# INDEX.


ACTION.

*See* CORPORATION, 2.

ADMIRALTY.

1. Admiralty rules 12 to 20 inclusive allow, in certain cases, a joinder of ship and freight, or ship and master, or alternative actions against ship, master or owner alone; but in no case within the rules can ship and owner be joined in the same libel: whether they may in cases not falling within the rules is not decided. *The Corsair*, 335.
2. A District Court sitting in admiralty cannot entertain a libel *in rem* for damages incurred by loss of life where, by the local law, a right of action survives to the administrator or relatives of the deceased, but no lien is expressly created by the act. *Ib.*
3. When the collision of two vessels causes great pain and suffering to a passenger on one of them, followed so closely by death as to be substantially contemporaneous with it, a libel *in rem*, where a right of action exists under a state statute, will not lie for those injuries as distinguished from death as a cause of action. *Ib.*

ADVERSE POSSESSION

*See* PUBLIC LAND, 1.

AMENDMENT.

*See* LIMITATION, STATUTES OF.

BAILMENT.

*See* CONTRACT, 1;
EVIDENCE, 1.

BANKRUPTCY.

*See* PATENT FOR INVENTION, 1, 2, 12.

BOUNDARY.

This case was decided February 29, 1892, 143 U. S. 359, and the decree withheld in order to enable the parties to agree to the designation of the boundary between the two States. Such agreement having been reached a decree is now entered accordingly. *Nebraska* v. *Iowa*, 519.

BROKERS' LICENSE.

*See* CONSTITUTIONAL LAW, 1.

CASES AFFIRMED.

The judgment below is reversed upon the authority of *The Oregon Railway and Navigation Company* v. *The Oregonian Railway Company, Limited*, 130 U. S. 1; *Oregon Railway Co.* v. *Oregonian Railway Co.*, 52.

*Crawford* v. *Neal*, 144 U. S. 585, affirmed and applied. *Furrer* v. *Ferris*, 132.

*See* CONSTITUTIONAL LAW, 4;
HOT-SPRINGS RESERVATION;
RECEIVER, 3.

CASES DISTINGUISHED OR EXPLAINED.

*Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, examined and distinguished from this case. *Ficklen* v. *Shelby County Taxing District*, 1.

*Rector* v. *Gibbon*, 111 U. S. 276, distinguished from this case. *McDonald* v. *Belding*, 492.

*See* PARTNERSHIP, 2;
PATENT, 18.

CHALLENGES.

*See* CONSOLIDATION OF ACTIONS, 2.

CONFISCATION.

*See* REBELLION, 1.

CONSOLIDATION OF ACTIONS.

1. Under Rev. Stat. § 921, a court of the United States may order actions against several insurers of the same life, in which the defence is the same, to be consolidated for trial, against their objection. *Mutual Life Ins. Co.* v. *Hillman*, 285.
2. The consolidation for trial, under Rev. Stat. § 921, of actions against several defendants does not impair the right of each to three peremptory challenges under § 819. *Ib.*

CONSTITUTIONAL LAW.

1. F. and C. & Co. were commercial agents or brokers, having an office in Shelby County, Tennessee, where they carried on that business. In 1887 they took out licenses for their said business, under the provisions of the statute of Tennessee of April 4, 1881, (Sess. Laws 1881, 111, 113, c. 96, § 9,) imposing a tax upon factors, brokers, buyers or sellers on commission, or otherwise, doing business within the State, or, if no capital be so invested, then upon the gross yearly commissions, charges or compensation for said business. During the year for which they took out licenses all the sales negotiated by F. were made on behalf of principals residing in other States, and the goods so sold were, at the

times of the sales, in other States, to be shipped to Tennessee as sales should be effected. During the same time a large part of the commissions of C. & Co. were derived from similar sales. They had no capital invested in their business. At the expiration of the year they applied for a renewal of their license. As they had made no return of sales, and no payment of percentage on their commission, the application was denied. They filed a bill to restrain the collection of the percentage tax for the past year, and also to restrain any interference with their current business, claiming that the tax was a tax on interstate commerce. *Held*, (1) that if the tax could be said to affect interstate commerce in any way it did so incidentally, and so remotely as not to amount to a regulation of such commerce; (2) that under the circumstances the complainants could not resort to the court, simply on the ground that the authorities had refused to issue a new license without the payment of the stipulated tax. *Ficklen* v. *Shelby County Taxing District*, 1.

2. The statute of June 13, 1885, of the State of New York (Sess. Laws 1885, c. 499) requiring companies operating or intending to operate electrical conductors in any city in the State to file with the Board of Commissioners of Electrical Subways maps and plans before constructing the conduits, and the statute of that State of May 29, 1886 (Sess. Laws 1886, c. 503) assessing the salaries and expenses of such board upon the several companies operating electrical conductors in any city in the State, are a constitutional exercise of the general police powers of the State, and are applicable to the New York Electric Lines Company which, before the passage of either of said acts, was incorporated under the laws of New York, and had obtained from the municipal government of the city of New York permission to lay its conductors in and through the streets and highways of the city, and had filed a map, diagram and tabular statement indicating the amount, position and localities of the spaces it proposed to occupy in and under the streets. *New York* v. *Squire*, 175.

3. The said law of 1885 simply transferred the reserve police power of the State from one set of functionaries to another, and required the company to submit its plans and specifications to the latter, who would determine whether they were in accordance with the terms of the ordinances giving it the right to enter and dig up the streets of the city; and, being so construed, it violates no contract rights of the company which might grow out of the permission granted by the municipality. *Ib.*

4. The said act of 1886 comes within the principles settled in *Charlotte &c. Railroad* v. *Gibbes*, 142 U. S. 386, and is not in conflict with the provision in the Fourteenth Amendment that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. *Ib.*

5. A state tax against a railroad corporation, incorporated under its laws

on account of transportation done by it from one point within the State to another point within it, but passing during the transportation without the State and through part of another State, is not a tax upon interstate commerce, and does not infringe the provisions of the Constitution of the United States. *Lehigh Valley Railroad* v. *Pennsylvania*, 192.

6. An insolvent law of a State, providing that any conveyance of property within the State made by a citizen of the State, being insolvent, within four months before the commencement of proceedings in insolvency, and containing preferences, shall be void, and shall be a cause for adjudging him insolvent and appointing an assignee to take and distribute his property, does not, as applied to a case in which the preferred creditors are citizens of other States, impair any right of the debtor under the Constitution of the United States; and such an adjudication, though made without notice to such creditors, and declaring void the conveyance made for their benefit, cannot, upon its affirmance by the highest court of the State, be reviewed by this court on a writ of error sued out by the debtor only. *Brown* v. *Smart*, 454.

7. The act of the legislature of Tennessee of March 26, 1879, c. 141, providing that "the rents and profits of any property or estate of a married woman, which she now owns or may hereafter become seized or possessed of . . . shall in no manner be subject to the debts or contracts of her husband, except by her consent," does not take away or infringe upon any vested right of the husband, or any right belonging to his creditors, and does not deny any right or privilege secured by the Constitution of the United States. *Baker* v. *Kilgore*, 487.

*See* INTERSTATE COMMERCE, 1, 2.

CONSTRUCTIVE NOTICE.

*See* LOCAL LAW, 1.

CONTINUANCE.

*See* JURISDICTION, A, 4.

CONTRACT.

1. In a written instrument a corporation declared that it held for the benefit of C. certain choses in action, stock and bonds, which it described, and said: "The proceeds arising from the sale of said securities and recovered from said choses in action are to be applied to pay off said notes and interest," and the remainder was to be paid to C. or his legal representatives, "subject to the repayment of moneys expended" by the corporation "in prosecuting claims or selling the securities." The notes were described, and it was stated that C. was indebted to the corporation in their amount; *Held*, that the declaration did not contain or imply any contract whereby the corporation was bound to prosecute claims or sell securities. *Culver* v. *Wilkinson*, 205.

