INDEX

OF THE

PRINCIPAL MATTERS.

ADMIRALTY.

1. Where a steamer approaches an object at night, and the captain is uncertain what it is, he should slacken his speed. If he does not take this precaution, his vessel will be responsible in case of a collision with another vessel. *Steamer Louisiana* v. *Fisher et al.* 1.
2. The night was not so dark as to make it the duty of the schooner to show a light. The schooner was discerned by the steamer in sufficient time to have avoided the collision, if proper care had been exercised. *Ibid.*
3. Where a general ship, employed in navigating the lakes, receives goods under a contract of shipment, corresponding in terms to the usual bill of lading for the transportation of goods on inland navigable waters, her liability must be determined by the rules of law applicable to carriers of goods upon such inland waters. *Propeller Niagara* v. *Cordes*, 7.
4. A common carrier by water, as on land, is responsible for every loss or damage, however occasioned, unless it happened by the act of God or the public enemy, or by some other cause or accident, without any fault or negligence on the part of the carrier, and expressly excepted in the bill of lading. *Ibid.*
5. Amongst the duties imposed upon carriers by water, one is to see that the vessel is provided with a competent and skilful master. *Ibid.*
6. The act of Congress, passed on the 3d of March, 1851, (9 Stat. at L., 635,) limiting the liability of ship owners, does not apply to the present case. *Ibid.*
7. After a vessel is stranded, there is still an obligation upon the master to take all possible care of the cargo. His duties in that respect are not varied by that event, and proof merely of reasonable care and diligence will not excuse him from liability. *Ibid.*
8. Where a vessel put into Presque Isle at night, in a storm, upon Lake Huron, the evidence does not justify this court in adjudging that the master could have kept on his course, nor in holding the vessel responsible for an error in judgment in the master, in the measures which he adopted after he had succeeded in entering the harbor. *Ibid.*
9. But after the vessel was stranded, he was guilty of culpable negligence in not protecting the cargo with sufficient care, and in returning home and

ADMIRALTY, (*Continued.*)
allowing the cargo to remain in the vessel during the remaining part of the winter, and until a late day in the spring. *Ibid.*

10. A master must not abandon his ship and cargo upon any grounds, so far as the goods are concerned, when it is practicable for human exertion, skill, and prudence, to save them from the impending peril. *Ibid.*
11. An ordinance of the city authorities of Charleston, prescribing where a vessel may lie in the harbor, how long she may remain there, what light she must show at night, and making other similar regulations, is not in conflict with any law of Congress regulating commerce, or with the general admiralty jurisdiction conferred on the courts of the United States. It is therefore valid. *Brig James Gray* v. *John Fraser*, 184.
12. A vessel at anchor is bound to show such a light as is required by the local regulations. *Ibid.*
13. Where a vessel, being towed into port by a steam-tug, came into collision with a vessel at anchor, and the steam-tug and vessel at anchor were both in fault, the loss must be equally divided between them, provided the ship in tow was thrown against the vessel at anchor without any fault or negligence on the part of the vessel in tow. *Ibid.*
14. The act of Congress passed on the 26th of February, 1845, (5 Stat. at L., 726,) confines the admiralty jurisdiction of the Federal courts upon the lakes to matters of contract and tort arising in, upon, or concerning steamboats and other vessels employed in the business of commerce and navigation between ports and places in different States and Territories upon the lakes. *Allen* v. *Newberry*, 244.
15. It does not extend, therefore, to a case where there was a shipment of goods from a port in a State to another port in the same State, both being in Wisconsin. *Ibid.*
16. And this is so, although the vessel was a general ship, and bound, upon the voyage in question, to Chicago, a port in the State of Illinois. *Ibid.*
17. What would be done in a case of general average, the court does not now decide. *Ibid.*
18. And a contract for supplies furnished to a vessel engaged in such a trade is subject to the same limitation. *Maguire* v. *Card*, 248.
19. A rule in admiralty, adopted at the present term, takes from the District Courts the right of proceeding *in rem* against a domestic vessel for supplies and repairs, which had been assumed upon the authority of a lien given by State laws. *Ibid.*
20. The reason of the rule explained. *Ibid.*
21. The rules of pleading in admiralty must be strictly complied with. The evidence and arguments confined to the points put in issue by the allegations of the libel and denial of the answer. *McKinlay* v. *Morrish*, 343.
22. Where the allegation of a libel was, that a cargo of soap had been injured by bad stowage, and by negligence of the captain that he had allowed the seams of the deck to be in an open and leaking condition, by which water had passed through them upon the soap, the evidence shows that the cargo was not injured by bad stowage or leaking from the deck. *Ibid.*

ADMIRALTY, (*Continued.*)

23. The injury to the cargo was caused by the sweat of the ship, her rocking, the nature of the compound of soap, and its long agitation in the boxes, to which it had been subjected in a boisterous passage. *Ibid.*

24. The rule is well established, that a consignee may sue in a court of admiralty, either in his own name, as agent, or in the name of his principal, as he thinks best. *Ibid.*

25. In a collision between a sailing vessel and a steamer, which took place at sea near the shore of Long Island, where the course of the sailing vessel was converging to the track of the steamer, the sailing vessel being then close hauled upon the wind, the evidence shows that the steamer was in fault. *New York and Liverpool Mail Steamship Company* v. *Rumball*, 372.

26. The sailing vessel did not change her course, and her whole company, including the master and mate, were on deck. *Ibid.*

27. The rules of navigation are obligatory upon vessels approaching each other, from the time the necessity for precaution begins, and continue to be applicable as the vessels advance, so long as the means and opportunity to avoid the danger remain. *Ibid.*

28. These rules require sailing vessels, when approaching a steamer, to keep their course; and steamers, under such circumstances, as a general rule, are required to keep out of the way. *Ibid.*

29. Under this rule, the steamer must of necessity determine for herself, and upon her own responsibility, independently of the sailing vessel, whether it is safer to go to the right or left, or to stop; and in order that she may not be deprived of the means of determining the matter wisely, it is required that the sailing vessel shall keep her course, and allow the steamer to pass either on the right or left, or to adopt such measures of precaution as she may deem best suited to enable her to perform her duty, and fulfil the requirement of the law to keep out of the way. *Ibid.*

30. Exceptional cases may be imagined; and where the rule could not be followed without defeating the end for which it was established, or without producing the mischief which it was the design of the rule to avert, of course it would not be applicable, and, in such a case, a departure from it would be both justifiable and commendable. *Ibid.*

31. But this not being such a case, the steamer must be responsible for the loss occasioned by the collision. *Ibid.*

32. The cases decided by this court referred to. *Ibid.*

33. Where the District Court of the United States, sitting in admiralty, decreed that a sum of money was due, but the amount to be paid was dependent upon other claims that might be established, this was not such a final decree as would justify an appeal to the Circuit Court. *Montgomery* v. *Anderson*, 386.

34. The Circuit Court, therefore, had no jurisdiction, and its judgment, affirming the decree of the District Court, and remanding the case to that court, was erroneous. *Ibid.*

35. Moreover, if it had jurisdiction, it was not authorized to remand the case to the District Court. The appeal had carried up the fund, and the Circuit Court should have executed its own decree. *Ibid.*

ADMIRALTY, (*Continued.*)

36. An agreement of counsel, filed in this court, stating that the whole fund had been distributed, will not correct the error. This court has heretofore decided that consent of counsel will not confer jurisdiction. *Ibid.*
37. The decree of the Circuit Court must be reversed, and the case remanded to that court, with directions to dismiss the case for want of jurisdiction. *Ibid.*
38. When freight is payable and when goods are to be delivered from a ship. *See Brittan* v. *Barnaby*, 529.
39. Where two steam-tugs are approaching a vessel from different directions, in order to secure the contract of towing her into harbor, the established rules are, that the steamer which is following in the wake of the vessel should come up on her starboard quarter and slack her engine, whilst the steamer which is approaching from the opposite direction should round to, either to windward or leeward, so as to head the same way as the vessel. *Sturgis* v. *Clough*, 451.
40. In the present case, the evidence shows that the master and pilot of the last-mentioned steamer were in fault by not conforming to the established rule, and thereby caused the collision which ensued between the two steamers. *Ibid.*
41. In a collision which took place upon Lake Erie, between the propeller Ogdensburgh and the steamer Atlantic, the propeller was in fault—
    1. Because she did not have a competent and skilful officer in charge of her deck, and his want of qualifications and skilfulness contributed to the collision. Owners of steamships must employ skilful and competent officers; and the remark is just as applicable to the under officers, whether the mate or second mate, as to the master, during all the time they have charge of the deck.
    2. Because she did not have signal lights properly displayed, as required by law. But the failure to show the lights, which are directed by the act of Congress, does not of itself throw the entire responsibility upon the offending party, where the other vessel also is in fault.
    3. Because the officer in charge of her deck neglected to seasonably change her helm, and persistently kept her on her course, after he discovered the signal lights of the steamer.
42. The Atlantic was in fault—
    1. Because the officer in charge of her deck did not exercise proper vigilance to ascertain the character of the approaching vessel, after he discovered the white lights, which subsequently proved to be the white lights of the propeller.
    2. She was also in fault because the officer of her deck did not seasonably and effectually change the course of the vessel, or slow or stop her engines after he discovered those lights, so as to prevent collision.
    3. Because she did not have a vigilant and sufficient look-out. Ocean steamers usually have two look-outs, in addition to the officer of the deck; and in general they are stationed, one on the larboard and the other on the starboard side of the vessel, as far forward as possible, and during the time they are so engaged, they have no other duties to per-

ADMIRALTY, (*Continued.*)

form; and no reason is perceived why any less precaution should be taken by first-class steamers on the lakes.

