

I N D E X.

ABANDONMENT. See *Letters-Patent*, 1.

ACCOUNT. See *Letters-Patent*, 14, 16.

ADMIRALTY.

1. A steam-tug which engages to tow a vessel into a port, although not a common carrier nor an insurer, is bound to exercise reasonable skill and care in every thing relating to the work until it is accomplished, and she is liable for the want of either to the extent of the damage sustained. *The "Margaret,"* 494.
2. She is bound to know the channel of her home port, how to reach it, and whether, in the state of the wind and water, it is safe and proper to attempt to enter with a tow. *Id.*
3. Under the maritime law, there is no lien upon a vessel for materials furnished and work done in repairing her at her home port. *The "Edith,"* 518.
4. A creditor, claiming the benefit of the provisions of the statute of New York, passed April 24, 1862, which purport to give such a lien, must, whether they be invalid or not, — a point which the court deems it unnecessary in this case to decide, — take it subject to all the conditions which they impose; and he loses it if it be not enforced within the time prescribed. Where a seizure has been seasonably made, a bond in conformity to them, when executed and delivered to him by the owner, is a substitute for the lien, and works a discharge of the vessel. *Id.*
5. The District Court can marshal the fund in its registry only between lien-holders and owners. *Id.*
6. This court, concurring in opinion with the court below that in this case both vessels were at fault, affirms the decree dividing the damages between them. *The "Stephen Morgan,"* 599.

ALABAMA. See *Mortgage*, 6.

APPEAL. See *Court of Claims*, 2, 3; *Mandamus*, 1, 2; *Practice*, 8, 9, 14, 17, 29.

1. An appeal does not lie from an order of the court below, denying a motion in a pending suit, to permit a person to intervene and become a party thereto. *Ex parte Cutting*, 14.

APPEAL (*continued*).

2. Subsequently to a decree *pro confesso*, additional parties were, by leave of the court, permitted to intervene as defendants, in the same manner and with like effect as if named in the original and supplemental bills. The case was then referred to a master, who computed, ascertained, and reported the amount of indebtedness, &c.; whereupon the court, after finding certain facts and overruling the exceptions of such intervening parties to his report, passed a final decree, but denied their right to an appeal therefrom. *Held*, 1. That they had that right. 2. That, to enforce it, a *mandamus* lies from this court. *Ex parte Jordan*, 248.
3. Appeals do not lie to this court from the circuit courts in the exercise of their supervisory jurisdiction under the bankrupt laws. *Conro v. Crane*, 441.
4. Where, in the progress of a suit for the foreclosure of a mortgage, a receiver was appointed, against whom, after the foreclosure and sale of the mortgaged premises, a decree was rendered directing him to pay into court \$18,776.25, the balance found due from him on the settlement of his accounts, — *Held*, that he had the right to appeal from that decree. *Hinckley v. Gilman, Clinton, & Springfield Railroad Co.* 467.
5. Whatever has been decided here upon one appeal cannot be re-examined in a subsequent appeal of the same suit. The subsequent appeal brings up only the proceedings of the Circuit Court after the mandate of this court. *Supervisors v. Kennicott*, 498.

APPOINTMENT, POWER OF. See *Trusts*.

ARMY REGULATIONS. See *Military Stations*, 2; *Officers of the Army*, 1, 2.

ASSIGNEE IN BANKRUPTCY. See *Mortgage*, 5.

A decree in a suit between husband and wife, confirming a conveyance of real estate made to her by him, does not bind his assignee in bankruptcy suing to set such conveyance aside on the ground that it was made in fraud of creditors. *Humes v. Scruggs*, 22.

ATTACHMENT.

An attachment levied upon lands in Arkansas is not discharged by the debtor's appearance to the suit. *Pike v. Wassell*, 711.

ATTORNEY AND CLIENT. See *Evidence*, 1.

AUTHENTICATION OF THE PUBLIC ACTS, ETC., OF A STATE.

The act of Congress, prescribing the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated, so as to take effect in every other State, does not relate to the admissibility of such acts, &c., of a State in its own courts, or in the courts of the United States sitting in that State. *Town of South Ottawa v. Perkins*, 260.

BANK OR BANKER. See *Taxation*, 2.

BANKRUPTCY. See *Appeal*, 3; *Jurisdiction*, 2, 3.

1. If money, which a married woman might have had secured to her own use, is allowed to go into the business of her husband, be mixed with his property, and applied to the purchase of real estate for his advantage, or for the purpose of giving him credit in business, and is thus used for a series of years, such real estate, unless there is at the time of its purchase a specific agreement that it shall belong to the wife, becomes the property of the husband for the purpose of paying his debts. A conveyance thereof to his wife upon the occurrence of his bankruptcy is a fraud upon his creditors, and void. *Humes v. Scruggs*, 22.
2. A provision in the constitution of a stock and exchange board, whose members are limited in number, and elected by ballot, that a member, upon failing to perform his contracts, or becoming insolvent, may assign his seat to be sold, and that the proceeds shall, to the exclusion of his outside creditors, be first applied to the benefit of the members to whom he is indebted, — the purchaser not becoming a member, nor having the right to transact business in the board until he shall be elected by ballot, — is neither contrary to public policy, nor in violation of the Bankrupt Act. *Hyde v. Woods*, 523.
3. Membership of the board is not a matter of absolute sale. Although property, it is, when purchased, qualified and incumbered by conditions which the creators of it had the right to impose, and a compliance with which is necessary to obtain it. *Id.*
4. In computing the four months before filing the petition in bankruptcy, within which time the assignment of his property by an insolvent debtor, with a view to give a preference to any creditor, is void, the day upon which the petition is filed must be excluded. *Dutcher v. Wright*, 553.
5. *Toof et al. v. Martin*, 13 Wall. 40, and *Buchanan v. Smith*, 16 id. 277, cited, and the doctrines therein announced applied to the facts of this case. *Id.*
6. The subsequent bankruptcy of the pledgor of a negotiable instrument does not deprive the pledgees of their right to dispose of it upon his default. *Jerome v. McCarter*, 734.

BEDS AND SHORES OF NAVIGABLE STREAMS, TITLE TO.

See *Commerce*, 3-7; *Riparian Proprietors*, 1-3.

BILL OF EXCEPTIONS. See *Practice*, 3, 23.

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Negotiable Instruments*.

BONA FIDE PURCHASERS FOR VALUE. See *Municipal Bonds*, 2, 4, 5, 6, 10.

BONDS. See *Mortgage*, 2, 3, 7; *Municipal Bonds*.

BURDEN OF PROOF. See *Distilled Spirits*, 1; *Pleading*, 1; *Practice*, 20.

CENTENNIAL BOARD OF FINANCE.

In the distribution of the moneys remaining in the treasury of the Centennial Board of Finance at the close of that corporation, as provided for in sect. 10 of the act of Congress of June 1, 1872 (17 Stat. 203), the appropriation of \$1,500,000, made by the act of Feb. 16, 1876 (19 id. 3), must be paid into the treasury of the United States before any division of assets is made among the stockholders in satisfaction and discharge of the capital stock. *Eyster v. Centennial Board of Finance*, 500.

CERTIORARI. See *Practice*, 16.

CHARGE TO JURY.

Where a policy of life insurance makes the declaration, the questions set forth in the proposal and the answers to them, a part of the contract, and declares, that, if they are found in any respect to be false and fraudulent, it shall be void, the court below did not err in charging the jury, that, where the answers were qualified by the statement of the applicant that they were as nearly correct as he could remember, the right to recover would not be defeated, unless the jury were satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorrectness. *Aetna Life Insurance Co. v. France*, 561.

CHATTELS, DEED OF TRUST OF. See *Landlord and Tenant*, 6; *Mortgage*, 1.

CHECK. See *Negotiable Instruments*, 4, 5, 6.

CHESAPEAKE AND OHIO CANAL COMPANY, PROPERTY OF, IN THE DISTRICT OF COLUMBIA. See *Taxation*.

CHORPENNING CLAIM.

From the repeal of the joint resolution of April 15, 1870 (16 Stat. 673), authorizing the Postmaster-General to adjust the accounts of George Chorpenning, and from the prohibition in the act of March 3, 1871 (id. 519), directing that no part of the money thereby appropriated for the use of the Post-office Department shall "be applied to the payment of what is known as the Chorpenning claim," the implication is clear, that nothing more was to be paid to him on account of said claim, without further authority from Congress. *Chorpenning v. United States*, 397.

CITATION, NON-SERVICE OF. See *Practice*, 9.

CITIZENSHIP, PRIVILEGES AND IMMUNITIES OF. See *Constitutional Law*, 10-12.

CLERK, PAYMENT OF HIS FEES. See *Practice*, 14.

COMMERCE. See *Fisheries*; *Warehouses*.

1. So much of the act of the legislature of New York, passed May 22, 1862, amended April 17, 1865, as requires, with certain exceptions, all ships or vessels which enter the port of New York, or load or unload, or make fast to any wharf therein, to pay a certain percentage per ton, to be computed on the tonnage expressed in the registers of enrolments of such ships or vessels respectively, is in violation of the Constitution of the United States, and therefore void. *Inman Steamship Co. v. Tinker*, 238.
2. The act of the legislature of Louisiana, approved March 6, 1869, in relation to the survey of the hatches of every sea-going vessel arriving at New Orleans, and of the damaged goods coming on board of her, &c., being a regulation of commerce with foreign nations and among the several States, is in violation of the Constitution of the United States, and therefore void. *Foster v. Master and Port Wardens of the Port of New Orleans*, 246.
3. In order that the passage-ways of commerce and navigation might be subject to public authority and control, the title to the land under water and to the shore below ordinary high-water mark, in navigable rivers and arms of the sea, was, by the common law, vested in the sovereign for the public use and benefit. *Barney v. Keokuk*, 324.
4. In England, tide-waters only were regarded as navigable. Hence the rule as to property was often expressed as applicable to them only, although the reason of it would make it apply to all navigable waters. *Id.*
5. The form, instead of the substance, of the rule has been adopted in many of the States of this country; and in them the public title to the beds and shores of navigable streams is confined to tide-water. *Id.*
6. From the same cause, the admiralty jurisdiction of the United States was for a long period restricted to tide-water. *Id.*
7. Since the decision of this court in *The Genesee Chief*, in 1851 (12 How. 443), declaring all the great lakes and rivers of the country navigable that are really such, there is no longer any reason for thus restricting the title of the State, except as a change in that respect might interfere with vested rights and established rules of property. *Id.*

COMMON CARRIER.

1. A railroad company in Wisconsin cannot recover for the transportation of property more than the maximum fixed by the act of that State of March 11, 1874, by showing that the amount charged was no more than a reasonable compensation for the services rendered. *Chicago, Milwaukee, & St. Paul Railway Co. v. Ackley*, 179.
2. The Winona and St. Peter Railroad Company, having been incorporated as a common carrier, with all the rights and subject to all the obligations which that term implies, was bound to carry, when called

COMMON CARRIER (*continued*).

upon for that purpose, and charge only a reasonable compensation therefor. *Winona & St. Peter Railroad Co. v. Blake*, 180.

3. An express company, well knowing that certain goods, received by it for transportation to a place mentioned in its receipt, were the property of the shipper, delivered them, without his knowledge, to a third person, at the place of shipment, on the order of the consignee. *Held*, that the company was liable to the shipper for the value of the goods. *Southern Express Co. v. Dickson*, 549.

COMMON LAW.

The common law, as a rule of conduct, may, unless constitutional limitations forbid, be changed at the will of the legislature. *Munn v. Illinois*, 113.

COMMUTATION FOR QUARTERS AND FUEL. See *Military Stations*, 2.

COMPTROLLER OF THE CURRENCY. See *National Banks*, 3, 5-9.

CONDEMNATION. See *Distilled Spirits*, 1, 2.

CONDITION PRECEDENT. See *Municipal Bonds*, 3-6, 16, 20, 28.

CONFEDERATE TREASURY NOTES. See *Negotiable Instruments*, 10, 11, 12.

CONFISCATION.

Certain lands in Arkansas, liable to confiscation under the act of July 17, 1862 (12 Stat. 589), and belonging to A., a non-resident of the State, were seized Feb. 16, 1865, by the marshal, pursuant to instructions from the district attorney, who, on the 17th of that month, filed a libel of information against them in the proper District Court of the United States. On the following day, a warrant of arrest and monition was issued and duly served. The libel was amended April 5, so as to embrace other lands of A. On that day a decree of condemnation, forfeiture, and sale of all the lands was entered by that court, and they were sold on the 28th of that month by the marshal, under a *venditioni exponas*. The purchasers subsequently conveyed them to B. The decree of condemnation was affirmed by the Circuit Court. A writ of attachment, sued out of one of the courts of Arkansas, March 9, 1865, at the suit of sundry creditors of A, was on that day levied upon the same lands. A., by his attorney, entered his appearance to the suit, and judgment was rendered against him Sept. 29. All of said lands were sold by the sheriff under a *feri facias*. B. became the purchaser, and refuses to pay taxes upon them, in order that, by buying them at a sale for delinquent taxes, his title may be perfected. A. is still living, and his children brought this suit. *Held*, 1. That the appearance of A. did not discharge the lien of the attachment. 2. That the levy of that

CONFISCATION (*continued*).

writ by the sheriff upon the lands seized by the marshal was void, and that B.'s interest in them is determinable upon the death of A.

3. That the decree of condemnation did not divest the rights of the attaching creditors in the lands not seized by the marshal, and that B.'s title to them in fee, acquired by his purchase at the sheriff's sale, was not affected by the proceedings in confiscation, and the sale under them. 4. That the affirmance by the Circuit Court of the decree gave no validity to it as against the attaching creditors.

5. That the heirs apparent or presumptive of A. have, in regard to the lands so seized and sold by the marshal, a right to protect their estate from forfeiture or incumbrance, and that B.'s refusal to pay the taxes on them presents a proper case for relief in a court of equity. *Pike v. Wassell*, 711.

CONSIGNOR AND CONSIGNEE. See *Common Carrier*, 3.

CONSTITUTIONAL LAW. See *Commerce*, 1, 2; *Corporations*, 2; *Fisheries*; *Judicial Comity*, 1-5; *National Banks*, 4.

1. Down to the time of the adoption of the fourteenth amendment of the Constitution of the United States, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular: it simply prevents the States from doing that which will operate as such deprivation. *Munn v. Illinois*, 113.
2. The court does not hold that a case may not arise in which it may be found that a State has, under the form of regulating her own affairs, encroached upon the exclusive domain of Congress in respect to inter-state commerce. *Id.*
3. The ninth section of the first article of the Constitution of the United States operates only as a limitation of the powers of Congress, and in no respect affects the States in the regulation of their domestic affairs. *Id.*
4. The act of the general assembly of Illinois, entitled "An Act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to art. 13 of the Constitution of this State," approved April 25, 1871, is not repugnant to the Constitution of the United States. *Id.*
5. The act of the general assembly of the State of Iowa, entitled "An Act to establish reasonable maximum rates of charges for the transportation of freight and passengers on the different roads of this State," approved March 23, 1874, is not in conflict with sect. 4, art. 1, of the Constitution of Iowa, which provides that "all laws of a general nature shall have a uniform operation," and that "the general assembly shall not grant to any citizen, or class of citizens,

CONSTITUTIONAL LAW (*continued*).

