evidently upon the hypothesis that an extra territorial sale of a patented article was a necessary subject of discussion.

But with this scrutiny of these cases, we are unembarrassed by the rule of comity which would lead us to conform our own judgment to that pronounced by the Circuit Courts elsewhere for the sake of uniformity of decision; and in view of the state of the law as it has been expounded by the Supreme Court, we feel authorized to express our own judgment, that a sale of patented articles, in the ordinary course of trade, outside the territorial limits to which the right to sell is restricted by the patentee's grant, is unwarranted.

There must, therefore, be a decree in favor of the complainant, with costs.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF GEORGIA.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME JUDICIAL COURT OF MAINE.[4]
SUPREME COURT OF WISCONSIN.[5]

AGENCY.

General Agent—Authority—Usage of Trade—Contracts—What constitutes.—A general agent is one authorized to transact all the business of his principal, or all his business of some particular kind: *National Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill.

In the case of a general agent the law permits usage to enter into and enlarge the liability of the principal, in respect to contracts made by the agent; and it has been held that the usages of a particular trade or business are admissible for the purpose of interpreting the powers given to an agent or factor: *Id.*

A corporation engaged in the manufacture of pig iron, adopted, through its directory, a resolution, as follows: "Resolved, that A. B., of Chicago, be and is hereby appointed and employed by this company as its sole agent for the consignment and sale of its entire product, he to receive a commission," &c. This agent assumed to authorize another to make contracts in respect to the subject-matter of the agency, and

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1884. The cases will probably appear in 112 U. S. Rep.

[2] From J. H. Lumpkin, Esq., Reporter; the cases will probably appear in 61 or 62 Ga. Rep.

[3] From Hon. N. L. Freeman, Reporter; to appear in 110 Ill. Rep.

[4] From J. W. Spaulding, Esq., Reporter; to appear in 76 Me. Rep.

[5] From Frederick K. Conover, Esq., Reporter; to appear in 61 Wis. Rep.

the latter did contract, on behalf of the corporation, with another manufacturing company, to supply the latter with all the pig iron they should need, use or consume in their business during the then ensuing season of such business. It was shown to have been the custom in Chicago for iron brokers to employ salesmen to make contracts with manufacturers of like kind for the year's supply of iron, to be delivered as ordered. On the question as to the authority of the agent, it was *held*, that under the resolution appointing him, in connection with the usage of trade in Chicago among this class of dealers, he had authority, as the general agent of his principal, to contract, through the instrumentality employed, for the sale of iron thereafter to be produced, and to be delivered in the future as ordered. His authority was not limited merely to the sale of the iron when it was ready for the market: *Id.*

And aside from any usage or custom among dealers, the resolution of appointment itself was broad enough in its terms to constitute the person appointed the general agent of the principal, in respect to the business to which it related, and authorized him to contract for the future delivery of iron, as was done: *Id.*

ASSIGNMENT.

Reservation of Exempt Property by Firm.—A reservation in an assignment by a co-partnership, of such articles "as are by law exempt from seizure and sale on execution" is inoperative, because the law gives the firm, as such, no exemptions. Such a reservation does not, therefore, render the assignment void for uncertainty: *Goll* v. *Hubbell*, 61 Wis.

ATTACHMENT.

Set-off—Unmatured Note.—At the time of the service of the writ on the alleged trustees, they, as a firm, were indebted to the principal defendant railroad company in the sum of $607.58 for freight. Prior to such service the railroad company gave its note for the payment of $550, amply secured, to one of the members of the firm, payable after such service but before the disclosure. At maturity of the note, by agreement between the payee and the railroad company, its amount was credited upon the firm's indebtedness to the company; and the note, with its collateral security, was surrendered to the company. *Held*, that the trustees were chargeable for the whole amount of their indebtedness to the company, without deducting the amount of the note: *Donnell* v. *Portland & Ogdensburg Railroad Co.*, 76 Me.

Ingalls v. *Dennett*, 6 Me. 79, commented upon: *Id.*

ATTORNEY. See *Practice.*

BROKER.

Compensation from both Parties.—One who, in the sale or exchange of property, acts merely as a middleman to bring the parties together, they making their own contract, may recover compensation from both parties: *Orton* v. *Scofield*, 61 Wis.

COMMON CARRIER.

