

I N D E X.

ABANDONED AND CAPTURED PROPERTY. See *Jurisdiction*, 9.

The act of March 12, 1863 (12 Stat. 820), relative to abandoned and captured property, as extended by the act of July 2, 1864 (13 id. 375), authorizes the recovery in the Court of Claims of the proceeds of property captured and, without judicial condemnation, sold by the military authorities after July 17, 1862, and before March 12, 1863, if such proceeds were accounted for and credited by the Secretary of the Treasury to the abandoned and captured property fund. *United States v. Pugh*, 265.

ABANDONED AND CAPTURED PROPERTY ACT.

The Abandoned and Captured Property Act of March 12, 1863 (12 Stat. 820), did not repeal the act approved July 17, 1862 (id. 589), entitled "An Act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes." *United States v. Winchester*, 372.

ABATEMENT. See *Husband and Wife, Property held in Community by*.

ACCOMPLICE.

1. The district attorney has no authority to contract that a person accused of an offence against the United States shall not be prosecuted, or his property subjected to condemnation therefor, if, when examined as a witness for the government against his accomplices, he discloses fully and fairly his and their guilt. *Whiskey Cases*, 594.
2. A person so accused cannot set up such a contract in bar of proceedings against him or his property for that offence, or avail himself of it on the trial, but has merely an equitable title to Executive mercy, which the court can only notice when an application to postpone the case is made in order to give him an opportunity to apply to the pardoning power. *Id.*

ACQUIESCENCE. See *Equity*, 1.

ACTION AT LAW. See *Stockholder, Personal Liability of*, 1.

ADJOINING PROPRIETORS. See *Municipal Corporations*, 3, 4.

The owner who makes excavations on his land is liable, if he thereby deprives that of adjoining proprietors of its lateral support, while it is in its natural condition; but their right to such support does not protect whatever they have placed upon the soil increasing the downward and lateral pressure. *Transportation Company v. Chicago*, 635.

ADMIRALTY. See *Jurisdiction*, 9.

1. A bond accepted by the court upon ordering the delivery to the claimant of property seized in admiralty, is in the subsequent proceedings a substitute for the property; and the question whether a case is made for the recall of the property must be determined before a final decree on the bond is rendered in the District Court, or in the Circuit Court on appeal. Action on that question cannot be reviewed here. *United States v. Ames*, 35.
2. A decree rendered on such a bond given with sureties by the claimant at the request and for the benefit of his firm, to which the property so delivered to him belonged, bars a suit against the other partners. *Id.*
3. The fact that the adverse party had no knowledge touching the ownership of the property, and that, by reason of the insolvency of the defendants, payment of the decree cannot be enforced, affords, in the absence of fraud, misrepresentation, or mistake, no ground for relief in equity. *Id.*

ADVERTISEMENT. See *Publication, Notice by; Jurisdiction*, 6.

AFFIDAVIT.

An affidavit for the continuance of a cause does not become a part of the record, so that effect can be given to it during the trial, unless it is properly introduced as evidence for some legitimate purpose by one of the parties. *Campbell v. Rankin*, 261.

APPEAL. See *Court of Claims*, 2; *Jurisdiction*, 3, 16; *Practice*, 7-10; *Town-Site Act*, 4.

Unless allowed in open court during the term at which the decree was rendered, an appeal will be dismissed, if no citation has been issued and the appellee does not appear. *Vansant v. Gas-Light Company*, 213.

APPEARANCE. See *Counsel, Appearance by*.

ASSIGNEE IN BANKRUPTCY.

1. A., a British subject resident in this country, was duly declared a bankrupt by the proper district court, Dec. 10, 1868, and the conveyance of his estate was in the usual form made by the register to an assignee. At that time he had a claim against the United States, of which the commission organized under the treaty between the United States and Great Britain of May 8, 1871 (17 Stat. 863), took

ASSIGNEE IN BANKRUPTCY (*continued*).

cognizance, and made an award for its payment. *Held*, that the claim passed to the assignee. *Phelps v. McDonald*, 298.

2. The statutory requirement, that all suits by or against an assignee in bankruptcy shall be brought within two years from the time the cause of action accrued, relates to suits by or against him with respect to parties other than the bankrupt. *Id.*

ASSIGNMENT. See *Equity*, 2.

ATTORNEY-AT-LAW. See *Partnership, Dissolution of*.

AUTHOR. See *Copyright*.

BANK, TAXATION OF CAPITAL OF. See *Constitutional Law*, 1.

BANKRUPTCY. See *Assignee in Bankruptcy*.

1. If goods sold by a debtor with intent to defraud his creditors are attached as his property in a chancery suit to recover a debt and set aside the sale, which is brought against him and the purchaser, and the latter, with sureties, executes to the complainants a replevin bond, authorized by statute, and conditioned that he, claiming the goods as his property, will pay the ascertained value of them as expressed in the bond, should he be cast in the suit, and they be decreed to be subject to the attachment, and liable thereunder to the satisfaction of the debt sued for, his liability on the bond is not a debt created by fraud within sect. 5117 of the Revised Statutes, which provides that such a debt shall not be barred by a discharge in bankruptcy; but if the petition in bankruptcy was filed after the execution of the bond, and before the rendition of the decree determining the right of property in the goods, his liability is a contingent one, which, under sect. 5068 of the Revised Statutes, is provable against his estate in the proper bankrupt court. *Wolf v. Stix*, 1.
2. His discharge in bankruptcy releases him from further liability, but does not affect that of his sureties on the bond. *Id.*

BARGE. See *Passengers, Transportation of*.

BOND. See *Admiralty; Bankruptcy; Florida, Internal Improvement Fund of; Internal Revenue*, 1, 5; *Internal Revenue, Collector of*, 3, 5; *Municipal Bonds; Negotiable Securities*.

BONDHOLDERS. See *Mortgage*.

BONDS ISSUED BY THE UNITED STATES TO RAILROAD COMPANIES. See *Railroads, Net Earnings of*, 5, 7; *Union Pacific Railroad Company*, 2-4.

BREWER. See *Internal Revenue*, 2, 3.

BURDEN OF PROOF. See *Constitutional Law*, 1; *Contracts*, 9.

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

CANAL-BOAT. See *Passengers, Transportation of*.

CAÑON CITY AND SAN JUAN RAILWAY COMPANY. See *Right of Way by Railroad Company, Priority of.*

CAPTURED AND ABANDONED PROPERTY. See *Abandoned and Captured Property.*

CAUSES, DOCKETING OF. See *Practice, 9, 10.*

CAUSES, REMOVAL OF.

1. A. having recovered a judgment against B. and C. in the District Court for the parish of New Orleans, B., on the ground among others that the judgment, having been obtained by default and without lawful service upon him, was void, filed a petition in that court praying for a decree of nullity and for an injunction. An injunction and citation were issued and served upon A., who thereupon, alleging that he was a citizen of Missouri and B. a citizen of Louisiana, prayed that the action of nullity be removed to the Circuit Court of the United States. It having been so removed, and B.'s petition amended by converting it into a bill so as to conform to the practice in equity, that court, on a final hearing upon the pleadings and proofs, the latter including an exemplification of the record and proceedings in the original suit, dissolved the injunction and dismissed the bill. *Held*, that the causes relied on for the nullity of the judgment being, under the Code of Louisiana, vices of form, the proceeding by petition was substantially a continuation of the original suit, and that the Circuit Court could not take cognizance thereof. *Barrow v. Hunton, 80.*
2. The character of cases sought to be removed to the courts of the United States is always open to examination, to determine whether, *ratione materiae*, they are competent to take jurisdiction thereof. State rules on the subject cannot deprive them of it. *Id.*
3. A. having in the State court recovered a judgment for \$12,000 against a railroad company, the latter took the case to the Supreme Court of Iowa, where a judgment was rendered reversing that below and ordering a new trial. Immediately thereafter the company obtained and filed in the office of the clerk of the lower court, the court not being in session, a writ of *procedendo*, together with a petition under the act of March 3, 1875 (18 Stat. 470), accompanied by the necessary bond, for the removal of the case into the Circuit Court of the United States. Within the sixty days allowed for that purpose by the laws of Iowa, but after the *procedendo* and petition had been filed, A. presented an application for a rehearing, and obtained from the Supreme Court an order suspending its judgment until the next term. The company then appeared and moved to dismiss the application, on the ground that, before it was presented, the case had been removed into said Circuit Court, and that, consequently, the Supreme Court had no jurisdiction thereof. That motion being denied and a rehearing had, A. consented to a reduction of the amount of his recovery to \$7,000, whereupon judgment therefor was

CAUSES, REMOVAL OF (*continued*).

entered in the Supreme Court in accordance with its opinion. *Held*, 1. That the Supreme Court having, after reversing the judgment of the lower court, still retained jurisdiction of the cause for the purpose of a rehearing, the right of the defendant to a new trial had not been perfected when the petition for removal was filed. 2. That the subsequent judgment in the Supreme Court operated as a revocation of the order to the court below to grant a new trial, and consequently withdrew the case from under that petition. *Sed quære*, Is the filing of the petition and bond in the clerk's office, the court not being in session, sufficient, under any circumstances, to effect a removal? *Railroad Company v. McKinley*, 147.

4. The ruling in *Vannevar v. Bryant* (21 Wall. 41), that after one trial has been had in a State court, the right to another must be perfected before a demand can be made for the removal of the case to the Circuit Court of the United States, reaffirmed. *Id.*
5. A., a citizen of Florida, with other persons, some of whom were citizens of New York, was sued by a citizen of the latter State, in a court thereof. The plaintiff, in his petition, alleged that the defendants held all the franchises and property of a certain railroad company, and prayed that they be required to hold the income of the railroad in trust for the payment of a judgment theretofore rendered in his favor in that court against the company, and that they be directed to pay him the amount thereof, and for other relief. He averred that A. was indorser on part of the notes on which the judgment had been rendered. There was a judgment in favor of all the defendants, which the Court of Appeals affirmed, except as to A. The cause was remanded for a new trial as to him, solely on account of his alleged liability as such indorser. After the *remittitur* went down to the court of original jurisdiction, and before such new trial, A. filed his petition in due form, accompanied by the necessary bond, for the removal of the suit as against him to the proper Circuit Court of the United States, under the act of July 27, 1866, 14 Stat. 306. *Held*, that the matter in dispute being sufficient, A. was entitled to a removal of the suit. *Yulee v. Yose*, 539.

CENTRAL PACIFIC RAILROAD COMPANY. See *Constitutional Law*, 3-6; *Railroads, Net Earnings of*, 3, 4.

CHALLENGE, RIGHT OF. See *Juror*, 1.

CHARTER. See *Constitutional Law*, 2-6; *Taxation, Exemption from*.

CITATION. See *Appeal; Practice*, 18.

CITY, LANDS HELD BY, FOR PUBLIC PURPOSES. See *Lands held by a City for Public Purposes*.

CIVIL SURGEONS.

Civil surgeons appointed by the Commissioner of Pensions under sect. 4777 of the Revised Statutes are not officers of the United States. *United States v. Germaine*, 508.

CLAIMS AGAINST THE UNITED STATES. See *Assignee in Bankruptcy*.

COASTING VESSELS.

Steamboats which ply between different ports on a navigable river may, under a State statute, be taxed as personal property by the city where the company owning them has its principal office, and which is their home port, although they are duly enrolled and licensed as coasting vessels under the laws of the United States, and all fees and charges thereon, demandable under those laws, have been duly paid. *Transportation Company v. Wheeling*, 273.

COLLATERAL SECURITY. See *Mortgage, Equitable*; *Municipal Bonds*, 9; *National Bank*.

COMMERCE. See *Coasting Vessels*.

COMMISSIONER OF INTERNAL REVENUE. See *Internal Revenue*, 4.

COMMISSIONER OF PENSIONS. See *Civil Surgeons*.

The Commissioner of Pensions is not the head of a department, within the meaning of sect. 2, art. 2, of the Constitution, prescribing by whom officers of the United States shall be appointed. *United States v. Germaine*, 508.

COMPTROLLER OF THE CURRENCY. See *Stockholder, Personal Liability of*, 2.

CONCURRENT JURISDICTION. See *Equity*, 1.

CONDITION.

A., a married woman, offered to pay one-half of her indebtedness in land in B. County, Mississippi, at ten dollars per acre, and give her notes secured by mortgage on her land in C. County, in that State, for the remainder. A large number of her creditors having accepted the offer, she conveyed her land to D. in trust, but provided in the deed that if any of them should fail within ninety days from its date "to signify in writing their acceptance of the terms of settlement and payment of their claims or debts," they should "be considered as refusing the same," and be debarred from the benefits of the deed. Among the creditors accepting the offer was E., who surrendered the notes held by him and took the new ones. After the ninety days had expired, A. expressed her hope that all her creditors would come in, and authorized her agent, in case they did, to receive her old notes and deliver the new ones in exchange therefor. At the time of said offer, A. represented that the land was incumbered only by a small annuity, and concealed the fact that a judgment by default had been obtained in C. County by F. against her and her husband. On execution sued out on that judgment, G., her son, and said F. purchased her land in that county. E. thereupon filed his bill to set the judgment aside, or to obtain

CONDITION (*continued*).

leave to redeem the land. *Held*, 1. That E. having acted in pursuance of the original offer of A., the condition in her deed as to a written acceptance within ninety days did not apply to him. 2. That the condition being only in the nature of a penalty against the creditors, not assenting in the prescribed way, could be, and in fact was, waived by A. *Bank v. Partee*, 325.

CONFEDERATE NOTES. See *Trust*.

CONFISCATION ACT. See *Abandoned and Captured Property Act; Judicial Sale*, 1.

CONSTITUTIONAL LAW. See *Coasting Vessels; Commissioner of Pensions; Municipal Corporations*, 5.

1. In assessing the taxes for the city of New Orleans for the year 1876, a bank there located, with a nominal capital of \$1,000,000, was assessed, in addition to its real estate, for the sum of \$700,000, as its capital, or money at interest. It refused to pay the assessment, alleging that its capital, not invested in real estate, consisted of legal-tender notes of the United States. *Held*, that the bank, on whom was the burden of proof, having failed by its own statement (*supra*, p. 98), or otherwise, to make good its allegation, the assessment does not invade its rights under the Constitution or the laws of the United States. *Canal and Banking Company v. New Orleans*, 97.
2. The statute of Illinois passed in 1872 conforming taxation to the new Constitution of 1870, and limiting the exemption of the property of the Northwestern University to land and other property in immediate use by the institution, impairs the obligation of the contract contained in the statute of 1855, which declares that all the property of that University shall be for ever free from taxation. *University v. People*, 309.
3. So far as it establishes in the treasury of the United States a sinking-fund, the act of Congress approved May 7, 1878 (20 Stat. 56), entitled "An Act to alter and amend the act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act," is not unconstitutional. *Sinking-Fund Cases*, 700.
4. The right of amendment, alteration, or repeal reserved by Congress in said acts of 1862 and 1864 considered. *Id.*
5. The establishment of the fund is a reasonable regulation of the administration of the affairs of the companies, promotive alike of the interests of the public and of the corporators, and is warranted under the authority which Congress has, by way of amendment, to

CONSTITUTIONAL LAW (*continued*).

change or modify the rights, privileges, and immunities granted by it. *Id.*

6. The legislation of Congress in relation to the Central Pacific Railroad Company and the Western Pacific Railroad Company — the latter now by consolidation a part of the former — considered, and *held*, 1. That, to the extent of the powers, rights, privileges, and immunities thereby granted, Congress retains the right of amendment, and by exercising it may, in a manner not inconsistent with the original charter granted by California, as modified by the act of that State passed in 1864, accepting what had been done by Congress, regulate the administration of the affairs of the company in reference to the debts created by it under authority of such legislation. 2. That the establishment of the sinking-fund by the act of May 7, 1878 (*supra*), does not conflict with any thing in said charter. *Id.*

CONTINUANCE, AFFIDAVIT FOR. See *Record*.