- privileges or immunities which, upon the same terms, shall not equally belong to all citizens;" nor is it a regulation of inter-state commerce. *Chicago, Burlington, & Quincy Railroad Co. v. Iowa*, 155.
6. The Chicago and North-western Railway Company was, by its charter, and the charters of other companies consolidated with it, authorized "to demand and receive such sum or sums of money for the transportation of persons and property, and for storage of property, as it shall deem reasonable." The Constitution of Wisconsin, in force when the charters were granted, provides that all acts for the creation of corporations within the State "may be altered or repealed by the legislature at any time after their passage." *Held*, that the legislature had power to prescribe a maximum of charges to be made by said company for transporting persons or property within the State, or taken up outside the State and brought within it, or taken up inside and carried without. *Peik v. Chicago & North-Western Railway Co.*, 164.
 7. The act of Wisconsin, approved March 11, 1874, entitled "An Act relating to railroads, express and telegraph companies, in the State of Wisconsin," is confined to State commerce, or such inter-state commerce as directly affects the people of Wisconsin. Until Congress shall act in reference to the relations of this consolidated company to inter-state commerce, the regulation of its fares, &c., so far as they are of domestic concern, is within the power of that State. *Id.*
 8. Neither the act of the legislature of Minnesota of Feb. 28, 1866, nor the Constitution of the State, adds to or takes from the grant made to the Winona and St. Peter Railroad Company by its original charter. *Winona & St. Peter Railroad Co. v. Blake*, 180.
 9. The several States of the Union possess the power to regulate the tenure of real property within their respective limits, the modes of its acquisition and transfer, the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners. *United States v. Fox*, 315.
 10. The right which the citizens of a State acquire by her appropriation to their use of the beds of all tide-waters within her jurisdiction as a common for taking and cultivating fish is a property right, and not a mere privilege or immunity of citizenship. *McCready v. Virginia*, 391.
 11. The second section of the fourth article of the Constitution, which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," does not vest the citizens of one State with any interest in the common property of the citizens of another State. *Id.*
 12. A law of Virginia, by which only such persons as are not citizens of

CONSTITUTIONAL LAW (*continued*).

- that State are prohibited from planting oysters in the soil covered by her tide-waters, is neither a regulation of commerce nor a violation of any privilege or immunity of inter-state citizenship. *Id.*
13. The court reaffirms the decision in *Insurance Company v. Morse*, 20 Wall. 445, that an agreement to abstain in all cases from resorting to the courts of the United States is void as against public policy, and that a statute of Wisconsin, requiring such an agreement, is in conflict with the Constitution of the United States. *Doyle v. Continental Insurance Co.*, 535.
 14. A State has the right to impose conditions, not in conflict with the Constitution or the laws of the United States, to the transaction of business within its territory by an insurance company chartered by another State, or to exclude such company from its territory, or, having given a license, to revoke it, with or without cause. *Id.*
 15. The legislature of Wisconsin enacted that if any foreign insurance company transferred a suit brought against it from the State courts to the Federal courts, the secretary of State should revoke and cancel its license to do business within the State. An injunction to restrain him from so doing, because such a transfer is made, cannot be sustained. The suggestion that the intent of the legislature is to accomplish an illegal result, to wit, the prevention of a resort to the Federal courts, is not accurate. The effect of this decision is, that the company must forego such resort, or cease its business in the State. The latter result is here accomplished. *Id.*
 16. As the State has the right to exclude such company, the means by which she causes such exclusion, or the motives of her action, are not the subject of judicial inquiry. *Id.*

CONTRACTS. See *Court of Claims*, 1, 4; *Eight-Hour Law*; *Insurance*, 1-4.

1. The telegraphic correspondence in this case, in relation to the sale and purchase of certain bonds, considered, and held to constitute a complete contract of sale upon the condition, or with an implied warranty, that the bonds were genuine. *Utley v. Donaldson*, 29.
2. The contract was not so modified by subsequent correspondence as to amount to a waiver on the part of the purchaser of such condition or warranty. *Id.*
3. In this case, no formal lease of the property was executed; but the court holds that the correspondence under which the United States entered into occupancy constituted a contract of letting for one year, with a privilege of three, at a rent of \$500 per month, without restriction as to the use to which the property might be put. *United States v. Bostwick*, 53.
4. Where a contract, entered into by a city for the construction of certain public works, provides that they shall be completed under the supervision and to the satisfaction of an officer of the city, his action,

CONTRACTS (*continued*).

in finally accepting them, is an announcement of his decision that the terms of the contract have been complied with, and is binding upon the city. *Omaha v. Hammond*, 98.

5. The power of a court of equity to cancel an executed contract ought not to be exercised, unless the fraud and false representations set up as the ground for relief are clearly proved, and the complainant has been thereby deceived and injured. *Atlantic Delaine Co. v. James*, 207.

CONVEYANCES. See *Equity*, 2-4; *Trusts*.

CONVEYANCES IN FRAUD OF THE BANKRUPT ACT. See *Assignee in Bankruptcy*; *Bankruptcy*, 1, 4, 5.

CORPORATIONS. See *Railroad Companies, Legislative Control of their Rates of Fare and Freight*, 1-3; *Taxation*, 2-4.

1. Where a railroad company has been a corporation *de facto* from the date of its organization, its existence and its ability to contract cannot be called in question in a suit brought upon evidences of debt given to it. *Commissioners of Douglas County v. Bolles*, 104.
2. Certain Wisconsin railroad corporations were consolidated with others of Illinois on terms which, in effect, required that the consolidated company should, when operating in Wisconsin, be subject to its laws. *Held*, that Wisconsin can legislate for the company in that State precisely as it could have legislated for its own original companies, if no consolidation had taken place. *Peik v. Chicago & North-Western Railway Co.*, 164.
3. A corporation created by the laws of Iowa, although consolidated with another of the same name in Missouri, under the authority of a statute of each State, is, nevertheless, in Iowa, a corporation existing there under the laws of that State alone. *Muller v. Dows*, 444.

COUPONS. See *Estoppel*, 2, 3, 12, 13; *Mortgage*, 2, 3; *Municipal Bonds*, 18, 27.

COURT OF CLAIMS. See *Practice*, 11-13, 15-17.

1. The obligations of the United States to its lessor relate to the condition of the premises at the time the term commenced. For damages done before that time by the army engaged in the suppression of the rebellion, no action can be maintained in the Court of Claims. *United States v. Bostwick*, 53.
2. The act of May 9, 1866 (14 Stat. 44), extending the jurisdiction of the Court of Claims, does not dispense with the existing rules regulating appeals from that court. *United States v. Clark*, 73.
3. In cases to which that act applies, the Court of Claims should set forth in its finding of facts the amount of loss, if any, which the petitioner has sustained. *Id.*
4. By reason of its improper suspension of the work of a contractor, who

COURT OF CLAIMS (*continued*).

had agreed to supply the skilled labor and the materials necessary for the erection of certain buildings for its use, the United States is liable in the Court of Claims for such damages as he has actually sustained. *United States v. Smith*, 214.

CREDITORS. See *Assignee in Bankruptcy*; *Bankruptcy*, 1, 2, 4, 5; *Husband and Wife*.

CRIMINAL CASES. See *Practice*, 5.

CROSS-EXAMINATION. See *Practice*, 4.

DAMAGES. See *Admiralty*, 4; *Court of Claims*, 1, 4; *Letters-Patent*, 15, 16, 19, 20; *Practice*, 6, 7, 12, 13.

DECREE. See *Estoppel* 7; *Jurisdiction*, 5; *Practice*, 24.

DEED. See *Prescription*, 3; *Sale for Taxes*.

The delivery of a deed conveying land will, in the absence of direct evidence of the fact, be presumed from the concurrent acts of the parties recognizing a transfer of the title. Thus, where a deed had been executed and recorded without the knowledge of the grantee, who subsequently, upon request of the grantor, conveyed the land to a third party, it was held that this recognition by both parties of the transfer of the title was sufficient evidence that at that time the deed had been delivered. *Gould v. Day*, 405.

DEVASTAVIT. See *Executors and Administrators*, 3.

DEVISE.

By a statute of New York, a devise of lands in that State can only be made to natural persons and to such corporations as are created under the laws of the State and are authorized to take by devise. A devise, therefore, of lands in that State to the government of the United States is void. *United States v. Fox*, 315.

DISTILLED SPIRITS.

The forty-fifth section of the act of July 13, 1866 (14 Stat. 163), imposes upon a claimant of distilled spirits, seized for a violation of that section, the burden of proving that the requirements of law have been complied with, and this court, upon consideration of the evidence disclosed in the record, deems it insufficient, and affirms the decree of condemnation. *One Hundred and Ninety-nine Barrels of Whiskey v. United States*, 86.

DISTRICT OF COLUMBIA. See *Ejectment*; *Husband and Wife*.

DRAFT. See *Negotiable Instruments*, 13, 14.

DRAWER AND DRAWEE. See *Negotiable Instruments*, 4-6.

DUE PROCESS OF LAW. See *Constitutional Law*, 1; *Rights of Property*, and to a *Compensation for its Use*.

EIGHT-HOUR LAW. See *Estoppel*, 4.

1. The act of Congress of June 25, 1868 (15 Stat. 77), declaring that eight hours shall constitute a day's work for all laborers, workmen, and mechanics employed by or on behalf of the government of the United States, is in the nature of a direction by the government to its agents. *United States v. Martin*, 400.
2. It is not a contract between the government and its laborers, that eight hours shall constitute a day's work. It neither prevents the government from making agreements with them, by which their labor may be more or less than eight hours a day, nor does it prescribe the amount of compensation for that or any other number of hours' labor. *Id.*
3. Where, therefore, a laborer, in the habit of working for the government twelve hours a day, for \$2.50 a day, is informed by the proper authority that, if he remains in the service at that compensation, he must continue to work twelve hours a day, and he does so continue, and is paid accordingly, he cannot afterwards recover for the additional time over eight hours as a day's labor. *Id.*

EJECTMENT.

1. The act of Congress approved June 1, 1870 (16 Stat. 146), abolishing all fictions in ejectment within the District of Columbia, does not abolish that action, nor convert it into a writ of right. *Hogan v. Kurtz*, 773.
2. Uninterrupted, open, visible, exclusive, and notorious adverse possession by the defendant, under a claim of title for twenty years, is a good defence, unless the other party is within some one of the exceptions contained in the Statute of Limitations; and proof of such possession is admissible under the general issue. *Id.*
3. The Statute of Limitations, when it begins to run, will not be arrested by any subsequent disability; and a party, claiming the benefit of its exceptions, can only avail himself of the disability which existed when the right of action first accrued. *Id.*
4. This action of ejectment was brought more than three years after the passage of the act of March 3, 1865, the second section whereof (13 Stat. 532) abrogated all exceptions in favor of parties beyond the District of Columbia, which, under then existing laws, might be replied or relied on in any action or proceeding brought in said District, with a saving as to actions then pending, or which might be brought within three years thereafter. The exception of those laws in favor of such of the grantors of the plaintiff as were foreigners and lived beyond seas was no longer in force. *Id.*

EQUITY. See *Contracts*, 5; *Power of Attorney*, 1; *Practice*, 28; *Trusts*, 2-6.

1. Before the laws of the United States were extended over the Territory of Oregon, the settlers in that country had formed for themselves a provisional government, under which they adopted regulations

EQUITY (*continued*).

for the possession and occupation of land in the Territory among themselves, although the title to the land was in the United States. Under the regulations, land was occupied, cultivated, and improved, and bought and sold, as if the parties had possessed the fee. The claimants did not, in their dealings with the land, deny the proprietorship of the United States, but they acted upon the expectation that their possessions and improvements would be respected by the government, and that ultimately they should acquire the title; and it was the general understanding of the people, that, whenever the legal title was obtained, it should inure to the benefit of the grantees of the claimant who secured the patent of the United States. This understanding affected all transactions in land until the passage of the Donation Act of Sept. 27, 1850. *Held*, that a purchaser under these circumstances from the claimant, or a person whose purchase from another had been confirmed by the claimant, acquired as against him an equitable right to the land which a court of equity will enforce when he has obtained the patent of the United States; and this equitable right passes to subsequent grantees of the first purchaser or confirmee. *Stark v. Starr*, 477.

2. Whenever there is great weakness of mind, though not amounting to absolute disqualification, arising from age, sickness, or any other cause, in a person executing a conveyance, and the consideration given for the land is grossly inadequate, a court of equity will, upon proper and seasonable application of the injured party, or his representatives or heirs, interfere and set the conveyance aside. *Allore v. Jewell*, 506.
3. When a person, from infirmity and mental weakness, is likely to be easily influenced by others, transactions entered into by such person without independent advice will be set aside, if there is any unfairness in them. The principle upon which courts act in such cases, applied to a conveyance of land obtained from a woman advanced in years, of doubtful sanity, living entirely by herself, without friends to take care of her, and confined to her house by sickness. *Id.*
4. The lapse of time, six years, before bringing suit to cancel a conveyance so obtained, cannot avail the defendant where he has had possession of the land, and a reasonable rent therefor is equal to the value of his improvements thereon, and there has been no loss of evidence preventing a full presentation of the case. *Id.*
5. A suit to recover judgment for labor performed by the plaintiff upon a quartz mill and mine in Montana Territory, and to enforce a mechanic's and laborer's lien upon the defendant's interest in the premises for the payment of the judgment, is a suit in equity, requiring specific directions for the sale of the property, such as are usually given upon the foreclosure of mortgages and the sale

EQUITY (*continued*).

