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Two schooners were sailing down the Delaware River, when a steamer proceeding in the same direction, at the rate of eight or nine miles an hour, was, in daytime, approaching near enough to them to render it necessary to make calculations to keep out of their way. They were in parallel courses, not far apart, beating upon their starboard tack, and nearing the Jersey bank. Instead of going outside of them, she, without seasonably slackening her speed, attempted to pass between them, and came into collision with and sunk the one nearer the bank, as the latter, having run her starboard tack and come about on her port tack, tacked again before she was under full headway to avoid colliding with the other schooner, which was still properly on her starboard tack. *Held*, that the steamer was liable. *The "Abbotsford,"* 440.

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APPOINTMENT, POWER OF.

1. The court adheres to its ruling in *Bowen v. Chase* (94 U. S. 812), touching the title to certain lands whereof Stephen Jumel was sometime the owner, which were conveyed upon certain trusts to the separate use of Eliza Brown Jumel, his wife, with a general power of appointment during her lifetime, and of the several appointments made thereunder to Mary Jumel Bownes by said Eliza, who survived her husband, which ruling declares that the title to the prop-

APPOINTMENT, POWER OF (*continued*).

erty situate in New York City passed on her death to said Mary in fee, except a tract of sixty-five acres on Harlem Heights, in regard to which no opinion was expressed. *Bowen v. Chase*, 254.

2. An appointment under a power is an intent to appoint carried out, and, if made by the last will and testament of the donee of the power, the intent, although not expressly declared, may be determined by the gifts and directions made, and if their purpose be to execute the power, the instrument must be regarded as an execution. *Blake v. Hawkins*, 315.
3. A., who had a power to appoint a fund in the hands of B., made her will, wherein she declared her intention thereby to execute all powers vested in her, particularly those created in her favor by certain deeds executed in 1839, whereby she became entitled to appoint that fund. Following this declaration were various gifts of pecuniary legacies for charitable purposes, amounting to \$28,500, and also provisions for the payment of certain annuities. Special disposition and appropriation were made of her personal property, which consisted of household furniture, carriage and horses, a growing crop upon a farm, a small sum of cash in hand, some petty debts due her, and about sixty slaves, the latter constituting nearly nine-tenths of the value of the whole. Certain real estate was also to be sold, and the proceeds applied to a specific purpose. The will declared that if it should appear at her decease that the bequests exceeded the amount of funds left, the first five only (those to charities) should be curtailed until brought within the assets. The fund in the hands of B. was not more than sufficient to pay the legacies. *Held*, 1. That it was the intention of the testatrix that the legacies to charitable purposes and to pay annuities should be paid, but not from the proceeds of the personal property which she owned in her own right, and specifically appropriated. 2. That the will was an execution of the power, and it appointed the whole fund to her executors. *Id.*
4. The "deed of explanation" (*supra*, p. 317) executed in 1845 was effectual, and its operation was to reduce the annuity charged upon the lands in the deed of 1839 proportionately as A. reduced the fund charged by her appointments or outlays, so as to make the annuity in each and every year equal to six per cent interest on so much of said fund as remained unappropriated or unexpended by her in each and every year respectively. *Id.*

APPRAISEMENT. See *Lands, Condemnation and Appropriation thereof for Public Uses*, 3-5.

APPROPRIATIONS BY CONGRESS. See *Lease*.

ARKANSAS. See *Taxation*, 8.

ARREARS OF PAY AND BOUNTY. See *Criminal Law*. 3.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy; Jurisdiction*, 3; *Limitations, Statute of*, 2.

1. It is only through the instrumentality of his assignees that creditors can recover, and subject to the payment of their claims, the property which the bankrupt fraudulently transferred prior to the adjudication in bankruptcy, or which he conceals from, and fails to surrender to, his assignees. *Glenny v. Langdon*, 20.
2. Assignees of the bankrupt are subject to the control and direction of the proper court, and it may, for good cause shown, compel them to take the requisite steps for the full and complete protection of the rights of his creditors. *Id.*

ASSIGNMENT. See *Claims against the United States; Letters-patent*, 17.

ATTORNEY-GENERAL, SUIT BY, IN THE NAME OF THE UNITED STATES. See *Constitutional Law*, 5-7; *Practice*, 1; *Union Pacific Railroad Company*, 1, 9.

BANKRUPTCY. See *Assignee in Bankruptcy; Process*, 1, 2; *Jurisdiction*, 3, 5, 8, 9.

A., in due course of legal proceedings, recovered, March 14, judgment against B., a merchant who, the preceding day, had made an assignment of all his property for the benefit of his creditors. An execution was forthwith sued out upon the judgment, and levied upon certain goods, part of the property so assigned. On the petition of a creditor, filed March 31, alleging that B. had committed acts of bankruptcy by fraudulently suspending and not thereafter resuming payment of his commercial paper due January 1, and by making said assignment, B. was by the proper court adjudged to be a bankrupt, and his estate conveyed in the usual form by the register to the assignee in bankruptcy, who filed his bill against A. to determine the title to the proceeds of the sale of the goods, which by consent had been made without prejudice to the rights, if any, of A. by the levy of the execution. Upon the hearing it appeared by the proofs that the assignment by B. was made in good faith to secure the distribution of his property among all his creditors. *Held*, that A. acquired no priority by the levy, and that the assignee in bankruptcy is entitled to the proceeds. *Reed v. McIntyre*, 507.

BIGAMY. See *Constitutional Law*, 1; *Indictment*.

BILL OF EXCEPTIONS. See *Practice*, 4.

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *National Bank*.

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CHALLENGE. See *Juror*, *Challenge of*.

CLAIMS AGAINST THE UNITED STATES.

1. Where a claim against the United States was allowed by the proper officers of the treasury, and a part thereof paid to the assignees of the claimant, upon his receipt for the whole sum, the United States, when sued by them for the balance, cannot, on the ground that the assignment was not executed in the manner prescribed by law, set up as a counter-claim the amount so paid. *McKnight v. United States*, 179.
2. The United States, by paying a part of the claim to the assignees, did not waive its right to withhold from them the residue. *Id.*
3. A., in whose favor the allowance was made, being then indebted as surety on an official bond given to the United States, the amount of such indebtedness was properly retained by the Treasury Department as a set-off to await the final adjustment and settlement of the accounts of his principal. *Held*, that the Court of Claims was bound to adjudge accordingly. *Id.*

COLLATERAL SECURITY. See *Evidence*, 3; *Taxation*, 5.

COMMISSIONER OF PATENTS. See *Letters-patent*, 15.

CONSTITUTIONAL LAW. See *Criminal Law*, 1; *Direct Tax*, 3; *Guardian*, *Embezzlement of Pension-money by*.

1. Sect. 5352 of the Revised Statutes, which declares bigamy committed in the Territories a crime against the United States, and prescribes its punishment, is in all respects constitutional and valid. *Reynolds v. United States*, 145.
2. The scope and meaning of the first article of the amendments to the Constitution discussed. *Id.*
3. A provision of the statutory code of Georgia which took effect Jan. 1, 1863, enacts that private corporations are subject to be changed, modified, or destroyed, at the will of the creator, except so far as the law forbids it, and that in all cases of private charters thereafter granted the State reserves the right to withdraw the franchise, unless such right is expressly negatived in the charter. Two railroad companies created prior to that date, each of which enjoyed by its charter a limited exemption from taxation, were consolidated by virtue of an act of the legislature passed April 18, 1863, which authorized a consolidation of their stocks, conferred upon the consolidated company full corporate powers, and continued to it the franchises, privileges, and immunities which the companies had held by their original charters. *Held*, 1. That by the consolidation the original companies were dissolved and a new corporation was created, which became subject to that provision of the code. 2. That a subsequent legislative act, taxing the property of such new corporation as other property in the State is taxed, was not prohibited by that

CONSTITUTIONAL LAW (*continued*).

provision of the Constitution of the United States which declares that no State shall pass a law impairing the obligation of contracts. *Railroad Company v. Georgia*, 359.

4. The judgment of the highest court of a State, that a statute has been enacted in accordance with the requirements of the State Constitution, is conclusive upon this court, and it will not be reviewed. *Id.*
5. The act of March 3, 1873 (17 Stat. 509), is a valid and constitutional exercise of legislative power. Congress, by requiring the Attorney-General to bring a suit in equity in the name of the United States in any circuit court against the Union Pacific Railroad Company and others, intended, not to change the substantial rights of the parties to the suit, but to provide a specific mode of procedure, which, by removing certain restrictions on the jurisdiction, process, and pleading which are in other cases imposed, would give a larger scope to the action of the court, and a more economical and efficient remedy than before existed. *United States v. Union Pacific Railroad Co.*, 569.
6. The provisions authorizing process to be served without the limits of the district where the suit might be brought, and parties and subjects of controversy to be united which, in an ordinary chancery suit, would render a bill multifarious, are regulations of practice and procedure which are subject to legislative control. *Id.*
7. Statutes have been frequently passed directing suits for specific objects to be brought by an attorney-general, and regulating the proceedings in them, such as a *quo warranto*, or a bill in equity against a corporation to test its right to the exercise of its franchises, or to declare them forfeited, or, if insolvent, to wind up its business and distribute its assets; and the validity of such statutes has uniformly been recognized. *Id.*

CONTINGENT INTEREST. See *Insurance*, 3.

CONTRACTS. See *Lease*; *Post-nuptial Contract*; *Union Pacific Railroad Company*, 6, 7.

CORPORATION. See *Constitutional Law*, 3, 7; *Privity*; *Union Pacific Railroad Company*, 9.

COUNSEL FEES.

In an action for malicious prosecution, the jury, if they find for the plaintiff, cannot, in estimating his damages, consider the fees of counsel in prosecuting the suit. *Stewart v. Sonneborn*, 187.

COUNTER-CLAIM. See *Claims against the United States*, 1; *National Bank*, 1.

COURT AND JURY. See *Criminal Law*, 2; *Malicious Prosecution*, 3-5.

1. Upon the trial of A. for bigamy in Utah, upon an indictment found under sect. 5352 of the Revised Statutes, the court told the jury "to

COURT AND JURY (*continued*).

consider what are to be the consequences to the innocent victims of this delusion [the doctrine of polygamy]. As this contest goes on they multiply, and there are pure-minded women and there are innocent children, — innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land." *Held*, that the charge was not improper. *Reynolds v. United States*, 145.

2. After the evidence in an action of ejectment had been closed, counsel on both sides agreed that as to the title of A., under whom the defendants claimed, there was no conflict of testimony, and that it was a matter for the court to determine. The court thereupon directed the jury to find specially that B., under whom the plaintiff claimed "at the time of her death, had no estate or interest in the lands claimed which was descendible to her heirs." *Held*, that if the parties meant that the court should determine whether, as a matter of fact, she had or had not such estate or interest, the direction was in the nature of a finding made at their request, which this court cannot review; that if the title was to be determined as a matter of law, they must have intended that the declarations of C. of whom B. was the widow, and which had been put in evidence, that the lands had all been sold from him under a power of attorney, — he being the former owner thereof, — were to be received as true, and, if so, the direction was proper. *Bowen v. Chase*, 254.

COURT OF CLAIMS. See *Claims against the United States*, 3.

COURTS OF THE UNITED STATES, JUDICIAL NOTICE BY.

Where countries have been acquired by the United States, its courts take judicial notice of the laws which prevailed there up to the time of such acquisition. Such laws are not foreign, but those of an antecedent government. *United States v. Perot*, 428.

COVENANTS OF TITLE. See *Purchase-money, Suit to enforce Lien for Payment thereof*, 3.

CREDITORS. See *Assignee in Bankruptcy*.

CRIMINAL LAW. See *Constitutional Law*, 1; *Guardian, Embezzlement of Pension-money by*.