CONTRACTS. See *Accomplice*, 1; *Constitutional Law*, 2; *Jurisdiction*, 5; *Lands, Contract for the Sale of*; *Specific Performance*.

1. A contract between the United States and A., for his removal of the rock at the entrance of a certain harbor, provided that he should complete the work at a specified time, and that if he should delay or be unable to proceed with it in accordance with the contract, the officer in charge might terminate the contract, and employ others to complete the work, deducting expenses from any money due or owing to A., who was also to be responsible for any damages caused to others by his delay or non-compliance. Payment upon the completion and acceptance of the several sections was to be made, reserving ten per cent therefrom until the completion and acceptance of the whole work. The work was not completed at the specified time, chiefly in consequence of the failure of a third party to deliver to A. the necessary explosive, and the officer in charge terminated the contract; but the evidence does not show that his action was wrongful. The work was completed by other parties at much lower terms. A. brought suit against the United States. *Held*, that the United States having sustained no loss by the failure of A., he is entitled to the reserved ten per cent, but not to the profits that he would have made had he performed the contract, nor to the difference between the contract price and that at which the work was completed by others. *Quinn v. United States*, 30.
2. The Secretary of the Treasury having been authorized by sect. 15 of the act of March 2, 1867 (14 Stat. 481), to "adopt, procure, and prescribe" meters to be used by distillers, adopted the meter of A., April 18, 1867. If the Secretary revoked his order, it was agreed that A. should be paid for all the instruments he might then have completed or have in process of completion, provided the number of

CONTRACTS (*continued*).

sets in process of manufacture at any one time should not exceed twenty. A joint resolution, passed Feb. 3, 1868 (15 id. 246), declared that, pending an examination thereby directed, all work on the construction of meters under the direction of the Treasury Department should be suspended, and that in the mean time no further contract should be made under the act of March 2, 1867. Power to adopt and prescribe meters was, by the act of July 20, 1868 (id. 125), conferred upon the Commissioner of Internal Revenue, who, Sept. 16, 1868, adopted A.'s meter, reserving the right to entirely revoke his order adopting it, and, on the part of the government, direct the discontinuance of its manufacture. June 8, 1870, the commissioner revoked his previous order, except as to meters then on hand or in process of construction not exceeding twenty sets; and A. was informed that neither the government nor any department or officer thereof was or would be responsible for or on account of any meters. The use of A.'s meter was entirely discontinued June 8, 1871. He then had fourteen and a half sets on hand, for the value of which he brought this suit, contending that the contract made by the Secretary in 1867, to pay for the instruments on hand at the time of the discontinuance to the extent of twenty sets, was adopted by the commissioner in 1868, and was made part of all the subsequent proceedings. It does not appear that any of the fourteen and a half sets on hand June 8, 1871, were on hand or in process of manufacture June 8, 1870. *Held*, that A. was not entitled to recover. *Tice v. United States*, 286.

3. A contract entered into between A. and B., whereby the former, for a valuable consideration, bound himself to secure, upon the location of certain certificates authorized to be issued by the act of July 17, 1854 (10 Stat. 304), title to the land thereby located to be vested in B., is not in violation of that act, or of the treaty of Prairie du Chien proclaimed Feb. 24, 1831 (7 id. 330). *Myrick v. Thompson*, 291.
4. Unless the contract so provides, the demand of one of the parties thereto that the other shall perform his agreement need not be in writing. *Colby v. Reed*, 560.
5. Where the amount to which the plaintiff is entitled is clear, an action by him for a breach of the contract will not be defeated solely on the ground that his demand upon the defendant was in excess of that amount. *Id.*
6. In such an action the court cannot, unless so authorized by statute, compel the plaintiff to accept, in mitigation of damages, when tendered to him by the defendant in open court, the property for the non-delivery of which the action was brought. *Id.*
7. The notice of the rescission of a contract is not rendered void by reason of the fact that it was given in Nevada on Sunday. *Pence v. Langdon*, 578.

CONTRACTS (*continued*).

8. The vendee of stock in a company, who, on the ground of fraud, rescinded his contract of purchase, is not bound to receive the stock certificate left on deposit for him by the vendor, and tender it to the latter before bringing his action for the purchase-money. *Id.*
9. Where the plaintiff's knowledge of the fraud and his neglect to promptly rescind the contract are relied on to defeat the action, the burden of proving the fact of such knowledge and the time when it was acquired rests upon the defendant. *Id.*

CONVEYANCE. See *Condition; Judicial Sale, 1; Lands, Contract for the Sale of, 2; Mortgage, Equitable.*

COPYRIGHT.

The right of an author or a publisher, under the copyright law, is infringed only when other persons produce a substantial copy of the whole or of a material part of the book or other thing for which he secured a copyright. Where, therefore, the owner of a copyright for maps of certain wards of "the city of New York, surveyed under the direction of insurance companies of said city, which exhibit each lot and building, and the classes are shown by the different coloring and characters set forth in the reference," brought his bill to restrain the publication of similar maps of the city of Philadelphia. *Held*, that the bill could not be sustained. *Perris v. Hexamer, 674.*

CORPORATION. See *Municipal Corporations; Practice, 7, 8; Taxation, Exemption from.*

COUNSEL, APPEARANCE BY.

Counsel who enter their appearance under the requirements of Rule 9 will be held responsible for all that such an entry implies, until, by substitution or otherwise, they are relieved from the obligation they have assumed. *Alvord v. United States, 593.*

COUPONS. See *Estoppel, 5; Municipal Bonds, 2, 4, 6, 7.*

COURT AND JURY. See *Practice, 13.*

1. The court submitted to the jury to determine whether from certain letters and telegrams, when considered in connection with the other evidence in the case, the defendant undertook to act as the agent of the plaintiff in the purchase of stock from other parties. The jury found, and the letters clearly showed, that he did undertake so to act. *Held*, that the omission of the court to construe the written evidence, if erroneous, affords him no just cause of complaint. *Pence v. Langdon, 578.*
2. A. brought an action against the proprietor of a park, to recover for injuries sustained by her from an attack by a male deer which, with other deer, was permitted to roam in the park, and which the declaration charged that the defendant knew to be dangerous. At the trial, evidence was introduced to show that the park was open

COURT AND JURY (*continued*).

and accessible to visitors ; that A. was in the habit of visiting it, and when lawfully there was attacked by the deer and severely injured; that she had often seen deer — about nine in number, three of whom were bucks, the oldest four years old — running about on the lawn, and persons playing with them, and that she had there seen the sign, “ Beware of the buck ; ” that the park contained about eleven acres; that notices were put up in the park a year or two before cautioning visitors not to tease or worry the deer; that she had no knowledge or belief, prior to the attack upon her, that the deer were dangerous, if not disturbed. Experts testified that in their opinion the male deer, at the season when the injury was sustained by A., was a dangerous animal. The bill of exceptions does not show that all the evidence for A. is set forth in it, or that the defendant introduced any. *Held*, that a motion to dismiss the action, nonsuit the plaintiff, and to direct the jury to return a verdict for the defendant, was properly denied. *Spring Company v. Edgar*, 645.

3. The court called attention to the testimony of the experts, and instructed the jury that it was for them to determine its weight. *Held*, that the instruction was proper. *Id.*
4. The jury were also instructed not to believe any extravagant statement of the injuries received by the plaintiff, and that, when they had made up their minds as to the amount really sustained, they should not be nice in the award of compensation, but that it should be liberal. The defendant did not request the instruction to be qualified or explained, or a different one given. *Held*, that the charge in that respect furnishes no ground for reversing the judgment. *Id.*
5. Where the charge to the jury, taken as a whole, fully and fairly submits the law of the case, the judgment will not be reversed because passages extracted therefrom and read apart from their connection need qualification. *Evanston v. Gunn*, 660.
6. Where, upon the undisputed facts of the case, the plaintiff is entitled to recover, it is not error for the court to instruct the jury to find for him. *Orleans v. Platt*, 676.
7. Where the testimony is all one way, a party is not entitled to instructions which assume that it is otherwise. *Id.*

COURT OF CLAIMS. See *Abandoned and Captured Property; Limitations, Statute of*, 3.

1. Where, in a suit arising under the act of March 12, 1863 (12 Stat. 820), relative to abandoned and captured property, as extended by the act of July 2, 1864 (13 id. 375), no direct proof was given that the proceeds of the sale of the property were paid into the treasury, if the circumstantial facts which are established by the evidence are set forth in the finding of the Court of Claims, which it

COURT OF CLAIMS (*continued*).

sends here as that upon which alone its judgment was rendered, and they are, in the absence of any thing to the contrary, the legal equivalent of a direct finding that such proceeds were so paid, this court will not on that account reverse the judgment. *United States v. Pugh*, 265.

2. The judgment of the Court of Claims as to the legal effect of what may, perhaps not improperly, be termed the ultimate circumstantial facts of the case, is, if the question is properly presented, subject on appeal to be here reviewed; and where the rights of the parties depend upon such circumstantial facts alone, and there is doubt as to the legal effect of them, it is the duty of that court to frame its findings so that the question as to such effect shall be presented by the record. *Id.*
3. *United States v. Crusell* (14 Wall. 1), *Same v. Ross* (92 U. S. 281), and *Interningled Cotton Cases* (id. 651), so far as they bear upon the rule requiring, on an appeal from the Court of Claims, a finding by that court of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them, cited and explained. *Id.*

CREDITORS. See *Mortgage*, 1, 3.

CRIMINAL LAW.

A statute of Utah, passed March 6, 1852, provides that a person convicted of a capital offence "shall suffer death by being shot, hanged, or beheaded," as the court may direct, or "he shall have his option as to the manner of his execution." The Penal Code of the Territory, adopted in 1876, by which all acts and parts of acts inconsistent therewith are repealed, provides that any person convicted of murder in the first degree "shall suffer death," and that "the several sections of this code, which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed." A., convicted of having, June 11, 1877, committed murder in the first degree, was, by the proper court of that Territory, sentenced to be publicly shot. *Held*, that the sentence was not erroneous. *Wilkerson v. Utah*, 130.

DAMAGES. See *Adjoining Proprietors*; *Contracts*, 1, 6; *Court and Jury*, 4; *Municipal Corporations*, 3, 6; *Nuisance*; *Practice*, 17.

DECEDENT ESTATES. See *Georgia, Statute of Limitations of*.

1. A testator in whom was the legal title to lands, which he had sold by a written contract, can transfer by his will both such title and the notes given for the purchase of them, and the devisee will stand towards the purchaser in the same position that the testator did. *Atwood v. Weems*, 183.
2. Where the President, at the close of hostilities, appointed a military

DECEDENT ESTATES (*continued*).

governor of one of the States, the people whereof had been in rebellion against the United States, — *Held*, that such appointment did not change the general laws of the State then in force for the settlement of the estates of deceased persons, nor remove from office those who were at the time charged by law with public duties in that behalf. *Ketchum v. Buckley*, 188.

DEED. See *Judicial Sale*, 1.

DE FACTO OFFICER. See *Town-Site Act*, 1.

DEFAULT. See *Internal Revenue*, 5, 6.

DENVER AND RIO GRANDE RAILROAD COMPANY. See *Right of Way by Railroad Company, Priority of*.

DENVER PACIFIC RAILWAY AND TELEGRAPH COMPANY.

The Denver Pacific Railway and Telegraph Company is not liable for the debt incurred by the Kansas Pacific Railway Company on account of subsidy bonds; and although it is bound to perform the government service stipulated by the Pacific Railroad acts at the rates therein prescribed, and is subject to their provisions, so far as they are applicable to it, no part of the compensation due it for such service can be retained by the United States. *United States v. Denver Pacific Railway Company*, 460.

DEPARTMENTS, EXECUTIVE. See *Commissioner of Pensions*.

DEPUTY COLLECTOR. See *Internal Revenue, Collector of*, 1, 2.

DEVISEE. See *Decedent Estates*, 1.

DIRECT TAXES, SALES FOR.

1. The court reaffirms the ruling in *Bennett v. Hunter* (9 Wall. 326) and *Tacey v. Irwin* (18 id. 549), that a sale for direct taxes under the act of 1862 is void, where, before the sale, the owner, or some one for him, was ready and offered to pay them, and was told that payment would not be accepted. *Atwood v. Weems*, 183.
2. Such offer to pay, made to a clerk of the board of commissioners at their office, who was authorized by them to receive delinquent taxes generally, is sufficient. *Id.*
3. The court reaffirms the doctrine in *De Treville v. Smalls* (98 U. S. 517), that the certificate given by the commissioners to the purchaser of lands at a sale for a direct tax, under the act of June 7, 1862 (12 Stat. 422), as amended by the act of Feb. 6, 1863 (id. 640), is *prima facie* evidence of the regularity of the sale and of all the antecedent facts essential to its validity and to that of his title thereunder, and that 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. *Keely v. Sanders*, 441.
4. The sale may be valid, although, when it and the assessment were

DIRECT TAXES, SALES FOR (*continued*).

made, the lands belonged to a non-resident and were *in custodia legis*, the State court in which the *lis* was pending having enjoined all creditors from interfering with or selling them, and they were sold as an entirety, notwithstanding the fact that the tax bore but a small proportion to their value. *Id.*

5. A description of the lands in the notice of sale, which identifies them so that the owner may have information of the claim thereon, is all that the law requires. *Id.*
6. The word "district," where it occurs in the sixth section of the said act of 1862, signifies a part or portion of a State. The city of Memphis, Tenn., was, therefore, a district within the meaning of that section. *Id.*

DISTILLED SPIRITS. See *Internal Revenue*, 1.

DISTILLER. See *Internal Revenue*, 1-4.

DISTRICT ATTORNEY. See *Accomplice*, 1; *Juror*, 3.

DIVIDENDS, TAX ON. See *Internal Revenue, Collector of*, 4, 5.

EJECTMENT. See *Evidence*, 1; *Limitations, Statute of*, 1.

EQUITABLE MORTGAGE. See *Mortgage, Equitable*.

EQUITY. See *Admiralty*, 3; *Jurisdiction*, 10, 11, 12; *Partnership, Dissolution of*, 1.