2. The Supreme Court of Illinois having held that the ordinance of the city of Chicago that "no person, firm or corporation shall sell or offer for sale any spirituous or vinous liquors in quantities of one gallon or more at a time, within the city of Chicago, without having first obtained a license therefor from the city of Chicago, under a penalty of not less than $50 or more than $200 for each offence," is valid, this court follows the ruling of that court; and further holds that a contract made in violation of it creates no right of action which a court of justice will enforce. *Miller* v. *Ammon*, 421.

3. The general rule of law is, that a contract made in violation of a statute is void; and that when a plaintiff cannot establish his cause of action without relying upon an illegal contract, he cannot recover. *Ib.*

4. A telegraph company gave to H. & Co. the right to put up at their own expense and maintain and use a wire upon the poles of the company between New York and Philadelphia, and to permit four other parties to use the same with priority of right, the company to have the use of the wire when not so employed. The company agreed to keep and maintain the wire when accepted by it, and to bear all expenses of batteries, etc., connected with its working and to permit such use by H. & Co. and four other persons for a period of ten years. At the end of that time the wire was to be the property of the company, when the company agreed "to lease the same" to H. & Co. "for the use of themselves and such other four persons "for the sum of $600 per annum, payable quarterly, and upon the same terms in all other respects as if the wire had not been given up" to the company. The wire was put up by H. & Co. and used by them and "four other persons" for the term of ten years without compensation, and after that at the agreed compensation. The company then notified H. & Co. that the use of the wire by H. & Co. and the four other persons had become such as to exclude the company from all use of it, which was not contemplated by the original contract and that the agreement would be terminated by the company. H. & Co. filed their bill to restrain the company from so doing. *Held*, (1) That H. & Co. and their licensees, after the expiration of the ten years, were entitled to the same absolute use of the wire which they enjoyed before the wire was given up to the company, on payment of $600 per annum, payable quarterly; (2) That the facts disclosed no hardship which would justify a court of equity, in the exercise of its judicial discretion, to refuse the relief asked for; (3) That the plaintiffs were entitled to such relief in equity. *Franklin Telegraph Co.* v. *Harrison*, 459.

5. N. M. was indebted to U. in the sum of $200,000 secured by railroad bonds and stock and a mortgage on real estate in Boston. The debtor, desiring to use the bonds and stock held as collateral, proposed to substitute for them a mortgage on real estate in New York to secure the bond of E. M., N. M.'s brother, who was indebted to N. M., and who gave the bond and mortgage to secure that debt. E. M., at

the request of N. M., in order to enable N. M. to make the proposed substitution, wrote him a letter to be shown to U., saying, "You are hereby authorized to assign to U. the mortgage for $250,000 which I have given you as collateral security for loans made to me." *Held*, that while, as between E. and N., the mortgage was to be regarded as collateral security for loans made to E. by N., the assignment to U. was absolute as a security for the indebtedness of N. to U., without regard to the indebtedness of E. to N., and that a suit in equity to put a different construction upon it was wholly without merit. *Matthews* v. *Warner*, 475.

CORPORATION.

1. The statute of limitations begins to run against an action against a stockholder in an insolvent corporation, in the hands of a receiver, to recover unpaid assessments on his stock, when the court orders the assessment to be made. *Glenn* v. *Marbury*, 499.
2. When such a call is made the action, in the District of Columbia where the common law prevails, must be brought in the name of the company. *Ib.*

*See* EQUITY, 5, 8; PRACTICE, 3; JURISDICTION, B, 1; RAILROAD, 1 to 5.

COURT AND JURY.

A case should not be withdrawn from the jury unless the conclusion follows, as matter of law, that no recovery can be had upon any view which can properly be taken of the facts which the evidence tends to establish. *Texas & Pacific Railway Co.* v. *Cox*, 593.

*See* NATIONAL BANK; PARTNERSHIP, 1.

CUSTOMS DUTIES.

1. Under schedule C of § 2502 of the Revised Statutes, as enacted by § 6 of the act of March 3, 1883, c. 121, (22 Stat. 497,) iron ore was charged with a duty of 75 cents per ton, and that duty was assessable on the number of pounds of iron ore reported by the United States weigher, and not on the ore after the moisture was dried out of it. *Earnshaw* v. *Cadwalader*, 247.
2. Plain glazed and plain enamelled tiles, imported in February, May and June, 1886, were subject to a duty of fifty-five per cent as other earthen ware not specially enumerated. *Rossman* v. *Hedden*, 561.
3. The classification of a dutiable article is to be determined as of the date when the law imposing the duty was passed. *Ib.*

DAMAGES.

Under the laws of Texas, for the purchase of a portion of its unappropriated lands, an applicant could acquire no vested interest in the land

applied for, that is, no legal title to it, until the purchase price was paid and the patent of the State was issued to him; but he had the right to complete the purchase and secure a patent within the prescribed period, which right is designated in the decisions of the Supreme Court of the State as a vested right that could not be defeated by subsequent legislation, and is a valuable right, which would seem to be assignable. The measure of damages for the breach of a contract for the sale of such a vested right by the purchaser is the difference between the contract price and the salable value of the property. *Telfener* v. *Russ*, 522.

*See* MINERAL LAND, 2;
PATENT FOR INVENTION, 9.

DEED.

*See* JUDICIAL SALE, 2;
LOCAL LAW, 1, 4, 5.

DEMURRER.

*See* PRACTICE, 4.

DISTRICT OF COLUMBIA.

*See* CORPORATION, 2;
PARTITION, 1, 3.

EJECTMENT.

*See* LOCAL LAW, 3;
TRESPASS.

EQUITY.

1. Payments of bonds secured by a mortgage of real estate in Virginia, made in that State during the Civil War to the personal representatives of the mortgagee who had deceased, partly in Confederate notes and partly in Virginia bank notes issued prior to the war, are *held* to have been made and received in good faith, and the transactions to have been known to the children of the deceased, and to have been accepted and acquiesced in by them for so long a time as to preclude any interference in their behalf by a court of equity. *Washington* v. *Opie*, 214.
2. When a sale of property is decreed by a court of equity as the result of a litigation, it is the policy of the law that it shall not be set aside for trifling causes or matters which the complaining party might have attended to. *Pewabic Mining Co.* v. *Mason*, 349.
3. When such a sale is attacked the court will scrutinize all previous action of the parties during the litigation, which may throw light upon or explain their action at the sale. *Ib.*
4. It cannot be tolerated that either party should designedly wait until the

property has been struck off to the other, and then open the bidding and defer the sale by an increased offer. *Ib.*

5. When a corporation owning real estate is wound up by reason of the expiration of the term for which it was incorporated, and its real estate is sold by decree of court under directions of a master, stockholders may purchase it, and there is no fraud on other stockholders if a part of the stockholders combine to purchase it for the benefit of an adjoining property owned by them. *Ib.*

6. Litigants prolonging litigation to the extent of their ability in a suit in equity seeking the sale of real estate, and prolonging their resistance by having the sale postponed after the decree, cannot complain if it takes place finally in a time of financial depression. *Ib.*

7. The court decreed in this case that the assets of the mining company should be sold at public vendue, that the debts of the company should be ascertained by a master as a basis for the bid, and that the sale should take place on the confirmation of his report. *Held*, that it was not intended that the sale should be delayed till every claim arising since the commencement of the suit should have passed to final judgment; but that a mere statement of the amount should be presented as a basis for fixing an upset price. *Ib.*

8. No leave of court is necessary to enable a litigating stockholder to bid at such sale of the assets of the corporation under a decree in the suit in which he is a litigant. *Ib.*

9. The provisions in equity rule 83 respecting exceptions to a master's report do not apply to a report of a mere ministerial matter like a sale, but only to a report upon matters heard and determined by him. *Ib.*

10. The master's sale under the decree was advertised to take place in Michigan on Saturday, January 24. Late in the evening of Friday, January 23, the master received from M. a telegram from Boston, in Massachusetts, stating that he was a holder of nearly 3000 shares of stock, that he had just heard of the sale, that it was to take place on the Jewish Sabbath, that his Jewish friends wished to buy but would not attend on the Sabbath, and asking for a postponement. The sale took place on the 24th as announced, whereupon, on the 26th M. again telegraphed protesting and making an offer in advance of the purchaser's bid. The master reported this in his report of the sale. The sale was confirmed. The day after the confirmation M. asked leave to intervene and have the sale set aside. In the subsequent proceedings no proof was offered that M. was a shareholder, and it appeared affirmatively that he had no financial responsibility. *Held*, that if it had been planned he could not have been more opportunely ignorant before the sale, or more accurately informed after the confirmation, and that his intervention was too late. *Ib.*

*See* CONTRACT, 5; PARTNERSHIP, 2; MASTER IN CHANCERY; PUBLIC LAND, 1; RECEIVER.