Passenger—Ticket—Conditions.—Where, upon the sale of a round-trip ticket with coupons attached for passage over two roads, a special

contract was made to the effect that the passenger should sign his name in Jacksonville, Florida (the terminal point of the trip), before the agent there, before he could return on the ticket, such special contract controlled; and if the passenger failed to sign as agreed the company had the right to eject him. This being done politely by the conductor, the passenger was not entitled to damages: *Moses* v. *E., T., V. & G. Railroad*, 61 or 62 Ga.

The ticket being for the purpose of passing him over two roads, each had the right to stand on the contract; and if one passed him the other was not bound thereby to pass him also, in the teeth of the special contract: *Id.*

The fact that the conductor of the contracting road, upon the return of the passenger detached the last coupon before refusing and returning it and the ticket to the passenger, did not affect the action brought by the latter for being ejected. With or without the coupon he was not entitled to travel over the road on the ticket against his contract: *Id.*

Constitutional Law. See *Criminal Law.*

Prohibition by Ordinance, of Smoke from Tug-boats in Harbor—Regulation of Commerce—Police power of State—Delegation to Municipality. —An ordinance of the city of Chicago, making the owners, &c., of tug-boats, engines, &c., liable for allowing the emission of dense smoke from their smoke-stacks, is not in violation of sect. 8, art. 1, of the Federal Constitution, which declares that "Congress shall have power to regulate commerce," &c. Such a regulation by the city does not impose any restraint on the use of such vessels, although engaged in general commerce, other than is consistent with law. Controlling the use of tug-boats in towing in and out vessels from the harbor, is in no sense in conflict with the power existing in congress to regulate commerce with foreign nations and among the several states: *Harmon* v. *City of Chicago*, 110 Ill.

The existence of a power in congress to control harbors, and the towing in and out merchant vessels engaged in commerce with foreign nations and with the several states, does not of itself prevent local legislation for the security of property, and the health, comfort and convenience of the people in a municipality. It is only repugnant and interfering state legislation that must give way to the paramount laws of congress constitutionally enacted: *Id.*

A state has all power necessary for the protection of the property, health and comfort of the public, and it may delegate this power to local municipalities in such measure as may be deemed desirable for the best interests of the public; and the state may resume it again when deemed expedient: *Id.*

Contract.

Mutuality.—A contract between a manufacturer of pig iron and another who is engaged in a business requiring the use of that article, that the former will supply to the latter, and that the latter will purchase from him, all the pig iron which he should need, use or consume in his business during the then ensuing season of such business, fixing the limit of time—such amount supposed by the parties to be about a certain named quantity—is not wanting in the element of mutuality. The buyer is as

much bound to procure from the seller all the pig iron he should need in his business during the stipulated time, as the seller is to furnish it: *National Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill.

Consideration—Waiver of Lien—Statute of Frauds.—The waiver by a sub-contractor of a lien for materials furnished for the erection of a building, and the discharge of the principal contractor from liability therefor, constitutes a sufficient consideration for a promise by the owner of the building to pay for such materials: *Griswold* v. *Wright*, 61 Wis.

It seems that such promise is not within the Statute of Frauds, and need not be in writing: *Id.*

Interpretation of—Parol Evidence to vary Writings—Letter.—A letter containing an offer to pay a specified sum for certain services, and the acceptance of such offer evidenced by the performance of the services, constitute a contract in writing between the parties, and evidence of an antecedent or contemporaneous verbal agreement is inadmissible to vary or control such written agreement. Whether parol testimony is inadmissible to show that such letter was not intended as an agreement but was written for another purpose, is not determined: *Hooker* v. *Hyde*, 61 Wis.

A. offered in writing to pay B. $1000 if the latter would *help* him to effect the sale of certain lands. In an action by B. to recover the said amount it was admitted that he had rendered the services required of him, and both parties, in their pleadings, construed the agreement to be that B. should use his best efforts to bring about the sale. *Held*, that parol evidence was not admissible to explain the word "help:" *Id.*

Criminal Law. See *Surety.*

Waiver of Constitutional Right.—The accused may waive his constitutional right to meet the witnesses face to face: *Williams* v. *State*, 61 Wis.

Damages.

Land taken for Public Use—Market Value.—The true test as to damages to be paid for land taken for a public use, is its market value for any purpose to which it is adapted or may be applied. If lots sought to be condemned are in use for market gardening purposes, and are more valuable for that purpose than for any other, the owner will have the right to show that fact; and hence there is no error in admitting proof in such case of the value of the manure or compost on the land per load: *Chicago and Evanston Railroad Co.* v. *Jacobs*, 110 Ill.

The case of *Lake Shore and Michigan Southern Railway Co.* v. *Chicago and Western Indiana Railroad Co.*, 100 Ill. 21, distinguished: *Id.*

Deceit. See *Fraud.*

Deed.