1. In cases of concurrent jurisdiction, courts of equity consider themselves bound by the statutes of limitation which govern courts of law; in many other cases they act upon the analogy of the limitations at law; but even where there is no such statute governing the case, a defence founded upon the lapse of time and the staleness of the claim is available in equity where there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights. *Godden v. Kimmell*, 201.
2. A., an alleged creditor of B., whose claim had not been established at law, filed his bill against the latter, averring him to be insolvent, and against C., a debtor of B., praying that the debt due from C. be applied to the payment of that claim. There being no assignment to A. by B. of his debt against C., and no lien upon the fund in the hands of the latter, — *Held*, that the bill could not be sustained. *Smith v. Railroad Company*, 398.

ESTOPPEL. See *Admiralty*, 2; *Husband and Wife, Property held in Community by*; *Municipal Bonds*, 1-4, 6, 12; *National Bank*, 2; *Union Pacific Railway Company*, 2.

1. The judgment of a court of competent jurisdiction is, as to every issue decided in the suit, conclusive upon the parties thereto, and in a subsequent suit between them parol evidence, whenever it becomes necessary in order to show what was tried in the first suit, is admissible. *Campbell v. Rankin*, 261.

ESTOPPEL (*continued*).

2. A court in Louisiana, having jurisdiction of the parties and the subject-matter of the suit, rendered a judgment in favor of the plaintiff for a debt, with lien and privilege on the lands described in the mortgage given by the defendant to secure it. The judgment, on a devolutive appeal by the defendant, was in all things affirmed by the Supreme Court of the State. Pending the appeal, the lands were sold by the sheriff under the judgment, and purchased by the plaintiff, who obtained a monition under the act for the further assurance of titles to purchasers at judicial sales. Due publication of said monition having been made, and there being no opposition to said sale, the proper court ordered that the same "be confirmed and homologated according to law." A suit was subsequently brought in the Circuit Court of the United States by the heir-at-law of the mortgagor, praying that the title of the purchaser at said sale be decreed to be null and void, and that the complainant be adjudged to be the true and lawful owner of the lands. *Held*, that the judgment in the proceedings on the monition is conclusive proof of the validity of the sale, and, as *res adjudicata*, is a complete bar to the suit. *Montgomery v. Samory*, 482.
3. Where, pursuant to the authority vested in him by chapter 907 of the laws of New York, passed May 18, 1869, and the several laws amendatory thereof, the county judge renders judgment declaring that the conditions have been performed whereon a town in the county can lawfully subscribe for shares of the capital stock of a railroad company in that State, and issue its bonds to pay therefor, — *Held*, that the judgment, until reversed by a higher court, is conclusive. *Orleans v. Platt*, 676.
4. His judgment in favor of the subscription cannot be collaterally attacked in a suit on the bonds brought by a *bona fide* holder for value of them against the town; and where it is recited in them, the town is estopped from denying their validity. *Lyons v. Munson*, 684.
5. A., the lawful holder of coupons detached from bonds issued by a county in Kansas, applied to a court of competent jurisdiction for a *mandamus* to compel the county commissioners to pay such of them as were then due, and levy a tax sufficient to pay those shortly thereafter falling due. The commissioners denied the validity of the bonds and the obligation of the county to pay them. Judgment was rendered for the defendants. Subsequently, A. delivered the same coupons to B., to be collected for the benefit of A. B. brought suit. *Held*, that the judgment was a bar to the suit. *Block v. Commissioners*, 686.

EVIDENCE. See *Accomplice*, 1; *Court and Jury*, 1, 7; *Court of Claims*, 1-3; *Direct Taxes, Sales for*, 3; *Practice*, 3, 4; *Record*.

1. In ejectment, or trespass *quare clausum fregit*, actual possession of the land by the plaintiff, or his receipt of rent therefor, prior to his

EVIDENCE (*continued*).

- eviction, is *prima facie* evidence of title, on which he can recover against a mere trespasser. *Burt v. Panjaud*, 180.
2. In trespass *quare clausum fregit*, actual possession of the land by the plaintiff is sufficient evidence of title to authorize a recovery against a mere trespasser. *Campbell v. Rankin*, 261.
 3. The judgment of a court of competent jurisdiction is, as to every issue decided in the suit, conclusive upon the parties thereto, and in a subsequent suit between them parol evidence, whenever it becomes necessary in order to show what was tried in the first suit, is admissible. *Id.*
 4. While the record of a mining district is the best evidence of the rules and customs governing its mining interests, it is not the best or the only evidence of the priority or extent of a party's actual possession. *Id.*
 5. The fifth section of the act entitled "An Act to promote the development of the mining resources of the United States," approved May 10, 1872 (17 Stat. 91), gives no greater effect to the record of mining claims than is given to the records kept pursuant to the registration laws of the respective States, and does not exclude as *prima facie* evidence of title proof of actual possession, and of its extent. *Id.*
 6. The record kept by a person employed in the Signal Service of the United States, whose public duty it is to record truly the facts therein stated, is competent evidence of such facts. *Evanston v. Gunn*, 660.

EXECUTION. See *Lands held by a City for Public Purposes*.

EXPERTS, TESTIMONY OF. See *Court and Jury*, 3.

FALSE IMPRISONMENT. See *Jurisdiction*, 1.

FEDERAL QUESTION. See *Jurisdiction*, 1.

FINDINGS OF FACT. See *Court of Claims*.

FLORIDA, INTERNAL IMPROVEMENT FUND OF.

1. Where, under the act of the State of Florida entitled "An Act to provide for and encourage a liberal system of internal improvements in this State," passed Jan. 6, 1855, a railroad was sold by the trustees of the internal improvement fund, who applied the proceeds of the sale to the purchase and cancellation of a part of the outstanding bonds of the company, — *Held*, that the purchaser of the road is thereafter required to pay, on account of the sinking-fund for which that act provides, one-half of one per cent semi-annually upon the remaining bonds, and not upon the entire amount originally issued by the company. *Doggett v. Railroad Company*, 72.
2. Where the receiver of the internal improvement fund who was appointed by the court filed a bill in equity to determine upon what amount of said bonds the purchaser was bound to make such semi-annual payment. — *Held*, that the holders of them were not proper parties complainant. *Id.*

FORECLOSURE. See *Mortgage*, 1-4.

FORFEITURE. See *Internal Revenue*, 5, 6.

FRAUD. See *Admiralty*, 3; *Bankruptcy*; *Contracts*, 8, 9.

FRAUDS, STATUTE OF. See *New Hampshire, Statute of Frauds of*.

GEORGIA, STATUTE OF LIMITATIONS OF.

The statute of Georgia of March 16, 1869, requiring actions for the enforcement of rights of individuals under acts of incorporation or by operation of law, which accrued prior to June 1, 1865, to be brought before Jan. 1, 1870, does not apply to claims against the estate of a deceased person, so as to exclude the time which a previous statute allowed to administrators to ascertain the condition of the estate, and to creditors to file their claims. *Mills v. Scott*, 25.

HUSBAND AND WIFE, PROPERTY HELD IN COMMUNITY BY

A. gave his promissory notes, payable Jan. 1, 1868, and Jan. 1, 1869, and to secure the payment thereof executed a mortgage on certain lands in Louisiana, which he had held in community with his wife, then deceased. In proceedings upon an order of seizure and sale, the holder of the note purchased the property, and brought in a State court a petitory action therefor and for rents and profits. A. answered, setting up the nullity of the proceedings, by reason of the non-compliance by the sheriff with the requirements of the statute. B., his son, intervened, setting up such nullity, and also claiming one-half of the property as the heir of his deceased mother. A. having died, the plaintiff filed a supplemental petition against B., which contained no prayer for a personal judgment against him, nor did it set up the debt itself as a ground of claim or action. Judgment was rendered in favor of B., upon the ground that he was the owner of an undivided half of the property, and that the sale by the sheriff was void, because he had never had the property in his possession. The holder of the notes thereupon, Oct. 19, 1876, brought suit in the Circuit Court of the United States against B., charging him on the notes as universal heir of A., averring that he was liable for the debt, because as such heir he had taken possession of the estate and property of A., and praying a decree for the debt, with mortgage lien and privilege out of the mortgage property. B. set up the prescription of five years, and averred that the order of seizure and sale was a merger of the original debt, and that the executory proceedings were still pending; that he had taken possession of one half of the property as heir of his mother, and of the other half as the beneficiary heir of his father; but denied that such possession made him liable for the debt. He furthermore set up the said judgment as a bar. *Held*, 1. That the order of seizure and sale did not merge the debt, but that it was a judicial demand, continuing in operation until rendered effective by a valid sale of the property, and that the plea of prescription could not, therefore, be sustained. 2. That the pendency of a suit in a State court does not abate a suit upon the

HUSBAND AND WIFE, PROPERTY HELD IN COMMUNITY
BY (*continued*).

same cause of action in a court of the United States. 3. That the said judgment is not a bar to this suit. 4. That under articles 371 and 977 of the Civil Code of Louisiana, if a husband after the death of his wife mortgages community property for his debt, and afterwards dies while their son and heir is still a minor, but after he has been emancipated, the latter does not render himself liable for the debt as universal heir of his father, by simply taking possession of the property and receiving to his own use the rents and profits thereof. 5. That the complainant is entitled to a decree for the sale of one undivided half of the mortgaged property, to pay said notes and interest. *Gordon v. Gilfoil*, 168.

ILLINOIS. See *Constitutional Law*, 2; *Jurisdiction*, 2; *Municipal Bonds*, 4-6; *Municipal Corporations*, 1, 6, 7.

INFRINGEMENT. See *Copyright*.

INSTRUCTIONS TO JURY. See *Practice*, 23-25.

INSURRECTIONARY STATES, PROVISIONAL GOVERNMENTS
IN. See *Decedent Estates*, 2.

INTERNAL REVENUE.

1. Debt on a bond given under sect. 23 of the act of July 20, 1868 (15 Stat. 135), by a distiller with sureties, conditioned to be void if the obligors paid the taxes on the spirits deposited in the warehouse before their removal, and within one year from the date of the bond. Before the expiration of that time the spirits, while in the bonded warehouse in charge of an internal-revenue store-keeper, were destroyed by fire, without any fault, negligence, or carelessness on the part of the distiller, or of any person in charge of the distillery and warehouse who was in his employ. *Held*, that the obligors are liable to pay the taxes. *Farrell v. United States*, 221.
2. Brewers are included within the prohibition of the statute (14 Stat. 113; Rev. Stat., sect. 3232) that no person, firm, company, or corporation shall be engaged in or carry on any trade, business, or profession until he or they shall have paid the required special tax. *United States v. Glab*, 225.
3. If such tax for one year has been paid by a firm of brewers, which before the expiration of the year is dissolved by the retirement of one partner, the other may carry on the same trade or business at the same place for the remainder of the year, without again paying such tax or any part thereof. *Id.*
4. A. purchased, May 8, 1875, certain high wines from B., which the latter had produced and removed from his distillery to the bonded warehouse, the tax not having been paid on them. The collector of internal revenue was duly notified of the sale. While they were there, the Commissioner of Internal Revenue, under authority of sect. 3309 of the Revised Statutes, assessed a tax on the number of

INTERNAL REVENUE (*continued*).

- proof gallons of spirits distilled by B. at that distillery between Jan. 6 and March 8, 1875. *Held*, that the wines so purchased by A. were subject to the lien of the tax, and also, in the case of its non-payment, to the interest, penalty, and charges provided by law. *Hartman v. Bean*, 393.
5. The court reaffirms its ruling in *Erskine v. Milwaukee & St. Paul Railroad Co.* (94 U. S. 619), that the forfeiture of \$1,000 is the only penalty to which a corporation is liable for default, under sect. 122 of the internal-revenue act of June 30, 1864 (13 Stat. 284), as amended by the act of July 13, 1866. 14 *id.* 138. *Elliott v. Railroad Company*, 573.
 6. No intention to add to the penalty for that default, while the section remained in force, is manifested by the act of July 14, 1870. 16 Stat. 260. *Id.*

INTERNAL REVENUE, COLLECTOR OF.

1. A., a collector of internal revenue, was suspended, Sept. 23, 1873, from office, upon charges of fraud, by the supervisor, who reported his action to the commissioner, in accordance with sect. 3163 of the Revised Statutes. The Secretary of the Treasury, Sept. 26, directed B., the deputy collector of the district, to assume the duties of collector, as of Sept. 23, in place of A., and to continue in office until some person should be appointed thereto and duly qualified. A. died Oct. 16. A collector, appointed Nov. 9, took the oath and gave the required bond, Dec. 1, but did not take possession of the office until Dec. 10. B. performed the duties of collector from Sept. 23 to and including Dec. 9. *Held*, that B. was entitled to the compensation of collector during the whole period. *United States v. Farden*, 10.
2. Under the last clause of the first section of the act of March 1, 1869 (15 Stat. 282), providing that a deputy collector of internal revenue shall not receive compensation as collector, when the latter is entitled to compensation for services rendered during the same period of time, a collector suspended for fraud, and rendering no services thereafter, is not entitled to compensation so as to exclude the deputy collector therefrom; and the better opinion is that that provision is repealed by its omission from 16 Stat. 179; Rev. Stat., sect. 3150. *Id.*
3. Where a tax long past due to the United States has been paid to the collector of internal revenue, he and his sureties are liable therefor, although the amount so paid had not then been returned to the assessor's office or passed upon by him, nor had a sworn return of the tax-payer been delivered. *King v. United States*, 229.
4. The ruling in *The Dollar Savings Bank v. United States* (19 Wall. 227), that the obligation to pay the tax on dividends or interest does not depend on an assessment by any officer, and that a suit for such tax

INTERNAL REVENUE, COLLECTOR OF (*continued*).

can be sustained without it, reaffirmed and applied to the present case. *Id.*

5. The tax so paid is public money covered by the terms of the bond. *Id.*

IOWA. See *Causes, Removal of*, 3.

JUDGMENT. See *Estoppel*; *Taxation*, 1, 3.

JUDICIAL CONDEMNATION. See *Abandoned and Captured Property*.

JUDICIAL NOTICE. See *Letters-patent*.

JUDICIAL SALE. See *Estoppel*, 2; *Mortgage*, 4.

1. A marshal's deed which includes, with certain lands legally sold under the confiscation act of July 17, 1862 (12 Stat. 589), a parcel not mentioned either in the information, the monition, or the decree of condemnation, under which the sale was made, passes no title to such parcel. *Burbank v. Semmes*, 138.
2. A sale of lands in Louisiana by the sheriff is void unless he has them in his possession. *Gordon v. Gilfoil*, 168.

JURISDICTION. See *Admiralty*; *Causes, Removal of*, 2; *Court of Claims*, 2; *Equity*, 1; *Partnership, Dissolution of*, 1; *Practice*, 16, 17; *Stockholder, Personal Liability of*, 1.