1. Although the Constitution declares that in all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him, yet if they are absent by his procurement, or when enough has been proved to cast upon him the burden of showing, and he, having full opportunity therefor, fails to show, that he has not been instrumental in concealing them or in keeping them away, he is in no condition to assert that his constitutional right has been violated by allowing competent evidence of the testimony which they gave on a previous trial between the United States and him

CRIMINAL LAW (*continued*).

upon the same issue. Such evidence is admissible. *Reynolds v. United States*, 145.

2. A party's religious belief cannot be accepted as a justification for his committing an overt act, made criminal by the law of the land. Where, therefore, the prisoner, knowing that his wife was living, married again in Utah, and, when indicted and tried therefor, set up that the church whereto he belonged enjoined upon its male members to practise polygamy, and that he, with the sanction of the recognized authorities of the church, and by a ceremony performed pursuant to its doctrines, did marry again, — *Held*, that the court properly refused to charge that he was entitled to an acquittal, although they should find that he had contracted such second marriage pursuant to, and in conformity with, what he believed at the time to be a religious duty. *Id.*
3. An indictment against A., found Sept. 11, 1875, charged that in March, 1868, he, as agent and attorney of B. and C., did withhold, and continued thereafter to withhold from them, certain money which he, as their agent and attorney, had received from the United States by the collection of their respective claims for "pay and bounty" and "arrear of pay and bounty." *Held*, 1. That the acts charged are not an offence under sect. 13 of the act of July 4, 1864 (13 Stat. 389). 2. That sect. 31 of the act of March 3, 1873 (17 id. 575, Rev. Stat., sect. 5485), was not intended to apply to a case where the money had been withheld before its passage. *United States v. Benecke*, 447.
4. The word "claimant" in said sect. 13 means a person who, under the act of July 4, 1864, has a claim before the pension office. *Id.*
5. An indictment against A., found Sept. 15, 1875, charged that on Dec. 24, 1870, B. demanded of him the sum of \$525, which he as her agent and attorney had collected and received from the United States on account of a pension awarded to her, and that he then, and continuously thereafter, wrongfully withheld it from her. *Held*, 1. That the indictment was barred by sect. 1044 of the Revised Statutes. 2. That the crime charged was not a continuous one to the time of finding the indictment. *United States v. Irvine*, 450.

DAMAGES. See *False Imprisonment, Action for*; *Malicious Prosecution*, 6.

DECREE. See *Fraud*.

DEED OF TRUST. See *National Bank*, 3.

Where a party at the time of contracting a debt executed, to secure the payment thereof, a deed of trust of lands to which he had a perfect record title, and a third party subsequently makes claim that he had, at the date of the deed, a title to them, — *Held*, that the trustee and *cestui que trust* must be considered as purchasers; and if they had no notice of such claim, the lands are subject to sale to satisfy the debt. If the sale yields a surplus, the rights of such

DEED OF TRUST (*continued*).

third party thereto will be the same as they were to the land. *Kesner v. Trigg*, 50.

DEMURRER. See *Practice*, 3 ; *Union Pacific Railroad Company*, 1.

DIRECT TAX.

1. Where lands have been sold for an unpaid direct tax, the tax-sale certificate is, under the act of Feb. 6, 1863 (12 Stat. 640), *prima facie* evidence not only of a regular sale, but of all the antecedent facts which are essential to its validity and to that of the purchaser's title. It can only be affected by establishing that the lands were not subject to the tax, or that it had been paid previously to the sale, or that they had been redeemed according to the provisions of the act. *De Treville v. Smalls*, 517.
2. The ruling in *Cooley v. O'Connor* (12 Wall. 391), that the act of Congress contemplates such a certificate where the United States is the purchaser, reaffirmed. *Id.*
3. The act of June 7, 1862 (12 Stat. 422), imposing a penalty for default of voluntary payment of the direct tax upon lands, is not unconstitutional. It reserved to the owner of them the right to pay the tax within a specified time, and take a certificate of payment by virtue whereof the lands would be discharged. On his failing to do so, the penalty attached. *Id.*

DITCH AND CANAL OWNERS. See *Mining Claims*.

EJECTMENT. See *Estoppel*, 1 ; *French and Spanish Land-Grants*, 6 ; *Mexican Land-Grants*, 4 ; *Public Lands*, 1.

In ejectment in the courts of the United States the strict legal title prevails. *Foster v. Mora*, 425.

EMBEZZLEMENT. See *Guardian, Embezzlement of Pension-money by*.

EMINENT DOMAIN. See *Lands, Condemnation and Appropriation thereof for Public Uses*.

EQUITY. See *Evidence*, 3 ; *Limitations, Statute of*, 2 ; *Married Woman, Conveyance by, of her Separate Estate* ; *Postnuptial Contract, Union Pacific Railroad Company*, 2-5, 10 ; *Written Instruments, Reformation of*.

EQUITY OF REDEMPTION. See *Mortgaged Premises, Order of Sale of*, 3.

The decision in *Brine v. Insurance Company* (96 U. S. 627), that the decree of the Circuit Court of the United States sitting in Illinois, in a suit to foreclose a mortgage of lands in that State, must give effect to the equity of redemption after sale, as provided by the statutes of that State, reaffirmed. *Orvis v. Powell*, 176.

ESTOPPEL. See *Limitations, Statute of*, 1.

1. The United States filed a bill to quiet the title to certain lots in its possession in San Francisco ; the defendant set up, by way of estop-

ESTOPPEL (*continued*).

rel, judgments in ejectment rendered by the State courts at the suit of his grantor, against officers of the government then in possession as its agents, in whose behalf the district attorney, and additional counsel employed by the Secretary of the Treasury, appeared. The title was contested on the trial. *Held*, that these facts constitute no estoppel against the government, although, in California, a judgment in ejectment is, in ordinary cases, an estoppel against the tenant in possession, and the landlord who had notice of the suit *Carr v. United States*, 433.

2. The United States cannot be estopped by proceedings against its tenants or agents; nor be sued without its consent, given by act of Congress. *Id.*

EVICTIION. See *Purchase-money, Suit to enforce Lien for Payment thereof*, 1.

EVIDENCE. See *Court and Jury*, 2; *Criminal Law*, 1; *Direct Tax*, 1; *False Imprisonment, Action for*; *Letters-patent*, 1, 15; *Malicious Prosecution*, 1, 4; *Mexican Land-Grants*, 1; *Texas, Lands in*, 4.

1. In an action against the keeper of a public hotel, to recover the value of property lost by a guest at the hotel, evidence that a servant admitted that he had stolen the property while he was employed at the hotel by the landlord is not admissible. *Elcox v. Hill*, 218.
2. A., claiming to be the heir-at-law of B., brought ejectment for certain lands whereof C., the deceased husband of B., was sometime seised in fee, and part of which was shown to have been conveyed to one D. upon certain trusts which limited a life-estate to said B., with a general appointment during her lifetime, and on her failure to appoint, to her heirs in fee-simple. The defendants were the heirs-at-law of E., and were in possession of the lands; but said A. offered no evidence that said C. had transferred the title of a particular tract, or that said B. had ever acquired any interest therein, except her estate in dower. Certain conveyances made by said B. to defeat her appointments in favor of said E. and restore the lands to their original trusts were put in evidence. They recite that the said tract had been originally conveyed upon the same trusts as the remaining lands. The defendants then offered to prove declarations of said C., while residing on and having the seisin and control of the tract, that his wife had sold all the property out of his hands, under a power of attorney given not to dispossess him, but to do business for him; that they had compromised a settlement by which the estate owed him a support for life, and at his death and that of his wife it was to go to their daughter, and he was satisfied. *Held*, that such declarations being in harmony with the deeds that he had executed or authorized, and against his interest

EVIDENCE (*continued*).

in reference to the property not conveyed, or not shown to have been conveyed, were admissible. *Bowen v. Chase*, 254.

3. Parol evidence is admissible in equity to show that a certificate of stock issued to a party as owner was delivered to him as security for a loan of money. A court of equity will look beyond the terms of an instrument to the real transaction, and when that is shown to be one of security and not of sale, it will give effect to the actual contract of the parties. *Brick v. Brick*, 514.
4. The rule which excludes such evidence to contradict or vary a written instrument does not forbid an inquiry into the object of the parties in executing and receiving it. *Id.*

EXCEPTIONS TO CHARGE TO JURY.

Exceptions to the charge of the court which are in general terms, and do not clearly and specifically point out the objectionable part of it, cannot be sustained as a ground for reversing the judgment. *Railroad Company v. Varnell*, 479.

FALSE IMPRISONMENT, ACTION FOR.

A., who was an officer of the army, and acting as a provost-marshal in Vermont, arrested B., during the rebellion, on the charge of aiding and abetting deserters from the army. At the time of making the arrest, A. had no warrant, but was acting under orders of his commanding officer, based upon a report made to him by A. B. having brought an action for false imprisonment against A., the latter, for the purpose of satisfying the jury of the misconduct of B., and in support of his own testimony as to the state of facts which he at the time of making the arrest believed in good faith to exist, offered to show, by evidence which was not known to him at the time of B.'s release from imprisonment, that the latter had, during the rebellion, been engaged in procuring men to enlist in the army, and to desert after they had obtained their bounty; but the court, on the ground that the offered evidence did not become known to A. until after the commencement of the suit, excluded it. *Held*, that the evidence was admissible in mitigation of damages. *Beckwith v. Bean*, 266.

FEDERAL QUESTION. See *Jurisdiction*, 1, 4.

FEME SOLE. See *Married Woman, Conveyance by, of her Separate Estate*, 2.

FINDINGS OF FACT. See *Practice*, 4.

FLORIDA. See *French and Spanish Land-Grants*.

FORECLOSURE. See *Equity of Redemption, Mortgaged Premises, Order of Sale of*, 3.

FRAUD. See *Purchase-money, Suit to enforce Lien for Payment thereof*, 1, 3.

1. The frauds for which a bill to set aside a judgment or a decree between the same parties, rendered by a court of competent jurisdiction, will be sustained, are those which are extrinsic or collateral to the matter tried, and not a fraud which was in issue in the former suit. *United States v. Throckmorton*, 61.
2. The cases where such relief has been granted are those in which, by fraud or deception practised on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject-matter of the suit. *Id.*

FRAUDULENT TRANSFER. See *Assignee in Bankruptcy*, 1.

FRENCH AND SPANISH LAND-GRANTS.

1. A Spanish grant of land situate in the District of St. Louis, made May 12, 1785, which this court, in *Stanford v. Taylor* (18 How. 409), decided did not, without a survey, attach to any specific tract, was in 1811 confirmed by the board of land commissioners. The first survey was made in 1834, but was not carried into patent; and on an application under the act of June 2, 1862 (12 Stat. 410), the Secretary of the Interior issued instructions for another survey. It was made, but he decided that no effect should be given to it, as it did not conform to the calls of the grant. In ejectment, the demanded premises being embraced by that survey, the plaintiff, who claimed under the grantee, offered in evidence it and one subsequently made by the surveyor of St. Louis County, Missouri, accompanied by proof that they conformed to the calls of the grant, and were identical. The evidence was excluded. *Held*, 1. That the survey, having been disapproved by the Secretary, has no binding effect, and that the question of its correctness was not for the determination of the jury. 2. That in the absence of a subsisting recognized survey, the grant not having been confirmed by ascertained boundaries specifically set forth in the order of the board, so that the tract can be located without a survey, the plaintiff cannot recover. 3. That the act of June 6, 1874 (18 Stat. part 3, 62), entitled "An Act to obviate the necessity of issuing patents for certain private land-claims in the State of Missouri, and for other purposes," applies only to cases where the party interested is by law entitled to a patent. *Snyder v. Sickles*, 203.
2. The act entitled "An Act for the final adjustment of private land-claims in the States of Florida, Louisiana, and Missouri," approved June 22, 1860 (12 Stat. 85), provides for presenting all such claims in Florida and Louisiana to the registers and receivers of the several land-offices, within their respective districts, and in Missouri to the recorder of land-titles for the city of St. Louis, and for a report on the claims to the Commissioner of the General Land-Office, and

FRENCH AND SPANISH LAND-GRANTS (*continued*).