## EVIDENCE.

1. The receiver of a corporation, appointed by a court of New Jersey, having recovered in New Jersey a judgment against C. on notes given in renewal of those specified in the declaration, sued C. on the judgment in the Circuit Court of the United States for the Southern District of New York, and C. sought to give testimony of oral agreements, whereby the corporation agreed to prosecute some of the claims, to pay the expenses of such prosecution, and to do various things in regard to the bonds, and that its failure to do so had caused damages to C., which he claimed to first apply in discharge of the judgment and then recover the balance; *held*, that the evidence was inadmissible and that it was proper to direct a verdict for the plaintiff. *Culver* v. *Wilkinson*, 205.

2. The intention of a person, when material, may be proved by contemporaneous declarations in his letters, written under circumstances precluding a suspicion of misrepresentation. *Mutual Life Ins. Co.* v. *Hillman*, 285.

3. Upon the question whether a person left a certain place with a certain other person, letters written and mailed by him at that place to his family, shortly before the time when there is other evidence tending to show that he left the place, and stating his intention to leave it with that person, are competent evidence of such intention. *Ib.*

*See* LOCAL LAW, 1;
PARTNERSHIP, 1.

## EXECUTION.

*See* JUDICIAL SALE.

## FRAUD.

*See* NATIONAL BANK;
PUBLIC LAND, 1.

## HOT SPRINGS RESERVATION.

The court again adheres to its decision in *Rector* v. *Gibbon*, 111 U. S. 276, touching titles in the Hot Springs Reservation, and holds that there are no facts in these cases which take them out of the operation of that decision; but, in view of the delay in commencing these suits, and the previous acquiescence of the plaintiffs in the possession by the defendants, it limits the right of an account in equity of the rents of the premises to the date of the filing of the bills. *Goode* v. *Gaines*, 141.

*See* LOCAL LAW, 4, 5.

## ILLINOIS.

*See* LOCAL LAW, 1.

## INDIAN.

The treaty of Prairie du Chien, 7 Stat. 320, made grants of lands to certain Indians, upon condition that they should never be leased or conveyed by the grantees or their heirs, to any persons whatever, without the permission of the President of the United States. One of those grantees conveyed his land in 1858 by a deed which had endorsed upon it the approval of the President, given in 1871. The state court of Illinois held that the Indian had no authority to convey the land without permission from the President previously obtained. *Held*, (1) that this ruling of the state court raised a Federal question; (2) that the permission thus given by the President to the conveyance, after its execution and delivery, was retroactive, and was equivalent to permission before execution and delivery, as no third parties had acquired an interest in the lands. *Pickering* v. *Lomax*, 310.

*See* PUBLIC LAND, 1.

## INSOLVENT LAWS.

*See* CONSTITUTIONAL LAW, 6.

## INTERSTATE COMMERCE.

1. The issue by a railway company engaged in interstate commerce of a "party-rate ticket" for the transportation of ten or more persons from a place situated in one State or Territory to a place situated in another State or Territory, at a rate less than that charged to a single individual for a like transportation on the same trip, does not thereby make "an unjust and unreasonable charge" against such individual within the meaning of § 1 of the act of February 4, 1887, to regulate commerce, 24 Stat. 379, c. 104; nor make an "unjust discrimination" against him within the meaning of § 2 of that act; nor give "an undue or unreasonable preference or advantage" to the purchasers of the party-rate ticket within the meaning of § 3. *Interstate Commerce Commission* v. *Baltimore & Ohio Railroad*, 263.
2. Section 22 of that act, as amended by the act of March 2, 1889, 25 Stat. 855, 862, c. 382, § 9, provides that discriminations in favor of certain persons therein named shall not be deemed unjust, but it does not forbid discriminations in favor of others under conditions and circumstances so substantially alike as to justify the same treatment. *Ib.*
3. So far as Congress, in the act to regulate commerce, adopted the language of the English Traffic Act, it is to be presumed that it had in mind the construction given by the English courts to the adopted language, and intended to incorporate it into the Statute. *Ib.*

*See* CONSTITUTIONAL LAW, 1, 5.

## INTOXICATING LIQUORS.

*See* CONTRACT, 2.

## IOWA.

*See* BOUNDARY.

### JUDICIAL SALE.

1. Every reasonable inducement will be made in favor of a judicial sale, so as to secure, if it can be done consistently with legal rules, the object they were intended to accomplish. *Cox* v. *Hart*, 376.
2. Where it is doubtful to which of two tracts of land in the same neighborhood, both the property of the execution debtor, the description in the marshal's deed applies, extrinsic evidence may be admitted to show which was intended, and the question left to the jury under proper instructions. *Ib.*

*See* EQUITY, 2, 3, 4, 6, 7, 8, 10.

### JURISDICTION.

A. OF THE SUPREME COURT.

1. When the jurisdiction of this court depends upon the amount in controversy, it is to be determined by the amount involved in the particular case, and not by any contingent loss which may be sustained by either one of the parties through the probative effect of the judgment, however certain it may be that such loss will occur. *New England Mortgage Security Co.* v. *Gay*, 123.
2. The plaintiff made a loan to the defendant upon his promissory notes to the amount of $8500, secured by a mortgage of real estate in Georgia of the value of over $20,000. In assumpsit to recover on the notes the jury found the transaction to have been usurious and gave judgment for the sum actually received by the debtor which was $1700 less than the amount claimed, and for interest and costs. The effect of that judgment, if not reversed, is, under the laws of Georgia, to invalidate the mortgage given as security, in proceedings to enforce it. *Held*, that notwithstanding such indirect effect this court has no jurisdiction, the amount directly in dispute in this action being only the usurious sum. *Ib.*
3. When, in an action to recover an instalment of rent, the judgment below is for less than $5000, this court is without appellate jurisdiction although the judgment involved the existence and validity of the contract of lease, and thus indirectly an amount in excess of the jurisdictional limit. *Clay Center* v. *Farmers' Loan and Trust Co.*, 224.
4. The granting or refusing of an application for continuance by the court below is not subject to review here. *Cox* v. *Hart*, 376.
5. When the judgment in the Supreme Court of a Territory exceeds $5000 this court has jurisdiction of an appeal, although the judgment in the trial court may have been for a less sum and the jurisdictional amount reached in the appellate court by adding interest to that judgment. *Benson Mining Co.* v. *Alta Mining Co.*, 428.
6. Under the act of February 6, 1889, "to provide for writs of error in

capital cases," 25 Stat. 655, c. 113, a writ of error does not lie from this court to the Supreme Court of the District of Columbia to review a judgment of that court in general term affirming a judgment of the trial court convicting a person of a capital crime. *Cross* v. *United States*, 571.

7. A judgment of the Supreme Court of the State of Minnesota overruling a demurrer interposed by one of many defendants, and remanding the case to the trial court for further proceedings, is not a final judgment which can be reviewed by this court. *Meagher* v. *Minnesota Threshing M'f'g Co.*, 608.

*See* INDIAN;
MASTER IN CHANCERY, 2.