I. OF THE SUPREME COURT.

1. This court having in *Ex parte Lange* (18 Wall. 163) held that the judgment against him, rendered Nov. 8, 1873, was not authorized by law, he brought, in a State court, an action against the judge who pronounced it. That court decided that even though the judgment was unauthorized, the defendant having, in pronouncing it, acted in his judicial capacity, and it not being so entirely in excess of his jurisdiction as to make it the arbitrary and unlawful act of a private person, was not liable in damages. Held, that such decision does not present a Federal question. *Lange v. Benedict*, 68.
2. This court has jurisdiction to review the decision of the Supreme Court of Illinois, upon the question whether the statute of that State, passed in 1855, exempting all the property of the Northwestern University for ever from taxation, is a valid contract, or is void by reason of its conflicting with the State Constitution of 1848. *University v. People*, 309.
3. Under the act entitled "An Act concerning the practice in territorial courts, and appeals therefrom," approved April 7, 1874 (18 Stat. pt. 3, p. 27), the appellate jurisdiction of this court over the judgment or the decree rendered by a territorial court in a case not tried by a jury can only be exercised by appeal. *Stringfellow v. Cain*, 610.

II. OF THE CIRCUIT COURTS.

4. Where the causes relied on in the petition for the nullity of a judg-

JURISDICTION (*continued*).

ment of a court of Louisiana are, under the Code of that State, vices of form, the Circuit Court of the United States has no jurisdiction to take cognizance of the suit upon a petition for its removal into that forum. *Barrow v. Hunton*, 80.

5. A suit between citizens of the same State cannot be sustained in the Circuit Court as arising under the patent laws of the United States, where the defendant admits the validity and his use of the plaintiff's letters-patent, and a subsisting contract is shown governing the rights of the parties in the use of the invention. *Hartell v. Tilghman*, 547.
6. Where a suit in equity, to enforce a lien on property within the district, was pending at the time of the passage of the act of June 1, 1872 (17 Stat. 196), and a party who was not an inhabitant of, or found within, the district was thereafter, by an amended bill, made a defendant, — *Held*, that the court could acquire jurisdiction in the mode prescribed by the thirteenth section of that act. *McBurney v. Carson*, 567.

III. OF THE DISTRICT COURTS.

7. The admiralty jurisdiction of the district courts of the United States does not extend to seizures made on land. *United States v. Winchester*, 372.
8. The order of the President for the seizure, under the act of July 17, 1862 (12 Stat. 589), of the property of persons engaged in armed rebellion against the United States, or in aiding and abetting the rebellion, is a prerequisite to the exercise by the District Court of its jurisdiction to adjudge the forfeiture and decree the condemnation of such property. *Id.*
9. Cotton found on land in Mississippi was, Feb. 18, 1863, seized by the naval forces of the United States, without the order of the President, and delivered by an officer of the navy to the marshal of the United States for the Southern District of Illinois. A libel was filed in the District Court for that district, alleging as the ground of seizure that the cotton belonged to a person in armed rebellion against the United States. The cotton was sold, and a decree rendered, whereby one half of the proceeds was paid into the treasury of the United States, and the other half ordered to be paid to the officer as informer, who declined to accept it, and the check therefor was deposited with the assistant treasurer at St. Louis, on whom it had been drawn. At the instance of the admiral, the Supreme Court of the District of Columbia sitting in admiralty took jurisdiction of the case, and ordered the check to be deposited with the assistant treasurer at Washington, and the money to remain in his hands subject to the further order of the court. The check was so deposited, and the court by its decree distributed the money to the captors. *Held*, that the decrees were void, and that the owner

JURISDICTION (*continued*).

of the cotton was entitled to recover the net proceeds of the sale of it. *Id.*

IV. IN GENERAL.

10. Although a court of equity has not within its territorial jurisdiction the real or the personal property, which is the subject-matter in controversy, it may, having the necessary parties before it, compel, by appropriate process, the performance of every act, which, if done voluntarily by them according to the *lex loci rei sitæ*, would give full effect to its decree *in personam*. *Phelps v. McDonald*, 298.
11. Whenever a statute grants a new right, or a new remedy for the violation of an old right, or whenever such rights and remedies are dependent on State statutes or on acts of Congress, the jurisdiction, as between the law side and the equity side of the Federal courts, must be determined by the essential character of the case. Unless it comes within some of the recognized heads of equitable jurisdiction, the remedy of the party is at law. *Van Norden v. Morton*, 378.
12. The jurisdiction of the Federal courts cannot be affected by State legislation, and they will enforce equitable rights created by such legislation if they have jurisdiction of the subject-matter and the parties. *Smith v. Railroad Company*, 398.
13. A county judge in New York has, under the authority of chapter 907 of the laws of that State, passed May 18, 1869, and the several laws amendatory thereof, jurisdiction to determine whether the conditions have been performed whereon a town in the county can lawfully subscribe for shares of the capital stock of a railroad company in that State, and issue its bonds to pay therefor. His judgment, until reversed by a higher court, is conclusive. *Orleans v. Platt*, 676.
14. The ruling in *Orleans v. Platt* (*supra*, p. 676), as to the jurisdiction of the county judge in New York to decide upon the application made to him by the tax-payers of a town for an order that its bonds be issued to enable it to subscribe and pay for shares of the capital stock of a railroad company, reaffirmed and applied to this case. *Lyons v. Munson*, 684.
15. His judgment in favor of the subscription cannot be collaterally attacked in a suit on the bonds brought against the town by a *bona fide* holder for value of them; and, where it is recited in them, the town is estopped from denying their validity. *Id.*
16. The Probate Court of Utah has jurisdiction to determine the conflicting rights of claimants to lots forming part of the lands in that Territory entered as a town site under the act of Congress of March 2, 1867 (14 Stat. 541), and an appeal may be taken from the judgment of that court to the District Court within one year after it has been rendered. *Cannon v. Pratt*, 619.

JUROR.

1. An error committed in overruling an objection to a juror as legally disqualified is cured, where it appears affirmatively that he was not a member of the panel which tried the case, and it does not appear that by his exclusion therefrom the party's right of challenge was abridged. *Burt v. Panjaud*, 180.
2. A person offered as a juror is not compelled to disclose under oath his guilt of a crime which would work his disqualification. If he declines to answer, the objecting party must prove such disqualification by other evidence. *Id.*
3. The right, under sect. 821 of the Revised Statutes, to require the panel of the jurors called to serve for a term to take the oath therein prescribed, or to be discharged from the panel, is limited to the district attorney, and is not a right of individual suitors in a case about to be tried. *Atwood v. Weems*, 183.

KANSAS. See *Estoppel*, 5; *Municipal Bonds*, 7, 11; *Taxation*, 1.

A county in Kansas is a body politic, whose powers are exercised by a board of county commissioners, and when it is sued, process must be served upon the clerk of the board. Where, therefore, a *mandamus* was awarded against it, — *Held*, 1. That the writ was properly directed to it in its corporate name. 2. That service of a copy of the writ upon the clerk is service upon the corporation, and the members of the board who fail to perform the required act are subject to be punished for contempt. *Commissioners v. Sellew*, 624.

KANSAS PACIFIC RAILWAY COMPANY. See *Denver Pacific Railway and Telegraph Company*; *Railroads, Net Earnings of*, 5.

LACHES. See *Equity*, 1; *Practice*, 9.

LAND GRANTS.

1. An act of Congress (14 Stat. 239) granted to a railroad company, to aid in the construction of its road, every section of public land designated by odd numbers, to the amount of "twenty alternate sections per mile (ten on each side) of said railroad line," and provided that, where any of said sections or parts of sections should be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, the company should, in lieu thereof, select, under the direction of the Secretary of the Interior, other lands nearest to the limits of said sections, and not more than ten miles beyond them. There being a deficiency of said sections to satisfy the grant, the company, with the approval of said secretary, selected as part indemnity a quarter of an odd-numbered section of public land within ten miles beyond those limits, and obtained a patent therefor from the United States. When so selected, it was within a tract formerly covered by a Mexican claim, which, although *sub judice* at the date of the act, had

LAND GRANTS (*continued*).

been finally rejected as invalid. *Held*, that the patent conveyed a perfect title to the company. *Ryan v. Railroad Company*, 382.

2. *Newhall v. Sanger* (92 U. S. 761) cited, and distinguished from this case. *Id.*

LANDS, CONTRACT FOR THE SALE OF. See *Decedent Estates*, 1; *New Hampshire, Statute of Frauds of*.

1. A., at the commencement of the late rebellion, owned property in San Antonio, Texas, consisting principally of real estate and stock in a gas company. Apprehending that his life was in danger in consequence of his avowed hostility to secession, he fled from the country, and, by a power of attorney, authorized B. to sell the property for whatever consideration and upon such terms as he might deem best, and to execute all proper instruments of transfer. B. took possession of the property, which he retained until July, 1865, when he gave the charge of it, with the business and papers in his hands, to C. A. thereupon wrote to C., "I wish you to manage [my property] as you would with your own. If a good opportunity offers to sell every thing I have, I would be glad to sell. It may be parties will come into San Antonio who will be glad to purchase my gas stock and real estate." *Held*, that C. was thereby authorized to contract for the sale of the real estate, but not to convey it. *Lyon v. Pollock*, 668.

2. A deed executed to a purchaser, though invalid as a conveyance, may be good as a contract for the sale of the property described therein. *Id.*

LANDS HELD BY A CITY FOR PUBLIC PURPOSES.

Lands held by a city for public purposes, or ground rents arising therefrom and forming a part of its public revenues, are not subject to seizure and sale on execution. *Klein v. New Orleans*, 149.

LAPSE OF TIME. See *Equity*, 1.LETTERS-PATENT. See *Jurisdiction*, 5.

The court will take judicial notice of a thing which is in the common knowledge and use of the people through the country. It therefore holds that reissued letters-patent No. 5748, granted to Matthias Terhune Jan. 27, 1874, for an alleged new and useful improvement in corner sockets for show-cases, are void for want of novelty. *Terhune v. Phillips*, 592.

LICENSE. See *Specific Performance*.

LIEN. See *Equity*, 2; *Internal Revenue*, 4; *Jurisdiction*, 6; *Mortgage*, 1-3, 5; *Mortgage, Equitable*; *Partnership Property*; *Railroads, Net Earnings of*, 5; *Specific Performance*; *Trust*.

LIMITATIONS, STATUTE OF. See *Assignee in Bankruptcy*, 2; *Equity*, 1; *Georgia, Statute of Limitations of*.

1. Continuous adverse possession of lands in California for five years

LIMITATIONS, STATUTE OF (*continued*).

bars an action of ejectment, if the plaintiff or those under whom he claims were under no disability when the cause of action first accrued. *Harris v. McGovern*, 161.

2. When the Statute of Limitations begins to run, no subsequent disability will arrest its progress. *Id.*
3. A. residing in New Orleans and B. in Mobile during the whole rebellion, consigned cotton which they owned to C., a supervising special agent of the Treasury Department. It arrived at Mobile on the last of July or the first of August, 1865, when it was claimed by them. It was consigned to him to facilitate its arrival, as the government had at that time charge of the railroads. C. having received orders from the Treasury Department to ship all cotton received by him, shipped in the latter month that of A. and B. to New York, where it was sold. The net proceeds were paid into the treasury. A. and B. brought suit for them against the United States in the Court of Claims, March, 27, 1872. *Held*, that the suit was barred by the Statute of Limitations. *Clark v. United States*, 493.

LOUISIANA. See *Causes, Removal of*, 1; *Estoppel*, 2; *Judicial Sale*, 2; *Railroads, Compensation to Mala Fide Purchasers of*.

MANDAMUS. See *Estoppel*, 5; *Kansas*; *Taxation*, 1, 3.

MARRIED WOMAN, PERSONAL JUDGMENT AGAINST.

In Mississippi, a judgment *in personam* against a married woman is void, unless the record discloses that she has a separate estate there situate, and the bill or declaration avers that the debt sought to be recovered is a charge upon it or ought to be paid out of it. *Bank v. Partee*, 325.

MERGER. See *Husband and Wife, Property held in Community by*.

MEXICAN LAND CLAIMS. See *Land Grants*.

MILITARY GOVERNOR. See *Decedent Estates*, 2.

MINING CLAIMS. See *Evidence*, 4, 5.

MINING DISTRICT, RECORD OF. See *Evidence*, 4, 5.

MINOR, EMANCIPATION OF.

Under articles 371 and 977 of the Civil Code of Louisiana, if a husband, after the death of his wife, mortgages community property for his debt, and afterwards dies while their son and heir is still a minor, but after he has been emancipated, the latter does not render himself liable for the debt as universal heir of his father by simply taking possession of the property and receiving to his own use the rents and profits thereof. *Gordon v. Gilfoil*, 168.

MISSISSIPPI. See *Married Woman, Personal Judgment against: Municipal Bonds*, 3.

The fourteenth section of the Constitution of Mississippi, ratified Dec. 1,

MISSISSIPPI (*continued*).

1869, which declares that "the legislature shall not authorize any county, city, or town to become a stockholder in, or to lend its credit to, any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a special election, or a regular election, to be held therein, shall assent thereto," is wholly prospective. It does not abrogate previous acts of the legislature conferring authority to subscribe for stock. *Supervisors v. Galbraith*, 214.

MONITION. See *Estoppel*, 2; *Judicial Sale*, 1.

MORTGAGE. See *Mortgage, Equitable*; *Town-Site Act*, 1; *Union Pacific Railroad Company*, 1.

1. On Feb. 1, 1873, a railroad company in Illinois entered into a contract with A., whereby he agreed to sell and deliver to it, at a price payable in instalments, a number of cars, which, until they should be paid for, were to remain his property. They, when delivered, were numbered, marked, and lettered as his property, and were thereafter used in the ordinary business of the company. Prior to said contract the company had mortgaged to B., as trustee, its franchises, issues, and profits, and all the property it then possessed or might thereafter acquire, either in law or in equity, to secure the payment of certain bonds. B. filed, May 20, 1875, his bill for foreclosure. The receiver appointed by the court to take charge of the road, finding that the cars had not been paid for, and that they were necessary for its use, entered into an arrangement with A., subject to the approval of the court, by which they were valued at \$420 each; and it was agreed that a monthly rent of \$7 should be paid for each, with interest on the deferred payments, until the amount so paid should equal the value of the cars. They were then to become the property of the company. A., in January, 1876, intervened in the foreclosure suit, and after averring the payment of the rent during the period the receiver had used the cars, prayed that, out of any funds standing to the credit of the cause not otherwise appropriated, he should be paid for the use of the cars from October, 1874, when the last instalment of the purchase-money therefor had been paid, and that the cars be returned to him. B. and certain intervening bondholders, claiming that the cars, the title thereto having passed to the company under the contract, were, as after-acquired property, subject to the lien of the mortgage, denied that A. was entitled to payment for said use from the income of the road or from the proceeds of the sale, or to a return of the cars. The court, Dec. 6, 1876, ordered the sale of the mortgaged property, not including the cars. It was thereupon sold, the sale confirmed, and a conveyance to the purchasers ordered. Subsequently the court decreed that as A. had not parted with his title, the cars should be returned to him, and that the clerk should, out of the funds standing to the credit of the

MORTGAGE (*continued*).