- of mortgaged premises. The fact that, according to the modes of procedure adopted in the Territory, a personal judgment for the amount found due is usually rendered in such cases, with directions that, if the same be not satisfied out of other property of the debtor, the property upon which the lien is adjudged to exist shall be sold, and the proceeds applied to its payment, does not change the character of the suit from one of equitable cognizance and convert it into an action at law. *Davis v. Alvord*, 545.
6. The court affirms the doctrine announced in *Hendrickson v. Hinckley*, 17 How. 443, that a court of equity will not enjoin a judgment at law, unless the proof clearly shows that the defendant had a just defence, of which he could not avail himself at law, or to which, if available, he was prevented from resorting, by fraud or unavoidable accident, unmixed with any fault or negligence in himself or his agents. *Crim v. Handley*, 652.
 7. Absence of one of the counsel employed to conduct his defence in a suit at law does not furnish ground for equitable relief, where it appears that the defendant, had he been present at the trial, might have employed other counsel equally competent; nor does the fact that a witness upon whom he relied was so sick during his examination as to impair his recollection of facts within his knowledge. Having failed to ask a postponement or a continuance, he cannot go into equity and claim to have the judgment enjoined. *Id.*
 8. Nor will such relief be granted because the record of a prior suit upon which the defendant relied was lost, or could not be found by the clerk of the court. The loss of the record, and an unsuccessful search for it, presented a good cause for a continuance. Proof of its contents was also available under such circumstances as secondary evidence. *Id.*
 9. That the evidence is merely voluminous or tedious, is not sufficient cause for removing a case from a court of law to a court of equity. *Bowen v. Chase*, 812.
 10. A railroad company, on the 30th of April, 1850, mortgaged to trustees a specifically described portion of its road to secure certain certificates of indebtedness bearing interest at the rate of ten per cent per annum. Subsequent mortgages covering the entire line of road were made. As the work progressed, the company issued certificates of preferred stock, on which dividends of ten per cent per annum were to be paid. In October, 1852, the company made a proposition to waive, until Nov. 1, 1870, its right to redeem at pleasure the portion of its road first mortgaged, provided the holders of the certificates of indebtedness would, by indorsement thereon, authorize the trustees, after paying the holders three per cent semi-annually on the said certificates, to pay over semiannually to the treasurer of the company, for its use and benefit, the balance of the

EQUITY (*continued*).

income (for interest) which the stockholders were then entitled to receive, viz., two per cent, to be held by him, and appropriated, as far as might be required, or as the same might go, to the payment of interest to such preferred stockholders as should surrender their old certificates and receive new certificates of preferred stock, bearing three per cent interest or income semiannually in lieu of five per cent, as then stipulated. The company authorized the president to issue such new certificates of preferred stock, and to waive the right to redeem. None of the holders of the preferred stock accepted the proposition until Sept. 1, 1853. The trustees of the second mortgage foreclosed; the bondholders formed a new corporation, and have operated and owned the road since November, 1862. The holders of the new certificates of preferred stock filed their bill, Feb. 21, 1871, to recover the four per cent per annum relinquished under the first mortgage. On final hearing, the bill was dismissed. *Held*, 1. That there is no privity between the complainants and the new corporation. 2. That there was no privity between the holders of the certificates under the first mortgage and the preferred stockholders. 3. That the defence of the Statute of Limitations not having been set up by plea or answer, the case in that aspect cannot be considered. 4. That as the complainants, if they could recover the moneys claimed, would be entitled to discovery and an account, the objection that they have a remedy at law is not available. Where such an objection lies, it is the duty of the court *sua sponte* to take notice of it, and give it effect. 5. That it is not necessary, in order to let in a defence that the claim is stale, that a foundation should be laid by any averment in the answer. Where the facts disclose laches and neglect on the part of the complainant, the court will refuse relief. *Sullivan v. Portland & Kennebec Railroad Co.*, 806.

EQUITY OF REDEMPTION. See *Mortgage*, 4.

ESTOPPEL. See *Contracts*, 4, 7; *Corporations*, 1; *Letters-Patent*, 12; *Municipal Bonds*, 12; *National Banks*, 5, 7, 8; *Pleading*, 1, 2; *Power of Attorney*, 2; *Practice*, 36.

1. The difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action, stated. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that pur-

ESTOPPEL (*continued*).

- pose. But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. *Cromwell v. County of Sac*, 351.
2. In an action against a county in Iowa upon certain interest coupons originally attached to bonds issued by the county for the erection of a court-house, it was found and determined that the bonds were void as against the county in the hands of parties who did not acquire them before maturity for value; and, inasmuch as the plaintiff in that action had not proved that he had given such value, it was adjudged that he was not entitled to recover. *Held*, that the judgment did not estop the plaintiff, holding other bonds of the same series, and other coupons attached to the same bonds as the coupons in the original action, from showing, in a second action against the county, that he acquired such other bonds and coupons for value before maturity. *Id.*
 3. The finding in one action that the plaintiff therein is the holder and owner of certain coupons in suit does not estop the defendant from showing, in another action, that such plaintiff prosecuted the first action for the use and benefit of the plaintiff in the second action. The finding only establishes the fact that such plaintiff held the legal title to the coupons, which was sufficient for the purpose of the action, and was not inconsistent with an equitable and beneficial interest in another. *Id.*
 4. An allowance by the government, upon the application of the laborer, of a sum for the excess of time over eight hours per day, is, when accepted by him in full of the account, a bar to any further claim. *United States v. Martin*, 400.
 5. The omission of indorsers on a series of notes, transferred to the holder in settlement of their own note held by him, upon an agreement in writing that they should not be held liable on their indorsement, to set up the agreement as a defence to an action against them, brought by the holder on two of the notes, does not preclude them from setting up the agreement in a second action by the holder on others of the same series of notes. The judgment in the original action does not operate as an estoppel against showing the existence and validity of the agreement in the second action. *Davis v. Brown*, 423.
 6. When a judgment in one action is offered in evidence in a subsequent action between the same parties upon a different demand, it operates as an estoppel only upon the matter actually at issue and determined in the original action; and such matter, when not disclosed by the pleadings, must be shown by extrinsic evidence. *Id.*
 7. The complainant, Starr, and his brother, being in possession of cer-

ESTOPPEL (*continued*).

tain lots in the city of Portland, Oregon, filed a bill in equity in the State court to quiet their title and compel the defendant, who claimed an adverse interest under his patent from the United States, to execute a release to them. Their bill set forth two distinct and independent causes of action, or grounds for relief: one, founded upon an agreement made by the defendant with the parties through whom the complainants claimed, to ratify and confirm the title of such parties; and the other, founded upon a patent of the United States, issued to the city of Portland for land within its limits, in trust for the several use and benefit of the occupants thereof. This patent embraced the premises in controversy, and the complainants claimed as beneficiaries under it. On motion of the defendant, the court held that the two grounds for equitable relief were inconsistent, and compelled the complainants to elect upon which ground they would proceed. They objected to the order, but, under its compulsion, elected to proceed under the city patent, and accordingly amended their bill so as to present their claim for relief solely as beneficiaries under that instrument. The State court held that the patent to Stark was void as against the complainants, and decreed in their favor. On appeal to the Supreme Court of the United States, the decree was reversed, that court holding that the patent to the city was void; and the bill was subsequently dismissed. The defendant having afterwards commenced an action of ejectment for the possession of the premises, and recovered judgment, the complainant, who had in the mean time acquired the interest of his brother, filed the present bill, setting up substantially the same matter respecting the agreement of Stark with the parties through whom he claimed which was originally averred in the first suit, and also that the defendant was estopped by his acts from asserting title to the premises. *Held*, that the proceedings and decree in the first suit did not conclude the complainant in the present suit upon the agreement. *Stark v. Starr*, 477.

8. Where it is not a condition of a policy of life insurance that a statement of the age of the insured should accompany the proofs of his death, the party for whose benefit the insurance was effected, although no previous notice was given to the insurers that such evidence would be offered, is not estopped from proving at the trial of a suit on the policy that a statement of the age of the deceased accompanying such proofs, and differing from that made in the application, is erroneous. *Connecticut Mutual Life Insurance Co. v. Schwenk*, 593.
9. A judgment of a court of competent jurisdiction, upon a question directly involved in one suit, is conclusive as to that question in another suit between the same parties; but to this operation of the judgment it must appear, either upon the face of the record, or be

ESTOPPEL (*continued*).

- shown by extrinsic evidence, that the precise question was raised and determined in the former suit. If there be any uncertainty on this head in the record, the whole subject-matter of the action will be at large and open to a new contention, unless this uncertainty be removed by extrinsic evidence showing the precise point involved and determined. To apply the judgment, and give effect to the adjudication actually made, when the record leaves the matter in doubt, such evidence is admissible. *Russell v. Place*, 606.
10. If, upon the face of a record, any thing is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded, and nothing conclusive in it when offered as evidence. *Id.*
 11. The defendant, having been indicted under a statute of Alabama for setting up and carrying on a lottery without legislative authority, claimed in defence a right to set up and carry on the lottery in question under a subsequent statute passed on the 10th of October, 1868; this latter statute was repealed in March, 1871. It was admitted on the trial that the acts charged against the defendant were done under that statute, and would be legal if the statute were constitutional, and had not been repealed. That statute required the defendant, and certain other parties associated with him, before exercising the right claimed, to deposit in the treasury of the State, to the credit of the school fund, and for educational purposes, \$2,000, and annually thereafter the same sum for twenty years, or so long as they might do business under the act; and that sum had been deposited. Under a previous indictment against the same defendant for a similar offence, the Supreme Court of the State had held that the statute in question constituted a contract, and that the repealing act was, for that reason, void. In that case, the only matter before the court was the meaning of the statute; its constitutionality was not called in question. On the trial of the case at bar, the defendant relied upon that decision of the court, but he was, nevertheless, convicted and sentenced. On appeal to the Supreme Court of the State, the judgment was affirmed, the court deciding that the statute of Oct. 10, 1868, was unconstitutional. *Held*, that the previous adjudication of the court upon the meaning of the statute — that it constituted a contract between the defendant and the State — did not estop the State from denying its constitutionality in the present case, nor conclude the court upon that question, although the point might have been raised and determined in the first instance. *Boyd v. Alabama*, 644.
 12. The Court of Appeals of Maryland, in a suit whereto the parties to this suit were parties, rendered a decision adverse to the right of the holder of coupons attached to the preferred bonds issued by the Chesapeake and Ohio Canal Company, under an act of that State of

ESTOPPEL (*continued*).

March 10, 1845, entitled "An Act to provide for the completion of the Chesapeake and Ohio Canal to Cumberland, and for other purposes," to receive, out of the net revenues and tolls of the company, interest on such coupons from the time they respectively mature. In conformity with that decision, the Circuit Court of Baltimore City, in the same suit, entered a decree distributing those revenues and tolls, and ordering payment of the coupons from time to time as the same should accrue. *Held*, that the parties to this suit are bound by that decree. *Corcoran v. Chesapeake & Ohio Canal Co.*, 741.

13. The fact that one of the parties then appeared as a trustee for the bondholders does not render the decree less conclusive in a suit where his individual rights in the same subject-matter are involved. If he, at that time, owned any such bonds or coupons, he is bound, because he was representing himself. If he bought them since, he is bound as privy to the person who was represented. *Id.*

EVIDENCE. See *Estoppel*, 6, 9, 10; *Equity*, 8; *Practice*, 20; *Sale for Taxes*.

1. Within the scope of the professional employment of an attorney, the communications made to him by his client are privileged, and, without the consent of the latter, he should neither be required nor permitted by the courts of the United States to testify concerning them. *Connecticut Mutual Life Insurance Co. v. Schaefer*, 457.
2. As the effect of the statute of Iowa is to make an occupant of land in that State, who, under color of title thereto, and in good faith, has made valuable improvements thereon, the owner of the improvements, the question as to the ownership of the land is immaterial in an action to recover for their wilful or negligent destruction. *Milwaukee & Saint Paul Railway Co. v. Kellogg*, 469.
3. Where the subject of a proposed inquiry before a court is not a matter of science, but of common observation, upon which the ordinary mind is capable of forming a judgment, experts ought not to be permitted to state their conclusions. *Id.*
4. The question as to what is the proximate cause of an injury is ordinarily not one of science or of legal knowledge, but of fact for the jury to determine, in view of the accompanying circumstances. *Id.*
5. A finding that negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury, is not warranted, unless it appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances. Where there is no intermediate efficient cause, the original wrong must be considered as reaching to the effect, and proximate to it. *Id.*
6. The finding of the jury in this case, that the burning of the plaintiff's mill and lumber was the unavoidable consequence of the burning of the defendants' elevator, which had been caused by their negligence,

EVIDENCE (*continued*).

is, in effect, a finding that there was no intervening and independent cause between the negligent conduct of the defendants and the injury to the plaintiff. *Id.*

7. An entry in the minute-book of a lodge of odd fellows of which a deceased person was a member, made prior to the issue of a policy of insurance upon his life, and showing his age as recorded by the secretary of the lodge in the usual manner of keeping its records, is not admissible as evidence of such age. It is merely hearsay. *Connecticut Mutual Life Insurance Co. v. Schwenk*, 593.
8. The doctrine in *Insurance Company v. Wilkinson*, 13 Wall. 222, and *Insurance Company v. Mahone*, 21 id. 122, as to the admissibility of parol testimony to show that the answers to questions in an application for a policy of life insurance, as construed, interpreted, and written down by an agent of the company, were not those of the applicant, affirmed and applied to this case. *New Jersey Mutual Life Insurance Co. v. Baker*, 610.

EXCHANGE OF STATIONS. See *Military Stations*, 1, 2; *Officers of the Army*, 1, 2.

EXECUTION. See *Garnishee*, 1, 2; *Prescription*, 1-3; *Supersedeas*.

EXECUTORS AND ADMINISTRATORS.

1. In Arkansas, the real as well as the personal estate of the intestate is assets in the hands of an administrator; but neither species of property can be sold without an order of the Probate Court. *Tate v. Norton*, 746.
2. A claim admitted by the administrator, and allowed and classified by the Probate Court, has in that State the dignity and effect of a judgment. *Id.*
3. There can be no *devastavit* which will sustain an action against an administrator appointed in that State until he has violated an order of the Probate Court to pay creditors; and his accounts settled by that court cannot be collaterally attacked, but are conclusive, until, by a direct proceeding in equity instituted for that purpose, they are impeached for fraud or mistake. *Id.*

EXPERTS, TESTIMONY OF. See *Evidence*, 2, 3.

FEDERAL QUESTION. See *Practice*, 37.

FEIGNED ISSUE. See *Practice*, 23, 25.

FISHERIES.

Subject to the paramount right of navigation, the regulation of which in relation to foreign and inter-state commerce has been granted to the United States, each State owns the beds of all tide-waters within its jurisdiction, and may appropriate them, to be used by its citizens as a common for taking and cultivating fish, if navigation be not thereby obstructed. *McCready v. Virginia*, 391.

FORECLOSURE. See *Appeal*, 4; *Bonds*, 3; *Mortgage*, 4, 5.

FRANCHISES, FORFEITURE OF.

The question of the forfeiture by the Chesapeake and Ohio Canal Company of their right to hold, free from taxation, property after they ceased to use it for canal purposes, can be judicially determined only in a direct proceeding by the public authorities. It cannot be made an issue for the first time in the trial of a question of private right between other parties. *Mackall v. Chesapeake & Ohio Canal Co.*, 308.

FRAUD. See *Assignee in Bankruptcy*; *Bankruptcy*, 1; *Contracts*, 5; *Negotiable Instruments*, 1, 4, 6.

Fraud is generally a question of fact to be determined by all the circumstances of the case. *Humes v. Scruggs*, 22.

GARNISHEE.

1. In Kansas, an order of a court in a proceeding in aid of execution directing a garnishee to pay to the judgment creditor money which he owes to the judgment debtor is not a judgment, and does not determine finally the liability of the garnishee. *Atlantic & Pacific Railroad Co. v. Hopkins*, 11.

2. Therefore, in such a proceeding, an order of the Circuit Court of the United States, sitting in that State, awarding execution against a garnishee, is erroneous. *Id.*

HIGH-WATER MARK. See *Commerce*, 3-7; *Riparian Proprietors*, 1-3.

HUSBAND AND WIFE. See *Assignee in Bankruptcy*; *Bankruptcy*, 1; *Mortgage*, 6.