43. Being a case of mutual fault, the decree of the Circuit Court, apportioning the damages, is affirmed. *Chamberlain* v. *Ward*, 548.

AGENTS.

1. An agreement between a claimant and certain persons in Washington, whereby the claimant agreed to allow those persons a proportion of what might be recovered, was terminated when the United States and Great Britain made a convention, providing for the appointment of a board of commissioners to decide upon claims, in which the one in question was included. *Pemberton* v. *Lockett*, 257.
2. The agreement looked only to the services in Washington of the persons employed; and the facts of the case indicate that such was the intention of the parties. *Ibid.*
3. Where a contract is made by an agent, the principal whom he represents may maintain an action upon it in his own name, although the name of the principal was not disclosed at the time of making the contract; and, although the contract be in writing, parol evidence is admissible to show that the agent was acting for his principal. *Ford* v. *Williams*, 288.
4. The rule is well established that a consignee may sue in a court of admiralty, either in his own name, as agent, or in the name of his principal, as he thinks best. *McKinlay* v. *Morrish*, 343.

APPEALS.

1. There being no special provision in the act of Congress regulating appeals from the District Court of the United States in Wisconsin, they are governed by the general law of 1803. *Richmond* v. *City of Milwaukee*, 80.
2. By that act, no appeal will lie unless the sum or value in controversy exceeds two thousand dollars. *Ibid.*
3. Where the District Court of the United States, sitting in admiralty, decreed that a sum of money was due, but the amount to be paid was dependent upon other claims that might be established, this was not such a final decree as would justify an appeal to the Circuit Court. *Montgomery* v. *Anderson*, 386.
4. The Circuit Court, therefore, had no jurisdiction, and its judgment, affirming the decree of the District Court, and remanding the case to that court, was erroneous. *Ibid.*
5. Moreover, if it had jurisdiction, it was not authorized to remand the case to the District Court. The appeal had carried up the fund, and the Circuit Court should have executed its own decree. *Ibid.*
6. An agreement of counsel, filed in this court, stating that the whole fund had been distributed, will not correct the error. This court has heretofore decided that consent of counsel will not confer jurisdiction. *Ibid.*
7. The decree of the Circuit Court must be reversed, and the case remanded to that court, with directions to dismiss the case for want of jurisdiction. *Ibid.*

ARKANSAS.

See EJECTMENT.

ASSIGNMENT.

1. In Pennsylvania, where a transfer of certain accounts was made, the assignee had only an equitable interest, and could not sue in his own name. But when the suit was brought in Louisiana, where there is no distinction between a legal and equitable title, he could maintain the suit in his own name, and the assignment was good evidence. *Martin* v. *Johnson*, 395.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

1. An assignment made in Rhode Island of property in New York, for the benefit of a particular class of creditors, held good under the special circumstances of the case. *Livermore* v. *Jenckes*, 126.

BANKS.

See CORPORATIONS.

BILL OF EXCEPTIONS.

1. Where the parties to an ejectment suit agreed to waive a trial by jury, and that both matters of law and of fact should be submitted to the decision of the court, and then a bill of exceptions was brought up to this court to all the rulings and decisions of the court below, this court cannot look into errors of fact or errors of law alleged to have been committed in such an irregular proceeding, and the judgment of the court below will be affirmed. *Kelsey* v. *Forsyth*, 85.

BOND.

1. The obligation of the surety is *strictissimi juris*, and he cannot be called upon to pay more than the penalty of his bond. *Leggett* v. *Humphreys*, 66.
2. As he was not permitted to plead *puis darrein continuance*, the satisfaction of the penalty of his bond, &c., he is entitled to relief in equity. *Ibid.*
3. The obligor in a bond has a right to convey property for the purpose of indemnifying his surety, provided it be done *bona fide*, and there is no lien upon the property of the obligor. *Ibid.*

CALIFORNIA.

See LANDS, PUBLIC.

CANAL COMPANY.

See CORPORATIONS.

CHANCERY.

1. A surety in a bond who was not permitted to plead *puis darrein continuance* the satisfaction of the penalty of the bond, was entitled to relief in equity. *Leggett* v. *Humphreys*, 66.
2. Where there was a judgment at law against a bridge company, under which the tolls were sold in execution, a court of equity has power to cause possession to be taken of the bridge, to appoint a receiver to collect tolls, and pay them into court, to the end of discharging the judgment at law. *Covington Drawbridge Company* v. *Shepherd*, 112.
3. The laws of Rhode Island allow an assignment to be made by a failing debtor, for the benefit of certain preferred creditors, and for the exclusion of those who should refuse to execute releases from their respective claims. *Livermore* v. *Jenckes*, 126.
4. The laws of New York do not permit such assignments. *Ibid.*

CHANCERY, (*Continued.*)

5. Where an assignment with the above reservation was made in Rhode Island by a person and to persons residing there, which conveyed to trustees certain property in Rhode Island, and also property in New York, it was proper for the Circuit Court of New York to dismiss a bill filed by creditors residing there, provided there was no fraud in fact in the assignment. *Ibid.*
6. The complainants never acquired nor ever had any lien upon the property in New York, so as to subject it legally or equitably to their demand against the failing debtors, either before or after it was carried into judgment in the Supreme Court of New York. *Ibid.*
7. After various proceedings in the mode of deeds, bonds, &c., the legal title to a piece of property became vested in one person, and the equitable title in another. *Smith* v. *Orton*, 241.
8. The holder of the equitable title has a right to file a bill against the holder of the legal title, to compel him to convey such legal title upon clearing off the encumbrances. *Ibid.*
9. This right is not destroyed by the circumstance that the holder of the legal title had succeeded in a suit against another holder of the legal title, to which suit the holder of the equitable title was not a party. *Ibid.*
10. The fact that neither party is in actual possession of the premises is of no consequence, because the controversy is with respect to the legal title. *Ibid.*
11. The cases referred to, showing the necessity of preserving the distinction between legal and equitable rights and remedies. *Fenn* v. *Holme*, 481.
12. The certificate of probate of a deed in Tennessee did not say that the witness swore that the grantor acknowledged it on the day of its date. But as the certificate said that the grantor acknowledged it for the purposes therein contained, the probate is covered by an act passed in 1846. *Lea* v. *Polk County Copper Company*, 494.
13. Where a grant conveyed the legal title in 1842, and innocent purchasers paid for the property, and took legal conveyances for it, with an honest belief that they were dealing for and acquiring a legal title from the true owner, a claimant of the equity of the patent cannot set it up to overthrow the purchase. *Ibid.*
14. There was nothing in the case to cause suspicion in the minds of these purchasers. Three letters were added in the patent to the original name of the patentee. But the register did this in the course of his official duty, and, as this court believe, honestly; if the purchasers had gone into the inquiry, the presumption would have been that the register did his duty. *Ibid.*
15. These innocent purchasers might properly buy up an outstanding title. *Ibid.*
16. Where a person was in possession, this was sufficient notice to a claimant of an adverse title; and whether the deed under which this person claimed was registered or not, was of no importance to the claimant. *Ibid.*
17. The act of limitations of the State of Tennessee protects persons in possession of land under the following circumstances:

CHANCERY, (*Continued.*)

1. They must have had seven years' possession of land granted by the State. *Ibid.*
2. They must have held or claimed the land by virtue of a deed of conveyance, or other assurance, purporting to convey an estate in fee simple. *Ibid.*
3. No claim by suit in law or equity, effectually prosecuted, should have been set up, or made to said lands, within that time. *Ibid.*