- through him to Congress. In all such cases Congress reserved the right to confirm or to reject the claim. *Scull v. United States*, 410.
3. The eleventh section of the act authorizes the claimants in a defined and limited class of cases to sue by petition in the District Court of the United States within whose jurisdiction the land is situate. *Id.*
 4. The title on which such a suit can be sustained must be one which had been perfected under the Spanish or the French government before the cession to the United States, and the lands separated from the mass of the public domain by actual survey, or which are susceptible of such separation by a description which will enable a surveyor to ascertain and identify them by the boundaries found in the grant, or in an order of survey or investiture of possession. *Id.*
 5. No person can bring suit under that act who by himself, or by those under whom he claims, has not been out of possession over twenty years. *Id.*
 6. The act thus intended to provide a suit in the nature of ejectment against the United States whether out of possession or in possession, and to remove the bar of the Statute of Limitations. *Id.*
 7. The claim under the grant in this case covers over seven million acres, and it has never been actually surveyed or located; nor do the claimants present any actual survey, or ask for one, to ascertain if it be practicable under the description in the grant made in 1793. *Id.*
 8. An inspection of the maps presented by them, copied from the public surveys extended over the region to which the grant refers, shows that the calls for the boundary of the grant are impossible calls; that the royal surveyor was not on the ground, and was mistaken as to the locality of the natural objects on which he relied for description; and that no surveyor can by those calls locate or identify the land. *Id.*
 9. The suit was not, therefore, authorized by said act of 1860. *Id.*
 10. A mere permission by the commandant to settle on land in Florida, not followed by a grant or by other evidence of title under the Spanish government, will not sustain a claim in a suit in the District Court, brought under the eleventh section of the act of June 22, 1860 (12 Stat. 85). *United States v. Baltimore*, 424.
 11. Spanish grants made in Texas for lands in the "Neutral Ground," east of the Sabine, from 1790 to 1800, are valid. *United States v. Perot*, 428.
 12. The Mexican league applicable to grants of such lands, being a square of 5000 varas on each side, has always been estimated at 4428.4 acres, the vara being considered $33\frac{1}{4}$ American inches. *Id.*
 13. The true Mexican vara is slightly less than 33 American inches; but by use in California it is estimated at 33 inches, and in Texas at $33\frac{1}{4}$ inches. *Id.*

FRENCH AND SPANISH LAND-GRANTS (*continued*).

14. The common usage of a country in reference to its measures should be followed in estimating them, when mentioned in grants taking effect there. *Id.*

GRAND JURY. See *Indictment*.

GRANT. See *French and Spanish Land-Grants; Land-Grant Railroads; Mexican Land-Grants*.

GUARDIAN, EMBEZZLEMENT OF PENSION-MONEY BY.

Congress has, under the Constitution, power to declare that the embezzlement or fraudulent conversion to his own use by a guardian of the money which he, on behalf of his wards, has received from the government as a pension due to them, is an offence against the United States, and to vest the proper Circuit Court with jurisdiction to try and punish him therefor. *United States v. Hall*, 343.

HOMESTEAD CLAIMS. See *Land-Grant Railroads*, 1.

HOTEL-KEEPER, LIABILITY OF.

1. A. brought an action against the keeper of a public hotel in Illinois to recover the value of a stock of jewelry, worth \$6,300, which he had in his travelling-bags at the hotel while he was there as a guest. One of them was not locked, and both were left by him overnight in the coat-room of the hotel, he taking from the boy in charge a check therefor. The next morning, A. discovered that the jewelry had been taken from the bag which was unlocked. The other bag could not be found. A. had informed no one connected with the hotel of their contents, although there was a safe there for the custody of such property, and notice of the fact given, as required by the statute of that State. *Held*, that in the absence of proof that the loss was occasioned by the hand or through the negligence of the hotel-keeper, or by a clerk or servant employed by him in the hotel, A. was not entitled to recover. *Elcox v. Hill*, 218.
2. A hotel-keeper is not liable for a loss occasioned by the personal negligence of the guest himself. *Id.*
3. Evidence that a servant admitted that he had stolen the property while he was employed at the hotel by the landlord is not admissible in an action against the latter. *Id.*

HUSBAND AND WIFE, CONVEYANCE BY.

By the common law, if the husband and wife sell and convey her lands, the money which he receives therefor, without any reservation of rights on her part, will belong to him. *Kesner v. Trigg*, 50.

IDAHO. See *Practice*, 5.

ILLINOIS. See *Equity of Redemption; Hotel-keeper, Liability of; Mortgaged Premises, Order of Sale of*.

IMPORTER. See *Limitations, Statute of*, 1; *Surety*, 1, 2.

INDIAN RESERVATION. See *Practice*, 5.

INDICTMENT. See *Criminal Law*, 3-5.

Sect. 808 of the Revised Statutes, providing for impanelling grand juries and prescribing the number of which they shall consist, applies only to the Circuit and the District Courts of the United States. An indictment for bigamy under sect. 5352 may, therefore, be found in a district court of Utah, by a grand jury of fifteen persons, impanelled pursuant to the laws of that Territory. *Reynolds v. United States*, 145

INFANT, GRANT TO. See *Mexican Land-Grants*, 3.

INFERENCE. See *Malicious Prosecution*, 2.

INFRINGEMENT. See *Letters-patent*, 1, 4, 8, 9, 11.

INJUNCTION. See *Limitations, Statute of*, 1.

INSURANCE. See *Waiver*.

1. A policy upon a cargo in the name of A., "on account of whom it may concern," or with other equivalent terms, will inure to the interest of the party for whom it was intended by A., provided he at the time of effecting the insurance had the requisite authority from such party, or the latter subsequently adopted it. *Hooper v. Robinson*, 528.
2. No proof is necessary that the assured had an insurable interest at that time. It is sufficient if such interest subsisted during the risk and when the loss occurred. *Id.*
3. A policy "lost or not lost" is a valid stipulation for indemnity against past as well as future losses. A contingent interest may be the subject of such a policy. *Id.*
4. In an action against A. to recover the amount paid to him by the underwriters, who allege that neither he nor his principal had an insurable interest in such cargo, the burden of proof is on the plaintiffs to show that fact. *Id.*
5. A. having received the money as agent, and promptly paid it over to his principal, without notice of any adverse claim, or reason to suspect it, the plaintiffs, having been guilty of laches, must look to that principal. *Id.*

INSURABLE INTEREST. See *Insurance*.

INTEREST. See *National Bank*, 1, 2; *Probable Cause, Certificate of*.

INTEREST COUPONS. See *Limitations, Statute of*, 3.

IOWA. See *Limitations, Statute of*, 3.

JUDGMENT. See *Fraud*.

JUDGMENT AGAINST A CITY, ENFORCEMENT OF THE PAYMENT THEREOF.

The indebtedness of a city is conclusively established by a judgment recovered against it in a court of competent jurisdiction; and in enforcing payment, the plaintiff is not restricted to any particular property or revenues, or subject to any conditions, unless such judgment so provides. *United States v. New Orleans*, 381.

JUDICIAL COMITY. See *Constitutional Law*, 4.

JUDICIAL NOTICE. See *Courts of the United States, Judicial Notice by.*

JURISDICTION. See *Court and Jury*, 2; *French and Spanish Land Grants*, 3, 9, 10; *Practice*, 6; *Suits against the United States*, 1.

I. OF THE SUPREME COURT.

1. Where the record shows that a Federal question was not necessarily involved, this court has no jurisdiction to review the decision of the Supreme Court of Louisiana, that the act passed Jan. 24, 1874, does not authorize the funding board of that State to fund the bonds of a railroad company, whereon the State is liable only as a guarantor. *Citizens' Bank v. Board of Liquidation*, 140.
2. *Brown v. Atwell, Administrator* (92 U. S. 327), cited and approved. *Id.*
3. Where a suit was brought in the Circuit Court by assignees in bankruptcy, praying that a transfer of personal property by the bankrupt to A. be decreed to be fraudulent, that their title thereto be declared to be perfect, and that A. be enjoined from prosecuting an action therefor then pending in a State court, and the Circuit Court, after due notice, awarded a preliminary injunction, and an order is asked here for a *mandamus* commanding the judge who granted the injunction to set it aside, — *Held*, that the Circuit Court having jurisdiction of the suit, an error, if one was committed, can only be reviewed here after a final decree shall have been passed in that court. *Ex parte Schwab*, 240.
4. A Federal question is not presented by the decision of the Supreme Court of Appeals of the State of Virginia, that by the general principles of commercial law, if, during the late civil war, an indorser of a promissory note left his residence in loyal territory and went to remain permanently within the Confederate lines before the note matured, a notice of protest left at his former residence was not sufficient to charge him, if his change of residence was known, or by the exercise of reasonable diligence might have been known, to the holder of the note when it matured. *Bank v. McVeigh*, 332.
5. The decision in *Sandusky v. National Bank* (23 Wall. 289) and *Hill v. Thompson* (94 U. S. 322), that this court cannot review the action of the Circuit Court in the exercise of its supervisory jurisdiction over a judgment rendered by the District Court, on a petition praying that a party be adjudged a bankrupt, reaffirmed. *Cleveland Insurance Co. v. Globe Insurance Co.*, 366.
6. The jurisdiction conferred upon this court by sect. 847 of the Revised Statutes relating to the District of Columbia was taken away by the act of Congress approved Feb. 25, 1879, which enacts that a judgment or a decree of the Supreme Court of that District may be re-examined here "where the matter in dispute, exclusive of costs, exceeds the value of \$2,500." This court, therefore, dismisses a writ of error sued out Dec. 6, 1875, to reverse a final judgment of that court where the matter in dispute is of the value of \$2,250 *Railroad Company v. Grant*, 398.

JURISDICTION (*continued*).

II. OF THE CIRCUIT COURTS.

7. The Circuit Court of the United States has now no original jurisdiction to reform surveys made by the Land Department of confirmed Mexican grants in California. *United States v. Throckmorton*, 61.
8. No particular form of proceeding is required to remove for review by the Circuit Court of an adjudication of bankruptcy. It is sufficient if some "proper process" is used. *Cleveland Insurance Co. v. Globe Insurance Co.*, 366.
9. A writ of error, employed as "process" for the purposes of that jurisdiction, will not deprive the Circuit Court of its power to proceed. *Id.*

JUROR, CHALLENGE OF.

1. A petit juror in a criminal case testified on his *voire dire* that he believed that he had formed an opinion, although not upon evidence produced in court, as to the guilt or innocence of the prisoner; but that he had not expressed it, and did not think that it would influence his verdict. He was thereupon challenged by the prisoner for cause. The court overruled the challenge. *Held*, that its action was not erroneous. *Reynolds v. United States*, 145.
2. Where it is apparent from the record that the challenge of a petit juror, if it had been made by the United States for favor, should have been sustained, the judgment against the prisoner will not be reversed, simply because the challenge was in form for cause. *Id.*

LACHES. See *Insurance*, 5.

LAND-GRANT RAILROADS.

1. The grant of lands made to the Burlington and Missouri River Railroad Company, by the act of July 2, 1864 (13 Stat. 356), embraced ten odd-numbered sections per mile, to be taken on the line of the road and in equal quantities on each side thereof, which had not been sold, reserved, or otherwise disposed of by the United States, and to which, at the time of the definite location of such line, a pre-emption or a homestead claim had not attached. *United States v. Burlington & Missouri River Railroad Co.*, 334.
2. Lands are, within the meaning of the act, taken on such line when they are selected along its general direction or course, within lines perpendicular to it at each end. *Id.*
3. The grant was made to aid in the construction of the entire road; but the company, on completing each section of twenty miles, had the privilege to receive a patent for lands opposite thereto. *Id.*
4. The grant had no lateral limits, and the Land Department for years neglected to withdraw from market lands situate beyond twenty miles from the road, and the lands opposite to certain portions of it having been patented to other parties, *held*, that the grant to the

LAND-GRANT RAILROADS (*continued*).