Delivery—Presumption.—Where a deed purported on its face to have been delivered, and was duly recorded on the day after it was made, it was admissible in evidence without further proof to show that it was not only signed but delivered. The record of itself is presumptive proof of delivery: *Ross* v. *Campbell*, 61 or 62 Ga.

The attestation of the deed by a magistrate raises a like presumption: *Id.*

Where the grantor gave in the lot conveyed for taxation as the property of the grantee for several years succeeding the execution of the deed, this was a strong manifestation of the grantor's understanding that he considered the deed delivered and the title conveyed. It may be that the grantor would be estopped from denying his grantee's title; especially as he stated in conversations that he held the property as the agent of the grantee: *Id.*

Where all these circumstances united, in the absence of explanation or rebutting proof they would show the delivery of the deed, although it was in the possession of the grantor when he died some years after its date: *Id.*

EJECTMENT.

Color of Title—Extent of Boundaries.—Color of title is that which in appearance is a title, but in reality is not. It must be so far *prima facie* good in appearance as to be consistent with the idea of good faith. It must purport to transfer, and apparently transfer, the title to the holder: *Bolden* v. *Sherman*, 110 Ill.

A deed purporting to convey two lots of land in a subdivision by their numbers, where the plat and stakes showed the precise location of the lots sold, was held color of title to the entire lots as shown by the plat and stakes, notwithstanding one of the lots, as shown by other testimony, extended six feet over and upon an adjoining tract, and the description in the deed showing distances did include the six feet on the adjoining land. The monuments always prevail over distances: *Id.*

EQUITY.

Injunction—Restraining Collection of Judgment.—A court of equity will not enjoin a judgment at law merely on the ground that the process in the suit in which the judgment was rendered was not served on the defendant. To justify the interposition of a court of equity in such a case, it must be further shown that if the relief sought be granted, a different result will be obtained from that already adjudged by the void judgment. This is the rule under the common-law authorities: *Colson* v. *Leitch*, 110 Ill.

Jurisdiction.—Where courts of equity and of law have concurrent jurisdiction, and the former assumes it first, the suitor will not be forced into a court of law unless at the beginning of the equity suit a court of law could have given him as adequate and complete relief as the court of equity could do: *Illegas* v. *Dexter*, 61 or 62 Ga.

Bill to quiet Title—Non-resident Defendant—Jurisdiction.—Where a bill was filed in this state alleging the purchase of land therein, the payment of the purchase-money, a refusal by the vendor to make a title to the vendee, and that the former was a non-resident of the state and seeking to enforce the purchase and quiet the title and possession, the rule that a defendant in equity in this state must be sued in the county of his residence, is inapplicable; and the question of jurisdiction is whether any court of equity in the state has jurisdiction: *Harris* v. *Palmore*, 61 or 62 Ga.

In such a case, a court of equity of this state has jurisdiction to settle the title and to quiet the possession; and a suitor will not be forced into a foreign jurisdiction to settle the title to lands in this state: *Id.*

ERRORS AND APPEALS.

Mandamus—Order Awarding is a Final Judgment—$5000 Limit—Writ of Error by Party to enforce Collection of Tax whose Interest therein is less than that Amount.—An order awarding a peremptory writ of mandamus is a final judgment in a civil action within the meaning of that term as used in the statutes regulating writs of error to the United States Supreme Court: *Woodworth* v. *Blair*, S. C. U. S., Oct. Term 1884.

Several judgment creditors whose claims aggregated over $5000, obtained a levy of a certain tax to satisfy their claims, and united in an application for a mandamus on the collector to compel the collection of the tax. *Held*, that each creditor had the right to have the whole tax collected for distribution among the creditors, and that the jurisdictional limit must be measured by the amount of the whole tax and not by any individual claim: *Id.*

Judgment of Highest Court of a State—Execution—When Writ of Error a Supersedeas.—The provision of section 1007 of the Revised Statutes, that where a writ of error may be a supersedeas execution shall not issue until the expiration of ten days, does not apply to judgments in the highest court of a state, and a writ of error operates as a supersedeas only from the time of the lodging of the writ in the office of the clerk where the record to be re-examined remains. Therefore an appointment by the proper authority, of a district attorney to fill a vacancy caused by a removal by the Supreme Court of Kansas, made before the lodging of the writ of error in the clerk's office of the Supreme Court was valid, although the appointing judge was informed by the counsel of the plaintiff of the allowance of the writ of error, and the approval of the supersedeas bond, before he made the appointment: *Foster* v. *The State*, S. C. U. S., Oct. Term 1884.