- cause, pay to him \$14,568.75 as rent for the period the cars were in use before the appointment of the receiver. It does not appear that there were any funds in court to the credit of the cause except such as arose from the sale. *Held*, 1. That the lien of the mortgage did not attach to the cars upon their delivery to the company so as to defeat A.'s reclamation of them as against the mortgagee. 2. That the payment out of the earnings of the road for rent of the cars for the time they were used by the receiver was proper. 3. That *prima facie* the fund to the credit of the cause belonged to the mortgage creditors, and that A., being only a general creditor, is not entitled to payment therefrom. *Fosdick v. Schall*, 235.
2. The ruling in *Fosdick v. Schall* (*supra*, p. 235), that where a contract between A. and a railroad company for furnishing it cars provides that they shall be his property until paid for, a pre-existing mortgage by the company of all its then property, or that which it might thereafter acquire, does not subordinate the claim of A. for the price of the cars to the lien of the mortgage, reaffirmed and applied to this case. *Fosdick v. Car Company*, 256.
3. The ruling in *Fosdick v. Schall* (*supra*, p. 235), that the funds in the hands of a receiver of a railroad appointed in a suit to foreclose a mortgage executed by the company must be applied to the satisfaction of the lien of the mortgage creditors and not to the payment of debts due to the general creditors of the company, reaffirmed and applied to this case. *Huidekoper v. Locomotive Works*, 258.
4. In the mortgage of a railroad it was covenanted and agreed by all the parties thereto, that, in case of a foreclosure sale of the mortgaged property under a decree, the trustee named in the mortgage should, on the written request of the holders of a majority of the then outstanding bonds thereby secured, purchase the property at such sale for the use and benefit of the holders of such bonds, and that the right and title thereto should rest in him, no holder to have any claim to the proceeds except his *pro rata* share thereof, as represented in a new company or corporation, to be formed for their use and benefit; and that the trustee might take such lawful measures to organize a new company for their benefit, upon such terms, conditions, and limitations as the holders of a majority of the bonds should in writing request or direct, and he should thereupon reconvey the premises so purchased to such new company. On default of payment a suit was brought by the trustee against the mortgagor and subsequent mortgagees, praying for a foreclosure of the first mortgage, and for general relief. *Held*, 1. That such an agreement inures equally to the benefit of such bondholders, and that each holds his interest subject to the controlling power given to the majority of them. 2. That the trustee, the *cestui que trust*, and the trust itself being before the court, and it appearing that the holders of a majority of the bonds had in writing requested and directed the

MORTGAGE (*continued*).

- trustee, if he became the purchaser of the property, to convey it to a new corporation, the court might authorize and direct him to bid at the sale at least the amount of the principal and interest of the first-mortgage bonds, and might provide for a complete execution of the trust. 3. That though the specific relief sought was a strict foreclosure, a decree for a sale of the property and for the enforcement of the agreement contained in the deed was, under the prayer for general relief, appropriate. 4. That it was not error for the court to require that if a person other than the trustee became the purchaser at the sale he should pay at once, in cash, a part of his bid as earnest money. 5. That where some of the first-mortgage bondholders were permitted to intervene as parties to prosecute, for the protection of their several interests, an appeal from the decree for a sale of the property, and the appeal not having been made a *supersedeas*, the decree was executed, they cannot object to orders made prior to the decree, nor assign for error any part of it which is not injurious to their interests. *Sage v. Central Railroad Company*, 334.
5. Mortgages of the road and present and subsequently acquired property of a railroad company, executed to secure the payment of its bonds, are, while it retains possession, a prior lien upon the net earnings of the road. *Hale v. Frost*, 389.

MORTGAGE, EQUITABLE.

A customer of a bank, who had deposited with it, as collateral security for his current indebtedness on discounts, the note of a third person secured by mortgage, and had withdrawn the same after maturity, for the purpose of foreclosure and collection, under an agreement to return the proceeds, or to replace the note by securities of equal value, purchased the mortgaged property at the foreclosure sale. At the request of the bank he deposited with it the deed he had received for the property. His indebtedness to the bank was then fully paid, and his dealings with it were temporarily suspended. He afterwards incurred debts to it; and on his becoming an adjudicated bankrupt, it filed its bill against his assignee, claiming an equitable lien in its favor upon the property. The bill contained no allegation of money loaned or debt created on the faith of the deposit of the deed, and it prayed for the specific performance of the agreement to replace the note withdrawn. *Held*, that the bank could not claim an equitable mortgage by such deposit. *Biebinger v. Continental Bank*, 143.

MOTIONS. See *Practice*, 16.

MUNICIPAL BONDS. See *Estoppel*, 3, 4, 5; *Jurisdiction*, 13-15; *Mississippi*; *Taxation*, 1, 3, 4.

1. If a city issues bonds under its corporate seal, and in accordance with its charter, which empowers the council, with the sanction of a majority of voters attending an election for the purpose, to borrow

MUNICIPAL BONDS (*continued*).

money generally and to issue bonds therefor, and the bonds recite upon their face that they are issued in accordance with certain ordinances of the city, the titles of which, being quoted alone in the bonds, characterize the ordinances as providing for a loan for municipal purposes, the city is estopped, in a suit upon the bonds by an innocent purchaser for value, to set up that the ordinances appropriated the money to other purposes, and that the bonds were, therefore, void. *Hackett v. Ottawa*, 86.

2. A town in Wisconsin having, pursuant to law, voted to issue its bonds in aid of the construction of a railroad in that State, the bonds bearing date June 1, 1871, and signed by A. as chairman of the board of supervisors, and by B. as town clerk, were issued, and by A. delivered to the railroad company. When sued on the coupons by a *bona fide* holder of the bonds for value before maturity, the town pleaded that the bonds were not in fact signed by B. until July 13, at which date he had ceased to be town clerk, his resignation of that office having been, June 17, tendered and accepted, and his successor duly elected and qualified. *Held*, 1. That the town was estopped from denying the date of the bonds. 2. That in the absence of any thing to the contrary, it must be assumed for all the purposes of this case that the bonds were delivered to the company by A., with the assent of the then town clerk, and that they were, therefore, issued by the proper officers of the town. *Town of Weyauwega v. Ayling*, 112.
3. An act of the legislature of Mississippi, approved Feb. 10, 1860, authorized the county of Calhoun, among others, to subscribe to the capital stock of a railroad company, provided that at an election in the county, of which and of the amount to be subscribed, and in what number of instalments, twenty days' notice should be given, a majority of the qualified electors voting should be in favor of the subscription. The proposition, when first submitted, was rejected; but at a second election the vote was in favor of the subscription. An act, passed March 25, 1871, declared that the bonds issued in payment of previous subscriptions should be made payable to the president and directors of the company and their successors and assigns. The bonds were issued Sept. 1, 1871, payable to the railroad company, or bearer, ten years thereafter, at the agency of the company in the city of New York. They recite that they are issued in payment of the county subscription to the capital stock of the company, in pursuance of the said acts, and in obedience to a vote of the people of the county, at an election held in accordance therewith. In a suit on the bonds, — *Held*, 1. That the requirement that they should be made payable to the president and directors of the company, and their successors and assigns, is only directory; and that the recital therein estops the county from taking any advantage of the irregularity committed by its servants. 2. That no place of

MUNICIPAL BONDS (*continued*).

payment having been designated by the act, it was competent to make the bonds payable in New York. 3. That as in that State they could, after being assigned in blank, pass by delivery from hand to hand, and have all the properties of commercial paper, the result is the same as if they had been drawn in literal conformity with the statute. 4. That, in the absence of any prohibition in the act against more than one submission to the electors of the question of making the subscription, the second vote was not unlawful. *Supervisors v. Galbraith*, 214.

4. Where the authorities of a town in Illinois, being thereunto empowered, subscribed in its behalf for stock in a railroad company, and issued its coupon bonds in payment therefor, the town, when sued by a *bona fide* purchaser for value of the coupons before maturity, cannot set up as a defence that the company disregarded its promise to construct the road, or that the town officers delivered the bonds in violation of special conditions not required by statute, and of which he had no knowledge or notice. *Brooklyn v. Insurance Company*, 362.
5. Where the bonds were signed by the town officers designated for that purpose by the charter of the company which authorized the issue of the bonds, after the requisite popular vote and the subscription, it is not necessary that the board of auditors or the other corporate authorities should participate in their issue and delivery. *Id.*
6. Where a suit was brought by the town in the county court against the company and others, and a decree rendered that the bonds and coupons were null and void and should be surrendered for cancellation, — *Held*, that the decree bound the parties who were personally served with process or who appeared, and did not affect the other holders of the securities, who had only constructive notice of the suit. *Id.*
7. Bonds of a township in Kansas payable to A., a railroad company, or bearer, were duly executed by the township trustee and township clerk, acting in their official capacity, as its legal representatives. They recite that they were issued pursuant to an order of the proper officers of the township, made by authority of an act of the legislature which is therein cited, and were ordered by the qualified electors of the township, at an election duly held. An action was brought by a *bona fide* holder for value of the interest coupons attached to some of the bonds, who had no notice of any fact impairing their validity. *Held*, that it is not a defence to the action that at the time of voting and that of issuing the bonds their entire amount was in excess of the proportion which by law they should bear to the taxable property of the township, or that after the vote at said election had been cast in favor of subscribing for stock in B., a railroad company, the subscription was made for stock in A., and

MUNICIPAL BONDS (*continued*).

- said bonds issued in payment therefor, B. having, under a law existing at the time of said election, become merged and consolidated with A. to form a continuous line of road. *Wilson v. Salamanca*, 499.
8. This case distinguished from *Harshman v. Bates County*, 92 U. S. 560. *Id.*
 9. In May, 1871, certain parties claiming to be a majority of the tax-payers, and to own the greater part of the taxable property of a town in New York, petitioned the proper county judge for an order that its bonds, to the amount of \$80,000, should be issued to enable it to subscribe and pay for that amount of the capital stock of A., a railroad company. After hearing, he, July 1, 1871, ordered the bonds to be issued, and, pursuant to the statute, appointed three commissioners to execute and deliver them. Application was thereupon made by sundry tax-payers to the Supreme Court for a writ of *certiorari*, which was allowed, Sept. 30, 1871, and served upon him. The proper return was made. June 27, 1872, the Supreme Court affirmed the judgment. In July following, the case was taken to the Court of Appeals, where, solely upon the ground that he had refused the application of tax-payers to withdraw their signatures from the petitions, which, had it been granted, would have reduced the numbers and the taxable property represented below the statutory requirement, the previous judgment was, in February, 1873, reversed, with directions to dismiss the proceeding. April 3, 1872, the commissioners subscribed for eight hundred shares of the stock of A., and on the next day issued and delivered in payment one hundred and sixty of the bonds of the town of \$500 each, and thereupon received from A. scrip for the stock, which the town still holds. On the face of each bond was a certificate that it had been duly registered in the clerk's office of the county. A., Feb. 26, 1872, and May 31, 1873, entered into contracts with another railroad company, and at the latter date delivered as collateral security for the fulfillment of both contracts all the bonds to B., with authority to him to sell them and pay over the proceeds to the latter company. Feb. 4, 1874, the plaintiff purchased some of the bonds in good faith for a valuable consideration. He subsequently brought suit against the town to recover the amount due on the coupons. *Held*, that the plaintiff is entitled to recover. *Orleans v. Platt*, 676.
 10. *County of Warren v. Marcy* (97 U. S. 96) cited and approved. *Id.*
 11. A *bona fide* purchaser for a valuable consideration of municipal bonds, who had no actual notice of any defence, which could be set up against them, is not bound to look further than to see that there was legislative authority for their issue, and that the officers who were thereunto authorized have decided that the precedent conditions upon which it was allowed to be exercised have been fulfilled. If that authority was conferred, and such a decision made, the bonds

MUNICIPAL BONDS (*continued*).

are valid obligations which he may enforce. *Block v. Commissioners*, 686.

12. Where, pursuant to a statute of Kansas, entitled "An Act authorizing counties and cities to issue bonds to railroad companies," approved Feb. 10, 1865, as amended Feb. 26, 1866, an election was held in a county in that State upon the question of a county subscription to the capital stock of "any railroad company," then, or thereafter to be, organized, which should construct a railroad from a point in Missouri to a point in the county, and the result having, May 8, 1867, been declared by the proper authorities to be in favor of the subscription, and so entered on their minutes, the bonds were, in 1870, issued in payment of the subscription to a Missouri company which caused the road to be built. *Held*, that the subscription was binding, and that the county, in an action on the bonds by a *bona fide* purchaser, is estopped from asserting that, in fact, a majority of the qualified electors had not voted in favor of the issue of the bonds. *Id.*

MUNICIPAL CORPORATIONS. See *Kansas*; *Mississippi*.

1. *Semble*, that the borrowing of money by a city for the development of its natural resources for manufacturing purposes is within the provision of the Illinois Constitution of 1848, that corporate authorities may be empowered "to assess and collect taxes for corporate purposes," as interpreted by the Supreme Court of the State. *Hackett v. Ottawa*, 86.
2. That which the law authorizes a city to do in improving its streets cannot be a nuisance such as to give a common-law right of action. *Transportation Company v. Chicago*, 635.
3. A municipal corporation, authorized by law to improve a street by building on the line thereof a bridge over, or a tunnel under, a navigable river, where it crosses the street, incurs no liability for the damages unavoidably caused to adjoining property by obstructing the street or the river, unless such liability be imposed by statute. *Id.*
4. If the fee of the street is in the adjoining lot-owners, the State has an easement to adapt the street to easy and safe passage over its entire length and breadth. When making or improving the streets within its limits, in the exercise of an authority conferred by statute, a city is the agent of the State, and, if it acts within that authority, and with due care, despatch, and skill, is not at common law answerable for consequential damages. *Id.*
5. Acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, although their consequences may impair its use, are not a taking within the meaning of the constitutional provision which forbids the taking of such property for public use without just compensation therefor. *Id.*
6. During its change from a town to a village organization, under the

MUNICIPAL CORPORATIONS (*continued*).

statute of Illinois of April 10, 1872, the corporation is not released from the obligation to exercise the power with which it is invested to keep its streets and sidewalks in a safe condition. For neglect in that regard, it is liable to a party who thereby sustains special damages. *Evanston v. Gunn*, 660.

7. Inasmuch as the village succeeds to all the property and funds as well as to the liabilities of the town, and has power to borrow money to provide for improvements rendered necessary by any casualty or accident happening after the annual appropriation, it cannot, when sued by such party, set up that its board of trustees were unauthorized to make that appropriation for the year in which the plaintiff's injury occurred, nor that the board and the other officers of the village were prohibited by law from adding to the corporate expenditures in any one year an amount above that provided for in the annual appropriation bill for that year. *Id.*

NATIONAL BANK. See *Stockholders, Personal Liability of*, 2.

1. A party who, by way of pledge or collateral security for a loan of money, accepts stock of a national bank which he causes to be transferred to himself on its books, incurs immediate liability as a stockholder, and he cannot relieve himself therefrom by making a colorable transfer of the stock, with the understanding that at his request it shall be retransferred. *National Bank v. Case*, 628.
2. A national bank which had so accepted, and caused to be transferred to it, shares of stock of another national bank, was, on the latter becoming insolvent, sued as a stockholder. *Held*, that a loan of money by a national bank on such security is not prohibited by law; and, if it were, the defendant could not set up its own illegal act to escape the responsibility resulting therefrom. *Id.*

NEGOTIABLE SECURITIES. See *Municipal Bonds*, 3.