- company could be satisfied by lands elsewhere situate on the line of the road. *Id.*
5. By the act of July 1, 1862 (12 Stat. 489), and by said act of 1864, which was an amendment thereof, Congress intended to place the Union Pacific Railroad Company, and all its branch companies, upon the same footing as to lands, privileges, and duties, except where special provision was otherwise made; and the grant having been enlarged as to the sections and the distance from the road within which they should be selected, by striking out the numbers in the first act and substituting larger numbers, the first act must thenceforth be read as against the government and the parties claiming under concurrent or subsequent grants, as though the larger numbers had been originally inserted in it. The Burlington and Missouri River Railroad Company claiming under the act which declared that that of 1862, making the grant to the Union Pacific Railroad Company, should be thus read, must take its right to the lands subject to the claim of the latter company. *Id.*
 6. The Land Department, in executing the act, was not authorized to enlarge the quantity of lands on either side of the road to make up a deficiency on the other. But, at the suit of the United States, patents embracing any alleged excess on one side cannot be adjudged invalid as to any lands which are not identified, so as to be separated from the remainder; nor can any decree be rendered against the company for their value. *Id.*

LANDS, CONDEMNATION AND APPROPRIATION THEREOF
FOR PUBLIC USES.

1. The United States cannot interfere with the exercise by the State of her right of eminent domain in taking for public use land within her limits which is private property. But when the inquiry whether the conditions prescribed by her statutes for its exercise have been observed takes the form of a judicial proceeding between the owner of lands and a corporation seeking to condemn and appropriate them, the controversy is subject to the ordinary incidents of a civil suit, and its determination does not derogate from the sovereignty of the State. *Boom Company v. Patterson*, 403.
2. A controversy of this kind in Minnesota, when carried, under a law of the State, from the commissioners of appraisement to the State court, taking there the form of a suit at law, may, if it is between citizens of different States, be removed to a Federal court. *Id.*
3. In determining the value of lands appropriated for public purposes, the same considerations are to be regarded as in a sale between private parties, the inquiry in such cases being, what, from their availability for valuable uses, are they worth in the market. *Id.*
4. As a general rule, compensation to the owner is to be estimated by reference to the uses for which the appropriated lands are suitable,

LANDS, CONDEMNATION AND APPROPRIATION THEREOF
FOR PUBLIC USES (*continued*).

having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future. *Id.*

- b. On the upper Mississippi, where sending logs down the river is a regular business, the adaptability of islands to form, in connection with the bank of the river, a boom of large dimensions to hold logs in safety is a proper element for consideration in estimating the value of the lands on the islands when appropriated for public uses. *Id.*

LAST WILL AND TESTAMENT. See *Appointment, Power of*, 2, 3.

LEAGUE. See *French and Spanish Land-Grants*, 12.

LEASE.

- A. and the Postmaster-General executed an indenture, whereby the former leased to the United States, for the use of the Post-office Department, at an annual rent of \$4,200, payable quarterly, a building in Washington, for three years from and after June 5, 1873, with the privilege of renewing the term for the further period of two years. It was thereby "understood and agreed" by the parties that the indenture was made subject to an appropriation by Congress for the payment of the stipulated rent, and that no payment should be made to A. on account thereof until such appropriation should be available, when the arrears then due would be paid in full, and thereafter the payments be made at the time and in the manner stipulated. Congress made the requisite appropriations to pay the specified rent to the end of the second year of the term. By the act of March 3, 1875 (18 Stat. 367), making appropriations for the fiscal year ending June 30, 1876, Congress appropriated for the rent \$1,800, with a proviso "that the above sum shall not be deemed to be paid on account of any lease for years of said building: *Provided, however,* that at the end of the present fiscal year the Postmaster-General be directed, upon the demand of the lessor, to deliver up the possession of said premises." No such demand by the lessor was made. A. having received no rent for the third year, sued the United States therefor, and claimed \$4,200. *Held*, 1. That the parties to the indenture, by their expressed understanding and agreement, intended to incorporate into the instrument the substance of the act of Congress which prohibits any department from "involving the government in any contract for the future payment of money in excess of the appropriations." 2. That the appropriations for two years of the term were not such a recognition by Congress of the validity of the contract as bound the United States to pay the stipulated rent for the third year. 3. That by the said proviso A. had seasonable notice that no more than \$1,800 would be paid to him as rent for the third year, and that he, not having demanded the possession of the premises, must be held to have assented to the terms offered by said act. *Bradley v. United States*, 104.

LEGAL TITLE. See *Ejectment*.

LETTERS-PATENT.

1. Persons sued as infringers may, if they comply with the statutory condition as to notice, give the special defences mentioned in the Patent Act in evidence, under the general issue. *Bates v. Coe*, 31.
2. Such notices, in a suit in equity, may be given in the answer; and the provision is, that if any one of those defences is proved, the judgment or decree shall be in favor of the defending party, with costs. *Id.*
3. Defences of the kind, where the invention consists in a combination of old elements, incapable of division or separate use, must be addressed to the entire invention, and not merely to separate parts of the thing patented. *Id.*
4. Pursuant to that rule, the respondents alleged in their answer four of the statutory defences, besides the denial of infringement: 1. That the complainant is not the original and first inventor of the improvement. 2. That the alleged improvement is fully described in the several patents, printed publications, and rejected applications for patents, set forth in the answer. 3. That the improvement secured by the reissued patent is not for the same invention as the original. 4. That the improvement had been in public use and was known to the several persons named in the answer before the complainant made his application for a patent. *Id.*
5. All of these defences were overruled in the Circuit Court; and the respondents appealed to the Supreme Court, where the decision is that the first two defences are not proved, the court being of the opinion that the evidence introduced for the purpose was not sufficient to overcome the *prima facie* presumption which the patent affords in favor of the complainant. *Id.*
6. Two points were ruled in response to the third defence: 1. That the complainant is not obliged in such a case to introduce the original patent in evidence. 2. That the respondent cannot have the benefit of such a defence, if the original patent is not exhibited in the record. *Id.*
7. Improvements were made by the complainant in drilling and bolt-tapping machines, called in the specification a new and improved drilling and screw-cutting machine. Annexed to the specifications are the four claims of the patent, as set forth in the opinion of the court. *Id.*
8. Inventors may, if they can, keep their inventions secret, and, if they do, no neglect to petition for a patent will forfeit their right to apply to the commissioner for that purpose. Mere delay is not a good defence, but the respondent, in a suit for infringement, if he gives the required notice, may allege and prove that the invention embodied in the patent in suit had been in public use or on sale more than two years prior to the complainant's application for a patent.

LETTERS-PATENT (*continued*).

- and if he alleges and proves that defence, he is entitled to prevail in the suit. Those requirements constitute conditions to the sufficiency of the defence; and the court held that the respondents had not complied with either to any effectual extent. *Id.*
9. Infringement being denied in the answer, the burden of proof is upon the complainant; and the court decided that the charge in this case was fully proved. *Id.*
 10. Besides these defences, the assignment of errors presented two others, not set up in the answer: 1. That the Circuit Court erred in holding that the patentee was the original and first inventor of the improvement specified in the second claim. 2. That the Circuit Court erred in holding that the patentee was the original and first inventor of the improvement specified in the fourth claim of the patent. Both of those claims refer to parts of the drilling feature of the improvement, which is merely a combination of old elements; and the court overruled the defences, for two reasons: 1. Because they were not set up in the answer. 2. Because they were addressed to a part only of an indivisible improvement, and not to the entire invention, as required by the act of Congress. *Id.*
 11. Reissued letters-patent No. 5328, granted to William T. Garratt, March 18, 1873, for a new and useful improvement in lubricators, infringe letters-patent No. 111,881, granted to Nicholas Seibert, Feb. 14, 1871, for a new and useful improvement in lubricators. They are, therefore, void. *Garratt v. Seibert*, 75.
 12. Reissued letters-patent must be for the same invention as that which formed the subject of the original letters; or for a part thereof when divisional reissues are granted. They must not contain any thing substantially new or different. *Powder Company v. Powder Works*, 126.
 13. Original letters for a process will not support reissued letters for a composition, unless it is the result of the process, and the invention of the one involves the invention of the other. *Id.*
 14. Letters granted for certain processes of exploding nitro-glycerine will not support reissued letters for a composition of nitro-glycerine and gunpowder or other substances, even though the original application claimed the invention of the process and the compound. They are distinct inventions. *Id.*
 15. The last clause of sect. 53 of the act of July 8, 1870 (16 Stat. 205; Rev. Stat., sect. 4916), relates merely to the evidence to which the commissioner of patents may resort, but does not increase his power as to the invention for which a reissue may be granted. Whether said clause relates to any other than letters granted for machines is a question not considered in this case. *Id.*
 16. Reissued letters-patent No. 4818, for a new and useful improvement in compounds containing nitro-glycerine, and reissued letters-patent No. 4819, for a new and useful improvement in nitro-glycerine com-

LETTERS-PATENT (*continued*).

pounds, granted March 19, 1872, to the United States Blasting Oil Company, assignee of Alfred Nobel, are for a different invention from that described or suggested in original letters-patent No. 50,617, granted to said Nobel Oct. 24, 1865, for a new and useful improved substitute for gunpowder, upon which they are founded, and which they are intended, in part, to supersede. They are therefore void. *Id.*

17. Where, before the issue of letters-patent therefor, a party assigns his invention, and letters are lawfully issued to the assignee in his own name, the latter is entitled, where the instrument of assignment does not show a different intention, to obtain a renewal of them at the expiration of the original term. *Hendrie v. Sayles*, 546.

LIEN. See *Purchase-money, Suit to enforce Lien for Payment thereof*, 1

LIMITATIONS, STATUTE OF. See *Criminal Law*, 5; *French and Spanish Land-Grants*, 5; *Mexican Land-Grants*, 4.

1. Importations were made by A. and others, whereon they paid under protest certain duties unlawfully exacted by B., collector of customs. The latter, when sued for the excess of duties, pleaded the Statute of Limitations; whereupon A. filed his bill, setting forth that his attorney was informed by an officer of the custom-house, that by the rules and practice of the Treasury Department the presentation of A.'s claim to the auditor or refund clerk would prevent the Statute of Limitations from running, and that the statute, if the claims were so presented, could not and would not be interposed as a defence in case suits should be brought to recover said excess; that B., though he disclaimed any control in the matter, declared his confidence in the knowledge and experience of the officer who made such statement, and expressed his opinion as concurring therein; that A. did present his claim to the auditor or refund clerk, as suggested; and that, relying upon the prior action of the Secretary of the Treasury in recognizing claims of a like nature, and upon said statements and opinion of the officer of the custom-house, and the concurrence of B. therein, he and others had refrained from suing until the bar of that statute had attached. He therefore prayed that B. be enjoined from pleading it in any of the actions at law for such excess. *Held*, that the matters alleged are not sufficient to estop B. from pleading the statute. *Andreae v. Redfield*, 225.
2. Purchasers from an assignee in bankruptcy of property transferable to or vested in him as such, cannot maintain a suit in equity asserting their title to such property against persons claiming adverse rights therein, if, at the time of the purchase, his right of action was, under the Bankrupt Act (14 Stat. 517; Rev. Stat., sect. 5057), barred by the lapse of time. *Gifford v. Helms*, 248.
3. The Statute of Limitations of Iowa begins to run against coupon interest warrants from the time they respectively mature, although

LIMITATIONS, STATUTE OF (*continued*).

they remain attached to the bond which represents the principal debt. *Amy v. Dubuque*, 470.

4. The United States, whether named in a State Statute of Limitations or not, is not bound thereby; and when it sues in one of its own courts, such a statute is not within the provisions of the Judiciary Act of 1789, which declare that the laws of the States, in trials at common law, shall be regarded as rules of decision in the courts of the United States in cases where they apply. *United States v. Thompson*, 486.

LOUISIANA. See *French and Spanish Land-Grants; Jurisdiction*, 1.

MALICE. See *Malicious Prosecution*, 1, 2, 5.