18. Under the second head, an unregistered deed is sufficient to constitute the bar. The deed, when recorded, related back to its date. *Ibid.*
19. The possession of several persons in succession, claiming under the same title, was the same possession; and the evidence shows that the persons claiming under the statute were in possession for the required period of time. *Ibid.*
20. Courts of justice lend a very unwilling ear to statements of what dead men have said. *Ibid.*
21. The allegation that the possession was fraudulent, under a fraudulent grant and fraudulent deed, is not sustained by the evidence. Whether the deed which purported to convey an estate in fee simple was void or not, is immaterial, as the act of limitation intended to protect possession held under such deeds. The adverse possession was notice to everybody of the existence of the claim. *Ibid.*
22. By an act of Congress, passed on the 3d of March, 1835, (4 Stat. at L., 771,) a certain quantity of land was appropriated to the satisfaction of Virginia military land warrants, with a proviso that if the land was not enough to satisfy the warrants, a distribution should be made *pro rata*, in full satisfaction of the warrants. Under it a dividend of ninety per cent. was made. *Walker* v. *Smith*, 579.
23. In 1852 (10 Stat. at L., 143) another act was passed, providing for the deficiency of ten per cent., and directing the Secretary of the Interior to issue land scrip in favor of the "present proprietors" of any warrant thus surrendered. *Ibid.*
24. A bill in chancery for an injunction to prevent the Secretary from issuing the scrip to one of two claimants cannot be sustained. The Secretary must decide, and then it becomes a chose in action, upon which a court can act. *Ibid.*
25. Moreover, in this case the complainant has not made out such a case as to entitle him to relief. *Ibid.*
26. This court disclaims altogether any jurisdiction in the courts of the United States upon the subject of divorce or for the allowance of alimony, either as an original proceeding in chancery, or as an incident to a divorce *a vinculo*, or to one from bed and board. *Barber* v. *Barber*, 582.
27. But where a court of competent jurisdiction in New York decreed a divorce *a mensa et thoro* between man and wife, allowing alimony to the latter, and the husband removed to Wisconsin for the purpose of placing himself beyond the jurisdiction of the court which could enforce it, without having paid any part of the alimony, or leaving any estate of any kind out of which it could be paid, the wife can sue by her next

CHANCERY, (*Continued.*)
friend in a court of the United States, having equity jurisdiction, to recover the amount of alimony decreed by the State court. *Ibid.*
28. A divorce *a vinculo*, obtained in Wisconsin without a disclosure of the circumstances of the divorce case in New York, and upon the allegation by the husband that the wife had wilfully abandoned him, cannot release the husband there and everywhere else from his liability to the decree made against him in New York, upon that decree being carried into judgment in a court of another State of this Union or in a court of the United States, where the defendant may be found, or where he may have acquired a new domicil, differing from that which he had in New York when the decree was made there against him. *Ibid.*
29. The cases in England and in the United States examined, in which a wife may sue her husband by her next friend. *Ibid.*
30. A court of chancery in England will interfere to compel the payment of alimony which has been decreed to a wife by the ecclesiastical court, and the principal reason for its exercise is equally applicable to courts of equity in the United States. The parties to a cause for a divorce and for alimony are as much bound by a decree for both, which has been given by one of our State courts having jurisdiction of the subject-matter and over the parties, as the same parties would be if the decree had been given by the ecclesiastical court of England. *Ibid.*
31. This court has heretofore decided, and now reaffirms, that in order to bar the jurisdiction of the courts of the United States in equity, the remedy at law must be as practical and efficacious to the ends of justice and its prompt administration as the remedy in equity; and it is no objection to such equity jurisdiction that there is a remedy under the local law. *Ibid.*
32. After the divorce *a mensa et thoro* in New York, and the removal of the husband to Wisconsin, the domicil of the wife did not follow that of the husband, but remained unchanged in New York. The jurisdiction of the United States court therefore attached as it respected the different citizenship of the parties. *Ibid.*
33. The American and English authorities upon this point examined. *Ibid.*
34. A wife under a judicial sentence of separation from bed and board is entitled to make a domicil for herself different from that of her husband; and she may, by her next friend, sue her husband for alimony which he had been decreed to pay as an incident to such divorce, or when it has been given after such a decree by a supplemental bill. *Ibid.*
35. The equity side of the court was the appropriate tribunal before which she was to sue; and the District Court of the United States in the State of Wisconsin had jurisdiction over the case. *Ibid.*

COLLECTORS OF THE CUSTOM-HOUSES.
See DUTIES.
1. The provisions in the appropriation acts of 1849 and 1850, &c., &c., must be construed in connection with the previous laws in relation to the same subject-matter. *Converse* v. *United States*, 464.
2. A compensation for extra services where no certain compensation is fixed by law cannot be allowed by the head of a Department to any officer

COLLECTORS OF THE CUSTOM-HOUSES, (*Continued.*)

of the Government who has by law a fixed or certain compensation for his services in the office he holds. Nor can it be allowed by the court or jury as a set-off in a suit brought by the United States against an officer for public money in his hands. *Ibid.*

3. No allowance beyond his fixed compensation can be made except for the performance of certain duties required by law to be performed, for which the law grants a certain compensation to be paid, and which have no connection with the duties of the office he holds. *Ibid.*
4. The Secretary of the Treasury, under the acts of Congress above mentioned, was authorized to appoint an agent to purchase all the supplies necessary for the light-house service throughout the United States, and to make the necessary disbursements therefor. And such agent was entitled to a compensation of two and a half per cent. on the amount disbursed, and the money was appropriated to pay it. *Ibid.*
5. The Secretary had a right, under these laws, to select as agent any one already holding office, if he supposed him to be best qualified for the duty. But he had no right to order a collector of the revenue, or any other officer of the Government, to perform this duty without compensation outside of the light-house district of which he was superintendent, or outside of and alien to the office he held. *Ibid.*
6. The collector of Boston, having been the agent selected by the Treasury Department to purchase supplies for the light-house service throughout the United States, and to make the disbursements, is entitled to the compensation fixed by law for this service, so far as it was outside of his district and beyond the limits to which his duties as an officer extended. *Ibid.*
7. It has not been the policy of the United States to give unlimited power to the heads of departments over the subordinate officers of the Government whose salaries and duties are regulated by law. *Ibid.*

COLLISION OF VESSELS.

See ADMIRALTY.

COMMERCIAL LAW.

See ADMIRALTY and CORPORATIONS.

1. Where a vessel was chartered to bring a cargo of guano from the Chincha Islands to the United States, at the rate of twenty-five dollars per ton freight, with a stipulation that the ship should be entitled to any advance in the guano freight made by the charterers, and they subsequently chartered vessels to go from the United States for guano, (reserving certain privileges to the charterers,) at the rate of thirty dollars per ton freight, it was proper for the Circuit Court to leave it to the jury to say, from all the evidence in the case, whether or not the real contract in the last charters was to bring home guano at the rate of thirty dollars per ton freight. *Barreda* v. *Silsbee*, 146.
2. Contingent agreements between merchants and ship-owners ought to receive a reasonable construction, so as to carry their intentions into effect, and, in general, those intentions must be gathered from the language employed, the surrounding circumstances, and the subject-matter. *Ibid.*

COMMERCIAL LAW, (*Continued.*)

3. The case of Gether *v.* Capper, 80 Eng. C. L., examined. *Ibid.*
4. The declarations and statements of the agents of the charterers, made at the time of the execution of the subsequent charters above mentioned, were properly admitted in evidence as part of the *res gestae*, and to show that the charterers were acting in bad faith towards the owners of the vessel which was first chartered. *Ibid.*
5. Where the effect of a written agreement, collaterally introduced as evidence, depends not merely on the construction and meaning of the instrument, but upon extrinsic facts and circumstances, the inferences of fact to be drawn from it must be left to the jury. *Ibid.*
6. Moreover, the fact whether or not the charterers had paid thirty dollars per ton freight might have been proved by oral as well as written evidence. *Ibid.*
7. The authorities examined. *Ibid.*
8. Although the contracts between the charterers and the last owners might have been fair as between themselves, yet, if their effect was to work an unfairness to the first owners, parol evidence was admissible to show it. *Ibid.*
9. Where certain persons gave a joint and several note for the purpose of raising money, and their agent received a certificate of deposit, which certificate was afterwards duly paid upon presentation, the signers of the note cannot escape from their responsibility upon the plea that a certificate of deposit was not money. *Poorman* v. *Woodward*, 266.
10. Where the cashier of a bank wrote to the Secretary of the Treasury, saying that the bearer of the letter was authorized to contract for the transfer of money from New York to New Orleans, and such a transaction was not within the scope of the powers of the cashier, nor authorized by the directors, the bank was not bound to reimburse the money which the Secretary of the Treasury advanced. *United States* v. *City Bank of Columbus*, 356.
11. Where certificates of the public debt of Texas were transferable only by the owner, or his legal representative or attorney, and there is no sufficient evidence of the existence of a power of attorney, a mere endorsement in blank by the owner is not sufficient to justify a purchaser in drawing a conclusion that the holder is entitled to sell or discount it. *Combs* v. *Hodge*, 397.
12. The difference between this and negotiable instruments explained, and the authorities examined. *Ibid.*
13. But as the circumstances attending the purchase are not well disclosed in the record, the court will remand the case to the Circuit Court, with directions to allow the parties to amend the pleadings, and to take testimony, if they should be so advised. *Ibid.*
14. Where an accommodation bill of exchange was paid by one of the endorsers, and there was no special agreement that they should be bound to pay in equal proportions as co-sureties, the endorser who took it up had a right to assign it as collateral security for a pre-existing debt; and the assignee can maintain a suit against the original payee, who was also an endorser. *McCarty* v. *Roots*, 432.

