and as collateral security for the payment of his debt, is not subject to personal liability as a shareholder. But it is otherwise, if he allow his name to appear on the book as owner, or being the owner, makes a colorable transfer of the stock. *Ib.*
4. Liability of shareholders of national banks under section 5151, Rev. Stat., may be established by allowing one's name to appear upon the books of the corporation as owner, though in fact he be only a pledgee. Nor can the real owner exonerate himself from responsibility by making a colorable transfer of the stock, with the understanding that at his request it shall be retransferred. *Ib.*

See ACTION, 1;
CONSTITUTIONAL LAW, 4;
PLEADING, 1.

SURVEYS.

See EQUITY, 1, 2.
LAND DEPARTMENT, 1.

TAXATION.

1. When the difference is deep and radical between two domains in which the same kind of property may be situated, the law which makes them one district for taxation, so that all the property of the same kind in the same district must be taxed alike, and no reasonable distinction be permitted, must itself be so plain and urgent that no other intention can be suggested. *Foster* v. *Pryor*, 325.
2. There is no provision in the act of Congress of 1890 organizing Oklahoma, or in the territorial act of 1886, which was violated by the act of 1899, p. 216, Session Laws of Oklahoma, which provides that only taxes for territorial and court funds shall be assessed, levied or collected in any unorganized country, district or reservation attached to any county for judicial purposes, and the effect of which is to tax property in an organized county for more purposes, thereby making a different and higher rate than similar property is taxed in the unorganized territory attached to such county. *Ib.*

See CONSTITUTIONAL LAW, 1, 2;
INTERSTATE COMMERCE;
TRUST PROPERTY.

TERMS OF COURT.

Under the rules of the Supreme Court of the District of Columbia, the January terms begin on the first Tuesday of January. The effect of January 1, being a holiday, when it falls on Tuesday, is not to prolong an October term which ends on December 31, and postpone the commencement of the January term until January 8, but only to postpone the exercise by the court of its duties until the following day. It is too late, therefore, after January 1, to make a motion to prolong the October term, which motion under the rules must be made before the end of that term. The rule prolonging the term is to be exercised when invoked; there is no duty imposed upon the court to prolong the term of its own motion. *Gordon* v. *Randle*, 417.

TERRITORIAL COURTS.

See JURISDICTION, 2, 3.

TITLE INSURANCE COMPANIES.

See PUBLIC RECORDS.

TREATIES.

See ALIENS;
JURISDICTION, C.

TRIAL.

See COURT AND JURY;
COURTS, 4.

TRUST PROPERTY.

Under the statute of Massachusetts which requires that all personal estate held in trust shall be assessed for taxation to the trustee, a person residing in Massachusetts and holding property in trust has the same opportunity to show that he held no property in trust as he has in regard to his individual property, and it is as much his duty to disclose it as though it were individual property. *Glidden* v. *Harrington*, 255.

UNITED STATES.

See PRIZE.