B. JURISDICTION OF CIRCUIT COURTS.

1. Under the act of March 3, 1887, c. 373, § 1, as corrected by the act of August 13, 1888, c. 866, a corporation, incorporated in one State only, cannot be compelled to answer, in a Circuit Court of the United States held in another State, in which it has a usual place of business, to a civil suit, at law or in equity, brought by a citizen of a different State. *Shaw* v. *Quincy Mining Co.*, 444.
2. The proviso in § 6 of the act of March 3, 1887, 24 Stat. 552, c. 373, does not limit the operation of § 3 of that act as corrected by the act of August 13, 1888, 25 Stat. 433, 436, c. 866; and a Circuit Court of the United States may take jurisdiction of an action against a receiver or manager of property appointed by it, without previous leave being obtained, although the action was commenced before the enactment of the statute. *Texas & Pacific Railway Co.* v. *Cox*, 593.
3. This jurisdiction exists because the suit is one arising under the Constitution and laws of the United States. *Ib.*
4. A cause of action founded upon a statute of one State, conferring the right to recover damages for an injury resulting in death, may be enforced in a court of the United States sitting in another State if it is not inconsistent with the statutes or public policy of the State in which the right of action is sought to be enforced. *Ib.*
5. This cause of action founded upon the statute of Louisiana, conferring such right, is enforceable in Texas, notwithstanding the decisions of the courts of that State, referred to in the opinion in this case, those cases being in construction of the statute of Texas on that subject, and not applicable to the Louisiana statute. *Ib.*

LACHES.

1. Laches does not, like limitation, grow out of the mere passage of time; but it is founded upon the inequity of permitting the claim to be enforced — an inequity founded upon some change in the condition or relations of the property or the parties. *Galliher* v. *Cadwell*, 368.
2. G. made a homestead entry in Washington Territory in 1872. He died

as executrix in 1843. In 1846 the Illinois lands were sold for non-payment of taxes assessed in 1845. The county records show no judgment for the tax sale. The lands were purchased at the tax sale by a brother-in-law of the widow, who assigned the certificate to the widow, and the deed was made to her directly. She then, through her attorney in fact, made sales of various tracts of this land, at various times, until all were disposed of. The purchasers duly entered into possession, and took title, and they and those claiming under them continued in possession and paid all taxes on the lands occupied by them respectively for periods ranging from 29 to 33 years. In 1853 a deed of a part of the tract from the widow to one M. was put on record, in which it was recited that the land conveyed by that deed had been held by R. L. and had been devised by him. The county records also contained a copy of the Book of Land Entries, furnished by the auditor to the county clerk for the purpose of taxation: but, with these exceptions, those records contained nothing pointing to the patent to R. L., or to his will, or to the interest devised by it to his widow, J. N. L., until 1866, when what purported to be a copy of the will was filed in the office of the recorder of the county. To this copy were attached copies of the affidavits of the subscribing witnesses to the will in proof of its execution, and a certificate signed by the judge and by the clerk of the probate court in Ohio that these were copies of the will and affidavits and order and proceedings taken from the originals in that court; but there was no copy of the order and of the proceedings admitting the will to probate. The widow died in 1888, not having married again, and leaving no issue. Up to that time no one of the several purchasers, nor any one claiming under them, had actual notice that R. L. had been seized of these lands through a patent from the United States, or of his will, or of its provisions, nor any constructive notice thereof other than is to be implied from the public records of the United States and of the county. On the death of the widow the direct descendants of the brothers of R. L., being his only heirs at law, brought these actions of ejectment against the several persons occupying and claiming title to said several tracts of land, to recover possession of the same, maintaining that the tenancy of the widow and of all claiming under her was a life estate for the term of her life, and that the statute of limitations did not begin to run against the remaindermen until the expiration of the life estate. *Held*, (1) that the sheriff's deed for the land sold for taxes, being regular on its face, and purporting to convey the title to the land described in it was sufficient color of title to meet the requirements of the statute of limitations of the State of Illinois without proof of a judgment for the taxes; (2) that the book of land-entries in the county clerk's office furnished by the auditor to the county clerk for the purposes of taxation was not constructive notice of the issue of the patent for the public lands to R. L.; (3) that the will of

in 1873. The entry was cancelled in 1879 for want of final proof within the seven years. In 1880 the act of June 15, 1880, was passed, 21 Stat. 236, c. 227, authorizing persons who had made homestead entries to entitle themselves to the lands on paying the government price therefor. G.'s widow made application for a patent under this act, and her application was rejected. In 1881 W. entered the tract, and in 1882 received a patent for it. In 1884 the widow made an application for a rehearing under the act of 1880, and her application was rejected in the same year. The land having greatly increased in value by the growth of the city of Tacoma, C., claiming through conveyances from W., filed a bill to quiet title, making the widow a defendant. The widow answered setting up as a prior right the homestead entry. *Held*, (1) that it was doubtful whether the widow of G. was entitled to the benefit of the act of June 15, 1880; but that, without deciding that question, (2) in view of the rapid and enormous increase in value of the tract, and her knowledge of all the circumstances, which must be assumed from her near residence to the property, a court of equity would not disturb a title legally perfect, created by the general government after a decision adverse to any reservation of the homestead right, and on the faith of which costly improvements had been made. *Ib.*

*See* PUBLIC LAND, 1.

LEASE.

*See* RAILROAD, 1 to 4.

LIMITATION, STATUTES OF.

The rule that an amended declaration which sets forth a new cause of action is subject to the operation of a limitation coming into force after the commencement of the action does not apply to an amendment which sets forth the same cause of action as that set forth originally. *Texas & Pacific Railway Co.* v. *Cox*, 593.

*See* CORPORATION, 1;
LOCAL LAW, 1;
PATENT FOR INVENTION, 12.

LOCAL LAW.

1. In 1838 R. L., a resident of Ohio, received a patent from the United States of public lands in Illinois. In 1842 he made his will in Ohio, where he continued to reside until his death in 1843. After disposing of other property he devised his Illinois lands and bequeathed the remainder of his personal estate to his wife J. N. L. and to the heirs of her body, to be equally divided between them, share and share alike, and he appointed her sole executrix of the will. He left no issue surviving him, (although he had had children,) but he left brothers and the issue of deceased brothers. His will was duly proved in Ohio, and the widow, who elected to take under it, qualified

R. L. was not authenticated and certified by the officers of the probate court in Ohio in a manner to entitle it to record under the statutes of Illinois, and that the record of it there, without proper proof of its probate in Ohio, was not constructive notice of it and of its contents; (4) that the recital in the deed from J. N. L. to M. in 1853 was at most notice of the facts recited in it to the grantee and those claiming under him; (5) that, by the law of Illinois, the actual possession of the several defendants, for more than seven successive years prior to the commencement of these actions, of the lands in controversy, under claim and color of title made in good faith, that is, under deeds purporting to convey the title to them in fee, and the payment of all taxes legally assessed on them, without notice, actual or constructive, during that period, of any title to or interest in the lands upon the part of others that was inconsistent with an absolute fee in their immediate grantors, and in those under whom such grantors claimed, entitled them to be adjudged the legal owners of such lands according to their respective paper titles, even as against those, if any, who may have been entitled by the will of R. L. to take the fee after the death of his widow without heirs of her body; (6) that, in view of the foregoing, it was unnecessary to pass upon the nature of the estate devised to J. N. L. *Lewis* v. *Barnhart*, 56.

2. Whether an affidavit that one of the deeds relied on in the chain of title is forged, filed in an action of trespass to try title in Texas, for the purpose of obtaining a continuance, is such an affidavit as would, under Rev. Stats. Texas, art. 2257, affect its admissibility in evidence, *quære*. *Cox* v. *Hart*, 376.