MALICIOUS PROSECUTION.

1. To sustain an action for malicious prosecution, the failure of the proceedings against the plaintiff must be averred and proved; but such failure is not evidence of the defendant's malice or want of probable cause in instituting them. *Stewart v. Sonneborn*, 187.
2. Malice, the existence of which is a question exclusively for the jury, and want of probable cause must both concur to entitle the plaintiff to recover; and although the jury may infer malice from the want of probable cause, proof even of express malice will not justify the inference that probable cause did not exist. *Id.*
3. The question as to what amounts to probable cause is one of law in a very important sense. It is, therefore, generally the duty of the court, when evidence has been given to prove or disprove the existence of probable cause, to submit to the jury its credibility, and what facts it proves, with instructions that the facts found amount to proof of probable cause, or that they do not. *Id.*
4. A seeming exception to this rule may grow out of the nature of the evidence, as when the defendant's belief of the facts which are relied on by the plaintiff to prove want of probable cause is a question involved. What that belief was is always a question for the jury. *Id.*
5. In an action by A. to recover damages for the alleged wrongful and malicious institution of proceedings in bankruptcy against him, by B. & Co., the defendants asked the court to charge, that if the jury believed from the evidence that they, in prosecuting an action of debt against him, had acted on the advice of counsel, and upon such advice had an honest belief in the validity of the debt sued for and of their right to recover it; and in the institution of the bankruptcy proceedings had acted likewise on such advice, and under an honest belief that they were taking and using only such remedies as the law provided for the collection of what they believed to be a *bona fide* debt, they having first given a full statement of the facts of the case to counsel, — then there was not such malice in the wrongful

MALICIOUS PROSECUTION (*continued*).

use of legal proceedings by them as would entitle A. to recover. The court declined so to charge. *Held*, 1. That the instruction should have been given. 2. That the facts therein stated constituted in law a probable cause, and being such, the existence of malice, if such there was, would not entitle the plaintiff to recover. *Id.*

6. The jury, if they find for the plaintiff, cannot, in estimating his damages, consider the fees of counsel in prosecuting the suit. *Id.*

MANDAMUS. See *Jurisdiction*, 3.

A *mandamus* cannot be used to perform the office of an appeal or a writ of error. *Ex parte Schwab*, 240.

MARRIED WOMAN, CONVEYANCE BY, OF HER SEPARATE ESTATE.

1. Lands in Texas belonging to a married woman are termed in that State her "separate property," and she has in equity all the power to dispose of them which could be given to her by the amplest deed of settlement. *Slaughter v. Glenn*, 242.
2. During the absence of her husband, when she had the exclusive management of her interests, a married woman owning in her own right such lands conveyed them to A. by deed, which she acknowledged before the proper officer, as if she were a *feme sole*. She invested the purchase-money in another tract, and A. sold the lands to B. Some years afterwards, she and her husband brought an action to recover them. B. filed his bill, praying that the action be enjoined and his title quieted. *Held*, that, in view of the decisions of the Supreme Court of Texas as to the effect of such a conveyance, he was entitled to the relief prayed for. *Id.*

MEASURES. See *French and Spanish Land-Grants*, 14.**MEXICAN LAND-GRANTS.** See *Jurisdiction*, 7; *Practice*, 1; *Texas, Lands in*.

1. Under *Donner v. Palmer* (31 Cal. 500), which establishes a rule of property in California, the courts of the United States accept as competent primary evidence of *alcalde* grants of the pueblo land of San Francisco, the record of them, which, in accordance with the requirements of Mexican laws, was kept by the *alcalde* before the date of the incorporation of the city of San Francisco by that State, and which record, now in the custody of the city and county recorder, is known as one of the books of the former *alcalde's* office, the same having been, pursuant to law, turned over to the county recorder's office. *Palmer v. Low*, 1.
2. A grant appearing in that record is in the following form:—

"No. 39.

"Whereas George Donner has presented a petition soliciting for a grant of a title to a lot of ground therein described, therefore I, the undersigned *alcalde*, do hereby give, grant, and convey unto the said George Donner,

MEXICAN LAND-GRANTS (*continued*).

his heirs and assigns for ever, lot number thirty-nine (39), one hundred varas square, in the vicinity of the town of San Francisco, subject to all the rules and regulations governing in such cases.

"In testimony whereof, I have hereunto set my hand as alcalde, this nineteenth day of July, A.D. 1847.

"GEORGE HYDE, 1st *Alcalde*."

Held, that the terms used are sufficient to pass a title in fee to the land, and that, in the absence of any thing to the contrary, the instrument must be presumed to be sufficient in form to give full effect to the evident intention of the parties. *Id.*

3. That grant was made to an infant, but it has remained uncanceled, and was affirmed before the ordinance of the city council, known as the Van Ness ordinance, passed June 20, 1855, was approved by Congress. *Held*, that his title is superior to that of a party who, without right, entered upon the land, and whose claim thereto, arising out of his possession thereof, is grounded solely upon the enacting clause of that ordinance. *Id.*
4. In ejectment, commenced April 30, 1872, it appearing that the grantors of the plaintiff entered without title, in 1851 or 1852, and that they and he continued until May 8, 1867, in the exclusive and adverse possession of the land covered by that grant, when said Donner, under whom the defendant claimed title, was placed in possession by the proper officer, under legal process issued in a suit to which neither the plaintiff nor any of his grantors deriving title from any party to the suit after the commencement thereof was a party. *Held*, that as the title did not pass out of the United States until the passage by Congress of the act of July 1, 1864 (13 Stat. 332), to "expedite the settlement of the titles to lands in the State of California," the Statute of Limitations of that State did not run in favor of the plaintiff, by reason of his own and his grantors' possession, so as to transfer to him a title which could be asserted against the record title of the defendant. *Id.*

MILITARY BOUNTY LAND-WARRANT. See *Public Lands*, 1.

MINING CLAIMS.

1. The ninth section of the act of Congress of July 26, 1866, "granting the right of way to ditch and canal owners over the public lands, and for other purposes," enacted "that whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals, for the purposes aforesaid, is hereby acknowledged and confirmed: *Provided, however*, that whenever, after the passage of this act, any per-

MINING CLAIMS (*continued*).

- son or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage." *Held*, 1. That this section only confirmed to the owners of water-rights and of ditches and canals on the public lands of the United States the same rights which they held under the local customs, laws, and decisions of the courts prior to its passage. 2. That the proviso conferred no additional rights upon the owners of ditches subsequently constructed, but simply rendered them liable to parties on the public domain whose possessions might be injured by such construction. *Jennison v. Kirk*, 453.
2. The origin and general character of the customary law of miners stated and explained. *Id.*
 3. By that law, the owner of a mining claim and the owner of a water-right in California hold their respective properties from the dates of their appropriation, the first in time being the first in right; but where both rights can be enjoyed without interference with or material impairment of each other, the enjoyment of both is allowed. *Id.*
 4. By that law, a person cannot construct a ditch to convey water across the mining claim of another, taken up and worked according to that law before the right of way was acquired by the ditch owner, so as to prevent the further working of the claim in the usual manner in which such claims are worked, nor so as to cut off the use of water previously appropriated by the miner for working the claim, or for other beneficial purposes. *Id.*
 5. Accordingly, where the owner of a mining claim worked by the method known as "the hydraulic process," cut and washed away a portion of a ditch so as to let out the water flowing in it, the ditch having been so constructed across the claim previously acquired as to prevent it from being further worked by that method, and to prevent the use of water previously appropriated by him, — *Held*, that the cutting and washing away of the ditch, it having been done in order that the claim might be worked and the water used as before, was not an injury for which damages could be recovered. *Id.*
 6. Under an act entitled "An Act granting the right of way to ditch and canal companies over the public lands, and for other purposes," approved July 26, 1866 (14 Stat. 251), as well as under that entitled "An Act to promote the development of the mining resources of the United States," approved May 10, 1872 (17 id. 91), the location of a mining claim upon a lode or vein of ore should be made along the same lengthwise of the course of its apex at or near the surface. If otherwise laid, it will only secure so much of the lode or vein as it actually covers. *Mining Company v. Tarbet*, 463.
 7. Each locator is entitled to follow the dip of the lode or vein to an indefinite depth, though it carries him beyond the side lines of the

MINING CLAIMS (*continued*).

location; but this right is based on the hypothesis that they substantially correspond with the course of the lode or vein at the surface; and it is bounded at each end by the end lines of the location, crossing the lode or vein, and extended perpendicularly downwards, and indefinitely in their own direction. *Id.*

8. A location laid crosswise of a lode or vein, so that its greatest length crosses the same instead of following the course thereof, will secure only so much of the vein as it actually crosses at the surface, and its side lines will become its end lines, for the purpose of defining the rights of the owners. *Id.*
9. A locator working subterraneously into the dip of the vein belonging to another, who is in possession of his location, is a trespasser, and liable to an action for taking ore therefrom. *Id.*

MINNESOTA. See *Lands, Condemnation and Appropriation thereof for Public Uses.*

MISSOURI. See *French and Spanish Land-Grants; Municipal Bonds*, 1, 2.

MISTAKE OF LAW. See *Written Instruments, Reformation of*, 2.

MONEY PAID UNDER PROTEST. See *Taxation*, 7.

MORTGAGE. See *Mortgaged Premises, Order of Sale of; National Bank*, 3.

MORTGAGED PREMISES, ORDER OF SALE OF.

1. Where lands have been mortgaged, and parcels thereof subsequently sold at different times to different purchasers, the order in which such parcels shall be subjected to the satisfaction of the mortgage is, where the rule is established by a statute or by the decisions of the courts of the State where the lands lie, a rule of property binding on the courts of the United States sitting in that State. *Orvis v. Powell*, 176.
2. In Illinois, the rule has been established by the Supreme Court of that State, in *Iglehart v. Crane* (42 Ill. 261), that the parcels first sold should be last subjected to the satisfaction of the mortgage *Id.*

MUNICIPAL BONDS. See *Taxation*, 5.

1. Where, pursuant to the assent given by two-thirds of the qualified voters of a county in Missouri, at an election therein, stock in a railway company, which afterwards constructed its road through the county, was subscribed for by the county court, and the county exercised its rights as a stockholder, and issued its bonds to pay for the stock, — *Held*, that the bonds are not, in the hands of a *bona fide* holder for value, rendered void by the fact that, at the time of such election, the company was not created according to law. *County of Daviess v. Huidekoper*, 98.
2. The court again decides that the authority conferred by the charter of

MUNICIPAL BONDS (*continued*).

a railroad company in Missouri upon the county court of any county in which a part of the road of the company might be, to subscribe to the capital stock thereof, was not revoked by sect. 14 of art. 11 of the Constitution of that State, of 1865; and where the General Assembly reserved the right to amend the charter, and the company was consolidated with another, pursuant to a law passed after the adoption of the Constitution, the county court of the county through which the road passed might, without submitting the question to a popular vote, lawfully subscribe to the capital stock of the consolidated company, and issue its bonds in payment therefor. *County of Schuyler v. Thomas*, 169.

3. *County of Callaway v. Foster* (93 U. S. 567) and *County of Scotland v. Thomas* (94 id. 682) cited and approved. *Id.*
4. A city issued its bonds, engraved with vignettes on bank-note paper, of various denominations, ranging from \$1 to \$100, and having the form and appearance of treasury notes of the United States or bank-bills, and it paid them out to its creditors for property sold, materials furnished, and labor performed. It received them for taxes and other dues, and to some extent reissued them. They formed a considerable portion of the circulating medium of the city and vicinity. Under the authority of a statute of the State empowering the city council of any city to issue bonds for the purpose of extending the time of paying its indebtedness, which it was unable to meet at maturity, the city passed an ordinance providing for the redemption of the bonds first described. A., the lawful holder of some of them, which had been issued to other parties in payment of valid claims against the city and were overdue, surrendered them to the city, and received in lieu of the amount due thereon bonds for which the ordinance provided, and a credit on the books of the city. The city failing to pay, A. brought suit against it. A recovery was resisted, on the ground that the bonds engraved on bank-note paper had been issued in violation of law, and that the surrender of them was not a valuable consideration for the bonds and the credit received by A. *Held*, that whether the original bonds were issued in violation of law or not, — a point which this court does not decide, — A. is entitled to recover. *Little Rock v. National Bank*, 308.