COMMERCIAL LAW, (*Continued.*)

15. The endorser who took up the bill was a trustee; but the plea was defective in not averring that there remained sufficient funds in the trust estate to pay this bill after discharging the trust. *Ibid.*
16. The freight upon a shipment of goods is payable, according to general rules, when the merchandise is in readiness to be delivered to the person having a right to receive it, and when the consignee has had the opportunity to examine the goods, to see if the obligations of the bill of lading have been fulfilled by the ship-owner. *Brittan* v. *Barnaby*, 529.
17. Where the consignee of a ship gave notice to the consignee of the goods, requiring payment of the freight of the goods as they should be landed from the ship on the wharf, and the consignee of the goods offered to pay the freight of such of the merchandise as had been landed, the latter did all that he was bound to do under the notice, although not bound to do so by the commercial law, and the refusal of the consignee of the ship to receive such *pro rata* freight was unjustifiable. *Ibid.*
18. When the ship-master has a larger shipment under one bill of lading than can be landed in the business hours of one day, he must take care not to land it in such quantities as to be unable to ascertain the *pro rata* freight. Unless he takes this care, the goods landed will be under his care and responsibility without additional expense to the consignee of them until they shall be ready for delivery. *Ibid.*
19. Where the entire freight was demanded when only a part of the goods was ready to be delivered, and the entire freight was refused when the goods were all landed, except upon the condition that the consignee of the goods would pay cartage and storage, this was contrary to the general law upon the subject. *Ibid.*
20. This general law and the nature of freight examined and explained. *Ibid.*
21. Neither party can require from the other that the merchandise shipped under one bill of lading shall be put up into parcels for delivery or for the payment of freight. If the shipment is large, or cannot be landed in a day, the master has a right to ask for security or arrangement for the *pro rata* freight. But he cannot demand the payment of the freight of the entire shipment before the consignee has an opportunity to examine the goods. *Ibid.*
22. The ship is not bound to land an entire shipment in a day; and when landed on different days, if the shipper disregards the notice that such will be the case, and shall not be present to receive the goods, and has made no arrangement for the freight, then they may be stored in the ship-owner's name, to preserve his lien upon them for freight, for safe keeping, at the consignee's expense and risk. *Ibid.*
23. A stamp upon the back of the bill of lading, stating, amongst other things, "that the entire freight was payable prior to delivery, if required," which was put there by the ship's owner, but which there was no evidence was recognised by the shipper as part of his contract, cannot vary the obligations of the contract so as to authorize a demand for freight before the goods were ready for delivery. *Ibid.*
24. The general rule is, that the delivery of the goods at the place of destination, according to the bill of lading, is necessary to entitle the ship to

COMMERCIAL LAW, (*Continued.*)

freight. The conveyance and delivery is a condition precedent, and must be fulfilled. *Ibid.*

25. This general rule may be varied by stipulations; but they must be in writing, and be signed by the parties, before they can control the operation of the law merchant. *Ibid.*
26. It is not enough to establish that this was the mode of doing business by the ship-owner, nor that a practice prevailed in conformity with it at the port to which the goods were carried and delivered to a consignee. *Ibid.*
27. Such a stamp is not equivalent to a memorandum upon a policy of insurance, which is always on the face or the margin of the policy. The rules with respect to policies of insurance explained. *Ibid.*
28. The practice at San Francisco cannot be received as a custom, and therefore obligatory. Moreover, the practice is not established by evidence. *Ibid.*
29. Where bonds issued by county commissioners for subscription to a railroad company import on their face a compliance with the law under which they were issued, the purchaser was not bound (in this case) to look further for evidence of a compliance with the condition to the grant of the power. *Knox County* v. *Aspinwall*, 539.
30. A suit could be maintained upon the coupons, without the production of the bonds to which they had been attached. *Ibid.*
31. Bonds issued by a railroad company in Massachusetts, payable in blank, no payee being inserted, and issued to a citizen of Massachusetts, which had passed through several intervening holders, could be filled up by a citizen of New Hampshire, payable to himself or order, and then suit could be maintained upon them in the Circuit Court of the United States for Massachusetts. *White* v. *Vermont and Massachusetts Railroad Co.*, 575.
32. The eleventh section of the judiciary act does not apply to such a case. *Ibid.*
33. The usage and practice of railroad companies, and of the capitalists and business men of the country, and decisions of courts, have made this class of securities negotiable instruments. *Ibid.*
34. The later English authorities upon this point overruled. *Ibid.*

CONSTITUTIONAL LAW.

1. A statute of the State of New York, making it unlawful for any persons other than Indians to settle or reside upon any lands belonging to or occupied by any nation or tribe of Indians within that State, and providing for the summary ejectment of such persons, is not in conflict with the Constitution of the United States, or any treaty, or act of Congress, and the proceedings under it did not deprive the persons thus removed of property or rights secured to them by any treaty or act of Congress. *State of New York* v. *Dibble*, 366.
2. The process of a State court or judge has no authority beyond the limits of the sovereignty which confers the judicial power. *Ableman* v. *Booth*, 506.
3. A *habeas corpus*, issued by a State judge or court, has no authority within the limits of the sovereignty assigned by the Constitution to the United States. The sovereignty of the United States and of a State are distinct

CONSTITUTIONAL LAW, (*Continued.*)

and independent of each other within their respective spheres of action, although both exist and exercise their powers within the same territorial limits. *Ibid.*

4. When a writ of *habeas corpus* is served on a marshal or other person having a prisoner in custody under the authority of the United States, it is his duty, by a proper return, to make known to the State judge or court the authority by which he holds him. But, at the same time, it is his duty not to obey the process of the State authority, but to obey and execute the process of the United States. *Ibid.*
5. This court has appellate power in all cases arising under the Constitution and laws of the United States, with such exceptions and regulations as Congress may make, whether the cases arise in a State court or an inferior court of the United States. And, under the act of Congress of 1789, when the decision of the State court is against the right claimed under the Constitution or laws of the United States, a writ of error will lie to bring the judgment of the State court before this court for re-examination and revision. *Ibid.*
6. The act of Congress of September 18, 1850, usually called the fugitive slave law, is constitutional in all its provisions. *Ibid.*
7. The commissioner appointed by the District Court of the United States for the district of Wisconsin had authority to issue his warrant and commit the defendant in error for an offence against the act of September 18, 1850. *Ibid.*
8. The District Court of the United States had exclusive jurisdiction to try and punish the offence; and the validity of its proceedings and judgment cannot be re-examined and set aside by any other tribunal. *Ibid.*

CONTRACT.

1. Where it appeared from the record that a party sold land to a railroad company, the price of which was paid in the stock of the company, guarantied by certain persons to be at par after a named time, and suit was brought upon this written contract, the case does not appear to be open to a demurrer by the defendants, and the judgment of the court below sustaining such a demurrer must be reversed. It is an original contract, and, being declared on as such, the plaintiffs are entitled to judgment. *Hill* v. *Smith*, 284.

CORPORATIONS.

1. A railroad company held responsible for the publication of a libel. *Philadelphia, Wilmington, and Baltimore Railroad Co.* v. *Quigley*, 202.
2. Where the cashier of a bank wrote to the Secretary of the Treasury, saying that the bearer of the letter was authorized to contract for the transfer of money from New York to New Orleans, and such a transaction was not within the scope of the powers of the cashier nor authorized by the directors, the bank was not bound to reimburse the money which the Secretary of the Treasury advanced. *United States* v. *City Bank of Columbus*, 356.
3. Bonds issued by a canal company, pledging the real and personal property of the company for the payment of the debt and interest, and

CORPORATIONS, (*Continued.*)
containing other corresponding stipulations, will be treated by a court of equity as a mortgage, and enforced according to the intention of the contracting parties. *White Water Valley Canal Co.* v. *Vallette*, 414.