Certain bonds of a railroad company in Louisiana, promising to pay to the bearer either £225 sterling in London, or \$1,000 in New York or in New Orleans, declared that the president of the company was authorized to fix by his indorsement the place of payment. On their back were printed the following words: "I hereby agree that the within bond and the interest coupons thereto attached shall be payable in —." The blank for the place of payment was not filled. The bonds were never issued by the company, but were seized and carried off during the late war. They, and the past-due coupons thereto attached, were purchased in New York for a very small consideration. *Held*, 1. That, in the absence of the required indorsement, the uncertainty of the amount payable is a defect which deprives the bonds of the character of negotiability. 2. That the purchaser was affected with notice of their invalidity, and does not sustain the position of a *bona fide* holder without notice. *Parsons v. Jackson*, 434.

NET EARNINGS. See *Railroads, Net Earnings of*.

NEVADA. See *Contracts*, 7.

NEW HAMPSHIRE, STATUTE OF FRAUDS OF.

In order to satisfy the requirements of the Statute of Frauds of New Hampshire, the memorandum in writing of an agreement for the sale of lands which is signed by the party to be charged, must not only contain a sufficient description of them, together with a statement of the price to be paid therefor, but in that memorandum, or in some paper signed by that party, the other contracting party must be so designated that he can be identified without parol proof. *Grafton v. Cummings*, 100.

NEW TRIAL. See *Causes, Removal of*, 3-5; *Practice*, 1, 2, 6.

NEW YORK. See *Jurisdiction*, 13-15; *Municipal Bonds*, 9.

NOVELTY. See *Letters-patent*.

NUISANCE.

That which the law authorizes cannot be a nuisance such as to give a common-law right of action. *Transportation Company v. Chicago*, 635.

OATH. See *Juror*, 2, 3.

OFFENCES AGAINST THE UNITED STATES. See *Accomplice*.

OFFICERS OF THE UNITED STATES.

1. Civil surgeons appointed by the Commissioner of Pensions under sect. 4777 of the Revised Statutes are not officers of the United States. *United States v. Germaine*, 508.
2. The Commissioner of Pensions is not the head of a department, within the meaning of sect. 2, art. 2, of the Constitution, prescribing by whom officers of the United States shall be appointed. *Id.*

PACIFIC RAILROAD ACTS. See *Denver Pacific Railway and Telegraph Company*; *Railroads, Net Earnings of*, 2-7; *Right of Way by Railroad Company, Priority of*; *Union Pacific Railway Company*.

PAROL EVIDENCE. See *Evidence*, 1.

PARTIES. See *Florida, Internal Improvement Fund of*, 2; *Specific Performance*.

The objection that the defendants to an amended bill were all necessary parties to a supplemental bill filed in the same cause, cannot be made for the first time in this court. *McBurney v. Carson*, 567.

PARTNERSHIP, DISSOLUTION OF. See *Internal Revenue*, 3.

1. A., B., and C., who were partners as attorneys and counsellors-at-law, agreed that the general partnership between them should terminate March 18, 1869; that thereafter no new business should be received by the firm, and that any coming to it through the mails should be

PARTNERSHIP, DISSOLUTION OF (*continued*).

equitably divided. It was also stipulated that the business then in hand should be closed up as rapidly as possible by them "as partners, under their original terms of association and in the firm name." They agreed, Aug. 13, 1869, that in case of the death of either of them, his heirs or personal representatives should receive one-third of the fees in cases nearly finished, and twenty-five per cent in other partnership cases. A. having died, his executor filed his bill against B. and C. for a discovery, and to recover A.'s share in the fees received by them out of the partnership business which remained unfinished when the firm was dissolved. *Held*, 1. That a court of chancery had jurisdiction to entertain the bill, and power to decree the relief asked so far as the fees had been collected. 2. That the partners having by the agreement of August 13 provided for the division of the fees in case of the death of either of them, the survivors were entitled to no allowance for winding up the business, other than their share of the fees as specified in said agreement. *Denver v. Roane*, 355. ✓

2. Where an attorney-at-law refuses to act as a partner, or to perform the functions of such in the prosecution of a cause which has been intrusted to his firm, and repudiates his obligations, he is not entitled to any part of the fees subsequently earned by his partners in the cause. *Id.* ✓

PARTNERSHIP PROPERTY.

A member of a firm assigned and transferred in good faith his interest in the partnership property in payment of a just debt for which he was solely liable. The creditor took possession of it and sold it to A., who, by an act of sale, in which the other member of the firm united, transferred it for a valuable consideration to B. The firm and the members of it were insolvent. C., claiming to be a simple-contract creditor of the firm, then filed his bill to subject the property to the payment of his debt. *Held*, that C. had no specific lien on the property, and, there being no trust which a court of equity can enforce, the bill cannot be sustained. *Case v. Beuregard*, 119. ✓

PASSENGERS, TRANSPORTATION OF.

A canal-boat laden with coal for transportation, having on board the master, with his family, is not a "barge carrying passengers," within the meaning of sect. 4492 of the Revised Statutes, which requires that such a barge, while in tow of a steamer, shall be provided with "fire-buckets, axes, life-preservers, and yawls." *Transportation Line v. Cooper*, 78.

PENALTIES. See *Internal Revenue*. 2, 3.

Penalties are never extended by implication. Unless expressly imposed, they cannot be enforced. *Elliott v. Railroad Company*, 573.

PLEADING. See *Florida, Internal Improvement Fund of*, 2; *Husband and Wife, Property held in Community by*; *Stockholders, Personal Liability of*, 1.

1. Conclusions of law are not admitted by a demurrer. *United States v. Ames*, 35.
2. A person accused of an offence against the United States cannot plead, in bar of proceedings against him or his property, a contract which has been entered into with him by the district attorney, whereby the latter agreed that the accused should not be prosecuted if he, when examined as a witness for the government against his accomplices, disclosed fully and fairly his and their guilt, nor avail himself of it upon the trial, but has merely an equitable title to executive mercy, of which the court can take notice only when an application to postpone the case is made in order to give him an opportunity to apply to the pardoning power. *Whiskey Cases*, 594.

PRACTICE. See *Accomplice*, 2; *Admiralty*, 1; *Appeal*; *Jurisdiction*, 3, 6; *Mortgage*, 4.

1. Where an error in the amount recovered is apparent upon the record, and it could not have been remedied by an amendment of the pleadings, this court will of its own motion, in the interests of justice, direct that it be corrected, and, if necessary, order a new trial or further proceedings for that purpose. *Mills v. Scott*, 25.
2. An affidavit for the continuance of a cause does not become a part of the record, so that effect can be given to it during the trial, unless it is properly introduced as evidence for some legitimate purpose by one of the parties. *Campbell v. Rankin*, 261.
3. Where, in a suit arising under the act of March 12, 1863 (12 Stat. 820), relative to abandoned and captured property, as extended by the act of July 2, 1864 (13 id. 375), no direct proof was given that the proceeds of the sale of the property were paid into the treasury, if the circumstantial facts which are established by the evidence are set forth in the finding of the Court of Claims, which it sends here as that upon which alone its judgment was rendered, and they are, in the absence of any thing to the contrary, the legal equivalent of a direct finding that such proceeds were so paid, this court will not on that account reverse the judgment. *United States v. Pugh*, 265.
4. The judgment of the Court of Claims as to the legal effect of what may, perhaps not improperly, be termed the ultimate circumstantial facts of the case, is, if the question is properly presented, subject on appeal to be here reviewed; and where the rights of the parties depend upon such circumstantial facts alone, and there is doubt as to the legal effect of them, it is the duty of that court to frame its findings so that the question as to such effect shall be presented by the record. *Id.*
5. *United States v. Crusell* (14 Wall. 1), *Same v. Ross* (92 U. S. 281), and *Intermingled Cotton Cases* (id. 651), so far as they bear upon

PRACTICE (*continued*).

- the rule requiring, on an appeal from the Court of Claims, a finding by that court of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them, cited and explained. *Id.*
6. In an action of debt, the jury were sworn to try "the issue." Two issues were joined, and the jury found "the issue" for the plaintiff, and assessed his damages. Judgment was rendered therefor. On a subsequent day of the term, the defendant moved the court to set aside the judgment and grant a new trial, but filed no reasons therefor, and thereafter failed to appear. The record presents no bill of exceptions showing to what point the evidence at the trial was directed. *Held*, that the denial of the motion furnished no ground for reversing the judgment. *Brooklyn v. Insurance Company*, 362.
 7. Where the trustees or directors of a corporation have appealed from a decree, and directed their counsel to prosecute the appeal, this court will not dismiss it on the motion of strangers to the decree who, since it was rendered, have become the owners of a majority of the stock of the corporation. *Railway Company v. Alling*, 463.
 8. Such trustees or directors are in law the managers of the property and affairs of the corporation. As such they, in all litigation involving its action, represent it, its stockholders and creditors. If they violate their trust, the remedy must be sought in some court of original jurisdiction. *Id.*
 9. An appeal will be dismissed, where, at the term to which it was returnable, the transcript was, by reason of the laches of the appellant, not filed, or the cause docketed in this court. *Grigsby v. Purcell*, 505.
 10. The appellee at any time before the hearing may take advantage of the objection, or the court upon its own motion may dismiss the appeal. *Id.*
 11. In an action upon a contract the court cannot, unless so authorized by statute, compel the plaintiff to accept, in mitigation of damages, when tendered to him by the defendant in open court, the property for the non-delivery of which the action was brought. *Colby v. Reed*, 560.
 12. The objection that the defendants to an amended bill were all necessary parties to a supplemental bill filed in the same cause cannot be made for the first time in this court. *McBurney v. Carson*, 567.
 13. The jury should not be instructed to find for the defendant, unless the evidence is such as to leave no doubt that it is their duty to return a verdict in his favor. *Pence v. Langdon*, 578.
 14. The court announces its determination to enforce rigidly the rules requiring causes to be ready for hearing when they are reached. *Alvord v. United States*, 593.

PRACTICE (*continued*).

15. Counsel who enter their appearance under the requirements of Rule 9 will be held responsible for all that such an entry implies, until, by substitution or otherwise, they are relieved from the obligation they have assumed. *Id.*
16. Under amended Rule 6 the plaintiff in error, or the appellant, may, with a motion to dismiss the writ of error or the appeal, unite a motion to affirm the judgment or the decree; but where there is no color of right to a dismissal, the case being clearly within the jurisdiction of this court, a motion to affirm merely will not be sustained. *Whitney v. Cook*, 607.
17. The court declares that it will by the assessment of damages suppress the evil of resorting to its jurisdiction upon frivolous grounds. *Id.*
18. Where a judgment was rendered October 5, and the present term commenced October 15, and the writ of error and citation were returnable on the "second Monday in October next," the court, March 17, grants, on motion of the plaintiff in error, an order allowing the writ to be amended by inserting the third Monday of the term as the return-day thereof, but requires him to cause a new citation returnable on the first Monday of the following May to be issued and served. *National Bank v. Bank of Commerce*, 608.
19. Where the record of a suit is duly certified upon an appeal to a district court in Utah, and the latter states its findings of fact and its conclusions of law separately, and appeals from its order refusing a new trial and from its judgment are taken to the Supreme Court of that Territory, the statute whereof requires a statement, to be settled by the judge who heard the cause, specifically setting forth the "particular errors or grounds" relied on, and containing "so much of the evidence as may be necessary to explain them, and no more;" and where a statement settled and signed by him, and annexed to the copy of the order refusing a new trial, contains all the testimony and written proofs and allegations of the parties certified up to the District Court, upon which the trial was had, and it was stipulated that the statement might be used on an appeal from the judgment to the said Supreme Court, — *Held*, 1. That the proceeding was thus made to conform to the requirements of the Practice Act of Utah, and that the latter court was called upon to decide whether the evidence was sufficient to sustain the findings of fact, and, if it was, whether they would support the judgment. 2. That if that court reverses the judgment because the evidence does not sustain the findings, other findings must be made before the case can be put in a condition for hearing here; but if it has all the evidence which could be considered below, should the case be remanded, it may state the facts established by the evidence and render judgment. On an appeal to this court, the case, if otherwise properly here, will be determined upon the facts so stated.

PRACTICE (*continued*).

3. That if the findings of the District Court be sustained, and its judgment affirmed, or if its judgment be reversed for the reason that the findings are not sufficient to support the judgment, such findings are, in effect, adopted by the said Supreme Court, and they, for the purpose of an appeal here, furnish a sufficient statement of the facts of the case, within the meaning of the act "concerning the practice in territorial courts and appeals therefrom," approved April 7, 1874. 18 Stat. pt. 3, p. 27. *Stringfellow v. Cain*, 610.

20. A judgment will not be reversed for error in excluding testimony which is cumulative only, when it is apparent that if received it would not affect the result. *Cannon v. Pratt*, 619.
21. A party specifying his objection to the admission of evidence must be considered as waiving all others, or as conceding that there is no ground upon which they can be maintained. *Evanston v. Gunn*, 660.
22. Where the charge to the jury taken as a whole fully and fairly submits the law of the case, the judgment will not be reversed because passages extracted therefrom and read apart from their connection need qualification. *Id.*
23. Where, upon the undisputed facts of the case, the plaintiff is entitled to recover, it is not error for the court to instruct the jury to find for him. *Orleans v. Platt*, 676.
24. Where the testimony is all one way, a party is not entitled to instructions which assume that it is otherwise. *Id.*

PRAIRIE DU CHIEN, TREATY OF.

By the ninth article of the treaty of Prairie du Chien, proclaimed Feb. 24, 1831 (7 Stat. 330), a certain tract of country in the then Territory of Minnesota was reserved for Sioux half-breeds, "they holding by the same title and in the same manner that other Indian titles are held." By the act of July 17, 1854 (10 id. 304), the President, upon their relinquishment of all their rights and interest in the tract so reserved, was authorized to cause to be issued "certificates or scrip for the same amount of land to which each individual would be entitled in case of a division of the said grant or reservation *pro rata* among the claimants, which said certificates or scrip may be located upon any of the lands within said reservation not now occupied by actual and *bona fide* settlers of the half-breeds or mixed bloods, or such other persons as have gone into said Territory by authority of law, or upon any other unoccupied lands subject to pre-emption or private sale, or upon any other unsurveyed lands not reserved by government, upon which they have respectively made improvements: *Provided*, that no transfer or conveyance of any of said certificates or scrip shall be valid." A. made a contract, whereby, for a valuable consideration, he bound himself to

PRAIRIE DU CHIEN, TREATY OF (*continued*).

secure, upon the location of certain of said certificates, title to the land thereby located to be lawfully vested in B. *Held*, 1. That the contract is not in violation of said treaty or said act. 2. That the certificates may be located lawfully not only on unoccupied lands, but upon such as are occupied, provided that the occupants thereof waive the provision for their benefit, and consent to such location. 3. That the words, "upon which they have respectively made improvements," have exclusive reference to "other unsurveyed lands," and do not qualify the provision touching "other unoccupied lands." *Myrick v. Thompson*, 291.

PRE-EMPTION. See *Prairie du Chien, Treaty of*; *Union Pacific Railroad Company*, 1.

PRESCRIPTION, PLEA OF. See *Husband and Wife, Property held in Community by*.