MUNICIPAL CORPORATION. See *Taxation*, 1-4.

NATIONAL BANK.

1. In a suit by a national bank against all the parties to a bill of exchange discounted by it, to recover the amount thereof, the assignees of the acceptor — the latter having made an assignment for the benefit of his creditors — cannot, having intervened as parties, set up by way of counter-claim or set-off that the bank, in discounting a series of bills of their assignor, the proceeds of which it used to pay

NATIONAL BANK (*continued*).

other bills, knowingly took and was paid a greater rate of interest than that allowed by law. *Barnet v. National Bank*, 555.

2. The act of June 3, 1864 (13 Stat. 99, sect. 30), having prescribed that, as a penalty for such taking, the person paying such unlawful interest, or his legal representative, may, in any action of debt against the bank, recover back twice the amount so paid, he can resort to no other mode or form of procedure. *Id.*
3. A. executed a promissory note to B., and, to secure the payment thereof, a deed of trust of lands, which was in effect a mortgage with a power of sale thereto annexed. A national bank, on the security of the note and deed, loaned money to B., who thereupon assigned them to the bank. The note not having been paid at its maturity, the trustee was, pursuant to the power, proceeding to sell the lands, when A. filed his bill to enjoin the sale, upon the ground that, by sects. 5136 and 5137 of the Revised Statutes, the deed did not inure as a security for a loan made by the bank at the time of the assignment of the note and deed. *Held*, that the bank is entitled to enforce the collection of the note by a sale of the lands. *National Bank v. Matthews*, 621.

NEBRASKA. See *Taxation*, 6, 7.

OFFICIAL BOND. See *Claims against the United States*, 3.

PAROL EVIDENCE. See *Evidence*, 3, 4.

PATENTS OF THE UNITED STATES FOR LANDS. See *French and Spanish Land-Grants*, 1; *Land-Grant Railroads*, 3; *Practice*, 1; *Public Lands*, 1, 2.

PAY AND BOUNTY. See *Criminal Law*, 3.

PAYMENT, ASSUMPTION OF. See *Privity*.

PENALTY. See *Direct Tax*, 3.

PENSION. See *Criminal Law*, 5; *Guardian, Embezzlement of Pension-money by*.

PENSION OFFICE, CLAIMS BEFORE.

The word "claimant," in sect. 13 of the act of July 4, 1864 (13 Stat. 389), means a person who, under that act, has a claim before the pension office. *United States v. Benecke*, 447.

PLEADING. See *Malicious Prosecution*, 1; *National Bank*, 1; *Practice*, 3, 6; *Usury*.

POLYGAMY. See *Constitutional Law*, 1; *Court and Jury*; *Criminal Law*, 1, 2.

POST-NUPTIAL CONTRACT.

A post-nuptial contract, made upon sufficient consideration, and wholly or partially executed, will be sustained in equity. *Kesner v. Trigg*, 50.

POWER OF APPOINTMENT. See *Appointment, Power of*.

PRACTICE. See *Constitutional Law*, 6; *Exceptions to Charge to Jury, Jurisdiction*, 8; *Juror, Challenge of*, 2; *Letters-patent*, 1-3, 10; *Limitations, Statute of*, 4; *Statutes, Construction of; Union Pacific Railroad Company*, 3-5.

1. It is essential to a bill in chancery on behalf of the United States to set aside a patent for lands, or the final confirmation of a Mexican grant, that it shall appear in some way, without regard to the special form, that the Attorney-General has brought it himself, or given such authority for bringing it as will make him officially responsible therefor through all stages of its presentation. *United States v. Throckmorton*, 61.
2. Where a bill shows no equity in the complainant, and contains no averment that he has been injured by certain statutes of a State, this court will not pass upon an abstract question the object of which is plainly to obtain a decision touching their constitutionality, but will dismiss the bill without prejudice. *Williams v. Hagood*, 72.
3. When there is a demurrer to the whole bill, and also to part, and the latter only is sustained, the proper decree is to dismiss so much of the bill as seeks relief in reference to the matters adjudged to be bad, overrule the demurrer to the residue, and direct the defendant to answer thereto. *Powder Company v. Powder Works*, 126.
4. Under the act of Feb. 16, 1875, which took effect May 1 of that year, entitled "An Act to facilitate the disposition of cases in the Supreme Court of the United States, and for other purposes" (18 Stat. 315), the finding of facts by the Circuit Court in admiralty cases is conclusive; and only rulings upon questions of law can be reviewed by bill of exceptions. *The "Abbotsford"*, 440.
5. Process from a district court of Idaho cannot be served upon a defendant on an Indian reservation in that Territory. *Harkness v. Hyde*, 476.
6. Illegality in the service of process by which jurisdiction is to be obtained is not waived by the special appearance of the defendant to move that the service be set aside; nor after such motion is denied, by his answering to the merits. Such illegality is considered as waived only when he, without having insisted upon it, pleads in the first instance to the merits. *Id.*

PRE-EMPTION. See *Land-Grant Railroads*, 1.

PRIVATE LAND-CLAIMS. See *French and Spanish Land-Grants*.

PRIVITY.

An association having issued bonds, some of which were as collateral security in the hands of its creditors, a corporation adopted a resolution whereby it assumed the payment of the bonds, provided that stock was issued to the corporation by the association to the amount of said assumption of payment by said corporation as the said bonds were paid. *Held*, that a holder of the bonds is not in such privity with the corporation, nor has he such interest in the contract be-

PRIVITY (*continued*).

tween it and the association, as to warrant a suit in his own name to compel the corporation to pay the bonds. *National Bank v. Grand Lodge*, 123.

PROBABLE CAUSE. See *Malicious Prosecution*, 1-5.

PROBABLE CAUSE, CERTIFICATE OF.

Where, under sect. 8 of the act of July 28, 1866 (14 Stat. 329), the court grants a certificate that there was probable cause for the acts done by an officer of the United States, for which the judgment was rendered against him, the amount payable out of the treasury does not include any interest which had accrued upon the judgment before such certificate was given. *United States v. Sherman*, 565.

PROCEDURE. See *Constitutional Law*, 5, 6; *National Bank*, 2.

PROCESS. See *Constitutional Law*, 6.

1. No particular form of proceeding is required to remove for review by the Circuit Court of an adjudication of bankruptcy. It is sufficient if some "proper process" is used. *Cleveland Insurance Co. v. Globe Insurance Co.*, 366.
2. A writ of error, employed as "process" for the purposes of that jurisdiction, will not deprive the Circuit Court of its power to proceed. *Id.*
3. Process from a District Court of Idaho cannot be served upon a defendant on an Indian reservation in that Territory. *Harkness v. Hyde*, 476.

PUBLIC LANDS. See *Mining Claims*.

1. Where, in ejectment, it appeared that a location of a military bounty land-warrant, duly made by A. on the demanded premises, the same being a part of the surveyed public land of the United States, had not been vacated or set aside, — *Held*, that a subsequent entry of them by B. was without authority of law, and that a patent issued to him therefor was void. *Wirth v. Branson*, 118.
2. A party who has complied with all the terms and conditions which entitle him to a patent for a particular tract of public land, acquires a vested interest therein, and is to be regarded as the equitable owner thereof. While his entry or location remains in full force and effect, his rights thereunder will not be defeated by the issue of a patent to another party for the same tract. *Id.*
3. *Branson v. Wirth* (17 Wall. 32) commented on and approved. *Id.*

PURCHASE-MONEY, SUIT TO ENFORCE LIEN FOR PAYMENT THEREOF.

1. In a suit to enforce a lien for the purchase-money, where there has been no fraud and no eviction, actual or constructive, the vendee, or the party in possession of the lands under him, cannot controvert the title of the vendor. *Peters v. Bowman*, 56.

PURCHASE-MONEY, SUIT TO ENFORCE LIEN FOR PAYMENT THEREOF (*continued*).

2. A party claiming the lands by an adverse title cannot be permitted to bring it forward, and have it settled in that suit. *Id.*
3. The vendee and those claiming under him must rely on the covenants of title in the deed of the vendor: if there be none, there is, in the absence of fraud, no redress. *Id.*

PURCHASER. See *Deed of Trust; Married Woman, Conveyance by, of her Separate Estate; Texas, Lands in*, 5.

RAILWAY COMPANY. See *Municipal Bonds*, 1.

REISSUED LETTERS-PATENT. See *Letters-patent*, 12-16.

RELIGIOUS BELIEF. See *Criminal Law*, 2.

REMOVAL OF CAUSES. See *Lands, Condemnation and Appropriation thereof for Public Uses*, 2.

REVISED STATUTES.

The following sections referred to and explained:—

- Sect. 808. See *Indictment*.
- Sect. 1044. See *Criminal Law*, 5.
- Sect. 4916. See *Letters-patent*, 15.
- Sect. 5057. See *Limitations, Statute of*, 2.
- Sect. 5136. See *National Bank*, 3.
- Sect. 5137. See *National Bank*, 3.
- Sect. 5352. See *Constitutional Law*, 1; *Indictment*.
- Sect. 5485. See *Criminal Law*, 3.

REVISED STATUTES RELATING TO THE DISTRICT OF COLUMBIA.

- Sect. 847. See *Jurisdiction*, 6.

SAN FRANCISCO, CITY OF, CONVEYANCE OF LANDS BY.
See *Van Ness Ordinance*.

SET-OFF. See *Claims against the United States*, 3; *National Bank*, 1.

STATUTE OF LIMITATIONS. See *Limitations, Statute of*.

STATUTES.

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

- 1853. Feb. 9. See *Taxation*, 8.
- 1860. June 22. See *French and Spanish Land-Grants*, 2, 10.
- 1862. June 2. See *French and Spanish Land-Grants*, 1.
- 1862. June 7. See *Direct Tax*, 3.
- 1862. July 1. See *Land-Grant Railroads*, 5, 6.
- 1863. Feb. 6. See *Direct Tax*, 1.
- 1864. June 3. See *National Bank*, 2.
- 1864. July 1. See *Mexican Land-Grants*, 4.

STATUTES (*continued*).

- 1864. July 2. See *Land-Grant Railroads*, 1, 5.
- 1864. July 4. See *Criminal Law*, 3.
- 1866. July 26. See *Mining Claims*, 1, 6.
- 1866. July 28. See *Probable Cause, Certificate of*.
- 1870. July 8. See *Letters-patent*, 15.
- 1872. May 10. See *Mining Claims*, 6.
- 1873. March 3. See *Constitutional Law*, 5; *Union Pacific Railroad Company*, 1, 10.
- 1873. March 3. See *Criminal Law*, 3.
- 1874. June 6. See *French and Spanish Land-Grants*, 1.
- 1875. Feb. 16. See *Practice*, 4.
- 1879. Feb. 25. See *Jurisdiction*, 6.

STATUTES, CONSTRUCTION OF.

Where words in an act limiting the reviewing power of this court, in cases where the facts have been found below, "to a determination of the questions of law arising upon the record and to the rulings of the court excepted to," have acquired, through judicial interpretation, a definite meaning, by which that power, on exceptions, is confined to questions of law, they will, when found in a subsequent act, be presumed to be used in the same sense, unless a contrary intention appears from the act. *The "Abbotsford,"* 440.

SUITS AGAINST THE UNITED STATES.