4. Bonds issued in payment for the completion of the canal were not usurious by the laws of Indiana, although they purport to be for a loan, and although the sum for which they were issued was largely greater than the estimated cost of the work. *Ibid.*
5. The power to issue these bonds is derived from the charter of the company. Moreover, the contract was sanctioned by a special law of the State. And if the contract had been originally illegal, this law of the State would have prevented either party from setting up the illegality as a defence. *Ibid.*
6. The decree of the Circuit Court, appointing a receiver, &c., is therefore affirmed. *Ibid.*
7. Where two separate corporations were created to make railroads, they had no right to unite and conduct their business under one management; nor had they a right to establish a steamboat line, to run in connection with the railroads. *Pearce* v. *Madison and Indiana Railroad Co.*, 442.
8. Notes given for the purchase of the steamboat cannot be recovered upon. *Ibid.*
9. Where the statute of a State provided that the board of commissioners of a county should have power to subscribe for railroad stock, and issue bonds therefor, in case a majority of the voters of the county should so determine after a certain notice should be given of the time and place of election, and the board subscribed for the stock and issued the bonds, purporting to act in compliance with the statute, it is too late to call in question the existence or regularity of the notices in a suit against them by the holders of the coupons attached to the bonds, who were innocent holders, in this collateral way. *Knox County* v. *Aspinwall*, 539.
10. In such a suit, according to the true interpretation of the statute, the board were the proper judges whether or not a majority of the votes in the county had been cast in favor of the subscription to the stock. *Ibid.*
11. The bonds on their face import a compliance with the law under which they were issued, and the purchaser was not bound to look further for evidence of a compliance with the condition to the grant of the power. *Ibid.*
12. A suit could be maintained upon the coupons, without the production of the bonds to which they had been attached. *Ibid.*

DEMURRER.
See PLEAS and PLEADINGS.

DIVORCE.
See CHANCERY.

DOMICIL.

1. The question of domicil, so far as it depends upon the facts, is one for the jury. *Pennsylvania* v. *Ravenel*, 103.
2. But it was proper for the court to instruct the jury what constituted a domicil in law; and to say, further, that as the husband had his domi-

DOMICIL, (*Continued.*)

cil in Pennsylvania at the time of his death, the domicil of the widow remained also in Pennsylvania. Whether or not she afterwards changed it to South Carolina, was a question for the jury, to be decided by the evidence. If they believed this evidence, then the domicil of the widow was in South Carolina. *Ibid.*

3. Her acts and declarations, continued for many years, were to be received as evidence of this choice upon her part. *Ibid.*
4. After the divorce *a mensa et thoro* in New York, and the removal of the husband to Wisconsin, the domicil of the wife did not follow that of the husband, but remained unchanged in New York. The jurisdiction of the United States court therefore attached as it respected the different citizenship of the parties. *Barber* v. *Barber*, 582.
5. The American and English authorities upon this point examined. *Ibid.*
6. A wife under a judicial sentence of separation from bed and board is entitled to make a domicil for herself different from that of her husband. *Ibid.*

DUTIES AT THE CUSTOM-HOUSES.

1. The eighth section of the act of Congress, passed in 1846, (9 Stat. at L., 42,) exacting a penal duty of twenty per cent. when the appraised value of goods imported exceeds the invoiced value by ten per cent., does not include the case of an entry by a manufacturer who has produced the article imported. *Belcher* v. *Lawrason*, 252.
2. Nor did previous laws prior to the act of March 3, 1857, (Session Laws, page 199,) justify this penalty. The last-mentioned law puts goods manufactured and goods purchased upon the same footing in this respect. *Ibid.*
3. But by the act of 1842 (Stat. at L.) an addition of fifty per cent. to the duty is laid upon goods imported by a manufacturer, where the appraised value exceeded the invoiced value by ten per cent. *Ibid.*
4. The appraisal of the goods at the customs was properly made under the 17th section of the act of 1842, although imported and entered by the manufacturer. *Ibid.*
5. A writ of error to this court will not lie in an action against a collector for the return of duties paid under protest where the recovery was for a less sum than two thousand dollars. *Mason* v. *Gamble*, 390.

EJECTMENT.

1. Where there had been an original entry for land made in the office of the Lord Proprietor of the Northern Neck of Virginia, a survey ordered upon that entry, and actually made and returned, and a patent adopting that survey, and founded thereupon, was issued by the Lord Proprietor to a grantee differing in name from the maker of the original entry, these circumstances constitute no ground for vacating or impeaching the legal title vested by the patent. *Brown* v. *Huger*, 305.
2. The construction of the patent is the proper duty of the court, and not of the jury. *Ibid.*
3. It is a universal rule, that wherever natural or permanent objects are embraced in the calls of a patent or survey, these have absolute control, and both course and distance must yield to their influence. *Ibid.*

EJECTMENT, (*Continued.*)

4. Hence, where a survey and patent call for a boundary to run down a river to its point of junction with another, thence up that other, the rivers are obviously intended as the boundaries, and courses must be disregarded, especially when it is manifest that one of them has been interpolated through error. *Ibid.*
5. The authorities referred to. *Ibid.*
6. Where a deed was objected to in the Circuit Court on the ground of fraud, but no specific grounds of objection were made, this court cannot inquire into the correctness or incorrectness of the objection. *Thomas* v. *Lawson*, 331.
7. By the laws of Arkansas, and decisions of its courts, a sheriff's deed of land sold for the non-payment of taxes is made evidence of the regularity and legality of the sale, and the burden of proof of irregularity is cast upon the assailant of the tax title. *Ibid.*
8. The cases upon this point examined. *Ibid.*
9. The law also allows the purchaser of a tax title to file a petition on the chancery side of the State court, whose judgment, or decree, confirming the sale, shall operate as a bar against all persons who may claim the land in consequence of informality or illegality in the proceedings which led to the sale. *Ibid.*
10. A record of such a decree, when produced in the Circuit Court, was conclusive evidence of the title of the purchaser at the sheriff's sale. *Ibid.*
11. The plaintiff in ejectment must in all cases prove a legal title to the premises in himself, at the time of the demise laid in the declaration, and evidence of an equitable title will not be sufficient for a recovery. *Fenn* v. *Holme*, 481.
12. Hence, the holder of a New Madrid certificate, upon which no patent had been issued, and whilst it was yet uncertain whether or not the proposed location of it was reserved under older surveys, could not recover in ejectment. The legal title was in the Government. *Ibid.*
13. The cases referred to, showing the necessity of preserving the distinction between legal and equitable rights and remedies. *Ibid.*
14. The practice of allowing ejectments to be maintained in State courts upon equitable titles cannot affect the jurisdiction of the courts of the United States. *Ibid.*

EVIDENCE.

1. Where objection was made, during the trial of a cause, to the reception of the deposition of a witness, which had been taken under a commission, it was properly overruled, because the rules of practice in the Circuit Court of New York give time and opportunity to move for a suppression of the deposition or a re-examination of the witness. *Winans* v. *New York and Erie Railroad Co.*, 88.
2. The paper which the witness referred to, but did not annex to his deposition, was not in his power. *Ibid.*
3. In the trial of a suit for the violation of a patent right, the court cannot be compelled to receive the evidence of experts as to how a patent ought to be construed. The judge may obtain information from them if he desire it. *Ibid.*

EVIDENCE, (*Continued.*)

4. Declarations and statements of the agents of the charterers of vessels made at the time of the execution of the charters, were properly admitted in evidence as part of the *res gestae*, and to show that the charterers were acting in bad faith towards the owners of vessels which had been previously chartered. *Barreda* v. *Silsbee*, 146.
5. Where a contract is made by an agent, the principal whom he represents may maintain an action upon it in his own name, although the name of the principal was not disclosed at the time of making the contract; and, although the contract be in writing, parol evidence is admissible to show that the agent was acting for his principal. *Ford* v. *Williams*, 288.
6. The pleadings in another suit, where the parties were different, and the petition and answer signed by counsel, cannot be resorted to for admissions of the respective parties. *Combs* v. *Hodge*, 397.

FINAL DECREE.

See APPEALS.

FREIGHT.

1. When freight is payable and when goods are to be delivered from a ship. *See Brittan* v. *Barnaby*, 529.

INSURANCE COMPANIES.

1. Under a general act of the Legislature of New York, passed on the 10th of April, 1849, which authorized the incorporation of insurance companies in the State under it, held that the eighth section in the charter of a mutual insurance company formed under the general act, which provided for the payment of cash premiums, at the election of the insured, as well as premiums secured by notes, was authorized by the general act, and that a policy issued upon a payment of the premium in cash was legal and valid. *Union Insurance Co.* v. *Hoge*, 35.

JURISDICTION.

1. The admiralty jurisdiction of the courts of the United States does not extend to a case where there was a shipment of goods from a port in a State to another port in the same State. And this is so, although the vessel was a general ship and bound upon the voyage in question to a port in another State. *Allen* v. *Newberry*, 244.
2. Nor does it extend to a contract for supplies furnished to a vessel engaged in such a trade. *Maguire* v. *Card*, 248.
3. Congress passed no law in any wise affecting title to lands in the Territory of Oregon until September, 1850; and therefore where a controversy arose, in July, 1850, relating to titles to land, neither party could be said to have a legal title. *Lownsdale* v. *Parrish*, 290.
4. Consequently, the amount in controversy could not be ascertained, so as to bring the case within the jurisdiction of this court; and there is no question arising under the Constitution or laws of the United States so as to give jurisdiction. *Ibid.*
5. Where the District Court of the United States, sitting in admiralty, decreed that a sum of money was due, but the amount to be paid was dependent upon other claims that might be established, this was not such a final decree as would justify an appeal to the Circuit Court. *Montgomery* v. *Anderson*, 386.