3. The Texas statutes making provision for an allowance for improvements, in actions of trespass to try title, are intended to secure to the possessor in good faith compensation for his improvements, either by direct payment therefor by the owner of the land, or by giving him an opportunity to take the land at its assessed value, where the plaintiff elects not to pay for the improvements and keep the land; but they do not confer upon such possessor the right to an execution for the assessed value of the improvements at the expiration of a year. *Ib.*

4. In Arkansas, although the rule obtains that a person holding under a quitclaim deed may be ordinarily presumed to have had knowledge of imperfections in the vendor's title, yet that rule is not universal, and one may become entitled to protection as a *bona fide* purchaser for value, although holding under a deed of that kind; and in this case it is held that the plaintiff in error, although taking a quitclaim deed, was not chargeable with notice of any existing claim to the property upon the part of either of the defendants in error. *McDonald* v. *Belding*, 492.

5. In Arkansas, when the payment of the consideration and the acceptance of a deed by the purchaser occur at different times, the denial of notice of fraud, in order to support a claim to protection as a *bona fide* pur-

chaser, must relate both to the time when the deed is delivered, and to that when the consideration was paid; but, where it appears upon the face of the answer, that the purchase for a certain price and the delivery of the deed were made at the same time, and were parts of one transaction, the denial of notice until the defendant had made the purchase is equivalent to a denial of notice at the delivery of the deed. *Ib.*

6. Under the laws of Texas, for the purchase of a portion of its unappropriated lands, an applicant could acquire no vested interest in the land applied for, that is, no legal title to it, until the purchase price was paid and the patent of the State was issued to him; but he had the right to complete the purchase and secure a patent within the prescribed period, which right is designated in the decisions of the Supreme Court of the State as a vested right that could not be defeated by subsequent legislation, and is a valuable right, which would seem to be assignable. *Telfener* v. *Russ*, 522.

*District of Columbia.* *See* CORPORATION, 2; PARTITION, 1, 3.
*Georgia.* *See* JURISDICTION, A, 2.
*Illinois.* *See* RAILROAD, 1.
*Indiana.* *See* RAILROAD, 2.
*Kentucky.* *See* RAILROAD, 4, 5.
*Louisiana.* *See* JURISDICTION, B, 4, 5.
*Tennessee.* *See* CONSTITUTIONAL LAW, 7.
*Texas.* *See* JURISDICTION, B, 4.

MARRIED WOMEN.

*See* CONSTITUTIONAL LAW, 7.

MASTER AND SERVANT.

*See* RAILROAD, 6, 7.

MASTER IN CHANCERY.

1. The findings of a master in chancery, concurred in by the court, are to be taken as presumptively correct, and will be permitted to stand unless some obvious error has intervened in the application of the law or some important mistake has been made in the evidence, neither of which has taken place in this case. *Furrer* v. *Ferris*, 132.
2. Objections to a master's report should be taken in the court below; and if not taken there, cannot be taken here for the first time. *Topliff* v. *Topliff*, 156.

*See* EQUITY, 7, 9, 10.

MINERAL LAND.

1. When the price of a mining claim has been paid to the government, the equitable rights of the purchaser are complete, and there is no obliga-

tion on his part to do further annual work in order to obtain a patent. *Benson Mining Co.* v. *Alta Mining Co.*, 428.

2. A person who wrongfully works a mine, takes out ores therefrom, removes them, and converts them to his own use is not entitled, in an action to recover their value, to be credited with the cost of mining the ores. *Ib.*

MUNICIPAL BOND.

When the charter of a municipal corporation requires that bonds issued by it shall specify for what purpose they are issued, a bond which purports on its face to be issued by virtue of an ordinance, the date of which is given, but not its title or its contents, does not so far satisfy the requirements of the charter as to protect an innocent holder for value off from defences which might otherwise be made. *Barnett* v. *Denison*, 135.

NATIONAL BANK.

The 3d National Bank in New York was the correspondent of the Albion Bank, a country bank. W., during part of the time in which the transactions in controversy took place, was cashier and during the remainder was president of the Albion Bank. During all this time W. practically managed that bank, and his co-directors and other officers had little or no oversight of its affairs. He was engaged in stock speculations on his own account in New York, and drew from time to time for his own purposes in favor of K. & Co., his brokers, on the bank balance with the 3d National Bank. K. & Co. from time to time returned to that bank sums to be credited to the Albion Bank. The latter bank eventually became insolvent, being ruined by fraudulent operations of W. who disappeared, and was put in the hands of a receiver, who brought suit against K. & Co. to recover the sums so paid to them by W. out of the balance to the credit of the bank with the 3d National. K. & Co. claimed to offset the return payments made by them to the 3d National; but the trial court ruled that they were not entitled to do it, and no question in respect of them was submitted to the jury. *Held*, that the defendants were entitled to have it submitted to the jury whether the other directors and officers of the Albion Bank might not, in the exercise of reasonable and proper care, have ascertained that these moneys had been deposited to the credit of the Albion Bank, and whether they would or would not have accepted such deposits as the return of the moneys to the bank. *Kissam* v. *Anderson*, 435.

NEBRASKA.

*See* BOUNDARY.

NEGLIGENCE.

*See* RAILROAD, 6, 7.

NORTHERN PACIFIC RAILROAD.

*See* PUBLIC LAND, 2.

PARDON.

*See* REBELLION, 2.

PARTITION.

1. Under the act of August 15, 1876, c. 297, relating to partition of real estate in the District of Columbia, a tenant in common in fee, whose title is clear, may have partition, as of right, but by division or sale, at the discretion of the court. *Willard* v. *Willard*, 116.
2. A pending lease for years is no obstacle to partition between owners of the fee. *Ib.*
3. A bill in equity, under the act of August 15, 1876, c. 297, need set forth no more than the titles of the parties, and the plaintiff's desire to have partition by division of the land, or, if in the opinion of the court this cannot be done without injury to the parties then by sale of the land and division of the proceeds. *Ib.*

PARTNERSHIP.

1. An agreement of partnership between three partners for carrying on the business of sawing lumber, etc., in a village in Michigan, which provided that no part of the capital should be diverted or used by either partner otherwise than in the business, two of the partners to secure sawing for the mill and superintend the financial part of the business, the third partner to have the management of the work at the mill, did not create a partnership, each member of which had, under the settled rules of commercial law, and as between the firm and those dealing with it, authority to give negotiable paper in its name; and, one partner, without the knowledge of his copartners, having put the firm name to notes which were discounted by a bank in Boston, but not for the benefit of the firm, the other partners were entitled, in an action by the bank to recover on the notes, to have it submitted to the jury whether, under the circumstances, they were estopped to dispute the authority of their partner to make them and to put them in circulation. *Dowling* v. *Exchange Bank*, 512.
2. A bill in equity set forth the making of a partnership between the plaintiffs S. and R. and the defendant O., each to contribute $5000. It charged fraud, misappropriation of money and mismanagement on the part of O.; that he had vilified and traduced them, for which they reserved their right of action, and it prayed (1) for a receiver; (2) that the $15,000 capital so contributed should be paid into court; (3) for an injunction restraining O. from using the partnership name, etc.; (4) for a dissolution. The cause was referred to a master to take proof and report. The master found that there had been violations of the partner-

ship agreement by the plaintiffs in not paying up their contributions to the capital at the times agreed upon and by O. in various ways set forth, but that these had been condoned in November, 1884, the plaintiffs paying up their capital in full; that the partnership therefore was to be regarded as continuing uninterruptedly from July 1, 1884, to February 2, 1885, when O. was called to answer in the state court the suit of his copartners for its dissolution, from which time it was to be regarded as dissolved; and that the plaintiffs had incurred expenses on behalf of the firm amounting to $2538.52. On the coming in of this report, it appearing that R. had assigned all his interest in the suit to S., the court decreed that S. for himself, and as subrogee of R., recover from O. $10,000, with interest; that in other respects the report be confirmed; and "that the complainants' bill of complaint be dismissed without prejudice to their right in some other form of action, as they may be advised, to prosecute the matter of defamation of character set forth in the bill of complaint." *Held*, (1) That equity has jurisdiction, where a person has been induced, by fraudulent representations, to enter into a partnership, to rescind the contract at his instance, and put an end to it *ab initio;* (2) That if the case, upon the evidence, did not entitle complainants to a return of their capital, and to be placed in the same situation, as far as practicable, as if they had never entered into the partnership, but did authorize the ordinary decree for a dissolution and accounting, relief could be awarded in the latter aspect, even though the bill were not framed with precision, in the alternative, for a cancellation or for a dissolution and accounting; and that if the specific prayer were insufficient, such a decree could be maintained under the prayer for general relief, since it would be comformable to the case made by the bill; (3) That the Circuit Court did not err in rendering a decree at variance with the conclusions of the master (*Kimberly* v. *Arms*, 129 U. S. 512, distinguished); (4) That the evidence did not furnish sufficient ground for decreeing that complainants are entitled to the return of their capital, within the principle of the rule which has sometimes been applied in such cases; (5) That the master was correct in holding that the preponderance of evidence was to the effect that O.'s action early in October, in regard to continuing the business in his own name, was condoned, and the difficulties between the partners adjusted for the time being; (6) That the case was one for an accounting rather than necessarily for a return of capital; and that complainants should not be reinstated at defendant's expense in the same position as if they had not entered upon an enterprise which turned out to be unfortunate. *Oteri* v. *Swalzo*, 578.