1. Without its consent given by act of Congress, no direct proceedings will lie at the suit of an individual against the United States or its property; and its officer cannot waive its privilege in this respect, or lawfully consent that such a suit may be prosecuted so as to bind it. *Carr v. United States*, 433.
2. The United States can only hold possession of its property by means of its officers or agents; and to allow them to be dispossessed by suit would enable parties always to compel it to litigate its rights. Therefore, when the pleadings or the proofs disclose that its possession is assailed, the jurisdiction of the court ought to cease. *Id.*
3. The cases in which public property may be subjected to claims against it are those in which it is, by the act of the government, in juridical possession, or has become so without violating the possession of the government, and the latter seeks the aid of the court to establish or reclaim its rights therein. In such cases it is equitable that the prior rights of others to the same property should be adjudicated and allowed. *Id.*
4. *The Siren* (7 Wall. 152) and *The Davis* (10 id. 15) cited and approved. *Id.*

SUPREME COURT OF THE DISTRICT OF COLUMBIA. See *Jurisdiction*, 6.

SURETY. See *Claims against the United States*, 3.

1. A bond given at the port of New York, when certain goods were imported, was conditioned that the importer should pay \$425, — that being the estimated duty based on the invoice, — or the amount which should be subsequently ascertained to be due, or that he should within three years withdraw and export them, or transport them to a Pacific port. That sum was paid on the withdrawal of the goods, but it was less than the duty which was afterwards regularly liquidated. A suit was brought against the surety for the balance. *Held*, that he was not liable therefor. *Dumont v. United States*, 142.
2. The importer is liable for the duty; but the bond is discharged as to the surety by the performance of one of its alternative conditions. *Id.*
3. "Or" is never construed to mean "and" when the evident intent of the parties would be thereby defeated. *Id.*

SURVEY. See *French and Spanish Land-Grants*, 1, 4, 8; *Jurisdiction*, 7.TAXATION. See *Constitutional Law*, 3.

1. The legislative branch of the government has the exclusive power of taxation, but may delegate it to municipal corporations. *United States v. New Orleans*, 381.
2. When such corporations are created, the power of taxation is vested in them as an essential attribute for all the purposes of their existence, unless its exercise be in express terms prohibited. *Id.*
3. When, in order to execute a public work, they have been vested with authority to borrow money or incur an obligation, they have the power to levy a tax to raise revenue wherewith to pay the money or discharge the obligation, without any special mention that such power is granted. *Id.*
4. A limitation imposed by statute upon them, restraining them from creating any indebtedness without providing at the same time for the payment of principal and interest, will not control a subsequent statute, which, without prescribing such limitation, authorizes them to incur a special obligation. *Id.*
5. Bonds of the city of New Orleans, issued upon a subscription to the stock of a railroad company, under an ordinance which declared that the stock "should remain for ever pledged for the payment of the bonds," are an absolute obligation of the city, the ordinance creating only a pledge of the stock by way of collateral security for their payment. *Id.*
6. In Nebraska, no demand for taxes is required, but it is the duty of every person subject to taxation to attend at the office of the county treasurer and make payment. *Railroad Company v. Commissioners*, 541.
7. Certain lands in that State, the patents for which had been withheld from the Union Pacific Railroad Company by the United States, having been assessed for taxation and the taxes remaining unpaid,

TAXATION (*continued*).

the tax-lists, with warrants thereto attached, were issued, authorizing the county treasurer, upon default in the payment of the taxes, to enforce the collection of them by the seizure and sale of the personal property of the company. The company paid them, while protesting in writing that they were illegally and wrongfully assessed and levied, and were wholly unauthorized by law. At that time, they had not been demanded, and no special effort had been made by the treasurer for their collection, nor had he attempted to seize the personal property of the company. Patents for the lands were subsequently issued to the company. After the decision in *Railway Company v. McShane* (22 Wall. 444), that the lands were exempt from taxation, the company brought this action to recover the amount so paid. *Held*, that there being no statute giving the right to recover in such cases, the action could not be maintained. *Id.*

8. The act of the General Assembly of Arkansas of Jan. 12, 1853, incorporating the Cairo and Fulton Railroad Company, and exempting for ever its capital stock and dividends from taxation, does not so exempt the lands granted by the act of Feb. 9, 1853 (10 Stat. 155), to that State, and by her transferred to the company. *Railway Company v. Loftin*, 559.
9. The lands, although granted by Congress to aid in constructing the road and used in lieu of capital, to that extent relieving the company from the necessity of raising money through stock subscriptions, do not represent the stock within the meaning of the act of incorporation. *Id.*
10. *Railroad Companies v. Gaines* (97 U. S. 697) cited and approved. *Id.*

TAX SALE, CERTIFICATE OF. See *Direct Tax*.

TEXAS, LANDS IN. See *French and Spanish Land-Grants*, 11; *Married Woman, Conveyance by, of her Separate Estate*.

1. A Mexican was not, by the revolution which resulted in the independence of Texas, or by her Constitution of March 17, 1836, or her laws subsequently enacted, divested of his title to lands in that State, but he retained the right to alienate and transmit them to his heirs, and the latter are entitled to sue for and recover them. *Airhart v. Massieu*, 491.
2. The division of a country and the maintenance of independent governments over its different parts do not of themselves divest the rights which the citizens of either have to property situate within the territory of the other. *Id.*
3. That Constitution, although declaring generally that aliens shall not hold land in Texas except by title emanating directly from the government, did not divest their title; for it adds, that "they shall have a reasonable time to take possession of and dispose of the same in a manner hereafter to be pointed out by law " Before th

TEXAS, LANDS IN (*continued*).

title can be divested, proceedings for enforcing its forfeiture must be provided by law, and carried into effect; and hitherto they have not been provided. *Id.*

4. In Texas, the protocol of a Mexican title is an archive which may be deposited in the General Land-Office at any time, subject to all just implications arising from delay and the circumstances of its history; and when so deposited, a certified copy thereof from the land-office is competent *prima facie* evidence of the title. *Id.*
5. Until a title is deposited in the land-office, or duly recorded in the proper county, *bona fide* purchasers not having notice thereof, though claiming under a junior Mexican grant, will be protected. *Id.*

TRESPASS. See *Mining Claims*, 9.

TRUST. See *Appointment, Power of*, 1; *Union Pacific Railroad Company*, 8-10.

TRUSTEE. See *Deed of Trust*.

UNION PACIFIC RAILROAD COMPANY. See *Land-Grant Railroads*.

1. Where the Attorney-General filed a bill in chancery against the Union Pacific Railroad Company and others, under the fourth section of the act of March 3, 1873 (17 Stat. 509), its sufficiency on demurrer must be determined by the provisions of that section. *United States v. Union Pacific Railroad Co.*, 569.
2. That act authorized a decree in favor of that company for money due for capital stock, for money or property received from it on fraudulent contracts, or which ought in equity to belong to it; and also a decree in favor of it or of the United States for money, bonds, or lands wrongfully received from the latter, which ought in equity to be paid or accounted for. *Id.*
3. Except in favor of the company or of the United States, there can, under this act, therefore, be no recovery, and none but such as was sanctioned by the principles of equity before it was passed. *Id.*
4. The company might, by a cross-bill, have availed itself of the act; but it refuses to do so, and demurs to the bill, thereby foregoing any relief in its favor in this suit. As it is conformable neither to the principles of equity nor to those of the common law to render a decree or a judgment in favor of a competent party who asserts no claim and declines to proceed in the case, there can be no recovery in this suit in favor of the company. *Id.*
5. Though the bill sets up many fraudulent transactions on the part of the directors of the company and some of its stockholders, for which the other stockholders would be entitled to relief, the latter are not parties, and neither the frame of the bill nor the provisions of the act authorize any relief or recovery in their favor. *Id.*

UNION PACIFIC RAILROAD COMPANY (*continued*).

6. The United States sustains two distinct relations to the company, namely, that of the government creating it and exercising legislative and visitatorial powers; and that growing out of the contract contained in the charter and its amendment. *Id.*
7. This bill exhibits no right on the part of the United States to relief founded on that contract. The company has completed its road, keeps it in running order, and carries all that is required by the government. To the latter nothing is due, and it has the security which by law it provided. *Id.*
8. Nor does the bill show any thing which authorizes the United States as the depository of a trust, public or private, to sustain this suit. *Id.*
9. This interference by the Attorney-General with corporations on the ground of such a trust in the government is limited to two classes, to neither of which the present case belongs: 1. Where religious, charitable, municipal, or other corporations whose functions are solely public, and whose managers have destroyed or misappropriated the fund, or otherwise abused their functions; 2. Where other corporations exercise powers beyond those to which they are limited by the law of their organization. *Id.*
10. While the court does not say that there is no trust in regard to the duties of the company which the United States can enforce in equity, it is of opinion that none such is shown in this bill, and that no case is made for any relief authorized by the act under which it was brought. *Id.*

USURY. See *National Bank*, 1, 2.

In Virginia, a party cannot avail himself of the defence of usury, without averring and proving it, and he is required to pay the principal of his debt. *Kesner v. Trigg*, 50.

UTAH. See *Court and Jury*, 1; *Criminal Law*, 2; *Indictment*.VAN NESS ORDINANCE. See *Mexican Land-Grants*, 3.

Where the city of San Francisco, prior to the adoption of the Van Ness ordinance, made a conveyance of certain lots within the city to the United States, and another party sets up a claim to them, under the ordinance, — *Held*, that the conveyance barred the claim. *Carr v. United States*, 433.

VARA. See *French and Spanish Land-Grants*, 13.VENDOR AND VENDEE. See *Purchase-money, Suit to enforce Lien for Payment thereof*, 1, 3.VESTED INTEREST. See *Public Lands*, 2.

VIRGINIA.

In Virginia, a party cannot avail himself of the defence of usury, without averring and proving it, and he is required to pay the principal of his debt. *Kesner v. Trigg*, 50.

WAIVER. See *Claims against the United States*, 2; *Practice*, 6; *Suits against the United States*, 1.

A., a member of the firm of A., B., & Co., who were the owners of cotton, communicated the facts touching its ownership, situation, value, and risk, so far as he knew them, to C., a duly accredited agent of an insurance company; and thereupon the company, through C., entered into a verbal agreement with A., acting for and on behalf of the firm, to insure for a certain period the cotton for its whole value against loss by fire, at a premium which was subsequently paid to the company. A. assented that the insurance should be made in his name, upon the representation and agreement of C. that the entire interest of the firm in the cotton would be thereby fully protected. The cotton was burnt within the specified period. The policy was then issued and delivered to A., who, being at once advised by his attorneys that it in terms covered his interest, but not that of the firm, forthwith requested the company to correct it, so that it should conform to the agreement. The company having declined to do so, A., B., & Co. filed against it this bill, praying that the policy be reformed, and that the value of the cotton be awarded to them. *Held*, 1. That the acceptance of the policy was not such as waived any right of A., B., & Co. under the agreement covering their interest in the cotton, which A. in their behalf had made with the company, and that they are entitled to the relief prayed for. 2. That a mere mistake of law does not, in the absence of other circumstances, constitute any ground for the reformation of a written contract. *Snell v. Insurance Company*, 85.

WILL. See *Appointment, Power of*, 2, 3.

WORDS.

1. "Or" is never construed to mean "and," when the evident intent of the parties would be thereby defeated. *Dumont v. United States*, 142.
2. The word "claimant," in sect. 13 of the act of July 4, 1864 (13 Stat. 389), means a person who, under that act, has a claim before the pension office. *United States v. Benecke*, 447.

WRIT OF ERROR. See *Mandamus; Process*, 2.