EVIDENCE. See *Contract.*

Non-expert Witness—Speed of Train.—A non-expert witness may testify as to his estimate of the rate of speed at which a railroad train was moving, but such an estimate is very unsatisfactory proof and should be received with great caution: *Hoppe* v. *C., M. & St. P. Railroad*, 61 Wis.

EXECUTION. See *Homestead.*

EXECUTORS AND ADMINISTRATORS.

Action against—Statutory Notice—When necessary.—Where a statute provides that no action shall be maintained against an administrator on a claim against the intestate, unless demand was made on the administrator thirty days before the date of the writ, an action cannot be maintained without such notice against an administratrix for default in the payment of interest on a bond given by the intestate but on which no default occurred in his lifetime: *Boothby* v. *Boothby*, 76 Me.

FRAUD.

Misrepresentation—Must be relied on—Scienter.—A party defendant who has induced the plaintiff to subscribe and pay for stock in a corporation through false representations of the value of such stock, &c., is not liable in an action on the case for fraud and deceit, if it appears that the plaintiff did not rely upon the representations as charged in the declaration, but upon the guaranty of the defendant: *Holdom* v. *Ayer*, 110 Ill.

Where an agent of a mining company, by false representations as to the value of the shares of stock in such company, or as to the extent and condition of the property of the company, induces another to subscribe for and purchase shares of stock from the company, the agent will not be liable to the purchaser in an action for fraud and deceit unless he knew his representations were false when he made them. The fraud and the *scienter* constitute the grounds of the action: *Id.*

FRAUDS, STATUTE OF. See *Contract.*

Promise to pay Debt of Another.—A promise by a third person to assume and pay a sum due to a creditor in consideration of the discharge of the original debtor, accompanied or followed by such absolute discharge, is an original and not a collateral promise, founded on a sufficient consideration, and need not be in writing: *Wittemore* v. *Wentworth*, 76 Me.

HOMESTEAD.

Exemption—Intention to Occupy—Materials for Dwelling—Notice.—The *bona fide* intention to acquire certain land for a homestead, evidenced by overt acts in fitting it for such purpose and followed within a reasonable time by actual occupancy, renders such land exempt from the time of its purchase with such intent; and such exemption covers also the material actually upon the ground and designed for use in the construction of a dwelling-house, well or other essential of a homestead: *Scofield* v. *Hopkins*, 61 Wis.

Where the judgment creditors are the purchasers at an execution sale of land, they are presumed to know what the debtor has done and is doing on the land, indicating an intention to make it his homestead, and if such intention is manifest, no notice to them that he claims the premises as a homestead is necessary to prevent a waiver of the exemption: *Id.*

Requisite to Constitute—Householder—Family.—Under the statute, to create an estate of homestead three things must occur: 1st. The person must be a householder. 2d. He or she must have a family; and 3d. The property must be occupied as a residence. If either of these requisites is wanting the law will not create the estate: *Rock* v. *Haas*, 110 Ill.

Under the statute relating to homesteads, a person owning a dwelling-house that is capable of being occupied as such, is a householder: *Id.*

Under the Homestead Act a family is a collection of persons living together—hence one person cannot constitute a family. Nor can a person and his or her children, permanently separated, constitute a family. A person never having been married, and having no family,

or a man or woman having once been married but having no family, cannot claim an estate of homestead: *Id.*

Where a widow having children in another state, comes to this state, leaving them in other homes, with no purpose of bringing them with her, they cannot be said to constitute a family, with her at its head: *Id.*

To create the estate of homestead by reason of being husband and wife, the relation must be legal and not pretended. The fact that a man and woman may have lived together upon her premises before their marriage, and they marry after a judgment against her becomes a lien upon the same, will not render the property exempt from sale under the judgment: *Id.*

Sale of—Levy on in Hands of Purchaser.—Where a homestead was sold for the purpose of the removal of the family to another state and the making of a reinvestment there, the reversionary interest of the head of the family, in the hands of the purchaser, was subject to levy and sale by a creditor of the former: *City Bank* v. *Bryant*, 61 or 62 Ga.