3. One who lends a sum of money to a partnership under an agreement that he shall be paid interest thereon at all events, and shall also be paid one-tenth of the yearly profits of the partnership business if those profits exceed the sum lent, does not thereby become liable as a partner for the debts of the partnership. *Meehan* v. *Valentine*, 611.

## PARTY.

*See* CORPORATION, 2.

## PATENT FOR INVENTION.

1. An assignee in bankruptcy is not bound to accept the title to a patent for an invention, vested in the bankrupt at the time of the bankruptcy, if, in his opinion, it is worthless, or may prove to be burdensome and unprofitable; and his neglect for a year, during which he winds up the estate, to assume the ownership of such property, and his statement to a person desiring to purchase it that he has no power to do anything with it and that the bankrupt is the only one who can give title, are convincing proof of an election not to accept it. *Sessions* v. *Romadka*, 29.
2. It does not lie in the mouth of an alleged infringer of a patent to set up the right of an assignee in bankruptcy to the patent as against a title acquired from the bankrupt with the consent of the assignee. *Ib.*
3. Section 4917 of the Revised Statutes, which provides for disclaimers "whenever, through inadvertence, accident or mistake, and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer," and allows the patentee to "make disclaimer of such parts of the thing patented as he shall not choose to claim or hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent," is broad enough to cover disclaimers made to avoid the effect of having included in a patent more devices than can properly be made the subject of a single patent. *Ib.*
4. The power of a patentee to disclaim is a beneficial power, and ought not to be denied except when resorted to for a fraudulent and deceptive purpose. *Ib.*
5. The effect of delay by a patentee to make a disclaimer under Rev. Stat. § 4917 until after the commencement of an action for the infringement of his patent goes only to the recovery of costs. *Ib.*
6. Where the Revised Statutes adopt language of a previous statute which had been construed by this court, Congress must be considered as adopting that construction. *Ib.*
7. The invention patented by letters patent No. 128,925, issued July 9, 1872, to Charles A. Taylor for an improvement in trunks was novel and patentable; and the letters patent are infringed by the fasteners constructed in accordance with the descriptions in letters patent No. 145,817, dated December 23, 1873, and the improvements thereon described in letters patent No. 163,828, dated April 10, 1875, both issued to Anthony V. Romadka. *Ib.*
8. The pioneer in an art, who discovers a principle which goes into almost universal use, is entitled to a liberal construction of his claim. *Ib.*
9. When a patented invention is infringed by its use upon another article

of which it forms an inconsiderable part, taking the place of something previously serving the same uses, and there is no established royalty by which to measure the damages, they may be ascertained by finding the difference between the cost of the patented article and the cost of the article which it displaces; but this rule may be modified if law and justice seem to require it. *Ib.*

10. When it is doubtful from the evidence whether the word "patented" could be affixed to a manufactured article, or whether a label should be attached with a notice of the patent, under the provisions of Rev. Stat. § 4900, the judgment of the patentee is entitled to weight in determining the question. *Ib.*
11. A defendant in a suit for the infringement of letters patent, who relies upon a want of knowledge on his part of the actual existence of the patent, should aver the same in his answer. *Ib.*
12. When an assignee in bankruptcy refuses to accept a transfer of a right of action existing in the bankrupt at the time of the bankruptcy, and abandons it to the bankrupt before the expiration of the time within which an assignee in bankruptcy could bring suit upon it, the right of action of the bankrupt and of a purchaser from him are governed by the general statute of limitations, and not by the rule prescribed for an assignee in bankruptcy. *Ib.*
13. Letters patent No. 108,085, issued October 11, 1870, to John B. Augur for an improvement for gearing in wagons was not anticipated by the invention patented to C. C. Stringfellow and D. W. Serles, by letters patent No. 31,134, dated January 15, 1861, and are valid, so far as that invention is concerned. *Topliff* v. *Topliff*, 156.
14. It is not sufficient, in order to constitute an anticipation of a patented invention, that the device relied upon might, by modification, be made to accomplish the function performed by that invention, if it were not designed by its maker, nor adapted, nor actually used for the performance of such function. *Ib.*
15. In view of the extensive use to which the invention secured to John H. Topliff and George H. Ely by letters patent No. 122,079 for an improvement in connected carriage springs, reissued March 28, 1876, No. 7017, the invention secured thereby is held to have patentable novelty, although the question is by no means free from doubt. *Ib.*
16. The first reissue of that patent, being to correct a palpable and gross mistake, and being made within four months after the date of the original patent, was within the power of the Commissioner of Patents. *Ib.*
17. The second reissue of that patent is valid, whether it be an enlargement of the original patent or not. *Ib.*
18. *Miller* v. *Brass Co.*, 104 U. S. 350, was not intended to settle a principle that under no circumstances would a reissue containing a broader claim than the original be supported. *Ib.*
19. The power to reissue a patent may be exercised when the original

patent is inoperative by reason of the fact that its specification was defective or insufficient, or the claims were narrower than the actual invention of the patentee, provided the error has arisen from inadvertence or mistake, and the patentee is guilty of no fraud or deception; but such reissues are subject to the following qualifications: (1) That it shall be for the same invention as the original patent, as such invention appears from the specification and claims of such original; (2) That due diligence must be exercised in discovering the mistake in the original patent, and that, if it be sought for the purpose of enlarging the claim, the lapse of two years will ordinarily, though not always, be treated as evidence of an abandonment of the new matter to the public to the same extent that a failure by the inventor to apply for a patent within two years from the public use or sale of his invention is regarded by the statute as conclusive evidence of an abandonment of the patent to the public; (3) That this court will not review the decision of the Commissioner upon the question of inadvertence, accident or mistake, unless the matter is manifest from the record; but that the question whether the application was made within a reasonable time is, in most, if not in all such cases, a question of law for the court. *Ib.*

20. Objections to a master's report should be taken in the court below; and if not taken there, cannot be taken here for the first time. *Ib.*
21. The allowance of an increase of damages, under the statute, to the plaintiff in a suit for the infringement of letters patent rests somewhat in the discretion of the court below, and its finding on this point will not be disturbed unless the evidence clearly demands it. *Ib.*
22. The first claim of reissued letters patent No. 3204, granted to George Asmus, November 24, 1868, for an improvement in blast furnaces, on the surrender of original letters patent No. 70,447, granted to F. W. Lürmann, of Osnabruck, in Prussia, November 5, 1867, namely, "A blast furnace with a closed breast, where the slag is discharged through an opening or openings cooled by water, substantially as set forth," is invalid, because there was nothing in the original specification indicating that any such claim was intended to be made in the original patent, although the application for the reissue was made less than a year after the original patent was granted; and because, as respected that claim, the reissue was not for the same invention as the original patent, and was, therefore, within the express exception of the statute (act of July 4, 1836, c. 357, § 13, 5 Stat. 122). *Freeman* v. *Asmus*, 226.
23. The cases in this court on the subject of reissues, reviewed. *Ib.*
24. The fact commented on, that the application for the reissue was not signed or sworn to by the inventor, but only by the assignee of the patent. *Ib.*
25. Letters patent No. 241,321, granted May 10, 1881, to Charles H. Dunks and James B. Ryan, for improvements in swing woven-wire bed-bot-

toms, are invalid for want of patentability; all that was done being to suspend a fabric well known as a bed-bottom in substantially the same manner that other fabrics used for that purpose had been suspended. *Ryan* v. *Hard*, 241.