JURISDICTION, (*Continued.*)

6. An agreement of counsel, filed in this court, stating that the whole fund had been distributed, will not correct the error. This court has heretofore decided that consent of counsel will not confer jurisdiction. *Ibid.*
7. The court again decides that consent of parties cannot give jurisdiction. *Ballance* v. *Forsyth*, 389.
8. The act of Congress passed on the 3d of May, 1844, (5 Stat. at L., 658,) authorizes a writ of error, at the instance of either party, upon a final judgment in a Circuit Court in any civil action brought by the United States for the enforcement of the revenue laws, or for the collection of duties due or alleged to be due, without regard to the sum or value in controversy. *Mason* v. *Gamble*, 390.
9. But this law does not include a case where an action was brought against the collector for the return of duties paid under protest, and where the recovery was for a less sum than two thousand dollars. *Ibid.*
10. Such a case must be dismissed for want of jurisdiction. *Ibid.*
11. The practice of allowing ejectments to be maintained in State courts upon equitable titles cannot affect the jurisdiction of the courts of the United States. *Fenn* v. *Holme*, 481.
12. The decision of this court in 20 Howard, 227, as to what averment in the declaration is sufficient to give jurisdiction to the courts of the United States, again affirmed. *Covington Drawbridge Company* v. *Shepherd*, 112.
13. After a case has been heard and dismissed for want of jurisdiction, because it did not appear that the value of the property in controversy exceeded two thousand dollars, affidavits of its value come too late. *Richmond* v. *City of Milwaukee*, 391.
14. Bonds issued by a railroad company in Massachusetts, payable in blank, no payee being inserted, and issued to a citizen of Massachusetts, which had passed through several intervening holders, could be filled up by a citizen of New Hampshire, payable to himself or order, and then suit could be maintained upon them in the Circuit Court of the United States for Massachusetts. *White* v. *Vermont and Massachusetts Railroad Co.*, 575.
15. The eleventh section of the judiciary act does not apply to such a case. *Ibid.*
16. The usage and practice of railroad companies, and of the capitalists and business men of the country, and decisions of courts, have made this class of securities negotiable instruments. *Ibid.*
17. The later English authorities upon this point overruled. *Ibid.*
18. A woman who had been divorced a *mensa et thoro* from her husband by a court of competent jurisdiction in New York can sue in the District Court of the United States, on the equity side, for the alimony which had been decreed to her by the court in New York. *Barber* v. *Barber*, 582.
19. This court has heretofore decided, and now reaffirms, that in order to bar the jurisdiction of the courts of the United States in equity, the remedy at law must be as practical and efficacious to the ends of justice and its prompt administration as the remedy in equity; and it is no

JURISDICTION, (*Continued.*)
objection to such equity jurisdiction that there is a remedy under the local law. *Ibid.*

JURY.
1. The question of domicil, so far as it depends upon the facts, is one for the jury. *Pennsylvania* v. *Ravenel*, 103.
2. But it was proper for the court to instruct the jury what constituted a domicil in law; and to say, further, that as the husband had his domicil in Pennsylvania at the time of his death, the domicil of the widow remained also in Pennsylvania. Whether or not she afterwards changed it to South Carolina, was a question for the jury, to be decided by the evidence. If they believed this evidence, then the domicil of the widow was in South Carolina. *Ibid.*
3. Her acts and declarations, continued for many years, were to be received as evidence of this choice upon her part. *Ibid.*
4. Where a vessel was chartered to bring a cargo of guano from the Chincha Islands to the United States, at the rate of twenty-five dollars per ton freight, with a stipulation that the ship should be entitled to any advance in the guano freight made by the charterers, and they subsequently chartered vessels to go from the United States for guano, (reserving certain privileges to the charterers,) at the rate of thirty dollars per ton freight, it was proper for the Circuit Court to leave it to the jury to say, from all the evidence in the case, whether or not the real contract in the last charters was to bring home guano at the rate of thirty dollars per ton freight. *Barreda* v. *Silsbee*, 146.
5. Where the effect of a written agreement, collaterally introduced as evi dence, depends not merely on the construction and meaning of the in strument, but upon extrinsic facts and circumstances, the inferences of fact to be drawn from it must be left to the jury. *Ibid.*
6. Where the Secretary of the Treasury had power to select school lots, the question, whether or not he had exercised this power, was one to be decided by the jury. *Dickins's Lessee* v. *Mahana*, 276.
7. The construction of a patent for land issued by the State of Virginia by the lord proprietor was the proper duty of the court, and not of the jury. *Brown* v. *Huger*, 305.
8. Whether an inventor forbore to apply for a patent until he had perfected his invention, and tested its value by experiments, or negligently postponed his claims, were questions for the jury. *Kendall* v. *Winsor*, 322.

LANDS, PUBLIC.
1. The evidence is satisfactory to this court, that Alvarado, the Governor of California, granted a tract of land, to the extent of eleven leagues, to John A. Sutter, in 1841. *United States* v. *Sutter*, 170.
2. Although the original grant has not been produced, yet there is sufficient proof that it once existed, and was destroyed by fire. A draught of the grant, prepared by the Governor, is found in the archives, and the grant was recorded in the county registry of deeds; and this, together with the other evidence in the case, shows that it was genuine, and also the map which accompanied it. Although the map was incorrect in its lines of latitude, yet it can be located by its reference to natural objects. *Ibid.*

LANDS, PUBLIC, (*Continued.*)

3. This grant was authorized by the colonization laws of 1824 and 1828. *Ibid.*
4. But another grant, purporting to be issued by Micheltorena in 1845, for the surplus of the former grant, being an additional quantity of twenty-two leagues, does not stand in the same position. *Ibid.*
5. Supposing it to be genuine, yet the situation in which Micheltorena was placed at its date was such as to impair its validity. He had been driven from his capital, was not in the peaceful exercise of his official authority, and was shortly after compelled to abdicate. The grant was not recognised by the persons who succeeded him, nor was it produced by the claimant to be placed in the archives. It was not a valid claim at the date of the treaty of Guadalupe Hidalgo. *Ibid.*
6. Grantees under the claim may prosecute it for confirmation in the name of the original claimant. *Ibid.*
7. By an act of Congress passed in 1816, (3 Stat. at L., 256,) a bounty in land was given to those American citizens who were living in Canada at the time when war was declared against Great Britain, in 1812, and who returned to the service of their country. *Lessee of French and Wife* v. *Spencer*, 228.
8. This act was not like other bounty-land acts, by which the Government undertook to locate the bounty land. Under the act first mentioned, the warrants were delivered to the owners to be located by them, and were therefore assignable after an entry was made in the Land Office. *Ibid.*
9. The deed of conveyance in question was sufficient to pass the interest of the grantor. *Ibid.*
10. A patent issued to the original beneficiary, who had previously sold his right inured to the benefit of the purchaser, and related back to the date of the entry; and the heir of the grantor in such a deed is estopped from setting up a legal title under the patent. *Ibid.*
11. In 1792, Congress granted to certain persons a tract of land in Ohio, upon the condition that they would lay off lots of an hundred acres each to actual settlers, and upon the further condition that the lands which were undisposed of at the end of five years should revert to the United States. *Dickins's Lessee* v. *Mahana*, 276.
12. In 1818, Congress directed these reverted lands to be laid off into town ships and sections, or into one-hundred-acre lots, and to be sold, with the exception of the usual proportion for the support of schools. *Ibid.*
13. The Secretary of the Treasury had the power to reserve school lots, but the register of the land office had not. *Ibid.*
14. Whether or not the presumption was that the Secretary had exercised the power, was a question to be decided by the jury upon the evidence. and in deciding that it was a legal presumption the court erred. *Ibid.*
15. By the acts of Congress passed in 1829, (4 Stat. at L., 334,) and 1836, (5 Stat. at L., 79,) commissioners were to be appointed to hear and determine all claims to lots of ground in the town of Galena, Illinois, and to give a certificate in favor of each person having the right of pre-emption. *Morehouse* v. *Phelps*, 294.

