amounts received with the duty of remitting it in such a manner to the general agency at New York as to transfer the full local value for the time being received by him to such agency.

Judgment affirmed.

LEGAL NOTES.

ENGLISH LAW OFFICERS—RECENT CHANGES.—The change of ministry in England on the resignation of Mr. Disraeli, at the close of last year, was followed by the usual changes in the law officers of the Crown. Sir WILLIAM PAGE WOOD, so long known as Vice-Chancellor, and more recently as Lord Justice of the Court of Appeal in Chancery, became Lord Chancellor, with a peerage, under the title of Lord HATHERLEY; Vice-Chancellor Sir G. M. GIFFARD succeeded Sir W. P. WOOD as Lord Justice; and W. M. JAMES, Q. C., was promoted to the vacant Vice-Chancellorship.

Sir ROBERT P. COLLIER became Attorney-General, and JOHN D. COLERIDGE, Q. C., Solicitor-General.

CONFEDERATE NOTES. LIABILITY OF CORPORATION IN THE SECEDING STATES TO STOCKHOLDER IN LOYAL STATES FOR DIVIDENDS DECLARED DURING THE WAR.—*Keppel* v. *The Railroad*, in the Circuit Court of the United States for the District of Virginia, was an action by a stockholder for an account for dividends during and subsequent to 1861, the plaintiff being then a citizen of Pennsylvania. It appeared that under the Confiscation Act passed by the Confederate Congress, August 30th 1861, and proceedings in a Confederate court, some of the plaintiff's shares were sold, and the rest delivered to a receiver, and dividends were thereafter paid by the company to the purchasers and the receiver until November 1864. No dividends had been declared since then, but on the fall of the Confederate government the proceedings under the Confederate Confiscation Act had been treated as nullities, and the company admitted the title to be in plaintiff. But the company claimed that the payments of the premiums from 1861 to 1864 were valid payments, having been made under compulsion of the laws of a *de facto* government; and secondly, even if this were not allowed, the only liability was to pay on demand in such currency as had been under necessity received by the railroad, and no demand having been made until such currency (i. e. Confederate notes) had become utterly worthless, no decree could be made against the company. CHASE, C. J., considered the nature of governments *de facto*, and was of opinion that the Confederacy was not such a *de facto* government that the courts of the United States were bound to uphold transactions under its authority, when they were prejudicial to the interests of citizens of other states excluded by the rebellion, and the policy of the United States, from the care of their interests within the states in rebellion. He was therefore of opinion that the payments of premiums to any but the plaintiff were unlawful and invalid; and that as the premiums were not set apart, nor was any force actually used, or even threatened, the facts did not present a case

of exemption from liability on the principle of *vis major*. The second point of the defence he thought equally untenable, the dividends being declared in dollars, and the company, upon the declaration of each dividend, becoming the stockholders' debtor for a liquidated sum in dollars. He thought, however, that the court should recognise the fact that the earnings of the road were not in legal dollars of the United States, and that the liability of the railroad was only for the value of the currency received at a time when it ought to have been paid to the stockholder. He therefore directed an account to be computed by a master.

PUBLIC OFFICE. RIGHT TO FEES DEPENDENT ON PERFORMANCE OF DUTIES. ASSIGNMENT OF PROFITS.—In *Smith* v. *Mayor, &c., of New York*, in the Court of Appeals of New York, the plaintiff sued as assignee of one Roof, who was a Deputy Collector of Assessments in the city of New York, from July 1st 1857 to April 29th 1858, by appointment of Charles Devlin, street commissioner. During that term Roof, by direction of the street commissioner, daily offered to perform the duties of his office, but the defendants neglected and refused to permit him to do so, and in point of fact the duties were performed by another person. The compensation of a deputy collector was by law a commission on the amounts collected by him. It appears that the office of street commissioner, by whom the appointments of deputy collectors were made, was in dispute, and two sets of collectors had been appointed; the courts had decided in favor of Devlin, by whom plaintiff's assignor was appointed. Plaintiff claimed that Roof was entitled to perform the services which defendants had prevented him from doing, and that if he had, his fees would have been $1188, and that the assignment was made after Roof had ceased to be collector, and when his title to the said compensation was complete. The court, HUNT, J., delivering the opinion, held that the appointment to office was not a contract, there could be no property in an office, and the right to fees is dependent on the performance of the duties, and the plaintiff therefore had no right of action in this form. The following cases were cited: *Conner* v. *Mayor*, 1 Seld. 285; *People* v. *Warner*, 7 Hill 81; 2 Denio 272; *Deroy* v. *Mayor*, 39 Barb. 169: *Canniff* v. *Mayor*, 4 E. D. Smith 431; *Lynch* v. *Mayor*, 25 Wend. 680; *Baker* v. *Utica*, 19 N. Y. 326.