The policy of this state is to increase not diminish its population; and the policy of the homestead laws in the constitution is to secure homes to the people of the state, and to settle them permanently within its limits; and in case of a sale of the homestead for reinvestment, the intention is that such reinvestment shall also be within the state: *Id.*

While a purchaser may be subrogated to the rights of the head of the family, yet a sale and removal from the state terminates any immunity from levy, at least as to the reversion: *Id.*

Semble, that upon the removal of the debtor from the state his homestead terminated, and a levy on and sale of the reversion would carry the entire title: *Id.*

INJUNCTION. See *Equity.*

LEASE. See *Real Estate.*

LIMITATIONS, STATUTE OF.

Trustee—Claim against for Trust-money.—At the death of a trustee who had given no bond as such, if the identity of the trust fund or property is lost, the *cestui que trust* stands in the position of a general creditor of the estate; or if the trust is not terminated the estate becomes at once liable to a new trustee who may be appointed, and the special statute of limitations applies to the demands for the trust funds as it does to other claims against the estate, though a new trustee is not appointed: *Fowler* v. *True*, 76 Me.

MALICIOUS PROSECUTION.

Conspiracy to Convict by Perjury—Nol. pros.—In an action against several defendants for conspiring together to procure the plaintiff to be indicted and convicted of a crime by false and perjured testimony, and for causing him to be thus indicted and convicted by such false and perjured testimony, the gist of the action is the alleged tort and not the alleged conspiracy: *Garing* v. *Fraser*, 76 Me.

At common law an action does not lie against a witness for perjury: *Id.*

A simple *nol. pros.* is not such a determination of an indictment as will entitle the accused to maintain an action for malicious prosecution: *Id.*

MANDAMUS. See *Errors and Appeals.*

When it lies—Discretionary Matters.—Where a statute does not impose an absolute obligation upon a county board to perform a certain act, but clothes it with an ultimate discretion in the matter, or where the statute is merely directory as to the act and not mandatory creating an absolute duty, mandamus will not lie to compel the board to perform the act: *Board of Supervisors* v. *The People*, 110 Ill.

MASTER AND SERVANT. See *Negligence.*

Injury to Employee—Defective Machinery—Negligence of Co-employee.—The plaintiff, a mason, employed with other masons, carpenters and section men in the erection of a water-tank and wind-mill for the defendant railroad company, was injured by the falling of a portion of the frame-work for the wind-mill, which he was assisting to raise. The apparatus for raising such frame-work consisted of a windlass or crab, tackle, blocks, ropes, the water-tank itself, and an anchor post set in the ground about sixty feet distant, all of which had been placed in position and adjusted under the direction of the foreman. The fall of the frame-work was caused by the giving away of the anchor post, which had not been set in the ground to a sufficient depth. *Held*, that the whole apparatus for hoisting could not be considered as a single machine which the defendant was bound to furnish adjusted and in position to do the work, but the placing and adjustment of the detached appliances were a part of the work to be done. The injury was caused, therefore, not by any failure of the defendant to furnish proper and safe machinery or appliances, but by the negligence of the foreman in the management of such appliances: *Peschel* v. *C. M. & St. P. Railroad*, 61 Wis.

Such foreman had no general authority to employ or discharge the men under him, but was subordinate to a master carpenter who had that authority, and who had charge and control of the different gangs of men working for the company, and gave directions to the foreman as to what they were to do. *Held*, that the foreman was a fellow-servant of the plaintiff engaged in a common employment, and that the company was therefore not liable for the injury: *Id.*

Railroad—Negligence of Postal Clerk—Evidence.—A railroad company is not responsible for the negligent acts of postal clerks or agents upon its trains: *Master* v. *C. M. & St. P. Railroad*, 61 Wis.

The evidence showed that a small mail-bag was thrown either from the mail-car, express-car or baggage-car on a train by a person within the car. The bag could not lawfully have been in any other than the mail-car, and no person other than a postal clerk or agent could lawfully enter such car or throw the bag therefrom. *Held*, that in the absence of evidence to the contrary, it will be presumed that the bag was thrown from the mail-car by a postal clerk or agent: *Id.*

The mail-bag was usually thrown from the train about 200 feet west of the depot, and there was no evidence that it had ever been thrown off at the depot prior to the occasion in question. *Held*, that the railroad company was not chargeable with notice that it was likely to be

thrown off at the depot, and hence was not bound to guard, by notice or otherwise, against an injury to one of its employees resulting from its being thrown off there: *Id.*

NEGLIGENCE. See *Master and Servant.*

Injury from Fire communicated by Locomotive Engine—Burden of Proof as to the Cause—Remote and Proximate Cause.—The statute which declares that in actions for damages for injury to property "occasioned by fire communicated by any locomotive engine while passing along any railroad," shall be *prima facie* evidence "to charge with negligence" the owner or operator of the road at the time, was intended to charge upon the company using the locomotive all injuries which are shown to have resulted from fire from a passing train, unless the company defendant can rebut such conclusion by proof showing that the loss was not occasioned by its negligence: *Chicago and Alton Railroad Co.* v. *Pennell*, 110 Ill.