LANDS, PUBLIC, (*Continued.*)

16. Where a person presented his claim as the legal representative of a set tler, obtained the certificate, and afterwards a patent to the legal representatives, it inured to the benefit of the person who had presented the claim, obtained the certificate, paid the money, and procured the patent. *Ibid.*
17. Where this person acted for himself individually, and also as the administrator of his co-tenant who was dead, it was his duty and right, under the laws of the State, to pay both shares of the purchase-money. *Ibid.*
18. One standing outside, who took no interest in the claim for many years after it was passed, and then claimed under a deed made by the settler in 1829, alleging that he was the proper legal representative, had not such a title as would enable him to maintain an action of ejectment. *Ibid.*
19. The cases under incipient Spanish titles do not apply to this case, because the United States were the absolute owners of the lots in question, and could dispose of them at their pleasure. *Ibid.*
20. Where there was a petition for land in California, addressed to Michelto rena, the Governor, which was referred by him to his Secretary, Jimeno, and by him to Sutter, and there is no evidence that these papers, with Sutter's certificate, were ever returned to the Governor, or sanctioned by the authorities of the State subsequently, the evidence is not suffi cient to support the claim, although sanctioned by what is called Sutter's general title. *United States* v. *Nye*, 408.
21. Sutter's general title was this:
22. In December, 1844, Micheltorena issued a general grant to all persons who had made applications upon which a favorable report had been made by Sutter, and directed Sutter to give them a copy of this order, to serve instead of a formal title. *Ibid.*
23. But this power thus conferred upon Sutter was abrogated by the abdication of the Governor, and, in this case, the power was not executed for more than a year after such abdication. The claim is therefore invalid. *Ibid.*
24. Where there was a petition for land in California to Micheltorena, in July, 1844, but no final action was taken upon it except under Sutter's general title, (see preceding case of United States *v.* Nye,) the claim is not considered to be sufficiently established. *United States* v. *Bassett*, 412.
25. Between May, 1829, and July, 1832, there was an interval in the acts of Congress reserving lands from sale which were claimed under Spanish concessions in Louisiana; and during this interval, an entry or patent for any of these lands would have been valid. *Easton* v. *Salisbury*, 426.
26. But a patent issued in 1827, whilst the reservation was in force, was void, and the patent did not become operative *proprio vigore* during the interval between 1829 and 1832. *Ibid.*
27. The confirmation of the concession in 1836, therefore, gave a good title to the claimant under the concession. *Ibid.*
28. Moreover, the New Madrid warrant, not being located within one year from the 26th of April, 1822, was void. *Ibid.*
29. The jurisdiction of the board of commissioners for the settlement of private land claims in California, and of the courts of the United States on ap-

LANDS, PUBLIC, (*Continued.*)

peal, extends not only to the adjudication of questions relating to the genuineness and authenticity of the grant, and others of a similar character, but also all questions relating to its location and boundaries; and does not terminate until the issue of a patent conformably to the decree. *United States* v. *Fossatt*, 445.

30. It is the duty of the surveyor general to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same. *Ibid.*

31. The plaintiff in ejectment must in all cases prove a legal title to the premises in himself, at the time of the demise laid in the declaration, and evidence of an equitable title will not be sufficient for a recovery. *Fenn* v. *Holme*, 481.

32. Hence, the holder of a New Madrid certificate, upon which no patent had been issued, and whilst it was yet uncertain whether or not the proposed location of it was reserved under older surveys, could not recover in ejectment. The legal title was in the Government. *Ibid.*

LIBEL.

1. A railroad company held responsible for the publication of a libel. *Philadelphia, Wilmington, and Baltimore Railroad Co.* v. *Quigley*, 202.

NOTES, PROMISSORY.

See COMMERCIAL LAW.

OREGON.

1. Congress passed no law in any wise affecting title to lands in the Territory of Oregon until September, 1850; and therefore where a controversy arose, in July, 1850, relating to titles to land, neither party could be said to have a legal title. *Lownsdale* v. *Parrish*, 290.

2. Consequently, the amount in controversy could not be ascertained, so as to bring the case within the jurisdiction of this court; and there is no question arising under the Constitution or laws of the United States so as to give jurisdiction. *Ibid.*

PATENT RIGHTS.

1. In the trial of a suit for the violation of a patent right, the court cannot be compelled to receive the evidence of experts as to how a patent ought to be construed. The judge may obtain information from them if he desire it. *Winans* v. *New York and Erie Railroad Co.*, 88.

2. Winans's patent for "a new and useful improvement in the construction of cars or carriages intended to travel upon railroads," was for the manner of arranging and connecting the eight wheels of a railroad carriage for the purpose of enabling burden and passenger cars to pursue a more smooth, even, and safe course over the curves and irregularities of a railroad. And it was proper to instruct the jury, that if they found, from the evidence, that before the time when Winans claimed to have made the discovery, carriages with eight wheels, arranged and connected substantially in the same manner and upon the same mechanical principles with those described in the patent, were known, and publicly used, Winans was not entitled to recover. *Ibid.*

3. The ultimate object of the patent laws being to benefit the public by the use of the invention after the temporary monopoly shall have expired,

PATENT RIGHTS, (*Continued.*)

one who conceals his invention, and uses it for his own profit, is not entitled to favor if another person should find out and use the invention. *Kendall v. Winsor*, 322.

4. But this does not include the case of an inventor who forbears to apply for a patent until he has perfected his invention or tested its value by experiments. *Ibid.*
5. Whether or not an inventor intended to do this, or negligently to postpone his claims to a patent, as, for instance, by acquiescing with full knowledge in the use of his invention by others, are questions which ought properly to be left to the jury. *Ibid.*
6. If a person should surreptitiously obtain knowledge of the invention, and use it, he would have no right to continue to use it after the inventor should have obtained a patent. *Ibid.*

PLEAS AND PLEADINGS.

1. The decision of this court in 20 Howard, 227, as to what averment in the declaration is sufficient to give jurisdiction to the courts of the United States, again affirmed. *Covington Drawbridge Company v. Shepherd*, 112.
2. Under the general-issue plea, no question could be raised as to the capacity of the parties to sue in the Circuit Court. *Philadelphia, Wilmington and Baltimore Railroad Co.* v. *Quigley*, 202.
3. Where it appeared from the record that a party sold land to a railroad company, the price of which was paid in the stock of the company, guarantied by certain persons to be at par after a named time, and suit was brought upon this written contract, the case does not appear to be open to a demurrer by the defendants, and the judgment of the court below sustaining such a demurrer must be reversed. It is an original contract, and, being declared on as such, the plaintiffs are entitled to judgment. *Hill* v. *Smith*, 284.
4. Where a contract is made by an agent, the principal whom he represents may maintain an action upon it in his own name, although the name of the principal was not disclosed at the time of making the contract; and, although the contract be in writing, parol evidence is admissible to show that the agent was acting for his principal. *Ford* v. *Williams*, 288.
5. The rules of pleading in admiralty must be strictly complied with. The evidence and arguments confined to the points put in issue by the allegations of the libel and denial of the answer. *McKinlay* v. *Morrish*, 343.
6. The pleadings in another suit, where the parties were different, and the petition and answer signed by counsel, cannot be resorted to for admissions of the respective parties. *Combs* v. *Hodge*, 397.
7. Where four persons made a contract with a citizen of Ohio, and three of the four were citizens of Indiana, and suit was brought against the three in the Circuit Court of the United States for Indiana, the non-joinder of the fourth was justified by the act of 1839, (5 Stat. at L., 321.) *Clearwater* v. *Meredith*, 489.
8. The decision at the present term, in the case of Hill *v.* Smith, again affirmed. *Ibid.*

PLEAS AND PLEADINGS, (*Continued.*)

9. A suit could be maintained upon the coupons, without the production of the bonds to which they had been attached. *Knox County* v. *Aspinwall*, 539.

10. Where a libel was filed by the owners of a steamer against the owners of a propeller for a collision, and there was an agreement between the parties in the court below, that the answer of the respondents should operate as a cross-libel, the mode of proceeding does not meet the approval of this court, and ought not to be drawn into precedent. The respondents should file their cross-libel, take out process, and have it served in the usual way. *Ward* v. *Chamberlain*, 572.

PRACTICE.

1. Where a common-law case was dismissed at the last term for want of jurisdiction, (the record showing that no final judgment was given in the court below,) an affidavit setting forth that the final judgment was accidentally omitted from the record, and the production of a correct record, are not sufficient to sustain a motion to annul the order of dismissal, and reinstate the case upon the docket. *Rice* v. *Minnesota and Northwestern Railroad Co.*, 82.

2. After the judgment of this court was passed upon the case, and the term was closed, the function of the writ of error was over, and it cannot now be revived. *Ibid.*

3. The distinction pointed out between a common-law case and a case in admiralty. *Ibid.*

4. The agreement of parties cannot authorize this court to revise a judgment of an inferior court in any other mode of proceeding than that which the law prescribes, nor can the laws of a State, regulating the proceedings of its own courts, authorize a District or Circuit Court sitting in the State to depart from the modes of proceeding and rules prescribed by the acts of Congress. *Kelsey* v. *Forsyth*, 85.

5. Where the parties to an ejectment suit agreed to waive a trial by jury, and that both matters of law and of fact should be submitted to the decision of the court, and then a bill of exceptions was brought up to this court to all the rulings and decisions of the court below, this court cannot look into errors of fact or errors of law alleged to have been committed in such an irregular proceeding, and the judgment of the court below will be affirmed. *Ibid.*

6. A writ of error must be made returnable to the first day of the term, which is now the first Monday in December. If made returnable to any subsequent day, it is erroneous, and will be dismissed on motion. It cannot be amended. *Insurance Co. of Virginia* v. *Mordecai*, 195.