1. Purchases of real or personal property, made during coverture, by the wife of an insolvent debtor, are justly regarded with suspicion. She cannot prevail in contests between his creditors and her, involving their right to subject property so acquired to the payment of his debts, unless the presumption that it was not paid for out of her separate estate be overcome by affirmative proof. *Seitz v. Mitchell*, 580.

2. The earnings of the wife while cohabiting with her husband are not, by the Revised Statutes relating to the District of Columbia, made her separate property. She can have them only by his gift, and it is not protected against his creditors. *Id.*

ILLINOIS. See *Constitutional Law*, 4; *Judicial Comity*, 5; *Municipal Bonds*, 8, 12.

The Supreme Court of Illinois, by a long course of decisions, has held that, under the Constitution of 1848, a statute of that State is not valid unless the legislative journals show that it was passed by a majority of all the members elect in each house of the general assembly. *Town of South Ottawa v. Perkins*, 260.

INDEMNITY. See *Surety*.

INDIANA, SCHOOL LANDS IN.

1. The Supreme Court of Indiana having decided in this case that the moneys arising from section 16 in each congressional township of that State, all of which are to be paid into the county treasury by the school trustee, form a part of the school fund which the county auditor is required to distribute to the various townships in the county, and that, in so doing, he is bound by the proviso in the act of March 4, 1855, "that in no case shall the congressional township fund be diminished by such distribution, and diverted to any other township," this court affirms the decision. *Davis v. Indiana*, 792.
2. This court adheres to the ruling in *Springfield Township v. Quick*, 22 How. 56, that the right of the inhabitants of the several congressional townships in that State to such moneys for the use of schools in the township where section 16 lies, is sufficiently protected by that proviso. *Id.*

INDIANS.

- A. settled upon land belonging to the Indians of the village or pueblo of Taos, in New Mexico. *Held*, 1. That he was not liable under the acts of Congress which prohibit a settlement by any person on land belonging, secured, or granted by treaty with the United States, to any Indian tribe. 2. That they have a complete title to their land, and are not an Indian tribe within the meaning of those acts. *United States v. Joseph*, 614.

INDORSER AND INDORSEE. See *Negotiable Instruments*, 2, 4, 6-9.

INFRINGEMENT. See *Letters-Patent*, 3, 4, 7, 8, 10.

INJUNCTION. See *Equity*, 6-8; *Practice*, 34.

INJURY, PROXIMATE CAUSE OF. See *Evidence*, 3-6.

INSURANCE. See *Life Insurance*.

1. Unless prohibited by statute or other positive regulation, a valid contract of insurance can be made by parol. *Relief Fire Insurance Company of New York v. Shaw*, 574.
2. There is nothing in the charter of the Relief Fire Insurance Company of New York, nor in c. 196, sect. 1, of the acts of Massachusetts for 1864, which prohibits it from entering into such a contract in the latter State. *Id.*
3. The correspondence in this case considered, and held to create a valid contract for a policy of insurance in the Home Insurance Company of New York for \$4,000 on the mill and machinery of the complainants, situated at Staunton, Ill., for one year from Oct. 12, 1872, at the rate of six and a half per cent premium. *Eames v. Home Insurance Co.*, 621.
4. It appearing that the property was destroyed by fire Oct. 29, 1872, whereby loss and damage accrued to the complainants to the whole

INSURANCE (*continued*).

amount of insurance, that due proof and notice were given, and that the premium for said insurance was tendered and refused, the complainants are entitled to a decree against the defendant for \$4,000, less the amount of said premium, with interest and costs. *Id.*

INTEREST. See *Mortgage*, 2, 3.

1. The court adheres to the rule in *The Diana*, 3 Wheat. 58, allowing interest from the date of the decree of condemnation in the District Court, upon the appraised value of the property seized for a violation of the revenue laws. *One Hundred and Ninety-nine Barrels of Whiskey v. United States*, 86.
2. A depositor in a national bank, when it suspends payment, and a receiver is appointed, is entitled, from the date of his demand, to interest upon his deposit. *National Bank of the Commonwealth v. Mechanics' National Bank*, 437.
3. The interest being a liquidated sum at the time of the payment of the deposit, an action lies to recover it, and interest thereon. *Id.*

INTERNAL REVENUE.

1. A., who died Dec. 4, 1867, devised his real estate to his widow for her life, with remainder over to B. She died June 17, 1872, when B. entered. *Held*, that an internal revenue tax could not be legally assessed May 15, 1873, on B.'s succession. *Clapp v. Mason*, 589.
2. A penalty of \$1,000 is the only liability incurred by a railroad company for failing to comply with the provisions of sect. 121 of the internal revenue act of June 30, 1864 (13 Stat. 284), as amended by the act of July 13, 1866 (14 id. 138). *Erskine v. Milwaukee & St. Paul Railway Co.*, 619.

INTER-STATE COMMERCE. See *Constitutional Law*, 1, 5, 7; *Fisheries*; *Warehouses*.IOWA. See *Constitutional Law*, 5; *Corporations*, 3; *Evidence*, 2; *Riparian Proprietors*, 1-3.

Although no permanent obstruction, like a depot building, can be erected on the streets of a town, it is held in Iowa that they may, by public authority, be occupied by railway tracks without the consent of the adjacent proprietor, and without compensation, whether the fee of the streets be in him (as in the city of Keokuk) or in a third person. *Barney v. Keokuk*, 324.

JUDGMENT. See *Estoppel*, 1-3, 5, 6; *Garnishee*, 1, 2; *Practice*, 15, 17; *Supersedeas*.

A judgment duly entered by a court having jurisdiction of the parties and of the subject-matter in controversy, is, notwithstanding irregularities in matters of form, binding, until set aside or reversed. *Gunn v. Plant*, 664.

JUDICIAL COMITY. See *Municipal Bonds*, 8.

1. This court adopts the decision of the Supreme Court of Kansas, affirming the validity and binding effect of an act of the legislature of that State, approved Feb. 10, 1865, entitled "An Act to authorize counties and cities to issue bonds to railroad companies," although the yeas and nays were not called and entered on the journals of the respective houses on the final passage of the bill, and the enrolled bill was not signed by the presiding officer of the senate. *County of Leavenworth v. Barnes*, 70.
2. The decision of the Supreme Court of the State of Wisconsin, that the act of the legislature approved March 11, 1874, entitled "An Act relating to railroads, express and telegraph companies, in the State of Wisconsin," was not repealed by that entitled "An Act in relation to railroads," approved March 12, 1874, is binding upon this court. *Peik v. Chicago & North-Western Railway Co.*, 164.
3. As giving a construction to the State Constitution and statute, this court accepts the decision of the Supreme Court of Wisconsin, that the charter of the Milwaukee and Waukesha Railroad Company, granted by the Territory, is subject to repeal or alteration, inasmuch as it was not accepted, nor was the company organized, until after the admission of the State into the Union, under a constitution which continued that act in force, and provided that all laws for the creation of corporations might be altered or repealed by the legislature at any time after their passage. *Stone v. Wisconsin*, 181.
4. Except where the Federal Constitution and laws are concerned, the courts of the United States, in passing upon the Constitution and statutes of a State, conform to the settled construction of them by the highest State court; and, when the latter holds a pretended act of the legislature to be void and not a law, the courts of the United States are bound to hold accordingly. *Town of South Ottawa v. Perkins*, 260.
5. The Supreme Court of Illinois has decided, in two cases, that the act approved Feb. 18, 1857, entitled "An Act authorizing certain cities, counties, incorporated towns, and townships to subscribe to the stock of certain railroads," was never passed, and is not an act of the legislature of that State. This court concurs in that view, and also holds that no subsequent legislation has given any new force to the act, or any validity to the bonds issued, or the proceedings had, under it. *Id.*

JURISDICTION. See *Appeal*, 3.

I. OF THE SUPREME COURT.

1. Under the fifth section of the act of March 3, 1875 (18 Stat. 471), this court has jurisdiction to review an order of a circuit court dismissing a cause, or remanding it to the State court from which it had been removed under the second section of that act. *Hoadley v. San Francisco*, 4.

JURISDICTION (*continued*).

2. This court cannot review the action of the Circuit Court in the exercise of its supervisory jurisdiction over an adjudication of bankruptcy rendered by the District Court. *Hill v. Thompson*, 322.
3. It is immaterial whether such adjudication was upon a summary hearing by the District Court, or after a trial by jury to ascertain the fact of the alleged bankruptcy. *Id.*
4. This court has no jurisdiction to re-examine the decree of the highest court of a State, reversing that of an inferior court, and remanding the cause for further proceedings. *Davis v. Crouch*, 514.

II. OF THE CIRCUIT COURTS.

5. A decree, foreclosing a mortgage executed by the Chicago and Southwestern Railroad Company of its entire railroad and franchises, and ordering a sale of them, passed by the Circuit Court of the United States for the District of Iowa, which, in a suit there pending, had jurisdiction of the mortgagor and the trustees in the mortgage, is not invalid because a part of the property ordered to be sold is situate in the State of Missouri. *Muller v. Dows*, 444.

III. IN GENERAL.

6. A suit by or against a corporation in a court of the United States is regarded as brought by or against its stockholders, all of whom are, for the purposes of jurisdiction, conclusively presumed to be citizens of the State which created it. *Muller v. Dows*, 444.
7. There are no presumptions in favor of the jurisdiction of the courts of the United States; but the facts upon which it rests must, in some form, appear in the record of all suits prosecuted before them. *Ex parte Smith*, 455.

JURY. See *Practice*, 18, 20.

KANSAS. See *Judicial Comity*, 1; *Garnishee*, 1, 2; *Municipal Bonds*, 1, 2, 3, 5, 14, 19, 20.

LACHES. See *Equity*, 10.

LANDLORD AND TENANT. See *Mortgage*; *Statutory Lien*.

1. Unless excluded by the operation of some express covenant or agreement, there results from the relation of landlord and tenant an implied obligation on the part of the latter not to commit waste, nor, by his failure to exercise reasonable care, permit it to be committed. *United States v. Bostwick*, 53.
2. In the absence of an express covenant to repair, a tenant is not answerable for accidental damages, nor is he bound to rebuild, if buildings are accidentally destroyed by fire or otherwise. *Id.*
3. The destruction of ornamental trees, fences, walls, &c., and the quarrying and removal of stone and gravel, is voluntary waste, within the prohibition of the implied agreement, for which the tenant is answerable. *Id.*

LANDLORD AND TENANT (*continued*).

4. Where property was rented by the United States "for all purposes," no recovery can be had on account of its use for a small-pox hospital. *Id.*
5. The acceptance, without objection by the lessor, of reduced rates of rent, after the expiration of the first year, is conclusive evidence of his assent, in consideration of the continued occupancy by the United States, to a modification of the original agreement in that particular. *Id.*
6. Under the act of Congress approved Feb. 22, 1867 (14 Stat. 403), the lien of a landlord for rent has priority over a deed of trust made by his tenant after the commencement of the tenancy, whether the chattels covered by the deed were, when it was executed, upon the demised premises, or were subsequently acquired and placed by the tenant upon them. *Beall v. White*, 382.
7. A surrender to a landlord is effected either by words manifesting the intention of the lessee to yield up his estate, or by operation of law, where the parties, without such words, do some act which implies that they both agree to consider the surrender as made. *Id.*
8. In this case, the court holds that there was no surrender, either express or by operation of law. *Id.*

LESSOR AND LESSEE. See *Court of Claims*, 1; *Landlord and Tenant*, 1-5; *Railroad Companies, Legislative Control of their Rates of Fare and Freight*, 2, 3.

LETTERS-PATENT.

1. Letters-patent No. 102,913, issued to John L. Mason, May 10, 1870, for an "improvement in fruit-jars," are void: *first*, because there was a purchase, sale, and prior use of the invention more than two years prior to the application for a patent; *second*, because, at the time of such application, the invention had been abandoned to the public. *Consolidated Fruit-Jar Company v. Wright*, 92.
2. In letters-patent of the United States, No. 10,965, bearing date May 23, 1854, issued to John Myers and Robert G. Eunson, granting to them, for the term of fourteen years from that date, the exclusive right and liberty of making, using, and vending to others to be used, an improved machine for sawing thin boards, &c., which letters-patent were subsequently extended for the term of seven years from May 23, 1868, the claim of the improvement described as the employment or use of deflecting plates, — one or two, — placed at the sides of a circular saw, for the purposes set forth in the specification, is void, because it does not describe a patentable invention. *Dunbar v. Myers*, 187.
3. This court finds that the respondents below did not infringe the second and fourth claims of the patent. *Id.*
4. This court finds that letters-patent No. 80,492, granted to William H. Cammeyer, bearing date July 28, 1868, for an improved portable

LETTERS-PATENT (*continued*).

- and adjustable still-water dam, were not infringed by the defendant. *Cammeyer v. Newton*, 225.
5. The claims embraced by the patent, and the nature and mode of operation of the invention which is therein described, and of the machine or apparatus used by the defendant in alleged violation of the patent, examined. *Id.*
 6. The alleged new and useful improvement in mechanism for marking cloth in sewing-machines, for which letters-patent No. 28,633, bearing date June 5, 1860, were issued to Henry W. Fuller and Anthony W. Goodell, consists only of a combination of old elements or ingredients constituting an apparatus for effecting the results described in the specification. *Fuller v. Yentzer*, 288.
 7. The rights of the holder of such a patent are not infringed, unless it appears that, without his authority, the entire combination is made, used, or sold. *Id.*
 8. The apparatus used by the respondents, and that for which said letters-patent were awarded, described, and the conclusion reached, that they essentially differ in their construction and mode of operation. *Id.*
 9. Reissued letters-patent No. 3,218, granted Dec. 1, 1868, to Henry W. Fuller, assignee, by mesne assignments, of Israel M. Rose, for an improvement in a tuck-creasing attachment in sewing-machines, were not superseded by letters-patent No. 28,633, issued June 5, 1860, to Henry W. Fuller and Anthony W. Goodall. *Fuller v. Yentzer*, 299.
 10. The court holds that the apparatus constructed, used, and sold by the respondents, do not infringe the complainants' patent. *Id.*
 11. Letters-patent No. 96,284, issued to Joshua Merrill, May 18, 1869, for improved manufacture of deodorized heavy hydrocarbon oils, construed and held to be good for the superheating coil, with its steam-pipe, &c., referred to in the second claim of the specification, and for the described process by which the oil is deodorized, but not for the product of that process. *Merrill v. Yeomans*, 568.
 12. In an action at law for damages for the infringement of a patent for an alleged new and useful improvement in the preparation of leather, which patent contained two claims, one for the use of fat liquor generally in the treatment of leather, and the other for a process of treating bark-tanned lamb or sheep skin, by means of a compound composed and applied in a particular manner, the declaration alleged, as the infringement complained of, that the defendants had made and used the invention, and caused others to make and use it, without averring whether such infringement consisted in the simple use of fat liquor in the treatment of leather, or in the use of the process specified. *Held*, that the judgment recovered in the action does not estop the defendant in a suit in equity by the same plaintiff, for

LETTERS-PATENT (*continued*).