CIVIL RIGHTS BILL. EVIDENCE OF CHINAMEN IN A CRIMINAL PROSECUTION AGAINST A NEGRO.—*The People* v. *Washington*, in the Supreme Court of California (October Term 1868), was a case arising under the statute of California providing that "no Indian or person having one half or more of Indian blood, or Mongolian or Chinese, shall be permitted to give evidence in favor of or against any white person." The defendant, a mulatto, was indicted for robbery, and on the trial the only evidence offered against him was the testimony of Chinamen, not born within the United States. The court below held the witnesses incompetent, and discharged the defendant, whereupon the case was brought to this court by writ of error. The Supreme Court affirmed the judgment, holding that since the passage of the 13th Amendment to the Constitution of the United States, and the Act of Congress of April 9th 1866, commonly called the Civil Rights Bill, the defendant stood in the same position before the law as if he were a white person. RHODES, J., thus sums up the opinion:—

"Our conclusion is, that the portion of the Civil Rights Bill now in question—and we are not called upon to consider any other—was not repugnant to the Constitution of the United States as it read prior to the adoption of the fourteenth amendment, and that its effect was to put all persons, irrespective of race or color, born within the United States, and not subject to any foreign power, excluding Indians not taxed, upon an equality before the laws of this state in respect to their personal liberty; and that the fourteenth section of the statute of this state in relation to crimes and punishments, so far as it discriminates against persons on the score of race or color, born within the United States and not subject to any foreign power, excluding Indians not taxed, has, by the force and effect of the Civil Rights Bill, become null and void."

SAWYER, C. J., and SANDERSON, J., concurred. CROCKET, J., and SPRAGUE, J., dissented, holding the Civil Rights Bill to be unconstitutional.

TAKING PRIVATE PROPERTY. WHAT IS PUBLIC USE.—*Horton* v. *Squankum & Freehold Marl Company*, in the U. S. Circuit Court, District of New Jersey (Nov. Term 1868), was a bill to enjoin the defendants from taking the plaintiff's land on the ground that the railroad which the charter authorized the company to build was a mere private road, and that private property could not be taken without the owner's consent except for public use. The Constitution of New Jersey provides that private property shall not be taken for public use without just compensation. The act of incorporation of defendants is entitled "An act to incorporate the Squankum and Freehold Marl Company." It authorizes the company to purchase, hold, and convey such marl-beds as they may deem proper, in the county of Monmouth, and to open and work the same, and to transport the marl, and to vend the same, and to build and use the railroad thereafter mentioned, and to lay and maintain drains through the adjacent lands for the benefit of their said marl beds. It further authorizes them to construct a railroad in the county of Monmouth, to run from some convenient point on the line of the Freehold and Jamesburg Agricultural Railroad at or near the village of Freehold, to the said marl beds, at or near the village of Farmingdale, with such branches as may be deemed proper, not exceeding three miles in length, and to run engines and cars on said railroad for the transportation of their said marl. And it then authorizes them to enter upon, take possession of, occupy and excavate, any lands that may be necessary for the construction of their said railroad, and, if they cannot agree with the owners thereof, that application may be made to a Judge of the Circuit Court, for the appointment of commissioners to view and examine the said lands, and to make a just and equitable appraisement of the value of the same.

It was claimed by plaintiff that this road so authorized was merely for transportation of the company's marl, and was therefore a private road. It appeared, however, that by another Act of the same session of the Legislature, the Freehold and Jamesburg Railroad, with which the new road was to connect, were authorized to run their cars over the latter for the transportation of passengers and general freight. FIELD, D. J., delivered the opinion, holding that, "When and in what cases pri-

vate property shall be taken for public use, is a question for the legislature alone to determine. From their decision there can be no appeal. What is such a public use as will justify the taking of private property, is also a question, which the legislature must in the first instance determine. But upon this point their determination, although entitled to respectful consideration, is not final and conclusive;" citing *Tidewater Co.* v. *Coster*, 3 C. E. Green 518. (See abstract of this case, 7 Am. Law Reg. N. S. 760, 761.)

Upon the latter point, he was of opinion that the facts showed such a public use as would support the act. The acts relating to the connection between the proposed road and the Freehold and Jamesburg road, he thought might be construed as supplementary to each other, whether so entitled or not, and the bill and answer showed that the two companies had so accepted them, and the acts and the contracts under them brought the new road into the class of railroads which were undoubtedly a public use for which land might be taken.

Even if the act in question had stood alone, the use which it contemplated was so general and public in its nature, he doubted whether he would have felt authorized to declare the act invalid; citing as an analogous case *Scudder* v. *Trenton Delaware Falls Co.*, Saxton 694.