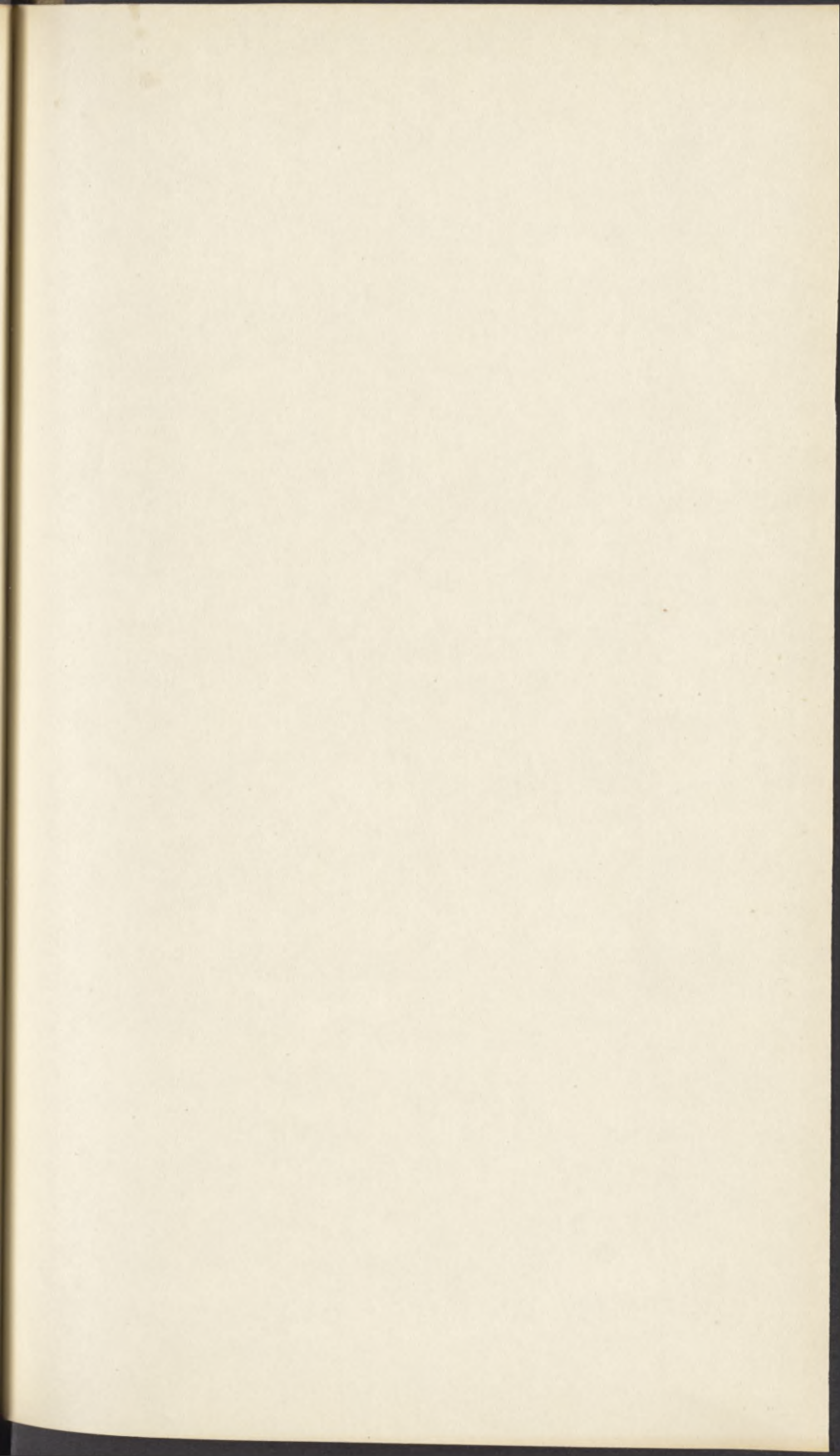
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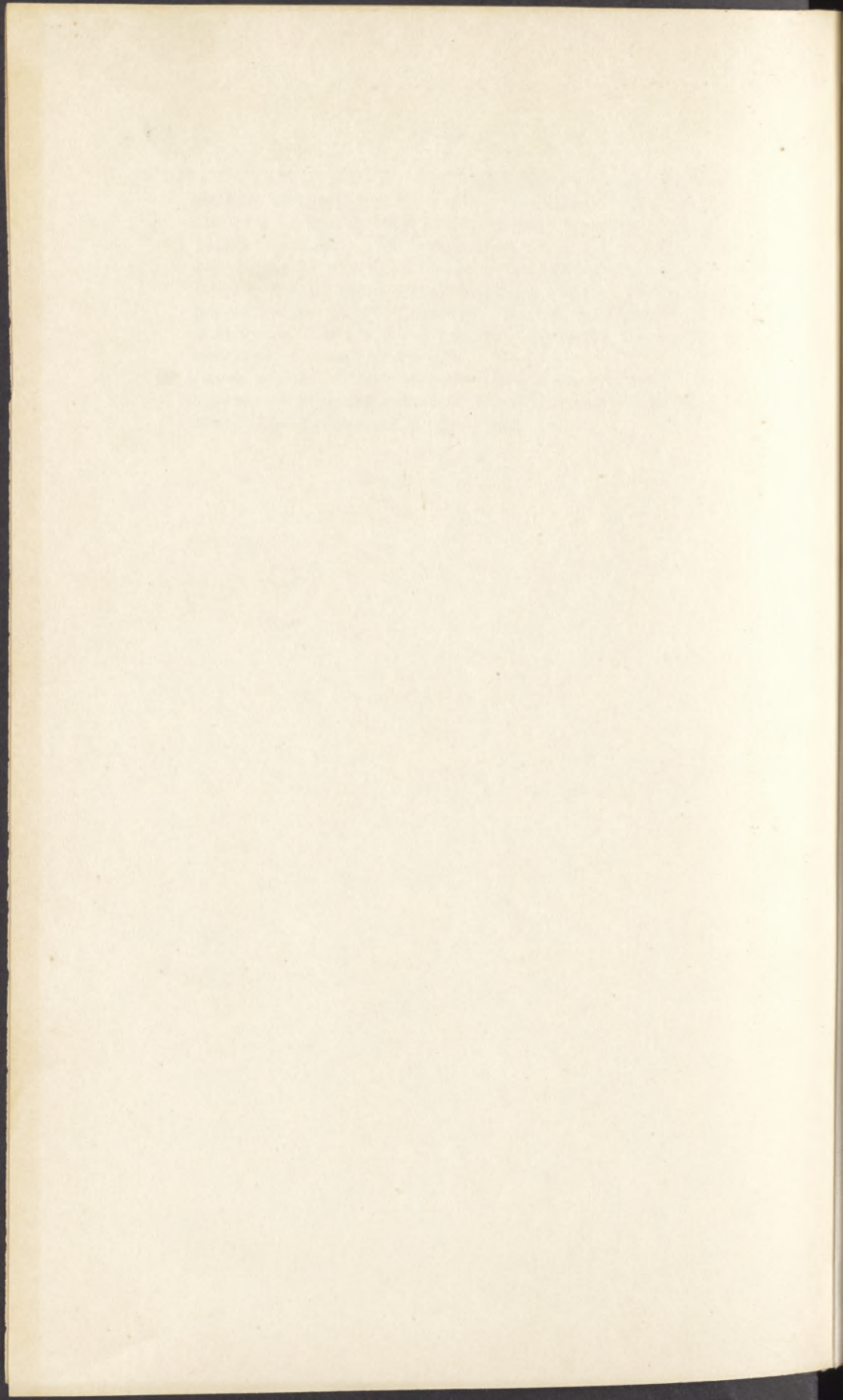
1. A. and B., having arranged the terms on which the partnership between them should be dissolved, stipulated that their clerk should examine their books, ascertain the amount which each had put into the firm and each had drawn out, and report the same as the basis of their agreed settlement, and that if any error was made, it should be corrected when discovered. The clerk made the examination, and reported that the sum of \$47,039.54 was due from B. to A. Thereupon, supposing the report to be correct, each made, executed, and delivered to the other all the papers necessary to perfect and com

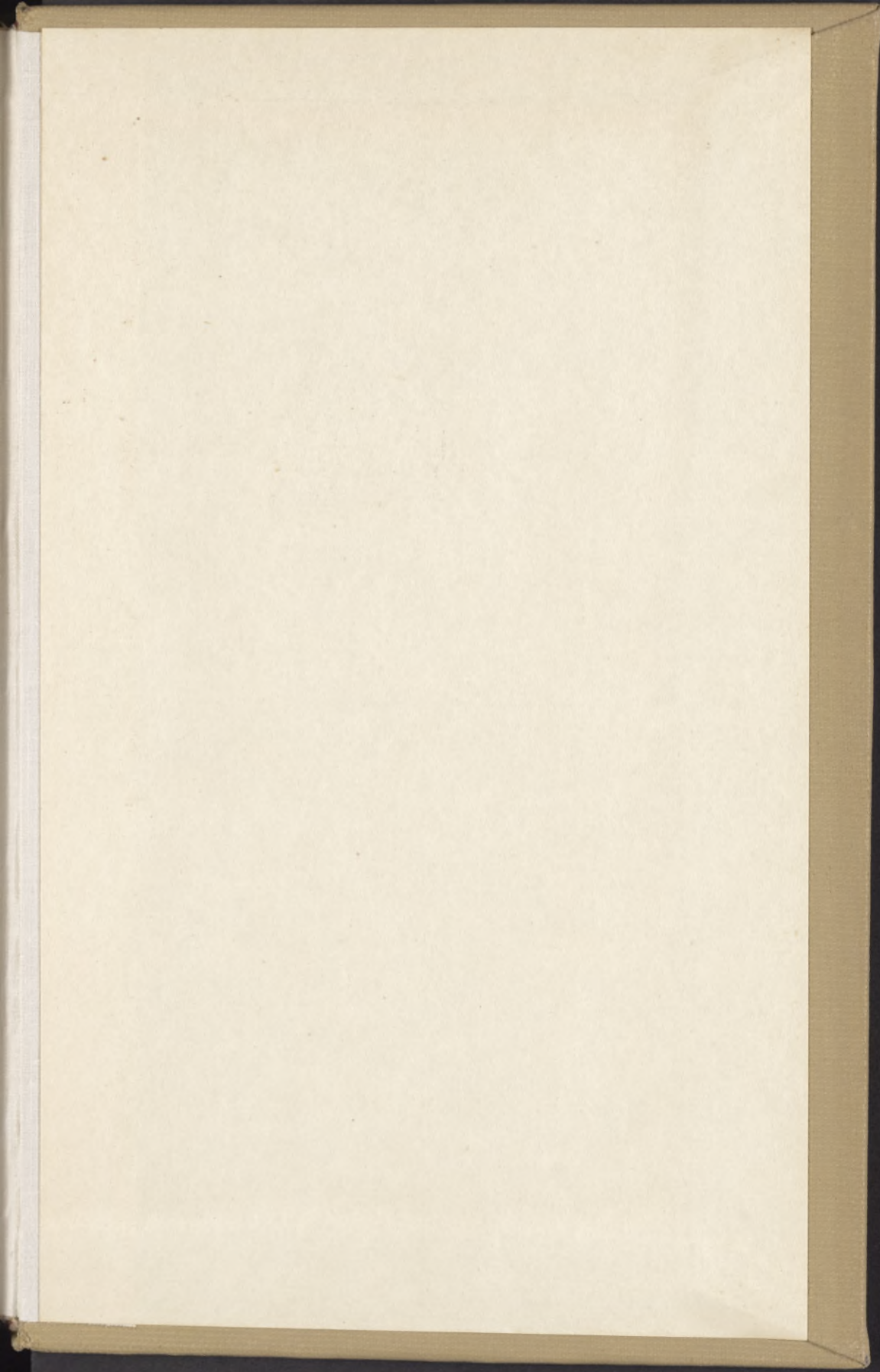
WRITTEN INSTRUMENTS, REFORMATION OF (*continued*).

plete the terms and conditions of the dissolution of the partnership. On the same day, the clerk discovered that he had made an error of \$4,036.12 against A. B. having refused to correct it, A. filed his bill praying for an account, the correction, amendment, and cancellation of the papers so executed by them, and for a decree for the payment of the \$4,036.12 due him. The bill was dismissed, on the ground that A.'s remedy was at law. *Held*, that the decree was erroneous. *Ivinson v. Hutton*, 79.

2. A mere mistake of law does not, in the absence of other circumstances, constitute any ground for the reformation of a written contract. *Snell v. Insurance Company*, 85.







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