26. The machine manufactured under letters patent No. 347,043, issued August 10, 1886, to John H. Horne for "new and useful improvements in rag engines for beating paper-pulp" is an infringement of the first claim in letters patent No. 303,374, issued August 12, 1884, to John Hoyt, for a rag engine for paper making. *Hoyt* v. *Horne*, 302.

27. Whether it infringes the second claim in Hoyt's patent is not decided. *Ib.*

PAYMENT.

*See* NATIONAL BANK.

PLEADING.

*See* LIMITATION, STATUTES OF;
PATENT FOR INVENTION, 11.

PRACTICE.

1. This case having been submitted on briefs, the submission was set aside by the court, and an oral argument ordered. When the case was reached neither party appeared by counsel, but an offer was again made to submit on the briefs. The court thereupon ordered the case dismissed for want of prosecution in the manner directed by its previous order; but subsequently this dismissal was set aside on motion, and argument was heard. *Ficklen* v. *Shelby County Taxing District*, 1.

2. For reasons stated in the motion, the court grants a motion to submit this case, when received in regular call, without printing the record. *Oregon Railway & Navigation Company* v. *Oregonian Railway Company*, 52.

3. The court, being informed that the control of both the corporations parties to this suit, had come into the hands of the same persons, but that there was a minority of stockholders in the Amador Medean Gold Mining Company who retained the interest that they had at the time the decision was rendered — that the two corporations were still in existence and organized — and that the present managers and owners of the properties were anxious that the question should be decided, in order that the minority of the stockholders might receive whatever, by the finding of the court, would be due to them, reverses the judgment and remands the case for further proceedings in conformity to law, without considering or passing upon the merits of the case in any respect. *South Spring Hill Gold Mining Co.* v. *Amador Medean Gold Mining Co.*, 300.

4. A demurrer to a petition upon the ground that it does not set out a cause of action without taking notice of the fact that the suit is

brought in the wrong district, is a waiver of objection on account of the latter cause. *Texas & Pacific Railway Co.* v. *Cox*, 593.

*See* CONSOLIDATION OF ACTIONS; LOCAL LAW, 2; COURT AND JURY; MASTER IN CHANCERY, 1, 2.

## PRINCIPAL AND AGENT.

*See* INDIAN.

## PUBLIC LAND.

1. F., a half-breed of the Sioux nation, received in 1857 a certificate of land-scrip under the treaty of July 15, 1830, 7 Stat. 328, and under the act of July 17, 1854, 10 Stat. 304, c. 83, which enacted that "no transfer or conveyance of any of said certificates or scrip shall be valid." In March, 1860, she executed a power of attorney in blank, and a quitclaim deed in blank, the name of the attorney, the description of the land, and the name of the grantee in the deed being omitted. These came into the possession of P., on the payment of $150, who inserted the name of R. as attorney, and his own name as grantee, and a tract of 120 acres in Omaha, of which he was already in possession but without valid title, as the description. The deed was then delivered to him by R. and was put upon record. P. never informed F. of this location, or of the record of these several instruments, but remained in possession of the located tract, either personally or through his grantees. Congress, on the procurement of P., confirmed his title to the tract. 15 Stat. 186, c. 240; 269, c. 21. The half-breed was ignorant of all this until August, 1887, when the Sioux Indians became citizens of the United States by virtue of article 6 of the treaty of April 29, 1868, 15 Stat. 637. In 1888 the representatives of F., who had deceased, filed a bill in equity against P., setting forth these facts; averring that the power of attorney and quitclaim deed had been fraudulently procured by some persons unknown, and praying that P. should be decreed to have taken the title in trust for F., and that the power of attorney and the quitclaim deed should be declared to be fraudulent and a cloud upon plaintiff's title, and that the defendants be directed to surrender the estate to plaintiffs. To this the defendants demurred, and the court below dismissed the bill. *Held*, (1) that P. was chargeable with notice that the power and the quitclaim deed were intended as devices to evade the law against the assignment of the scrip, and that he acquired no title through them; (2) that he acquired no additional rights through the confirmatory acts of Congress; (3) that having no right to locate the scrip for his own benefit, he must be deemed to have located it for F. and as her representative; (4) that this implied trust did not prevent him from taking and holding possession of the land adversely to her, and for his

own use and benefit; (5) that, under these circumstances, F. was bound to use reasonable diligence in discovering the fraud, and seeking redress; (6) that, conceding that plaintiffs were incapable of being affected with laches so long as they maintained their tribal relations, the bill was fatally defective in not setting forth when and how the alleged frauds were discovered, in order that the court might clearly see whether it could not have been discovered before; (7) that, in view of all the circumstances, it would be inequitable to disturb the disposition made of the case below; (8) that the most which could be justly demanded would be the repayment of the $150, with interest. *Felix* v. *Patrick*, 317.

2. Land which, at the time of the grant of July 2, 1864, 13 Stat. 365, c. 217, of public lands to the Northern Pacific Railroad Company, was segregated from the public lands within the limits of the grant by reason of a prior preëmption claim to it, did not, by the cancellation of the preëmption right before the definite location of the grant pass to the railroad company, but remained part of the public lands of the United States, subject to be acquired by a subsequent preëmption settlement followed up to acquisition of title. *Bardon* v. *Northern Pacific Railroad Co.*, 535.

*See* INDIAN; LACHES, 2; LOCAL LAW, 6; MINERAL LAND.

## RAILROAD.

1. The statute of Illinois of February 12, 1855, empowering all railroad corporations incorporated under the laws of the State to make "contracts and arrangements with each other, and with railroad corporations of other States, for leasing or running their roads," authorizes a railroad corporation of Illinois to make a lease of its road to a railroad corporation of another State; but confers no power on a railroad corporation of the other State to take such a lease, if not authorized to do so by the laws of its own State. *St. Louis, Vandalia & Terre Haute Railroad Co.* v. *Terre Haute & Indianapolis Railroad Co.*, 393.

2. A railroad corporation of Indiana is not empowered to take a lease of a railroad in another State by the statute of Indiana of February 23, 1853, c. 85, authorizing any railroad corporation of that State to unite its railroad with a railroad constructed in an adjoining State, and to consolidate the stock of the two companies; or to extend its road into another State; or "to make such contracts and agreements with any such road constructed in an adjoining State, for the transportation of freight and passengers, or for the use of its said road, as to the board of directors may seem proper." *Ib.*

3. A lease for nine hundred and ninety-nine years by one railroad corporation of its railroad and franchise to another railroad corporation,

which is *ultra vires* of one or of both, will not be set aside by a court of equity at the suit of the lessor, when the lessee has been in possession, paying the stipulated rent, for seventeen years, and has taken no steps to repudiate or rescind the contract. *Ib.*

4. The act of the legislature of Kentucky of January 22, 1858, authorizing any railroad company to lease its road to another railroad company, provided its road so leased should be so connected as to form a continuous line, permits the lessee company to take leases of branches by means of which it establishes continuous lines from their several termini to each of its own. *Hancock* v. *Louisville & Nashville Railroad Co.*, 409.

5. Under the legislation of the State of Kentucky, the right to receive and vote upon the shares of stock in the Shelby Railroad Company which were issued upon the subscription of a part of Shelby County became vested in the Shelby Railroad District of Shelby County as a corporation *quoad hoc*. *Ib.*

6. The obligation upon an employé of a railroad company to take care and exercise diligence in avoiding accidents from its trains, while in the performance of his duties about the tracks, is not to be measured by the obligation imposed upon a passenger when upon or crossing them. *Aerkfetz* v. *Humphreys*, 418.