7. This court has heretofore decided, in several cases, that, in order to bring the questions of law before this court by writ of error, the facts must be found in the court below by a jury, by a general or special verdict, or must be agreed upon in a case stated. *Campbell* v. *Boyreau*, 224.

8. And also, that where the parties agree that the court shall decide questions both of law and fact, none of the questions decided, either of fact or law, can be reviewed by this court on a writ of error. *Ibid.*

9. The practice in Louisiana is an exception to this general rule, as that prac-

PRACTICE, (*Continued.*)

tice is sanctioned by the act of Congress which requires the courts of the United States to conform to the practice of the State courts. *Ibid.*

10. Where a deed was objected to in the Circuit Court on the ground of fraud, but no specific grounds of objection were made, this court cannot inquire into the correctness or incorrectness of the objection. *Thomas* v. *Lawson*, 331.
11. After a case has been heard and dismissed for want of jurisdiction, because it did not appear that the value of the property in controversy exceeded two thousand dollars, affidavits of its value come too late. *Richmond* v. *City of Milwaukee*, 391.
12. The cases upon this point examined. *Ibid.*
13. Moreover, the value of the property is stated in the proceedings of the court below, and affidavits have never been received here to vary it or enhance it in order to give jurisdiction. *Ibid.*
14. This court has already decided at the present term (see page 195 of this volume) that a writ of error made returnable on the third Monday in January, and the defendant in error cited to appear on that day, is irregular, and must be dismissed. *Porter* v. *Foley*, 393.
15. A motion to remand the case to the court below, with leave to amend the writ of error and citation, cannot be granted. But if the plaintiff in error desires it, he may, in order to save expense, withdraw the transcript, and use it in connection with the proper and legal process to bring the case here. *Ibid.*
16. An exception taken to the refusal of a judge to sign a bill of exceptions, under the circumstances of this case, requires no further notice. *Martin* v. *Ihmsen*, 395.
17. The only cases which will be taken up out of their regular order on the docket are those where the question in dispute will embarrass the operations of the Government while it remains unsettled. *United States* v. *Fossatt*, 445.
18. But if the court below, to which a mandate is sent, does not proceed to execute it, or disobeys and mistakes its meaning, the party aggrieved may, by motion for a mandamus, at any time, bring the errors or omissions before this court for correction. *Ibid.*
19. No appeal will lie from any order or decision of the court below which is not a final decree. *Ibid.*
20. The decree of the court below, in the present case, was not a final decree. *Ibid.*
21. After an appeal has been docketed and dismissed under the 63d rule of court at a prior term of the court, the same case cannot again be docketed without a new appeal. *Rogers* v. *Law*, 526.

PRESCRIPTION.

1. The ruling of the court below, viz: that prescription was interrupted by a litigation which was pending between the parties shortly before the present suit was instituted, was, under the circumstances of the case, correct. *Martin* v. *Ihmsen*, 395.

RAILROAD COMPANIES.

See CORPORATIONS.

1. A railroad company is responsible in its corporate capacity for acts done by its agents, either *ex contractu* or *in delicto*, in the course of its business and of their employment. *Philadelphia, Wilmington, and Baltimore Railroad Co.* v. *Quigley.*
2. It is responsible, therefore, in an action for the publication of a libel. *Ibid.*
3. It is within the course of its business and the employment of the president and directors, for them to investigate the conduct of their officers and agents, and report the result to the stockholders. *Ibid.*
4. But a publication of this report must be made under the conditions and responsibilities that attach to individuals under such circumstances. *Ibid.*
5. In the absence of any malice or bad faith, a report to the stockholders is a privileged communication. But this privilege does not extend to the preservation of the report and evidence in a book for distribution amongst the persons belonging to the corporation, or the members of the community. *Ibid.*
6. So far, therefore, as the corporation authorized the publication in the form employed, they are responsible in damages. *Ibid.*
7. But the instruction of the Circuit Court was erroneous, holding the corporation responsible for a publication which took place after the commencement of the suit. Also an instruction allowing the jury to give exemplary damages, because there was no evidence that the injury was inflicted maliciously or wantonly. *Ibid.*
8. Under the general-issue plea, no question could be raised as to the capacity of the parties to sue in the Circuit Court. *Ibid.*
9. Bonds issued by a railroad company in Massachusetts, payable in blank, no payee being inserted, and issued to a citizen of Massachusetts, which had passed through several intervening holders, could be filled up by a citizen of New Hampshire, payable to himself or order, and then suit could be maintained upon them in the Circuit Court of the United States for Massachusetts. *White* v. *Vermont and Massachusetts Railroad Co.*, 575.
10. The eleventh section of the judiciary act does not apply to such a case. *Ibid.*
11. The usage and practice of railroad companies, and of the capitalists and business men of the country, and decisions of courts, have made this class of securities negotiable instruments. *Ibid.*
12. The later English authorities upon this point overruled. *Ibid.*

SURETIES UPON A BOND.

1. There was a suit brought in the Circuit Court of the United States for the southern district of Mississippi, against a sheriff and his sureties upon the sheriff's official bond, in which judgment was given for the defendant. Being brought to this court by writ of error, the judgment was reversed, and a mandate went down, directing the Circuit Court to enter judgment for the plaintiffs. (See 2 Howard, 28.) *Leggett* v. *Humphreys*, 66.
2. Whilst the suit was pending in this court, judgment against the sheriff

SURETIES UPON A BOND, (*Continued.*)

and his sureties was given in a State court, and execution was issued against one of the sureties, by means of which his property was sold and the amount of the penalty of the bond collected and paid over. *Ibid.*

3. When the mandate of this court went down, the Circuit Court entered judgment against the surety, who filed his bill in equity for relief. This suit also was brought up to this court, who decided that the complainant was entitled to relief. (See 3 Howard, 313.) *Ibid.*

4. Further proceedings in this case render it necessary for this court now to decide—

The obligation of the surety is *strictissimi juris*, and he cannot be called upon to pay more than the penalty of his bond. *Ibid.*

As he was not permitted to plead *puis darrein continuance*, the satisfaction of the penalty of his bond, &c., he is entitled to relief in equity. *Ibid.*

The obligor in a bond has a right to convey property for the purpose of indemnifying his surety, provided it be done *bona fide*, and there is no lien upon the property of the obligor. *Ibid.*

TARIFF.

See DUTIES.

TELEGRAPH COMPANIES.

1. Where there was a telegraph company from Baltimore to Wheeling, with branches to Washington and Pittsburg, and another company from Pittsburg to Philadelphia, and from Harrisburg to Baltimore; and the former company complained that the latter received messages at Philadelphia, sent from Pittsburg and Wheeling, directed to Baltimore and Washington; and there was no direct infringement of the patent right, nor any violation of a contract, the case is without a legal remedy. *Western Telegraph Co. v. Magnetic Telegraph Co.*, 456.

2. Every person is at liberty to use a circuitous route, if he prefers it to a shorter route. *Ibid.*

TENNESSEE.

1. The certificate of probate of a deed in Tennessee did not say that the witness swore that the grantor acknowledged it on the day of its date. But as the certificate said that the grantor acknowledged it for the purposes therein contained, the probate is covered by an act passed in 1846. *Lea* v. *Polk County Copper Company*, 494.

2. The Tennessee act of limitations construed. *Ibid.*

VIRGINIA.

1. Where there had been an original entry for land made in the office of the lord proprietor of the Northern Neck of Virginia, a survey ordered upon that entry, and actually made and returned, and a patent adopting that survey, and founded thereupon, was issued by the lord proprietor to a grantee differing in name from the maker of the original entry, these circumstances constitute no ground for vacating or impeaching the legal title vested by the patent. *Brown* v. *Huger*, 305.

2. By an act of Congress, passed on the 3d of March, 1835, (4 Stat. at L., 771,) a certain quantity of land was appropriated to the satisfaction of

VIRGINIA, (*Continued.*)

Virginia military land warrants, with a proviso that if the land was not enough to satisfy the warrants, a distribution should be made *pro rata*, in full satisfaction of the warrants. Under it a dividend of ninety per cent. was made. *Walker* v. *Smith*, 579.

3. In 1852 (10 Stat. at L., 143) another act was passed, providing for the deficiency of ten per cent., and directing the Secretary of the Interior to issue land scrip in favor of the "present proprietors" of any warrant thus surrendered. *Ibid.*

4. A bill in chancery for an injunction to prevent the Secretary from issuing the scrip to one of two claimants cannot be sustained. The Secretary must decide, and then it becomes a chose in action, upon which a court can act. *Ibid.*

WISCONSIN.

1. There being no special provision in the act of Congress regulating appeals from the District Court of the United States in Wisconsin, they are governed by the general law of 1803; and by that act no appeal will lie unless the sum or value in controversy exceeds two thousand dollars. *Richmond* v. *City of Milwaukee*, 80.