- an injunction and an accounting for gains and profits, from contesting the validity of the patent, it not appearing by the record, and not being shown by extrinsic evidence, upon which claim the recovery was had. The validity of the patent was not necessarily involved, except with respect to the claim which was the basis of the recovery: a patent may be valid as to a single claim, and invalid as to the others. *Russell v. Place*, 606.
13. This court, in affirming the validity of the letters-patent No. 15,687, granted to Joseph D. Cawood Sept. 9, 1856, for "an improvement in the common anvil or swedge-block for the purpose of welding up and re-forming the ends of railroad rails when they have been exfoliated, or become shattered from unequal wear occasioned by the inequalities of the road," &c., which were before it in *Turrill v. Michigan Southern, &c. Railroad Co.*, 1 Wall. 491, holds, in addition to what was declared in that case, that they embrace a bottom support for the rail on the anvil; and that they are infringed by the machines known as the "Illinois Central," the "Etheridge," and the "Whitcomb," but not by those known as the "Bayonet vise," the "Michigan Southern," and the "Beebe and Smith." *Cawood Patent*, 695.
 14. Where an account for the infringement of letters-patent is prayed for and decreed, the record filed here should set it forth. This court should not be called upon to perform the duties of a master. *Id.*
 15. Considering the number of feet of rails mended by the respondents in the use of the machines covered by said letters-patent, and of those which infringe them, the gain in mending, compared with the cost of mending on the common anvil, and the saving in fuel and labor, the damages decreed by the court below are not excessive. *Id.*
 16. In settling an account between a patentee and an infringer of his letters-patent, the question is not what profits the latter made in his business, or from his manner of conducting it, but what advantage he derived from his use of the patented invention. *Id.*
 17. Reissued letters-patent No. 2,145, granted to Eli W. Blake, Jan. 9, 1866, for an improvement in machines for crushing stones, and extended June 15, 1872, were not anticipated by those granted Sept. 4, 1849, No. 6,690, to Hobbs & Brown, for crushing ice, nor by those granted Jan. 3, 1854, No. 10,365, to James Hamilton, for an ore-crusher. *Blake v. Robertson*, 728.
 18. The court sustains the validity of said letters-patent to Blake, and finds that they have been infringed by the respondent. *Id.*
 19. In an action for the infringement of letters-patent, damages must be proved, and the burden of proof is upon the complainant. *Id.*
 20. In this case, no license fee charged by the complainant is shown, although it appears that he made a profit of forty dollars per inch

LETTERS-PATENT (*continued*).

- on the width of the jaws of the machines sold by him. They, however, embraced inventions covered by patents other than that for the infringement of which this suit was brought. *Held*, that, in the absence of proof to show how much of profit was due to such other patents, and how much was a manufacturer's profit, he is entitled to nominal damages only against the respondent. *Id.*
21. The powers and jurisdiction of the Supreme Court of the District of Columbia, in patent cases, are the same, as well in equity as at law, as those of the Circuit Courts of the United States; and whether a case, involving the validity or the infringement of letters-patent, shall be first tried at law is a matter of discretion and not of jurisdiction. *Cochrane v. Deener*, 780.
 22. The improvement in processes for manufacturing flour, for which reissued letters-patent No. 5,841 were granted to William F. Cochrane and his assignees, April 21, 1874, being a reissue of letters-patent No. 37,317, granted to him Jan. 6, 1863, does not consist in using drafts or currents of air, but in the process as a whole, comprising the application of the blast, and the carrying off the fine impurities whereby the middlings, after being separated from the other parts, are purified, preparatory to regrinding. *Id.*
 23. A process may be patentable, irrespective of the particular form of the instrumentalities used. If one of the steps of a process be that a certain substance is to be reduced to a powder, it may not be at all material what instrument or machinery is used to effect that object, whether a hammer, a pestle and mortar, or a mill. Either may be pointed out; but, if the patent is not confined to that particular tool or machine, the use of the other would be an infringement, the general process being the same. *Id.*
 24. A process is a mode of treatment of certain materials to produce a given result. It is not an act or series of acts, performed upon the subject-matter, to be transformed and reduced to a different state or thing. If new and useful, it is just as patentable as a piece of machinery. In the language of the patent law, it is an art. *Id.*
 25. The machinery pointed out as suitable to perform the process may or may not be new or patentable, whilst the process itself may be altogether new, and produce an entirely new result. The process requires that certain things should be done with certain substances, and in a certain order; but the tools to be used in doing this may be of secondary consequence. *Id.*
 26. The court holds that reissued letters-patent No. 5,841, bearing date April 21, 1874, for improvements in processes for manufacturing flour, No. 6,030, bearing date Aug. 24, 1870; No. 6,594 and No. 6,595, bearing date Aug. 17, 1875, for improvements in machines for bolting flour, and issued to William F. Cochrane and his assignees, — are valid, and were infringed by the defendants, in using

LETTERS-PATENT (*continued*).

machines constructed according to reissued letters-patent No. 5,346, bearing date April 1, 1873, being a reissue of letters-patent No. 135,953, bearing date Feb. 18, 1873, and granted to Edward P. Welch and his assignees, for improvements in middlings-purifiers, and being for improvements upon machines patented to Jesse B. Wheeler and Ransom S. Reynolds; but that letters-patent No. 37,319 and No. 37,320, bearing date Jan. 6, 1863, issued to said Cochrane, for improvements in bolting flour, were not infringed. *Id.*

LIEN. See *Admiralty*, 3-5; *Judgment; Landlord and Tenant*, 6; *Mortgage*, 5; *Statutory Lien*.

In Georgia, the omission to record the verdict upon which the judgment was rendered does not deprive the plaintiff of his lien upon the real estate of the defendant. *Gunn v. Plant*, 664.

LIFE INSURANCE. See *Estoppel*, 8; *Evidence*, 7, 8.

1. A policy of life insurance originally valid does not cease to be so by the cessation of the assured party's interest in the life insured, unless such be the necessary effect of the provisions of the instrument itself. *So held*, where, subsequently to effecting an insurance by husband and wife, upon their joint lives, payable to the survivor on the death of either, they were divorced *a vinculo matrimonii*, and she, having thereafter paid the premiums to the time of his death, brought suit on the policy. *Connecticut Mutual Life Insurance Co. v. Schaefer*, 457.
2. Any person has a right to procure an insurance on his own life, and assign it to another, provided it be not done by way of cover for a wager policy. *Id.*
3. The relationship between a party and another for whose benefit he effects an insurance upon his life, if a good and valid consideration in law for any gift or grant, furnishes no ground for the imputation that the transaction was by way of cover for a wager policy. *Ætna Life Insurance Co. v. France*, 561.
4. A policy of insurance, taken out by a man upon his life for the benefit of his sister, who has no insurable interest in his life beyond that of relationship, is not void; and it is immaterial what is the arrangement between them for the payment of the premiums. *Id.*

LOUISIANA. See *Commerce*, 2; *Prescription*, 1-3.

MANDAMUS. See *Appeal*, 2; *Practice*, 21, 22, 26.

1. To entitle a petitioner to a writ of *mandamus* to compel a circuit court to allow an appeal from its decree, he must show that he has a clear right to an appeal which has been refused him by that court. *Ex parte Cutting*, 14.
2. *Mandamus* does not lie to compel a circuit court to allow an appeal from its decree by a person not an original party to the suit, unless

MANDAMUS (*continued*).

it appears that his petition to be allowed to intervene was granted, or that he at least acted, or was treated, as a party. *Id.*

MASSACHUSETTS. See *Insurance*, 1, 2.

MECHANICS' LIENS. See *Equity*, 5.

1. Mechanics and laborers asserting a lien upon real property for their work, and claiming priority over mortgagees and others, who have acquired interests in the property, must furnish strict proof of all that is essential to the creation of the lien; and that requires them to prove when the work was commenced, the character of the work, and when it was completed. *Davis v. Alcord*, 545.
2. Work was done by the plaintiff, under a contract with the defendant made Aug. 1, 1869, on two distinct parcels of property situated in Montana Territory, — one a quartz-mill and the other a quartz-mine, — separated a considerable distance from each other. The work on the mill was completed in the fall of 1869 or in the summer of 1870. Nothing was done afterwards except to make occasional repairs as they were needed. The work on the mine was done in 1870, but it was not shown when the work was commenced. In June, 1871, upon an accounting between the plaintiff and the defendant, there was found due to the plaintiff a large sum, which the parties agreed should be a lien upon the mill and mine in equal proportions. Notices claiming a lien upon each for the amount as thus apportioned were accordingly filed in the recorder's office. *Held*, 1st, That a lien did not arise from this contract of apportionment, or from the special contract under which the work was done, but from the work itself, which was performed upon the property; 2d, That the work being done on different parcels of property, the lien claimed on one was to be considered separately from the lien claimed on the other; 3d, That the notice, so far as the mill was concerned, was filed too late, the statute requiring the notice to be filed within sixty days after the completion of the work; and that the occasional repairs subsequently made could not be added to the work done months before, so as to render the whole work one continued performance, for which a single lien could be claimed within sixty days after the last repairs; 4th, That it not appearing when the work upon the mine was commenced in 1870, it will not be presumed that it was commenced before the mortgage of the defendant was executed and recorded in September of that year, so as to give to the lien for the work priority over the mortgage. *Id.*

MERGER. See *Sale for Taxes*.

MILEAGE. See *Officers of the Army*, 2.

MILITARY STATIONS. See *Officers of the Army*, 1, 2.

1. The home of the officer to which he is ordered is not a military station. A military "station" is merely synonymous with military "post."

MILITARY STATIONS (*continued*).

In each case it means not an ordinary residence, having nothing military about it, except that one of its occupants holds a military commission, but a place where military duty is performed, or stores are kept or distributed, or something connected with war or arms is kept or done. *United States v. Phisterer*, 219.

2. An officer so ordered is not, when at home awaiting orders, entitled to commutation for quarters and fuel. His home is not a "station," within the meaning of sect. 1080 of the Army Regulations. *Id.*

MINERAL LANDS.

1. Although the title to mineral lands may remain in the United States, the ores, when dug or detached from the lands under a mining claim, are free from any lien, claim, or title of the United States, and, becoming personal property, are, as such, subject to State taxation in like manner as other personal property. *Forbes v. Gracey*, 762.
2. The words "mines or mining claims" in the sixth section of the act of the legislature of Nevada of Feb. 28, 1871, imposing a tax upon such ores, and making it "a lien on the mines or mining claims from which the ores or minerals bearing gold or silver are extracted for reduction," were evidently intended to distinguish between cases in which the miner is the owner of the soil, and therefore has a perfect title to the mine, and those in which he works under a mining claim, the title to the land remaining in the United States. In the first case, the tax is a valid lien on the mine itself; but in the second, only upon his possessory right, under existing laws and regulations, to work and explore the mine. *Id.*
3. Such a claim is property in the fullest sense of the word. It is subject to a lien for taxes, and may be sold for the non-payment of them, without infringing the title of the United States. *Id.*

MINNESOTA. See *Constitutional Law*, 8.

MISSOURI. See *Municipal Bonds*, 24, 25, 28, 29.

1. Under the Code of Practice of Missouri, if any one of the defences set up in the answer is a bar to the plaintiff's right to recover, a demurrer to the whole answer must be overruled. *County of Dallas v. MacKenzie*, 660.
2. A county in Missouri, sued on certain coupons attached to bonds alleged to have been issued by it, denied in its answer the plaintiff's ownership for value, and, for a further defence, averred that no orders authorizing the issue of such bonds were ever made by the proper county court, but that two of the justices thereof fraudulently and corruptly, but not as a court, made a certain other order, upon conditions which were not complied with. It further averred that such bonds were fraudulently and corruptly issued, and without authority. No copy of the bonds was filed with the plaintiff's complaint. The plaintiff demurred to the answer. *Held*, that the demurrer must be overruled. *Id.*

MONTANA, CIVIL PRACTICE ACT OF.

Under the Civil Practice Act of Montana, judgment cannot be entered against a defendant, as upon default for want of issues to be tried, where there is on file in the cause an answer specifically denying, upon information and belief only, all the allegations in the complaint, if it appears that the facts in controversy were not within the personal knowledge of the defendant, and that the information upon which he based his belief came from his agents employed to transact the business out of which the litigation arose. *Maclay v. Sands*, 586.

MORTGAGE. See *Equity*, 10; *Jurisdiction*, 5; *Waiver*.

1. It is only where no rule of law is infringed, and the rights of third persons are not prejudiced, that courts of equity will, in certain cases, give effect to mortgages of subsequently acquired property. *Beall v. White*, 382.
2. Where a railroad company issues its bonds, and mortgages its property to secure the payment of them and of the semiannual instalments of interest thereon, as they respectively fall due, under the authority of an act of the legislature, which declares that the bonds shall not mature at an earlier period than thirty years, a provision in them, that, upon a failure to pay any coupon thereto attached, when presented at the place of payment, and a continued default thereon for six months, the whole sum mentioned in the bond shall become due and payable, is void. *Howell v. Western Railroad Co.*, 463.
3. In such a case, the mortgage may provide that it shall be foreclosed upon non-payment of interest. When suit in foreclosure is brought, if the sum ascertained to be due on the coupons be paid within such reasonable time as the court shall appoint, no further proceedings in the suit can be had until there is another default; if the sum be not so paid, a sale of the property, with a foreclosure of all the rights subordinate to the mortgage, should be ordered, with a direction to bring the proceeds into court, when, in distributing them, the sums secured by the mortgage must be protected, according to their respective priority of lien. *Id.*
4. Prior mortgagees are not necessary parties to the bill of a junior mortgagee, which seeks only the foreclosure or the sale of the equity of redemption. *Jerome v. McCarter*, 734.
5. Neither the mortgagor nor his assignee in bankruptcy can object to the order in which the priority of valid and subsisting liens on the mortgaged premises is fixed by the decree of foreclosure. *Id.*
6. A conveyance of lands in Alabama to a married woman, "to have and to hold to the sole and proper use, benefit, and behoof of her, her heirs and assigns for ever," vests in her, under the laws of that State, a statutory separate estate; and a mortgage of the lands, ex-

MORTGAGE (*continued*).

cuted by her and her husband to secure the payment of his debts, is void. *Lippincott v. Mitchell*, 767.

7. A company, to secure the payment of its bonds, mortgaged its property, and the rents, issues, and profits arising therefrom, with the provision, that, if there was default in paying the interest, the mortgagee might take possession of the property, manage the same, and receive and collect all rents and claims due and to become due to the company. Default was made; and the mortgagee, in November, 1874, filed his bill, setting forth that the company had on hand moneys and claims due to it, both of which he prayed might be applied to his mortgage. An execution upon a judgment, which B. had against the mortgagor, having been sued out and returned *nulla bona*, he, in December of that year, filed his bill to subject such moneys and claims to the payment of his judgment. *Held*, that, inasmuch as the mortgagee had not taken possession, his claim to the earnings and income on hand at the time of filing his bill must be postponed to that of B. *American Bridge Co. v. Heidelberg*, 798.

MUNICIPAL BONDS. See *Estoppel*, 2, 3; *Judicial Comity*, 1, 5.