7. In an action by a track repairer against the receiver of a railroad to recover damages for injuries received from a locomotive and train while at work repairing the track in a station yard, it is held that the servants of the receiver were guilty of no negligence; and that if they were, the plaintiff's negligence contributed directly to the result complained of. *Ib.*

*See* INTERSTATE COMMERCE;
RECEIVER, 2, 3.

## REBELLION.

1. Although, under the ruling in *Wallach* v. *Van Ryswick*, 92 U. S. 207, the defendant in a proceeding for confiscation under the confiscation act of July 17, 1862, 12 Stat. 589, c. 195, and Joint Resolution No. 63, of the same date, 12 Stat. 627, had no power of alienating the reversion or remainder which was still in him after confiscation and sale, still an alienation of it by him by a deed of warranty, accompanied by a covenant of seizin on his part, estops him and all persons claiming under him from asserting title to the premises against the grantee, his heirs and assigns, or from conveying it to any other parties. *Jenkins* v. *Collard*, 546.

2. The general pardon and amnesty made by the public proclamation of the President at the close of the war of the rebellion had the force of public law. *Ib.*

*See* EQUITY, 1.

RECEIVER.

1. A receiver appointed by order of a court of chancery is obliged to take possession of a leasehold estate, if it be included within the order of the court; but he does not thereby become the assignee of the term, or liable for the rent, but holds the property as the hand of the court, and is entitled to a reasonable time to ascertain its value, before he can be held to have accepted it. *Quincy, Missouri & Pacific Railroad Co.* v. *Humphreys*, 82.

2. The Wabash Company controlled 3600 miles of road, made up by the consolidation and leasing of many different railroads, upon nearly every one of which there existed one or more mortgages. Among them was the Quincy road, 77 miles in length, which was leased by the Wabash in August, 1879, for a term of 99 years, with privilege of renewal, acquiring with the lease a majority of the stock. The Quincy road at the time of the lease had issued mortgage bonds to the amount of $2,000,000, on which there was a large amount of interest in arrear. To provide for this and other floating debts, and to extend the road, a new issue of mortgage bonds were provided for as part of the arrangement, which were issued, and the road was completed, and entered into and formed part of the Wabash system. In May, 1884, the Wabash company filed a bill in equity, alleging that it was insolvent and could not procure the means to pay its floating debts and interest due, and praying the court to take possession of its property and administer it as a whole. Receivers were thereupon appointed, who took possession. They were directed to pay out of the income which should come into their hands rental which had accrued or which might accrue upon all the company's leased lines, but to keep accounts showing the source of income and revenue with reference to expenditure. In June, 1884, the trustees under a general mortgage, which the Wabash company had made of its whole system, filed a cross-bill praying for the foreclosure of their mortgage and the appointment of receivers; but the court declined to appoint receivers other than those already appointed. On the 26th of January, 1884, the receivers informed the court of their inability to pay interest falling due on certain classes of bonds and interest on certain stocks, and made a statement in regard to several of the consolidated and leased roads from which it appeared that the earnings of the Quincy road had at no time since its acquisition been sufficient to pay its operating expenses, the cost of its maintenance and the interest upon its mortgage bonds. The receivers further petitioned the court for its advice, and they were thereupon ordered to keep separate accounts of the earnings, incomes, operating expenses, cost of maintenance, taxes, etc., of each of such lines, and to make quarterly reports thereof. These reports, when made, showed, as to the Quincy Company, that in May, 1885, there was a deficit of $20,251.09 in nine months' working. The court thereupon made a general order, as to all the properties, which pro-

vided in substance that where there was no income, rental claims were not to be paid by the receivers. On the 15th of July, 1885, the trustees of the Quincy mortgage petitioned the court to direct the receivers to transfer that road and its rolling stock to them, and an order was made to that effect. No possession was taken under that order, but the leased property was retransferred before the sale under the foreclosure of the general mortgage of the Wabash Company. The proceedings under the cross-bill resulted in a decree for such foreclosure on the 6th of January, 1886. No surplus was realized from the sale under that decree. The receivers' accounts on surrendering the property showed the net earnings to be $3,304,633.61 less than the amount of the preferred debts with whose payment they were charged. On the 8th of December, 1885, the intervening trustees of the Quincy mortgage filed a petition praying the court to order the receivers to pay arrears of interest, taxes, cost of repairs, and rental, aggregating $114,380, and to decree them to be liens superior and paramount to all mortgages on all the property of the Wabash Company. On the 19th of March, 1888, the court denied this prayer and dismissed this petition from which decree the Quincy Company and the trustees took this appeal. *Held*, (1) That the occupation of the Quincy road by the receivers under the order of court created no relation which obliged them to pay rent therefor under the lease; (2) That no equities existed which called upon the court to divest the proceeds of the sale or the net earnings of the property while in the receivers' hands, and apply them to the payments prayed for by the intervenors. (3) That the action of the court in appointing receivers on the application of the mortgagor could not be successfully challenged in this appeal. *Ib.*

3. Following *Quincy, Missouri & Pacific Railroad Co.* v. *Humphreys, ante*, 82, it is, with regard to the lease of the St. Joseph and St. Louis Railroad Company by the Wabash Company, now *Held*, (1) That, the circumstances in the latter case being similar to those in the former, the receivers were entitled to a reasonable time to ascertain the situation of the leased railroad before they could be held to have assumed the lease; (2) That the time taken by them in deciding not to assume it was a reasonable time; (3) That the course pursued by the court below towards the various independent roads which made up the Wabash system was equitable and just and will not be disturbed in this case. *St. Joseph & St. Louis Railroad Co.* v. *Humphreys*, 105.

*See* CORPORATION, 1;
JURISDICTION, B, 2, 3.

REVERSIONER.

*See* LOCAL LAW, 1.

RULES.

*See* ADMIRALTY, 1;
EQUITY, 9.

STATUTE.

A. CONSTRUCTION OF STATUTES.

*See* INTERSTATE COMMERCE, 3.

B. STATUTES OF THE UNITED STATES.

*See* CONSOLIDATION OF ACTIONS, 1, 2;
CUSTOMS DUTIES, 1;
INDIAN;
INTERSTATE COMMERCE, 1, 2;
JURISDICTION, A, 6; B, 1, 2;
PARTITION, 1, 3;
PATENT FOR INVENTION, 3, 5, 10, 22;
PUBLIC LAND;
REBELLION, 1.

C. STATUTES OF STATES AND TERRITORIES.

*Arkansas.* *See* LOCAL LAW, 4, 5.
*District of Columbia.* *See* PARTITION, 1, 3.
*Georgia.* *See* JURISDICTION, A, 2.
*Illinois.* *See* CONTRACT, 2;
LOCAL LAW, 1;
RAILROAD, 1.
*Indiana.* *See* RAILROAD, 2.
*Kentucky.* *See* RAILROAD, 4, 5.
*Louisiana.* *See* JURISDICTION, B, 4.
*New York.* *See* CONSTITUTIONAL LAW, 2, 3, 4.
*Pennsylvania.* *See* CONSTITUTIONAL LAW, 5.
*Tennessee.* *See* CONSTITUTIONAL LAW, 1, 7.
*Texas.* *See* DAMAGES;
JURISDICTION, B, 4;
LOCAL LAW, 2, 3, 6.

TAX SALE.

*See* LOCAL LAW, 1.

TRESPASS.

When both parties in an action to try title to real estate claim under a common source of title, it is unnecessary to consider whether the deed under which the common grantor claimed was valid. *Cox* v. *Hart*, 376.

TRUST.

*See* PUBLIC LAND, 1.

ULTRA VIRES.

*See* RAILROAD, 3.

WILL.

*See* LOCAL LAW, 1.