PROCESS. See *Jurisdiction*, 6, 10; *Kansas*.

PROPERTY, TAKING OF, FOR PUBLIC USES. See *Municipal Corporations*, 5.

PUBLICATION, NOTICE BY. See *Jurisdiction*, 6.

Where the decree required notice of the sale of the property to be advertised in certain newspapers, among which was A., printed in a certain city, and it appearing that, before such advertisement was made, A. had been merged into B., or that its name had been changed to B., — *Held*, that the identity of the paper remaining, the advertisement in B. was a substantial compliance with the order. *Sage v. Central Railroad Company*, 334.

PUBLIC LANDS. See *Land Grants*.

PUBLISHER. See *Copyright*.

RAILROAD COMPANIES, CONSOLIDATION OF. See *Municipal Bonds*, 7.

RAILROADS. See *Land Grants*; *Mortgage*.

RAILROADS, COMPENSATION TO MALA FIDE POSSESSORS OF, FOR INSEPARABLE IMPROVEMENTS.

1. In Louisiana, where a railroad, in a state of complete dilapidation and ruin, was sold under a mortgage, under circumstances which, importing some fraud in the purchasers, induced the court to set the sale aside and order a resale, such purchasers, though deemed possessors in bad faith, are entitled, by the spirit of article 508 of the Civil Code of that State, to compensation for reconstructing and repairing the road and putting it in working order. *Jackson v. Ludeling*, 513.
2. Whatever question may exist about compensation for inseparable improvements made by a possessor in bad faith, there is no ques-

RAILROADS, COMPENSATION TO MALA FIDE POSSESSORS OF, FOR INSEPARABLE IMPROVEMENTS (*continued*).

tion about his right to be reimbursed for necessary repairs, both according to article 2314 of that code and to the general civil law. *Id.*

3. It seems to be held in Louisiana, contrary to former decisions, that compensation will not be allowed to the possessor in bad faith for inseparable improvements to land, such as clearing and ditching; but reconstructing a railroad and putting it in working order, thereby restoring it to its normal condition, partake so much of the nature of repairs, that compensation therefor is required, by an equitable construction of article 508 of the Civil Code. *Id.*
4. The rule of compensation in such a case is to allow credit to the possessors for the value of the materials of such improvements as are yet in existence, and the cost of the labor bestowed thereon, not to exceed their value when delivered up; but not for the improvements which were consumed in the use. Interest on the outlay of the possessors will also be allowed to an amount not exceeding the net earnings, or fruits, received from the improvements. They will be accountable, however, for all the fruits received by them from the property, and will have a lien on it for any balance found to be due them on such an accounting. *Quære*, Are they accountable for such fruits beyond the allowance made to them for the improvements? *Id.*

RAILROADS, NET EARNINGS OF. See *Mortgage*, 5.

1. The net earnings, while the road is in possession of a receiver appointed by the court, may be applied to the payment of claims having superior equities to that of the bondholders. *So held*, where from such earnings payment was made to parties who had, before his appointment, furnished the company with car-springs, and spirals and supplies for its machinery department, which he continued to use in carrying on the business of the road. *Hale v. Frost*, 389.
2. The "earnings" of the Union Pacific Railroad include all the receipts arising from the company's operations as a railroad company, but not those from the public lands granted, nor fictitious receipts for the transportation of its own property. "Net earnings," within the meaning of the law, are ascertained by deducting from the gross earnings all the ordinary expenses of organization and of operating the road, and expenditures made *bona fide* in improvements, and paid out of earnings, and not by the issue of bonds or stock; but not deducting interest paid on any of the bonded debt of the company. *Union Pacific Railroad Company v. United States*, 402.
3. The case of the Central Pacific Railroad Company, in all material respects, involves the same questions as *Union Pacific Railroad Company v. United States* (*supra*, p. 402), and the court adheres to the conclusion there announced as to the time when the road must be con-

RAILROADS, NET EARNINGS OF (*continued*).

- sidered as completed, so as to render the company thereafter liable to pay annually five per cent of the net earnings of the road for the purposes mentioned in the sixth section of the act of July 1, 1862. 12 Stat. 489. *United States v. Central Pacific Railroad Company*, 449.
4. The rulings in that case upon the question of the earnings and expenditures of the road, and upon the principles by which the amount of net earnings is to be ascertained and in what manner paid, reaffirmed. *Id.*
 5. The bonds granted by the United States to the Kansas Pacific Railway Company are not a lien on, nor is the company liable for five per cent of the net earnings of, that portion of its road west of the one hundredth meridian. *United States v. Kansas Pacific Railway Company*, 455.
 6. The court adheres to the rulings in *Union Pacific Railroad Company v. United States* (*supra*, p. 402), as to the principle which should govern in determining the amount of net earnings. In regard to certain items claimed by the Kansas Pacific Railway Company as proper deductions from the gross receipts of the road, the following should be excluded, — money needed to place it in proper repair, but not actually expended for that purpose; the expenses of the land department; the interest on the funded debt, which has priority over the lien of the United States; and the fifty per cent retained by the latter from the amount due for services rendered to it: and that the following items should be allowed, provided they were actually paid out of the earnings of the road, and not raised by bonds or stock, — the equipment account, or replacing and rebuilding rolling-stock, machinery, &c.; the amounts paid for depot grounds, and the expenses of same; and the construction account, or improvements and additions to the track, &c. *Id.*
 7. The ruling in *Union Pacific Railroad Company v. United States* (*supra*, p. 402), that the United States is not entitled to recover if, during the period for which it claims the five per cent of the net earnings of any road, to aid in the construction of which the bonds of the United States were granted under the Pacific Railroad acts, such earnings were absorbed by the interest accruing on the first-mortgage bonds of the company, reaffirmed. *United States v. Sioux City and Pacific Railroad Company*, 491.

REBELLION, THE. See *Decedent Estates*, 2.

RECEIVER. See *Florida, Internal Improvement Fund of; Mortgage*, 1-3; *Railroads, Net Earnings of*, 1; *Specific Performance*.

RECORD.

An affidavit for the continuance of a cause does not become a part of the record, so that effect can be given to it during the trial, unless it is properly introduced as evidence for some legitimate purpose by one of the parties. *Campbell v. Rankin*, 261.

REMOVAL OF CAUSES. See *Causes, Removal of*.

REPEAL. See *Abandoned and Captured Property Act*.

REPLEVIN BOND. See *Bankruptcy*.

RES ADJUDICATA. See *Estoppel*, 2.

RESCISSION. See *Contracts*, 7-9.

REVISED STATUTES OF THE UNITED STATES.

The following sections referred to and explained:—

Sect. 821. See *Juror*, 3.

Sect. 3150. See *Internal Revenue, Collector of*, 2.

Sect. 3163. See *Internal Revenue, Collector of*, 1.

Sect. 3232. See *Internal Revenue*, 2.

Sect. 3309. See *Internal Revenue*, 4.

Sect. 4492. See *Passengers, Transportation of*.

Sect. 4777. See *Civil Surgeons*.

Sect. 5068. See *Bankruptcy*, 1.

Sect. 5117. See *Bankruptcy*, 1.

RIGHT OF WAY BY RAILROAD COMPANY, PRIORITY OF.

An act entitled "An Act granting the right of way through the public lands to the Denver and Rio Grande Railway Company," approved June 8, 1872 (17 Stat. 339); an act amendatory thereof, approved March 3, 1877 (19 Stat. 405); and an act entitled "An Act granting to railroads the right of way through the public lands of the United States," approved March 3, 1875 (18 Stat. 482),— considered with reference to the conflicting claims of the Denver and Rio Grande Railroad Company, and the Cañon City and San Juan Railway Company, to occupy and use the Grand or Big Cañon of the Arkansas for railroad purposes. *Held*, 1. That said act of 1872 granted an immediate beneficial easement in a particular way over which the routes designated in the charter of the Denver Company lay, capable, however, of enjoyment only when such way should actually and in good faith be appropriated for the purposes contemplated by that charter, and then the title thereto would take effect by relation as of the date of the act. 2. That that company finally appropriated the right of way through the cañon April 9, 1878, and was by its prior occupancy entitled to the benefits conferred by said act of 1872. 3. That both companies should be allowed to proceed with the construction of their respective roads through said cañon where it is broad enough for them to do so without interfering with each other; but where, in the narrow portions of the defile, this is impracticable, the court below, while recognizing and enforcing the prior title of the Denver Company, should, by proper orders, secure upon just and equitable terms the right of the Cañon City Company, under said act of 1875, to use, in common with the Denver Company, the same road-bed and track, after the same shall have been completed. *Railway Company v. Alling*, 463.

- SCRIP, LOCATION OF. See *Prairie du Chien, Treaty of*.
- SENTENCE. See *Criminal Law*.
- SINKING-FUND. See *Constitutional Law*, 3-6; *Florida, Internal Improvement Fund of*; *Union Pacific Railroad Company*, 5, 6.
- SHERIFF, SALE BY. See *Judicial Sale*, 2.
- SIGNAL SERVICE OF THE UNITED STATES, RECORD KEPT BY PERSON EMPLOYED IN. See *Evidence*, 4.
- SPECIAL ASSESSMENTS. See *Taxation*, 1, 3, 4.
- SPECIAL VERDICT. See *Practice*, 5.
- SPECIFIC PERFORMANCE.

A contract between A., a railroad company, and B., an express company, stipulated that B. should lend A. \$20,000, to be expended in repairing and equipping its road, and that A. should grant to B. the necessary privileges and facilities for the transaction of all the express business over the road, the sum found to be due A. therefor, upon monthly settlement of accounts, to be applied to the payment of the loan and the interest thereon. The contract was to continue for one year, when, if the money with interest thereon was not paid, it was to continue in force until payment should be made. After B. had advanced the money, and entered upon the performance of the contract, A. conveyed all its property, including its franchises, to C. in trust to secure the payment of certain bonds issued by it. Default having been made in their payment, C. brought a foreclosure suit, and obtained a decree placing the road in the hands of a receiver and ordering its sale. The receiver having declined to carry out the contract with B., the latter, with the consent of the court, brought its bill in equity for specific performance against him, A. and C. *Held*, 1. That the receiver is the only necessary party defendant. 2. That the transaction between the companies is not a license, but simply a contract for transportation creating no lien, the specific performance whereof would be a form of satisfaction or payment, which the receiver cannot be required to make. *Express Company v. Railroad Company*, 191.

- STATUTE OF FRAUDS. See *New Hampshire, Statute of Frauds of*.
- STATUTE OF LIMITATIONS. See *Limitations, Statute of*.
- STATUTES.

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

1854. July 17. See *Prairie du Chien, Treaty of*.
1862. June 7. See *Direct Taxes, Sales for*.
1862. July 1. See *Constitutional Law*, 3, 4; *Railroads, Net Earnings of*, 3; *Union Pacific Railroad Company*, 1, 2.
1862. July 17. See *Abandoned and Captured Property Act*; *Judicial Sale*, 1; *Jurisdiction*, 8.
1863. Feb. 6. See *Direct Taxes, Sales for*, 1, 3, 6.

STATUTES (*continued*).

1863. March 12. See *Abandoned and Captured Property; Abandoned and Captured Property Act; Court of Claims, 1; Practice, 3-5.*
1864. June 30. See *Internal Revenue, 5.*
1864. July 2. See *Abandoned and Captured Property; Court of Claims, 1.*
1864. July 2. See *Constitutional Law, 3, 4; Union Pacific Railroad Company, 1, 4, 6.*
1866. July 13. See *Internal Revenue, 5, 6.*
1866. July 25. See *Land Grants.*
1866. July 27. See *Causes, Removal of, 5.*
1867. March 2. See *Contracts, 2.*
1867. March 2. See *Jurisdiction, 16; Town-Site Act.*
1868. Feb. 3. See *Contracts, 2.*
1868. July 20. See *Contracts, 2; Internal Revenue, 1.*
1869. March 1. See *Internal Revenue, Collector of, 2.*
1870. July 14. See *Internal Revenue, 6.*
1872. May 10. See *Evidence, 5.*
1872. June 1. See *Jurisdiction, 6.*
1872. June 8. See *Right of Way by Railroad Company, Priority of.*
1874. April 7. See *Jurisdiction, 3; Practice, 19.*
1875. March 3. See *Causes, Removal of, 3.*
1875. March 3. See *Right of Way by Railroad Company, Priority of.*
1877. March 3. See *Right of Way by Railroad Company, Priority of.*
1878. May 7. See *Constitutional Law, 3-6; Union Pacific Railroad Company, 5, 6.*

STATUTES, CONSTRUCTION OF.

In construing a statute, aid may be derived from attention to the state of things as it appeared to the legislature when the statute was enacted. *Platt v. Union Pacific Railroad Company, 48.*

STOCK, TRANSFER OF. See *Stockholder, Personal Liability of.*

A party who, by way of pledge or collateral security for a loan of money, accepts stock of a national bank, which he causes to be transferred to himself on its books, incurs immediate liability as a stockholder, and he cannot relieve himself therefrom by making a colorable transfer of the stock, with the understanding that at his request it shall be retransferred. *National Bank v. Case, 628.*

STOCKHOLDER, PERSONAL LIABILITY OF.

1. A court of equity is the proper tribunal to ascertain the proportion of indebtedness chargeable to a stockholder of a bank on his personal liability. But as by the law of Georgia, as declared by the highest

STOCKHOLDER, PERSONAL LIABILITY OF (*continued*).

tribunal of that State, an action of debt will lie where the amount of the bank's outstanding indebtedness and the number of shares held by the stockholder are known and can be stated, the extent of his liability in such cases being fixed, and the amount with which he should be charged being a mere matter of computation, a similar action at law will be sustained in such cases in the Circuit Court of the United States. *Mills v. Scott*, 25.

2. The order of the Comptroller of the Currency prescribing to what extent the individual liability of the stockholders of an insolvent national bank shall be enforced, is conclusive. *National Bank v. Case*, 628.

STREETS, IMPROVEMENT OF. See *Municipal Corporations*, 2-5.

SUNDAY. See *Contracts*, 7.

SUPREME COURT OF THE DISTRICT OF COLUMBIA. See *Jurisdiction*, 9.

SURETIES. See *Bankruptcy*; *Internal Revenue, Collector of*, 3.

TAXATION. See *Internal Revenue*.