Where a railway company, through negligence by the escape of fire from its locomotive engine, sets fire to a depot, from which a hotel in the vicinity is destroyed, to make the company liable to the owner of the hotel it is not necessary that the burning of the hotel should be so certain to result from the burning of the depot that a reasonable person could have foreseen that the hotel *would* burn, or that it probably would. It is enough if it be a consequence so natural and direct that a reasonable person might, and naturally would, see that it was *liable* to result from the burning of the depot: *Id.*

Depot Grounds used in common by Servants of two Railroad Companies—Reciprocal Duties of the Companies—Contributory Negligence.—Where two railroad companies have, by agreement, a joint occupancy of depot grounds, in which their respective tracks are so situated and used that the servants of the two companies must necessarily, in the proper discharge of their duties, pass over each other's tracks, each company will owe the same duty to the servants of the other company, in the matter of observing proper care for their safety when crossing its tracks in the regular discharge of their duties, that it does to its own servants when crossing the same tracks: *Ill. Cent. Railroad Co.* v. *Frelka*, 110 Ill.

Where the servants of two railroad companies occupying the same depot grounds with their respective tracks, are required, in the performance of their duties, to pass over the tracks of both companies, a sign erected upon the grounds warning all persons to keep off the tracks, and informing them if they went upon them it would be at their peril, would not be regarded as applying to the servants of either company: *Id.*

Question for Jury—Nonsuit.—In a suit by an employee against a railroad company for injuries inflicted by the negligence of a co-employee, it is incumbent upon the plaintiff to show that the injury was the result of neither fault or negligence on his part. The question of negligence belongs peculiarly to the jury, and except in a clear case, where there is no conflicting evidence showing that the employee was in fault or was negligent, the court should not withhold the case from the jury by awarding a nonsuit. Where the evidence upon this point

was doubtful, it should have been submitted to the jury, and to grant a nonsuit was error: *Redding* v. *E., T., V. & G. Railroad*, 61 or 62 Ga.

NUISANCE.

Smoke in a City.—If the effect of a dense smoke emitted from a smoke-stack or chimney is detrimental to certain classes of property and business within the limits of a city, and is a personal annoyance to the public at large within the city, it is a public nuisance, whether so declared by ordinance or not. Unless such in fact, the act of so declaring it will not make it a public nuisance: *Harmon* v. *The City of Chicago*, 110 Ill.

OFFICER. See *United States.*

PATENT.

Discretion of Commissioner of Patents in issuing them not subject to Review by Secretary of the Interior.—The power of the Commissioner of Patents to grant or refuse an application for letters patent for inventions is committed to his judicial discretion, and his decision is not subject to review by the head of his department, the Secretary of the Interior: *Butterworth* v. *United States*, S. C. U. S., Oct. Term, 1884.

PRACTICE.

Continuance on Ground of Absence of Counsel.—The continuance of cases on account of the absence of counsel is not favored, and such absence is no cause for postponement, unless in case of necessity or misconception. Absence without leave to attend trials of cases pending in other courts, is no ground for continuance. Therefore, where one of counsel representing a defendant was engaged in attendance upon the Circuit Court of the United States, and the other was suddenly summoned to attend a session of the Supreme Court to argue a case from a circuit other than that in which he resided, and voluntarily left without leave or application for delay, this furnished no ground for continuance: *Cotton States Life Ins. Co.* v. *Edwards*, 61 or 62 Ga.

RAILROAD. See *Master and Servant; Negligence.*

REAL ESTATE.

Lease of Property to which Title is inchoate—Effect of subsequent Conveyance to Lessor.—A railroad company purchased property on time contracts by which the purchase-money was to be fully paid within four years, and a conveyance made when the payments were completed. Immediately on making the purchase the company went into possession, built on the property, and within a year leased all its lands and property for 99 years. *Held*, that the deed made at the end of the four years at once inured to the benefit of the lessee: *Skidmore* v. *Pitts., C. & St. L. Railway Co.*, S. C. U. S., Oct. Term 1884.

SET OFF. See *Attachment.*

SUPERSEDEAS. See *Errors and Appeals.*

TRUSTEE. See *Limitations, Statute of.*