1. Where the question of subscribing to the stock of a railroad company was, prior to the passage of the act of the legislature of Kansas, approved Feb. 10, 1865, entitled "An Act to authorize counties and cities to issue bonds to railroad companies," duly submitted to the qualified voters of the county, who voted to subscribe stock and issue bonds therefor, the board of county commissioners was, by that act, authorized to make the subscription, and issue bonds not exceeding the amount provided in the first and third sections thereof. *County of Leavenworth v. Barnes*, 70.
2. The bonds issued by the county of Leavenworth, Kansas, bearing date July 1, 1865, and reciting that they are issued in payment of the subscription of said county to the capital stock of the Leavenworth and Missouri-Pacific Railroad Company, under the provisions of the act of the legislature of Kansas, entitled "An Act to authorize counties and cities to issue bonds to railroad companies," approved Feb. 10, 1865, are, in the hands of a *bona fide* holder for value, valid and binding upon the county. *Id.*
3. Under the act of the legislature of Kansas, to authorize counties and cities to issue bonds to railroad companies, approved April 10, 1865, and that of Feb. 25, 1868, the board of commissioners of a county is authorized to determine whether the condition precedent to the lawful issue of such bonds has been complied with. *Commissioners of Douglas County v. Bolles*, 104.
4. A recital by the board in the bonds, showing that such condition has been complied with, is, when they are in the hands of a *bona fide*

MUNICIPAL BONDS (*continued*).

- holder for value, binding upon the county; and he is bound to look for nothing behind the recital except legislative authority for the issue of them. *Id.*
5. Where, upon the performance of certain conditions precedent, the issue of bonds to a railroad company by the board of commissioners of a county in Kansas is authorized by law, the bonds, when issued, if they recite such performance, are, in the hands of a *bona fide* holder for value, binding upon the county. *Commissioners of Johnson County v. January*, 202.
 6. The acceptance and holding by the county of the certificate of stock of the company, the issue and delivery of the bonds to the company, and the payment of interest on them for a time, cured the defects, if any existed, as to the order for submitting the question of subscription to a popular vote, and authorized a *bona fide* taker of the bonds to presume that every thing necessary to their validity had been properly done. *Id.*
 7. The fact that the act under which the bonds were issued is erroneously referred to in their recitals does not render them void. *Id.*
 8. This court concurs in opinion with the Supreme Court of Illinois, that the fifth section of the act of the general assembly of that State, approved Feb. 18, 1861, conferred no authority upon a municipal corporation to subscribe to the capital stock of the Paris and Decatur Railroad Company. *Township of East Oakland v. Skinner*, 255.
 9. The township of East Oakland subscribed to that capital stock without being thereunto authorized, and its bonds, bearing date April 20, 1871, and reciting that they are issued in payment of such subscription, are void. *Id.*
 10. Where there is a total want of authority to issue municipal bonds, there can be no *bona fide* holding of them. *Id.*
 11. A municipal corporation cannot, without legislative authority, issue bonds in aid of an extraneous object. Every person dealing in them must, at his peril, take notice of the existence and terms of the law which, it is claimed, conferred the power to issue them, no matter under what circumstances he may obtain them. *Town of South Ottawa v. Perkins*, 260.
 12. The town of Ottawa and the board of supervisors of Kendall County, municipal corporations in Illinois, having issued the bonds in suit, by virtue of a pretended act of the general assembly, approved Feb. 18, 1857, which was duly published among the printed statutes of that State as a law, and, therefore, *prima facie* valid, were not estopped from denying its passage, notwithstanding the holder of the bonds was a *bona fide* purchaser without actual notice. *Id.*
 13. Bonds issued, pursuant to legislative authority, by a municipal corporation, in aid of a railroad company, are negotiable instruments. *Commissioners of Marion County v. Clark*, 278.

MUNICIPAL BONDS (*continued*).

14. Where a statute of Kansas authorized towns or counties to issue bonds "for the purpose of building bridges, or to aid in the construction of railroads, water-power, or other works of internal improvement," and where another statute declared all custom grist-mills to be "public mills," and regulated their management,—*Held*, that bonds issued by a town of that State, to aid in the construction and equipment of a steam custom mill owned by an individual, were authorized by the statute. *Township of Burlington v. Beasley*, 310.
15. A municipality must have legislative authority to subscribe to the capital stock of a bridge company before its officers can bind the body politic to the payment of bonds purporting to be issued on that account. *McClure v. Township of Oxford*, 429.
16. If any of the essential proceedings prescribed by law for investing municipal officers with power to subscribe for stock, and issue bonds in payment thereof, be dispensed with, the bonds will be invalid in the hands of all who cannot claim protection as *bona fide* holders. *Id.*
17. Every dealer in municipal bonds, which, upon their face, refer to the statute under which they were issued, is bound to take notice of all its requirements. *Id.*
18. Where, upon their face, the coupons refer to the bonds to which they were attached, and purport to be for the semiannual interest accruing thereon, the purchaser of them is charged with notice of all which the bonds contain. *Id.*
19. The bonds issued by the township of Oxford, Kansas, bearing date April 15, 1872, and reciting that they are issued under an act of the legislature of Kansas, approved March 1, 1872, authorizing the township to subscribe for stock in the Oxford Bridge Company, and, in pursuance of a vote of the qualified electors of said township, at an election held therein, April 8, 1872, are void, because, as that act by its terms took effect only from its publication in the "Kansas Weekly Commonwealth," and it was not published until March 21, the election was not held pursuant to a notice of thirty days, as required by the act. *Id.*
20. Under the act of the legislature of Kansas, approved Feb. 10, 1865, authorizing the board of county commissioners of any county to, into, through, from, or near which any railroad is or may be located, to subscribe to the capital stock of the company, the location of the road is not a condition precedent to submitting the question of subscription to a vote of the qualified electors of the county. *Commissioners of Johnson County v. Thayer*, 631.
21. A proposition was submitted to the electors of Johnson County, whether the board should be "authorized to subscribe capital stock in the name and for the benefit of Johnson County, in the sum of \$100,000, to aid in the construction of a railroad commencing at or near the Union Depot, on the south side and near the mouth of the

MUNICIPAL BONDS (*continued*).

Kansas River, and near Kansas City; thence to Olathe, in Johnson County; thence, in a southerly direction, through said county to the southern boundary of the State of Kansas." *Held*, that, under the statute, this was a sufficiently specific description of the route of the contemplated road, and that it was not necessary to insert the name of the company constructing it. *Id.*

22. Irregularities or informalities, not involving the question of jurisdiction nor affecting the result of the vote, do not impair the validity of the bonds issued pursuant to the election; and the Curative Act of Feb. 25, 1868, was intended by the legislature of Kansas to reach the bonds issued before as well as those after its passage. *Id.*
23. Notice to one of the trustees appointed by the company in its deed mortgaging its property, including the county bonds, to secure the payment of its bonds, issued and negotiated for value to third parties, does not, in a suit by the trustees to enforce the payment of the county bonds, operate to destroy the *bona fide* holding of such parties. *Id.*
24. The fourteenth section of article 11 of the Constitution of Missouri, adopted in 1865, which declares that "the general assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to, any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto," prohibits any subsequent legislative grants to any municipal corporation, of authority to become a stockholder in, or to loan its credit to, a company, except upon the prescribed conditions; but it does not purport to take away any authority already granted. *County of Scotland v. Thomas*, 682.
25. The Alexandria and Bloomfield Railroad Company was incorporated under an act of the general assembly of Missouri, approved Feb. 9, 1857, which provided that "it shall be lawful for the county court of any county, in which any part of said road may be, to subscribe to the stock of said company," and issue its bonds therefor. The laws of the State reserved to the general assembly the right to amend the charter, and the company was, pursuant to the authority conferred by the act of March 2, 1869, consolidated with a corporation in Iowa, having like authority from that State; but the general direction of the road was not thereby changed. The road of the company passes through the county of Scotland; and the county court, in the absence of any election by the qualified electors of that county, subscribed, in August, 1870, to the capital stock of said consolidated company, and issued the bonds of the county in payment therefor. *Held*, 1. That the power of the county to subscribe for stock in the Alexandria and Bloomfield Railroad Company was the right and privilege of the company, and passed, with its other rights

MUNICIPAL BONDS (*continued*).

- and privileges, into the new conditions of existence which it assumed under the consolidation. 2. That the subscription made by the court was the act of the county, and binding upon it, and that the bonds so issued are valid. *Id.*
26. *Harshman v. Bates County*, 92 U. S. 569, is not in conflict with the rulings in this case. *Id.*
27. In a suit by a *bona fide* holder against a municipal corporation to recover the amount of coupons annexed to bonds issued by it, under authority conferred by law, questions of form merely, or irregularity, or fraud, or misconduct on the part of its agents, cannot be considered. *Town of East Lincoln v. Davenport*, 801.
28. Where an act of the legislature of Illinois, authorizing a town to subscribe to the capital stock of a certain railroad company, provides, that if a majority of the legal voters, voting at an election held for that purpose, shall be found to be in favor of such subscription, it shall be deemed and held that such town had taken stock in said company according to the proposals made, — *Held*, that the statute makes such a majority vote equivalent to, and a substitute for, a subscription by the town upon the books of the company. *Id.*
29. Where it was provided by a general law, or the charter of the company when such subscription was made, that the company might consolidate with other companies, in order to carry out the object of its charter, and that its franchises, rights, subscriptions, and credits might be transferred, and where such consolidation was effected, and a subsequent transfer by the consolidated company was lawfully made to a new company engaged in the construction of a connecting road thus forming a continuous line, the stockholders in the former companies becoming stockholders in the new company, — *Held*, that a delivery by the town to such new company of the bonds for the payment of the original subscription, and a receipt of a certificate of stock in it, were warranted by law. *Id.*

NATIONAL BANKS. See *Interest*, 2, 3.

1. The shares of stock of a national bank in New York should be assessed for taxation at their actual value. *People v. Commissioners of Taxes and Assessment*, 415.
2. The ruling in *Van Allen v. The Assessors*, 3 Wall. 573, as to the invalidity of the act of the legislature of New York of March 9, 1865, known as the Enabling Act, so far as it provided for the taxation of shares in a national bank, reaffirmed. *Id.*
3. The claims of depositors in a national bank at the time of its suspension for the amount of their deposits are, when proved to the satisfaction of the comptroller of the currency, placed upon the same footing as if they were reduced to judgments. *National Bank of the Commonwealth v. Mechanics' National Bank*, 437.

NATIONAL BANKS (*continued*).

4. A statute of Vermont is not void, which, for the purposes of taxation, requires, under a penalty for his neglect or refusal, the cashier of each national bank within the State to transmit, on or before the fifteenth day of April in each year, to the clerks of the several towns in the State in which any stock or share holders of such bank shall reside, a true list of the names of such stock or share holders on the books of such bank, together with the amount of money actually paid in on each share on the first day of that month. *Waite v. Dowley*, 527.
5. When a national banking association is insolvent, the order of the comptroller of the currency, declaring to what extent the individual liability of the stockholders shall be enforced, is conclusive. *Kennedy v. Gibson and Others*, 8 Wall. 498, cited and approved. *Casey v. Galli*, 673.
6. When his order is to collect an amount equal to the full par value of the stock, the suit by the receiver against the stockholder must be at law, and that amount will bear interest from the date of the order. *Id.*
7. In such a suit the stockholder is estopped from denying the existence or the validity of the corporation. *Id.*
8. No authority other than that conferred by Congress is required to enable a bank existing under a special or a general State law to become a national banking association. The certificate of the comptroller is conclusive as to the completeness of the organization under the act of Congress in a suit against a stockholder to enforce his liability, or a party upon his contract with the bank. *Id.*
9. A plea is bad which sets up that the comptroller has decided to pay a large amount of claims for which the bank is not responsible, and that, aside from these claims, there are means enough to meet the just liabilities of the bank. *Id.*

NAVIGABLE RIVERS. See *Commerce*, 3-7; *Fisheries*.

NEGLIGENCE. See *Evidence*, 5, 6.

NEGOTIABLE INSTRUMENTS. See *Bankruptcy*, 6.

1. Where the title of the original holder of negotiable instruments, which are infected with fraud, invalidity, or illegality, is destroyed, that of every subsequent holder which rests on that foundation, and no other, falls with it. *Commissioners of Marion County v. Clark*, 278.
2. Where the first indorsee, without notice of any prior equities between the original parties, purchases, for value, a negotiable instrument, the second indorsee, who acquires it before it is due, and for value, takes a good title, although he had notice of such equities. *Id.*
3. Bonds issued, pursuant to legislative authority, by a municipal corporation in aid of a railroad company are negotiable instruments. *Id.*

NEGOTIABLE INSTRUMENTS (*continued*).

4. The payee of a check before it is accepted by the drawee cannot maintain an action upon it against the latter, as there is no privity of contract between them. *So held*, where a check of the Treasurer of the United States upon a national bank duly designated as a depository of the public money, having been paid upon an unauthorized indorsement of the name of the payee, suit to recover the amount of the check was brought by its true owner against the bank. *First National Bank of Washington v. Whitman*, 343.
5. The rights of the parties are not changed by the fact that, on a settlement of accounts between the Treasurer and the bank, the check, on the supposition that it had been properly paid, was credited to the bank. Such an error does not affect the real state of the accounts; when it is discovered, they are open to correction. *Id.*
6. Payment to a stranger upon an unauthorized indorsement does not operate as an acceptance of the check, so as to authorize an action by the real owner to recover its amount as upon an accepted check. *Id.*
7. An indorser of a promissory note is a competent witness to prove an agreement in writing made with its holder at the time of his indorsement, that he shall not be held liable thereon, where the paper has not afterwards been put into circulation, but is held by the party to whom the indorsement was made. *Davis v. Brown*, 423.
8. *Bank of United States v. Dunn*, 6 Pet. 51, explained and qualified. *Id.*
9. An agreement like the one mentioned above, and the indorsement, taken together, are equivalent, so far as the holder of the note is concerned, to an indorsement without recourse to the indorser. *Id.*
10. Where a promissory note for dollars, made in Georgia, in January, 1863, is shown to have been solvable in Confederate treasury notes, the sum thereby payable in actual money must be ascertained by the value in coin or legal currency of the United States, at the time when and the place where the note was made, of such treasury notes, equal in nominal amount to the number of dollars specified. *Stewart v. Salamon*, 434.
11. Where a payment is indorsed in the same monetary terms which are used in the note itself, the presumption is that it was intended to be credited in the same circulating medium. If the parties intended otherwise, some proof on the subject should be presented. *Id.*
12. Accordingly, where a promissory note for dollars, shown to be solvable, at the time it was made, in Confederate treasury notes, had a receipt for a specified number of dollars indorsed upon it, it was *held* that, in the absence of proof, the principal designated on the face of the note was reduced only by the amount specified in the receipt. *Id.*
13. A negotiable instrument, payable to bearer, or indorsed in blank, produced by a transferee suing to recover its contents, is, when received in evidence, clothed with the *prima facie* presumption that he became the holder of it for value at its date in the usual course of

NEGOTIABLE INSTRUMENTS (*continued*).

business, without notice of any thing to impeach his title. *Collins v. Gilbert*, 753.