1. Sect. 16 of a statute of Kansas, approved March 2, 1871, authorized cities of the second class to pass ordinances imposing taxes for general revenue purposes on all the taxable property within their limits, and make specified public improvements; and provided that, to meet the cost of "paving, macadamizing, curbing, and guttering of streets," assessments should be made on all the lots or pieces of ground extending along the street the distance to be improved, according to their assessed value. Sect. 17 provided that these assessments should be known as "special assessments for improvements," and be levied and collected as one tax, in addition to the general taxes; but it empowered the mayor and council to issue for the cost of such improvements bonds payable at the expiration of specified terms, and make assessments in each year, to pay the principal and interest maturing thereon during the fiscal year, upon the taxable property chargeable therewith, "as provided in the last part of the preceding section." Other sections authorized the city council to provide, when necessary, for the issue of bonds, for the purpose of funding any and all indebtedness of the city, and required it to make provision, by levying taxes payable in cash, for a sinking-fund for the redemption at maturity of "the bonded indebtedness of the city," and to levy annually taxes payable in cash on all taxable property within the city in addition to other taxes, and in amount sufficient to pay the interest and coupons, as they became due, on all the bonds of the city. Under this statute the city council of F., a city of the second class, passed an ordinance for grading, paving, guttering, and macadamizing one of its streets within prescribed limits, and for paying the cost of the work by the issue of special improvement-bonds of the city signed by the mayor,

TAXATION (*continued*).

attested by the city clerk under the corporate seal of the city, and countersigned by the city treasurer. The ordinance provided that the bonds should be paid, principal and interest, solely from special assessments, to be made upon and collected from the lots and pieces of ground upon the street the distance improved, in the manner provided in sects. 16 and 17 of the above statute. Each bond issued under this ordinance states in its margin that it is issued in accordance with sects. 16 and 17 of the statute, and in pursuance of an ordinance of the city of F., entitled an ordinance ordering the grading, curbing, guttering, and macadamizing of streets, and upon its face that it is a special improvement bond of the city of F., Kansas. The city, for value received, thereby acknowledges itself to owe, and promises to pay to the holder the amount thereof, and each bond is indorsed with the certificate of the auditor of State that it was regularly and legally issued. A., the holder for a valuable consideration of some of these bonds before they matured, brought suit against the city, and recovered judgment for the amount thereof in the ordinary form, except that the court added, that it "be enforced and collected pursuant to law, in such case made and provided." Said judgment not being paid, A. sued out a writ of *mandamus* to compel the levy of a tax. The court below held that the levy must be confined to special assessments upon the property benefited and improved. *Held*, that his remedy was not so confined, and that the city was bound to impose, in satisfaction of the judgment, a tax upon all the taxable property within her limits. *United States v. Fort Scott*, 152.

2. Steamboats which ply between different ports on a navigable river, may, under a State statute, be taxed as personal property by the city where the company owning them has its principal office and which is their home port, although they are duly enrolled and licensed as coasting-vessels under the laws of the United States, and all fees and charges thereon demandable under those laws have been duly paid. *Transportation Company v. Wheeling*, 273.
3. Where the statute authorizing a county to subscribe for stock in a railroad company, and issue its bonds therefor, limits its power to provide for the payment of them to an annual special tax of one-twentieth of one per cent, and other laws then and still in force empowered it to levy a tax for general purposes not exceeding one-half of one per cent, upon the assessed value of the taxable property of the county, — *Held*, that, in the absence of further legislation, a *mandamus* will not lie to compel the levy of taxes beyond the amount so authorized. *United States v. County of Macon*, 582.
4. A holder of such bonds who has recovered judgment for the amount thereof does not thereby obtain an increased right to a levy of taxes. *Id.*

TAXATION, EXEMPTION FROM. See *Constitutional Law*, 2; *Jurisdiction*, 2.

1. The act of the legislature of South Carolina passed in 1856, granting a charter to A., a railroad company, did not expressly exempt it from the provisions of the act of Dec. 17, 1841, which declares that all charters of corporations thereafter granted shall be "subject to amendment, alteration, or repeal by the legislative authority;" but conferred upon the company all the rights, privileges, and immunities granted to a certain other company which had been incorporated in 1845, with an express exemption from taxation for the period of thirty-six years, and from the operation of said act of Dec. 17, 1841. The act of 1856 was amended in 1868. *Held*, 1. That the provisions of the act of 1841 are applicable to the act of 1856, and that the latter act must be read as if it declared that the capital stock of the company and its real estate should be exempt from taxation for thirty-six years unless the legislature should, in the mean time, withdraw the exemption. 2. That if an exemption from future legislative control had been originally acquired, it ceased when the company in 1868 obtained an amendment to its charter. *Hoge v. Railroad Company*, 348.
2. The intention of the legislature to exempt the property of corporations from taxation must be clear beyond a reasonable doubt. It cannot be inferred from uncertain phrases or ambiguous terms. If a doubt arise, it must be solved in favor of the State. *Id.*
3. *Tomlinson v. Jessup* (15 Wall. 454) referred to and qualified. *Id.*

TENDER. See *Direct Taxes*, *Sales for*, 1, 2; *Contracts*, 6, 8.

TESTATOR. See *Decedent Estates*, 1.

TITLE. See *Evidence*, 1, 2, 5; *Land Grants*, 1.

TOWN-SITE ACT.

1. An incorporated town in Utah was situate on public lands, which were duly entered at the proper land-office by the mayor, to whom a patent was issued under the act of March 2, 1867 (14 Stat. 541). The legislature of the Territory, as authorized by that act, enacted the requisite rules and regulations for the disposal of the lots in the town, and provided that the party who was the rightful owner of possession, or occupant, or was entitled to the occupancy or possession of a lot, should on certain conditions be entitled to a deed therefor from the mayor. A mode whereby contesting claims should be determined was prescribed. A., before the lands were entered, was in the possession of a lot, and mortgaged it to B., but thereafter remained in possession. In a foreclosure suit brought in the proper court against A., wherein the process sued out was served by the marshal of the United States for that Territory, a decree was rendered whereunder he, still acting as the ministerial officer of that court, under the decision of the local courts that he was entitled so

TOWN-SITE ACT (*continued*).

to do, made sale of the lot to C. The sale was confirmed by the court, and C. conveyed the lot to D., a non-resident. A. and D. respectively claimed a deed from the mayor. *Held*, 1. That A.'s interest in the lot, before the lands were entered, could be the subject of a sale or mortgage. 2. That although this court subsequently decided that the marshal could act only in cases where the United States was concerned, his doings in the premises were those of an officer *de facto*; that by his service of the process the court acquired jurisdiction of the person of A.; that the sale under the decree extinguished A.'s right to the lot; and that D. was entitled to a deed therefor from the mayor. *Hussey v. Smith*, 20.

2. A., possessed of a lot in the city of Salt Lake, Utah, died in 1857, leaving a widow and minor children. Under the act of March 2, 1867 (14 Stat. 541), the mayor, Nov. 4, 1871, duly entered at the proper land-office the lands occupied as the site of the city, and received, June 1, 1872, a patent therefor, "in trust for the several use and benefit of the occupants thereof according to their respective interests." The legislature of the Territory prescribed, by a statute approved Feb. 17, 1869, rules and regulations for the execution of such trusts, and provided that the several lots and parcels within the limits of the lands so entered should be conveyed to "the rightful owner of possession, occupant, or occupants," or to such persons as might be entitled to the occupancy or possession. Shortly after A.'s death, his widow relinquished the possession of a part of the lot. She subsequently conveyed another portion thereof, and removed with her children therefrom. Another portion was sold by the administrator of A., to pay taxes assessed and debts incurred by making improvements upon the property after the latter's death. The purchaser paid full value therefor, and has, since Dec. 10, 1869, remained in the exclusive possession thereof. *Held*, 1. That A. at the time of his death had, by reason of his possession of the lot, an inchoate right to the benefit of the act of Congress, should under its provisions the lands be entered, and that his right to maintain the possession as against the other inhabitants of the city descended under the laws of Utah to his widow and children. 2. That the withdrawal of the widow and children from parts of the lot, and her voluntary surrender of all control over them, extinguished her and their rights as to such parts. 3. That, under the territorial statute, an occupant of a lot could sell and convey his possessory rights therein, before the lands were so entered. 4. That the purchaser from the administrator is entitled to a conveyance from the mayor. 5. That the widow and children of A. are entitled to a deed from the mayor conveying to them, according to their respective interests, that part of the lot whereof they were in possession at the time the lands were entered. *Stringfellow v. Cain*, 610.

TOWN-SITE ACT (*continued*).

3. The doctrine in *Stringfellow v. Cain* (*supra*, p. 610) reaffirmed. *Canon v. Pratt*, 619.
4. The Probate Court of Utah has jurisdiction to determine the conflicting rights of claimants to lots forming part of the lands in that Territory entered as a town-site under the act of Congress of March 2, 1867 (14 Stat. 541), and an appeal may be taken from the judgment of that court to the District Court, within one year after it has been rendered. *Id.*

TRANSCRIPT. See *Practice*, 9.

TRESPASS. See *Evidence*, 1, 2.

TRUST. See *Partnership Property*.

A., seised of lands situate in South Carolina, died in 1856. By his last will and testament he appointed B. his executor, with power to sell them and hold the proceeds in trust for his widow and two minor children,—the interest on one-third of said proceeds to be paid to the widow, and that on the other two-thirds to be applied to the education and support of the children until they should attain the age of twenty-one years, when the principal was to be paid to them. B. sold the lands to C. in 1857 for \$50,000, receiving therefor \$15,000 in cash and the latter's bonds for the deferred payments, secured by a mortgage on the lands, which was duly recorded. In 1861, the widow removed to New York, where she has since resided. In 1863, C. sold the lands to D. for \$100,000 in Confederate treasury notes. In that currency, C. paid his bonds to B., who surrendered them, entered the mortgage as satisfied, and invested the currency in Confederate bonds. The children having in 1866 come of age, and assigned their interest in the estate to their mother, she, on the ground that the surrender of C.'s bonds and the cancellation of the mortgage were procured by fraud, brought her bill praying that the bonds of C. be decreed to be subsisting securities, and the mortgage a valid lien on the lands. The court below decreed accordingly. *Held*, that the decree was proper. *McBurney v. Carson*, 567.

TRUSTEES. See *Practice*, 7.

UNION PACIFIC RAILROAD COMPANY. See *Constitutional Law*, 3-5.

1. By the third section of the act of Congress approved July 1, 1862 (12 Stat. 489), incorporating the Union Pacific Railroad Company, lands were granted to the company "for the purpose of aiding in the construction of the railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon," and it was enacted that all such lands "not sold or disposed of" by the company before the expiration of three years after the completion of the entire road should be

UNION PACIFIC RAILROAD COMPANY (*continued*).

subject to settlement and pre-emption, like other lands. Upon a consideration of this and other provisions of the act, and of the amendatory act of July 2, 1864 (13 id. 356), — *Held*, 1. That these provisions should be so construed as to effect their primary object, which was to furnish aid in and during the construction of the road, and that it cannot be controlled or defeated by the secondary and subordinate purpose of opening to settlement and pre-emption such of the lands as should not be sold or disposed of within the designated period. 2. That the words "or disposed of" are not redundant, nor are they synonymous with "sold," but they contemplate a use of the lands granted different from the sale of them, and that a mortgage of them is such a use. 3. That the mortgage of them executed by the company April 16, 1867, for the purpose of raising money necessary to continue and complete the construction of the road, disposed of them within the meaning of the act, and was authorized thereby. 4. That the mortgage was an hypothecation of the fee, and not merely of an estate determinable at the expiration of three years from the completion of the road, and the debt it was given to secure not having matured, the lands are not subject to pre-emption. *Sed quære*, whether the remnants that may be unsold when the mortgage debt shall be paid will not then be subject to pre-emption. *Platt v. Union Pacific Railroad Company*, 48.

2. The act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July 1, 1862 (12 Stat. 489), after providing for the issue of patents for land and of bonds to the Union Pacific Railroad Company and other companies from time to time, as successive sections of their respective roads should be completed, requires the companies to perform all government transportation of mails, troops, &c., and to credit the compensation therefor on the government loan; and then adds, that "after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof." *Held*, 1. That the liability of the Union Pacific Railroad Company to make this payment accrued when it reported, and the President of the United States accepted, its road as completed, for the purpose of issuing the bonds, though the acceptance was provisional, and security was required that all deficiencies in construction should be supplied. 2. That the company having obtained the bonds and agreed in regard to the security, is estopped from denying that the road was then completed. *Union Pacific Railroad Company v. United States*, 402.
3. The "earnings" of the road include all the receipts arising from the company's operations as a railroad company, but not those from the public lands granted, nor fictitious receipts for the transporta-

UNION PACIFIC RAILROAD COMPANY (*continued*).

tion of its own property. "Net earnings," within the meaning of the law, are ascertained by deducting from the gross earnings all the ordinary expenses of organization and of operating the road, and expenditures made *bona fide* in improvements, and paid out of earnings, and not by the issue of bonds or stock; but not deducting interest paid on any of the bonded debt of the company.

Id.

4. The government bonds issued to the company were declared to be a first lien on the road and property; the act of July 2, 1864 (13 id. 356), authorized the company to issue an equal amount of first-mortgage bonds, to have priority over the government bonds. *Held*, that this priority authorized the payment of the interest accruing on these first-mortgage bonds out of the net earnings of the road, in preference to the five per centum payable to the government, which is only demandable out of the excess in each year.

Id.

5. Neither the debt of the Union Pacific Railroad Company nor that of the Central Pacific Railroad Company to the United States is paid by depositing and investing the sinking-fund in the manner prescribed in the act of May 7, 1878. 20 Stat. 56. *Sinking-Fund Cases*, 700.

6. Retaining in the fund the one-half of the earnings for services rendered to the government by those companies respectively, which by the act of July 2, 1864 (13 Stat. 356), was to be paid to them, does not release the government from such payment. Although kept in the treasury, the fund is owned by them, and they will be entitled to the securities whereof it consists which remain undisposed of when the debt chargeable upon it shall be paid. Under the circumstances, such retaining is, in law, a payment to them.

Id.

UTAH. See *Criminal Law; Jurisdiction*, 16; *Practice*, 19; *Town-Site Act*.

WAIVER. See *Condition; Practice*, 21.

WASHINGTON, TREATY OF.

An award made by the commission organized under the treaty between the United States and Great Britain of May 8, 1871 (17 Stat. 863), in favor of a claimant against the United States, passes to his assignee in bankruptcy. *Phelps v. McDonald*, 298.

WILL.

A testator in whom was the legal title to lands, which he had sold by a written contract, can transfer by his will both such title and the notes given for the purchase of them, and the devisee will stand towards the purchaser in the same position that the testator did.

Atwood v. Weems, 183.

WISCONSIN. See *Municipal Bonds*, 2.

WORDS.

1. In the phrase "sold or otherwise disposed of," where the same occurs in the third section of the act of July 1, 1862 (12 Stat. 489), incorporating the Union Pacific Railroad Company, the words "or otherwise disposed of" are not synonymous with "sold," but they contemplate a use by the company of the lands granted different from the sale of them. A mortgage of them is such a use. *Platt v. Union Pacific Railroad Company*, 48.
2. The words, "upon which they have respectively made improvements," in the act of July 17, 1854 (10 Stat. 304), have exclusive reference to "other unsurveyed lands," and do not qualify the provision touching "other unoccupied lands." *Myrick v. Thompson*, 291.
3. "District," where it occurs in the sixth section of the act of June 7, 1862 (12 Stat. 422), signifies a part or portion of a State. The city of Memphis, Tenn., was, therefore, a district within the meaning of that section. *Keely v. Sanders*, 441.

1888

In the year 1888, the first of the series of
 observations was made on the 1st of July, 1888, at
 the observatory of the University of Cambridge, England.
 The observations were made by the late Professor
 G. B. Airy, and the results were published in the
 Philosophical Magazine, London, 1888, p. 100.
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