INTERNAL REVENUE. LOTTERY.—*The United States* v. *Olney*, in the U. S. District Court for the District of Oregon (Nov. Term 1868), was an action to recover a special tax from defendant as a lottery dealer. It appeared that Olney owning a large number of town lots in Astoria, divided them into parcels, containing in most cases one lot, but in certain others, called prize parcels, two, four, or six lots were included, or single lots of much more than average value. He then sold tickets for the uniform price of $50, and the purchasers were to have their names written on slips of paper and the number of the various parcels also on slips of paper and both to be drawn by lot, the purchaser whose name was first drawn to take the parcel first drawn, &c.

It was claimed on the part of defendant that each purchaser got a lot worth the price of his ticket, $50, and that they having become the owners in common of the property, took this mode of dividing it among themselves. The court, however (DEADY, J.), held it a lottery, as the element of *chance* was a principal part of the consideration offered and regarded in the purchase of tickets; citing *The Art Union Case*, 7 N. Y. 228.

INTERNAL REVENUE. CRIMINAL LAW. DISCHARGE OF JURY WITHOUT PRISONER'S CONSENT.—*The United States* v. *Watson*, in the U. S. District Court, Southern District of New York, was an indictment under the Act of July 13th 1866 for concealment of distilled spirits removed from the distillery in violation of the revenue laws. Defendant moved for a discharge on the ground that at a previous term a jury had been sworn under the same indictment, and, on account of the sickness of the district attorney and the absence of witnesses for the United States, a juror had been withdrawn by order of the court, and without the consent of defendant.

BLATCHFORD, J., held that the discharge of the jury under the circumstances, was not caused by necessity, and therefore was a bar to further proceedings. (BLATCHFORD, J., explained that he had ordered

the juror withdrawn under the impression that defendant consented.) See the opinion in full, in 8 Internal Revenue Record 170.

REVENUE ACTS. IMPORTS. BOND FOR GOODS SEIZED.—*The U. S.* v. *Four Cases of Silk Ribbon*, in the U. S. District Court for the Southern District of New York (May Term, 1867), and *U. S.* v. 12,347 *Bags of Sugar* (Nov. 1868), in the U. S. District Court, District of California, were both upon motion to instruct appraisers as to the mode of appraisement of goods and to deliver to claimants on filing bond for the proper amount. In both cases, the goods while in warehouse under the ordinary bond for duties, under the Acts of Aug. 30th 1842 and Aug. 6th 1846 (9 Stat. 53, Brightly's Dig. tit. *Imports*, § 282, &c.), had been seized for violation of the revenue acts, under the Act of May 28th 1830, § 4 (4 Stat. 410, Brightly's Dig. *Imports*, § 206), and March 3d 1863, § 2 (12 Stat. 739). The questions were whether the bond required by the Act of March 1st 1799, § 89 (1 Stat. 696), should be for the full market value of the goods or such value less the duties legally chargeable thereon, and whether the value should be estimated at the time of seizure or the time of delivery. In the New York case, BLATCHFORD, J., was of opinion:—

1. That the bond should be for the full value of the goods *to the importer* at the time of *seizure*.

2. That when the goods are seized in his hands after the duties are paid, their value to him is the market value, which includes the amount of duties.

3. That where the goods are seized in warehouse, their value to the importer is the market value less the duties, and for this amount the bond must be given.

In the California case, HOFFMAN, J., dissenting from the preceding decision, held that the bond must be for the full market value at the *time of appraisement and delivery* to claimant, *without deduction for duties*. (In this connection see opinion of CADWALADER, J., in *U. S.* v. *Segars*, 3 Phila. Rep. 517.)

ADMIRALTY. FORFEITURE OF SEAMEN'S WAGES FOR DISOBEDIENCE OF ORDERS.—The case of *The Bark Almatia*, in the U. S. District Court, District of Oregon (Nov. Term, 1868), was a suit *in rem* for seamen's wages. The facts were, that libellants had shipped for a round voyage from San Francisco to Portland-on-Wallamet and back. While at the dock at Portland, on a Sunday morning, the second mate called the men up at six o'clock, and set them to work about the ship. He then ordered them to loose and refurl the foresail. The weather was calm and dry and the foresail had been furled the Tuesday before, by order and direction of the first mate. It was then half-past eight o'clock, and the custom was to have breakfast on Sunday morning at eight. There was no necessity of refurling the sail at that time. To this order, the men replied that it was after eight o'clock, and they wanted their breakfasts. The officer immediately reported this answer to the master, who had the men called aft. On coming aft, the master asked the men what was the matter. They answered that they wanted their breakfast. To this the master replied—You want your breakfast, do you? The master then asked the men if they would furl the sail. They replied that it was after eight o'clock, and they wanted