14. The title of a *bona fide* holder for value of an accepted draft, indorsed in blank, is not affected by the fact that the party from whom he received it before its maturity had possession of it for certain purposes, and misappropriated it. *Id.*

NEW TRIAL. See *Practice*, 15-17, 23.

NEW YORK. See *Commerce*, 1; *National Banks*, 1.

NONSUIT. See *Practice*, 26.

NON-USER. See *Railroad Companies, Legislative Control of their Rates of Fare and Freight*, 3.

OFFICERS OF THE ARMY.

1. An officer of the army, who, under the second section of the act of March 3, 1869 (15 Stat. 318), is ordered from a military post, at which he is doing duty, to his home, to await orders, does not exchange his station, within the meaning of sect. 1117 of the Army Regulations. *United States v. Phisterer*, 219.
2. The case is governed by sect. 1110 of such regulations; and under it the officer is entitled to an allowance of ten cents for each mile travelled by him in pursuance of his orders. *Id.*

PARTIES. See *Appeal*, 1, 2; *Mandamus*, 2; *Mortgage*, 4.

PATENTABLE INVENTION. See *Letters-Patent*, 2.

PAYEE. See *Negotiable Instruments*, 4-6.

PLEADING. See *Equity*, 10; *Estoppel*, 5, 6; *Franchises, Forfeiture of; Missouri, Practice Code of*, 1, 2; *Mortgage*, 4; *Practice*, 23, 24.

1. A general replication denies every allegation in the answer of a defendant not responsive to the bill. Therefore, he must prove his allegation of a decree in a former suit pleaded by way of estoppel. *Humes v. Scruggs*, 22.
2. Defendants who have actually received the consideration of a written agreement cannot, in an action brought against them for a breach of their covenants, set up that the agreement did not bind the plaintiff to perform his covenants, provided it appears that he has performed them in good faith and without prejudice to the defendants. *Storm v. United States*, 76.
3. In a suit by or against a corporation in a court of the United States, it should appear by the declaration, or bill of complaint, that the corporation was created by the State whereof the adverse party is not a citizen; but a defective averment of that fact may be cured by the subsequent pleadings. *Muller v. Dows*, 444.
4. The principle that a party seeking to enforce a claim, legal or equitable, must present to the court, either by the pleadings or the proofs,

PLEADING (*continued*).

- or both, all the grounds upon which he expects a judgment in his favor, and is not at liberty to split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit, if the first fail, does not require distinct causes of action; that is to say, distinct matters, each of which would authorize by itself independent relief, to be presented in a single suit, though they exist at the same time, and might be considered together. *Stark v. Starr*, 477.
5. A plea of a stockholder of a national bank, when sued to enforce his individual liability, which sets up that the comptroller of the currency has decided to pay a large amount of claims for which the bank is not responsible, and that, aside from these claims, there are means enough to meet the just liabilities of the bank, is bad. *Casey v. Galli*, 673.

PLEDGOR AND PLEDGEE. See *Bankruptcy*, 6.

POWER OF ATTORNEY.

1. Where a ratification by an attorney of a deed of settlement is insufficient in form, because of the manner in which he expressed his agency in appending his signature to the instrument declaring the ratification, a court of equity will look beyond the form of the execution, and, having ascertained his intention in signing the instrument, will, if possible, give it the effect intended, if such ratification has been acted upon by others, and has not been objected to by the principal, when called to his attention. *Stark v. Starr*, 477.
2. The subsequent action of the principal in asserting a right in severalty to property, which he could only do upon his approval of such ratification by his attorney, will estop him from denying the ratification. *Id.*

PRACTICE. See *Appeal*, 5; *Contracts*, 5; *Court of Claims*, 2, 3; *Letters-Patent*, 14; *Writ of Error*.

1. An objection of the defendant, that the evidence admitted in the court below tended to prove that he was not solely liable to the plaintiff for one of the items of the account sued upon, cannot be made for the first time in this court. *Wheeler v. Sedgwick*, 1.
2. Where the questions of title involved in a suit do not arise under the Constitution or the laws of the United States, or a treaty made under its authority, and the parties are citizens of the State where the suit was brought, the Circuit Court does not err in remanding it to the State court from which it was removed. *Hoadley v. San Francisco*, 4.
3. Alleged errors, not presented by a bill of exceptions, nor otherwise apparent on the face of the record, are not the proper subjects of re-examination by an appellate tribunal. *Storm v. United States*, 76.
4. Questions propounded to a witness, on his cross-examination, merely

PRACTICE (*continued*).

- to ascertain the names of persons whom a party may desire to call as witnesses to disprove the case of the opposite party, may be excluded; and it is within the discretion of the presiding judge to determine, in view of the evidence previously introduced, and of the nature of the testimony given by the witness in his examination-in-chief, to what extent a cross-examination, with a view to affect his credibility, shall be allowed. *Id.*
5. This court will refuse to hear a criminal case, unless the convicted party suing out the writ of error is where he can be made to respond to any judgment which may be rendered here. *Smith v. United States*, 97.
 6. Under the twenty-third rule, in relation to damages, where a writ of error was sued out merely for delay, more than ten per cent upon the amount of the judgment cannot be awarded, but the court may give less. *West Wisconsin Railway Co. v. Foley*, 100.
 7. Being satisfied that this case is one to which that rule should be applied, the court, affirming the judgment below for \$26,333, with costs, awards, in addition to interest, \$500 damages. *Id.*
 8. Where a party sued out a writ of error, and obtained the allowance of an appeal, and duly filed a transcript of the record here, the court will not, on motion, dismiss the cause; but, when it comes on to be heard, will determine whether it is properly here by appeal or by writ of error, and proceed accordingly. *Hurst v. Hollingsworth*, 111.
 9. An appeal, although allowed out of term, is not avoided by the non-service of a citation; but this court will impose such terms upon the appellant as, under the circumstances, may be legal and proper. *Dayton v. Lash*, 112.
 10. The question that the statute of Wisconsin violates the obligation of the consolidated company, under the land grant to the Wisconsin and Superior Railroad Company, to keep the part of its road which formerly belonged to the latter company open as a public highway for the use of the government of the United States, free from toll, &c., can only be raised in a suit between the first company and the United States. *Peik v. Chicago & North-Western Railway Co.*, 164.
 11. The finding of facts by the Court of Claims, in the nature of a special verdict, is conclusive here, unless impeached for some error in law appearing in the record. *United States v. Smith*, 214.
 12. That court, in estimating damages, must be governed by the proofs submitted; but it is not required to set forth the elements of the calculation by which it arrives at its final result. *Id.*
 13. That court may, however, be asked by either party to state whether a particular item of charge or of damage is included in its finding, and, if so, to what amount. *Id.*
 14. Where, by reason of the failure of the appellant to enter into an undertaking to the clerk for the payment of his fees, or otherwise satisfy

PRACTICE (*continued*).

- him in that behalf, the appeal has, upon motion of the appellee, been docketed and dismissed, the court will not, on motion of the appellant, at a subsequent term, set aside the order of dismissal, and grant leave to file the record and docket the cause. *Selma & Meridian Railroad Co. v. Louisiana National Bank of New Orleans*, 253.
15. The Court of Claims, by granting a new trial after rendering judgment, and while an appeal therefrom is pending here, vacates the judgment, and resumes control of the case and the parties. *United States v. Young*, 258.
 16. In such a case, a writ of *certiorari* will not be granted to compel that court to send here the proceedings subsequent to the appeal; but the appeal will be dismissed. *Id.*
 17. After judgment shall have been finally rendered by the Court of Claims, the proceedings in which the new trial was obtained may be brought here by appeal for review. *Id.*
 18. Any State may, by its Constitution and laws, prescribe what shall be conclusive evidence of its statutes; but, on general principles, the question as to the existence or non-existence of a statute is a judicial one, and, though framed in form as an issue in fact, must, when it arises in the courts of the United States, be decided by them, on evidence legally applicable under the laws of the State, without taking the advice of a jury on the subject. *Town of South Ottawa v. Perkins*, 260.
 19. Stipulations between counsel, relative to the course of proceeding in a cause pending in this court, cannot be withdrawn by either party without the consent of the other, except by leave of the court upon cause shown. *Muller v. Dows*, 277.
 20. A court is not required to submit evidence to the jury, unless it be of such a character as would warrant a verdict for the party producing it, and upon whom the burden of proof is imposed. *Commissioners of Marion County v. Clark*, 278.
 21. This court cannot, by *mandamus*, compel an inferior court to reverse a decision made by it in the exercise of its legitimate jurisdiction. *Ex parte Flippin*, 348.
 22. *McCargo v. Chapman*, 20 How. 555, so far as it conflicts with this doctrine, disapproved. *Id.*
 23. A bill of exceptions cannot be taken on the trial of a feigned issue directed by a court of equity, or, if taken, can only be used on a motion for a new trial made to that court. *Johnson v. Harmon*, 371.
 24. As the verdict may or may not have been the ground for the decree, an appeal from the latter cannot be made to turn on the judge's rulings at the trial of the feigned issue, but must be decided upon the whole case, pleadings, evidence, and verdict, giving to the latter as much effect as it is worth. *Id.*
 25. Where a question put to a witness is in itself unobjectionable, but

PRACTICE (*continued*).

- the answer goes beyond what is called for, and is improper or incompetent testimony, an objection to the question will not extend to the answer. Special objection must be taken in such case to the answer. *So held*, where a witness was asked whether he could form a judgment of the quantity of timber which had been on certain pine-timber lands from the stumps that remained, and he stated in his answer what, in his judgment, the quantity was. *Gould v. Day*, 405.
26. This court will not by *mandamus* compel an inferior court to grant a motion to vacate an order setting aside a judgment of nonsuit. *Ex parte Loring*, 418.
 27. This court, where it manifestly has no jurisdiction over the matter in controversy, will entertain a motion to dismiss the writ of error before the return-day thereof. *Clark v. Hancock*, 493.
 28. The rule of equity practice, that when a defendant's answer under oath expressly negatives the allegations of the bill, and the testimony of one person only affirms them, the court will not decree in favor of the complainant, does not extend to so much of the answer as is not directly responsive to the bill. *Seitz v. Mitchell*, 580.
 29. A party who does not appeal from the final decree of a circuit court cannot be heard in opposition thereto, when the case is properly brought here by the appeal of the adverse party. *The "Stephen Morgan,"* 599.
 30. Where a party prosecutes a suit as a representative creditor, and the other creditors, until notice to the contrary, have the right to rely upon him to protect their interest in the subject-matter of the litigation, a notice by the appellees of a motion to dismiss an appeal pending in this court, where he is the appellant, served upon counsel representing him and the other creditors, is insufficient and irregular, if it does not specify the time when such motion will be made, although he may have entered into a stipulation with the appellees consenting to a dismissal of the appeal on their paying the costs. *Glenny v. Langdon*, 604.
 31. Counsel cannot, in requests to the court below, assume the existence of facts, and ask a charge to the jury based upon such assumption; nor, upon argument here, insist that, because the assumption was made, this court is to consider the assumed facts as existing. *New Jersey Mutual Life Insurance Co. v. Baker*, 610.
 32. Where an appeal has been duly taken, the *supersedeas* which follows from a compliance by the appellant with the act of Congress in that behalf operates to stay the execution of the decree. *Goddard v. Ordway*, 672.
 33. Where the subject-matter of litigation is the funds in the possession of a receiver, the court below may, notwithstanding the *supersedeas*, give him the requisite orders for their preservation; but it cannot place them beyond the control of a decree that may be made here. *Id.*

PRACTICE (*continued*).

34. Should that court, by mistake or otherwise, proceed to carry its decree into effect, its action may be restrained by the appropriate writ from this court. *Id.*
35. An objection that leave was not given to file the bill of foreclosure, — the mortgaged premises being at the time in the possession of a receiver appointed in a former suit in the same court, — if, under any circumstances, available, will not be sustained, if made a year and a half after the bill was filed, and when the party objecting had in the mean time appeared, answered it, and cross-examined the witnesses of the complainant. *Jerome v. McCarter*, 734.
36. In chancery suits, adverse rights as between co-defendants may be determined; and a party who had a hearing and an opportunity to assert his rights will be bound by the decree, so far as it affects them. *Corcoran v. Chesapeake & Ohio Canal Co.*, 741.
37. Where the judgment of the highest court of a State is here for re-examination, the Federal question, which, it is claimed, arises in the record, will be considered here as it comes from that court. Where, therefore, the point there arising was whether the evidence in the record sustained a finding of fact upon which the judgment of an inferior court had been entered, and the appellate court was permitted by its rules to set aside the judgment as against the weight of evidence only where there was no evidence to support it, or such an absence of evidence that it might be presumed to have been given through the influence of prejudice, passion, or favor, this court will not, upon a question of preponderance of testimony alone, reverse the judgment of the latter court. *So held*, where the question below was, whether a party, when he purchased property, had reasonable cause to believe that his vendor was insolvent, and was making the sale in fraud of the bankrupt law. *Melendy v. Rice*, 796.

PRESCRIPTION.

1. Although, in Louisiana, informalities which occur in a sheriff's proceedings under execution may, if taken advantage of in due time, be good ground for annulling a sale made by him, yet, if he, being thereunto authorized, sells the land, and executes a deed therefor, to a *bona fide* purchaser, the latter, in an action against him to recover the land, commenced after five years from the time he entered into possession, can set up the statutory prescription. *Pike v. Evans*, 6.
2. The failure of the sheriff to actually seize the property is cured by the possession of such a purchaser for five years. *Id.*
3. Under the laws of Louisiana, a deed of property from a person having authority to sell is regarded as a just title for the purpose of prescription. *Id.*

PRESUMPTION. See *Deed; Jurisdiction*, 6; *Negotiable Instruments*, 11; *Mechanics' Liens*, 2; *Husband and Wife*, 1.

PRIOR USE. See *Letters-Patent*, 1.

PRIVATE PROPERTY, DEPRIVATION OF. See *Constitutional Law*, 1.

PRIVILEGED COMMUNICATIONS. See *Evidence*, 1.

PRIVITY. See *Estoppel*, 13; *Equity*, 10.

PROPERTY, REGULATION OF, WHEN THE PUBLIC HAS AN INTEREST IN ITS USE.

1. Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens towards each other, and, when necessary for the public good, the manner in which each shall use his own property. *Munn v. Illinois*, 113.
2. It has, in the exercise of these powers, been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, &c., and, in so doing, to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. *Id.*
3. When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use. He may withdraw his grant by discontinuing the use. *Id.*
4. The limitation by legislative enactment of the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one. *Id.*
5. Where property has been clothed with a public interest, the legislature may fix a limit to that which shall in law be reasonable for its use. *Peik v. Chicago & North-Western Railway Co.*, 164.

PUBLIC POLICY. See *Bankruptcy*, 2.

RAILROAD COMPANIES, LEGISLATIVE CONTROL OF THEIR RATES OF FARE AND FREIGHT.

1. Railroad companies are carriers for hire. Engaged in a public employment affecting the public interest, they are, unless protected by their charters, subject to legislative control as to their rates of fare and freight. *Chicago, Burlington, & Quincy Railroad Co. v. Iowa*, 155.
2. The Burlington and Missouri River Railroad Company has, within the scope of the authority conferred by its charter, and subject to the limitations thereby imposed, the power of a natural person to make contracts in reference to its business. Like such person, it, or its assignee, the plaintiff in error, is, under the same circumstances, subject at all times to such laws as the general assembly of the State may from time to time enact. *Id.*
3. A power of government which actually exists is not lost by non-user. The fact, therefore, that the power of regulating the maximum rates

RAILROAD COMPANIES, LEGISLATIVE CONTROL OF THEIR RATES OF FARE AND FREIGHT (*continued*).

of fare and freight was not exercised for more than twenty years after the incorporation of that company is unimportant. Nor does it affect the case, that, before the power was exercised, the company had pledged its income as security for the payment of debts incurred, and had leased its road to a tenant that relied upon the earnings for the means of paying the stipulated rent. It could neither grant nor pledge more than it had, and its pledgee or tenant took the property subject to the exercise by the State of the same powers of regulation which might have been exercised over the company itself. *Id.*

REAL PROPERTY, POWER OF THE STATES TO REGULATE THE TENURE OF, AND THE MODE OF TRANSFERRING IT. See *Constitutional Law*, 9.

REASONABLE COMPENSATION. See *Common Carrier*, 1, 2; *Constitutional Law*, 5, 6; *Property, Regulation of, when the Public has an Interest in its Use*, 1-5.

RECEIVER. See *Appeal*, 4; *Practice*, 33.

REDEMPTION OF PROPERTY SOLD FOR TAXES. See *Sale for Taxes*.

REMOVAL OF CAUSES FROM STATE COURTS. See *Jurisdiction*, 2; *Practice*, 2.

A suit pending in an appellate State court, after it has been prosecuted to final judgment in a court of original jurisdiction, cannot be removed to the Circuit Court of the United States. *Lowe v. Williams*, 650.

REVISED STATUTES OF THE UNITED STATES.

The following section referred to and explained:—

Sect. 1007. See *Supersedeas*.

REVISED STATUTES RELATING TO THE DISTRICT OF COLUMBIA. See *Husband and Wife*, 2.

RIGHTS OF PROPERTY, AND TO A COMPENSATION FOR ITS USE.

Rights of property, and to a reasonable compensation for its use, created by the common law, cannot be taken away without due process; but the law itself, as a rule of conduct, may, unless constitutional limitations forbid, be changed at the will of the legislature. The great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. *Munn v. Illinois*, 113.

RIPARIAN PROPRIETORS.

1. In Iowa, it is held, conformably to the true rule on that subject, that the bed of the Mississippi River and its banks to high-water mark

RIPARIAN PROPRIETORS (*continued*).

belong to the State, and that the title of the riparian proprietor extends only to that line. *Barney v. Keokuk*, 324.

2. This rule applies as well where the land was granted to bound upon the river generally (as in the case of the Half-breed Sac and Fox reservation), as where it was granted according to surveys run along the bank by a meandering line. Hence it applies in the city of Keokuk, which is on that reservation. *Id.*
3. The public authorities, therefore, have the right, in Iowa, to build wharves and levees on the bank of the Mississippi below high water, and make other improvements thereon, necessary to navigation, or public passage by railways or otherwise, without the consent of the adjacent proprietor, and without making him compensation. *Id.*

SALE FOR TAXES. See *Taxation*.

Certain lands in Michigan, sold for taxes, were, for want of other purchasers, bid in by the State. Before the sale became absolute, the owner of the property, having a complete title thereto at the time the sale was made, purchased the State bids. *Held*, 1. That a redemption of the property from the sale was practically effected by the purchase. 2. That the ownership of the State's lien and of the title to the lands being thus united in the same person, the lien was merged in the title. 3. That tax-deeds, subsequently executed to the owner by the State, were only evidence that the taxes were satisfied, the lien of the State discharged, and the estate restored from the sale: they transferred no new title to the grantee. *Gould v. Day*, 405.

SPECIFIC PERFORMANCE. See *Equity*, 1.

STATUTE OF LIMITATIONS. See *Ejectment*, 2-4; *Equity*, 10; *Presumption*, 1-3.

STATUTES.

The great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. *Munn v. Illinois*, 113.

STATUTES OF THE UNITED STATES. See *Revised Statutes of the United States*.

The following, among others, referred to, commented on, and explained:—

- 1825. March 3. See *Taxation*, 1.
- 1850. Sept. 27. See *Equity*, 1.
- 1862. July 17. See *Confiscation*.
- 1865. Feb. 16. See *Confiscation*.
- 1864. June 30. See *Internal Revenue*, 2.
- 1865. March 3. See *Ejectment*, 4.
- 1866. May 9. See *Court of Claims*, 2.
- 1866. July 13. See *Distilled Spirits*.

STATUTES OF THE UNITED STATES (*continued*).

1866. July 13. See *Internal Revenue*, 2.
 1867. Feb. 22. See *Landlord and Tenant*, 6.
 1868. June 25. See *Eight-Hour Law*, 1.
 1869. March 3. See *Officers of the Army*, 1.
 1870. April 15. See *Chorpenning Claim*.
 1870. June 1. See *Ejectment*, 1.
 1871. March 3. See *Chorpenning Claim*.
 1872. June 1. See *Centennial Board of Finance*.
 1875. Feb. 18. See *Supersedeas*.
 1875. March 3. See *Jurisdiction*, 1.
 1876. Feb. 16. See *Centennial Board of Finance*.

STATUTORY LIEN.

A statutory lien attaching to personal chattels, although no possession of them be delivered, has the same operation and efficacy as existed at common law, where the possession accompanied and followed the deed creating the lien. *Beall v. White*, 382.

STIPULATIONS BETWEEN COUNSEL. See *Practice*, 18.

STREETS. See *Iowa*, 1.

There is no substantial difference between streets in which the legal title is in private individuals and those in which it is in the public, as to the rights of the public therein. *Barney v. Keokuk*, 324.

SUCCESSION TAX. See *Internal Revenue*, 1.

SUPERSEDEAS. See *Practice*, 32, 33.

Sect. 1007 of the Revised Statutes, which, as amended by the act of Feb. 18, 1875 (18 Stat. part 3, p. 316), provides that, where a writ of error may operate as a *supersedeas*, execution shall not issue until the expiration of ten days after the rendition of the judgment, has reference only to the judgments of the courts of the United States. *Doyle v. Wisconsin*, 50.

SUPREME COURT OF THE DISTRICT OF COLUMBIA. See *Letters-Patent*, 21.

SURETY.

A surety, who holds several securities by way of indemnity, may resort to either of them for payment. *Muller v. Dows*, 444.

SURRENDER OF AN ESTATE. See *Landlord and Tenant*, 7, 8.

SURVEY OF HATCHES OF SEA-GOING VESSELS. See *Commerce*, 2.

TAXATION. See *Franchises, Forfeiture of; Mineral Lands*, 1-3; *National Banks*, 1, 2; *Sale for Taxes*.

1. The canal and other works of the Chesapeake and Ohio Canal Company, situate in the District of Columbia, having, by an act of

TAXATION (*continued*).

- Congress of March 3, 1825 (4 Stat. 101), been exempted from taxation, a sale in 1864 of any part thereof, on account of taxes alleged to be due thereon, was void. *Mackall v. Chesapeake & Ohio Canal Co.*, 308.
2. A corporation whose business is confined to the investment of its capital in bonds secured by mortgage on real estate, and to the negotiation, sale, and guaranty of them, is not a bank or a banker within the meaning of sect. 3407 of the Revised Statutes, and is not liable to be taxed as such. *Selden v. Equitable Trust Co.*, 419.
 3. The charter of the Chesapeake and Ohio Railroad Company does not exempt from taxation that portion of the road of the company between Richmond and Covington. *Chesapeake & Ohio Railroad Co. v. Virginia*, 718.
 4. A railroad corporation, formed, under an act of the legislature of Virginia, by the consolidation of existing companies, and "vested with all the rights, privileges, franchises, and property which may have been vested in either company prior to the act of consolidation," acquires no greater immunity from taxation than they severally enjoyed as to the portions of the road which belonged to them under their respective charters. Whatever property was subject to taxation would, after the consolidation, remain so. *Id.*

TIDE-WATERS. See *Commerce*, 3-7; *Constitutional Law*, 12; *Fisheries*.

TIME, COMPUTATION OF. See *Bankruptcy*, 4.

TONNAGE, DUTY OF. See *Commerce*, 1.

TRIAL BY JURY. See *Jurisdiction*, 3.

TRUSTS.

1. A trust, created in order to give a married woman the separate and exclusive use of land, free from the control of her husband, will be sustained; by converting it into a legal estate, its purpose would be defeated, as, by virtue of his marital rights, the land would be placed under his control. *So held*, in regard to the effect of certain conveyances of land in New York, set out in the opinion of the court, which were executed in 1827 and 1828 to Michael Werckmeister by Stephen Jumel, upon certain trusts which limited a life-estate to the separate use of Eliza Brown Jumel, his wife, with a general power of appointment during her lifetime, and, on failure to make such appointment, to her heirs in fee-simple. *Bowen v. Chase*, 812.
2. After the date of those conveyances, the said Eliza, by deed, bearing date Nov. 21, 1828, duly executed, as required by the trust, made an appointment of the land, in the following words, to wit: "Now I, the said Eliza Brown Jumel, do hereby direct, order, limit, and appoint that, immediately after my demise, the said Michael Werck-

TRUSTS (*continued*).

meister, or his heirs, convey all and singular the said above-described premises to such person or persons, and to such uses and purposes, as I, the said Eliza Brown Jumel, shall, by my last will and testament, under my hand, and executed in the presence of two or more witnesses, designate and appoint, and, for want thereof, then that he convey the same to my husband, Stephen Jumel, in case he be living, for and during his natural life, subject to an annuity, to be charged thereon, during his said natural life, of six hundred dollars, payable to Mary Jumel Bownes, and, after the death of my said husband, or in case he shall not survive me, then, immediately after my own death, to her, the said Mary Jumel Bownes and her heirs in fee." *Held*, that, after the termination of said Eliza's separate interest for life, the appointment limited the equitable estate in the land, and vested in said Stephen and Mary immediate interests, although they did not take effect in possession until the death of said Eliza, and were subject to be defeated by the exercise of her reserved power of disposing of the land by her last will and testament. *Id.*

3. The effect of the chapter of the Revised Statutes of New York, touching uses and trusts (1 Rev. Stat. 727), which went into operation Jan. 1, 1830, upon the estates created by the trust and appointment, considered; but, in the view taken by the court of this case, it is not material whether they were, by the statute, turned into legal estates, or remained, as they were originally, merely equitable in their nature. *Id.*
4. The appointment in favor of said Mary was a voluntary one; and as said Eliza had a power to lease and a power to convey, assure, and dispose, which latter power manifestly includes a power to sell, not only by the terms used, but, in this trust, by the direction as to the disposition of the purchase-money "in case of an absolute sale," sales of the land to actual purchasers for a valuable consideration were effectual, and superseded the prior appointment in favor of said Mary. It was not necessary to their validity that said Eliza, in making that appointment, should have expressly reserved a power of revocation. *Id.*
5. Where the subsequent appointments were voluntary, or intended merely as means of restoring the property to its original trusts, or of revesting it absolutely in said Eliza, the interest of said Mary, whether it be regarded as a legal or an equitable estate, would not be thereby displaced. *Id.*
6. Certain appointments, subsequent to that in favor of said Mary made by said Eliza, who survived her husband and died intestate in 1865, declared to be voluntary and for the purpose of revesting the title in said Eliza. Bowen, claiming to be her sole heir-at-law, has brought sundry actions of ejectment to recover the land. Said Mary died intestate in 1843. The appellees are in possession of the land, and

TRUSTS (*continued*).

claim, as her heirs-at-law, under the appointment in her favor. *Held*, that they are entitled to relief in a court of equity. If their estate is to be regarded as still an equitable one, their right to such relief is undoubted, no matter where, or in whom, the legal estate may be. If, by virtue of the statute, their equitable estate was converted into a legal estate, they have good cause to come into that court for the purpose of removing the cloud upon their title created by the subsequent voluntary appointments and conveyances. *Id.*

UNITED STATES, DEVISE TO. See *Devise*.

UNITED STATES, PRIORITY OF, TO PAYMENT. See *Centennial Board of Finance*.

VERDICT. See *Practice*, 23, 25.

VERMONT. See *National Banks*, 4.

VIRGINIA. See *Constitutional Law*, 12; *Taxation*, 4.

WAGER POLICY. See *Life Insurance*, 2-4.

WAIVER. See *Landlord and Tenant*, 5.

The court holds that there was no waiver by the Chicago, Rock Island, and Pacific Railroad Company of its right to foreclose the mortgage, executed by the Chicago and South-western Railroad Company upon its road and franchises. *Muller v. Dows*, 444.

WAREHOUSES. See *Constitutional Law*, 4.

Where warehouses for storing grain are situated and their business is carried on exclusively within a State, she may, as a matter of domestic concern, prescribe regulations for them, notwithstanding they are used as instruments by those engaged in inter-state, as well as in State, commerce; and, until Congress acts in reference to their inter-state relations, such regulations can be enforced, even though they may indirectly operate upon commerce beyond her immediate jurisdiction. *Munn v. Illinois*, 113.

WARRANTY. See *Contracts*, 1, 2.

WASTE. See *Landlord and Tenant*, 1, 3.

WINONA AND ST. PETER RAILROAD COMPANY. See *Constitutional Law*, 8.

WISCONSIN. See *Common Carrier*, 1; *Constitutional Law*, 6, 7, 15; *Corporations*, 2; *Judicial Comity*, 2, 3.

WITNESS. See *Negotiable Instrument*, 7.

WRIT OF ERROR. See *Practice*, 27.

A., having a decree against the city of Memphis for the payment of money, obtained, by judgment rendered March 30, 1875, a *mandamus*, directing her, for the payment of the decree, to levy a tax upon

WRIT OF ERROR (*continued*).

all the taxable property of the city. She thereupon passed an ordinance levying a special tax of fifty-four cents "on the \$100 worth of property." Under the laws of the State, taxable real and personal property, other than merchants' capital, is embraced in one tax-list, and merchants' capital in another. A., finding that such capital was not subjected to the special tax, although it was to that levied for all other purposes, and that the required sum would not be raised, moved for a further peremptory *mandamus*, requiring such capital, as it was assessed for other purposes in the year 1875, to be included in the property to be taxed for his benefit. Such *mandamus* was directed by judgment March 2, 1876. On the 20th of the following May, the city moved to set aside the latter judgment; but the court refused to grant the motion, and re-entered, on that day, the judgment as the final judgment in the premises. Thereupon the city, within due time, sued out a writ of error, and gave the necessary bond. *Held*, 1. That the court had the right to set aside the judgment of March 2, during the term at which it was rendered, and to re-enter it as of the date when the motion to set it aside was made. 2. That the writ of error was properly sued out on the re-entered judgment, and is a *supersedeas*. *Memphis v. Brown*, 715.







