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ACCOUNT STATED.

Unless objected to within a reasonable time,—and what constitutes such a reasonable time is a question of law,—an account rendered becomes an account stated, and cannot be impeached except for fraud or mistake. *Oil Company v. Van Etten*, 325.

ADMIRALTY. See *Appeal*, 2-4; *Maritime Law*; *Prize*.

1. Under the act of Feb. 16, 1875, c. 77, a finding in a case of admiralty and maritime jurisdiction on the instance side of the Circuit Court has the effect of a special verdict in an action at law, and although no exceptions are filed, its sufficiency in connection with the pleadings to support the decree rendered is open to consideration on appeal. *The "Adriatic,"* 512.
2. A sailing-vessel meeting a steamer should keep her course, unless it is manifest that she would thereby occasion a collision. Where, therefore, as in this case by her unnecessary changes of course, she misled and embarrassed an approaching steamer that was laboring to keep out of her way, and a collision occurred whereby she was sunk, whereas had she kept on the course she was sailing when first seen by the steamer, or adhered to her first new course afterwards taken, a collision would not have happened,—*Held*, that the steamer is not liable. *Id.*

AGENCY. See *Maritime Law*; *Railroad*, 1.

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

ALE. See *Customs Duties*, 5.

ALIENS. See *Constitutional Law*, 1-4.

APPEAL. See *Admiralty*, 1; *Appeal Bond*; *National Banks*, 5.

1. An appeal will not be dismissed by reason of the omission of certain persons who were parties to the suit in the court below, if they have no interest in maintaining or reversing the decree. *Basket v. Hassell*, 602.
2. When persons summoned as garnishees in a libel in admiralty *in personam* are adjudged by the court to have a fund of the principal defendant in their hands and to pay it into court, and the libellant afterwards obtains a final decree against him with an award of exe-

APPEAL (*continued*).

- cution against the fund in their hands, the first order is interlocutory, and they can appeal from the last decree only. *Cushing v. Laird*, 69.
3. Where, in a suit in admiralty by one insurance company against another upon a contract of reinsurance, it became essential for the libellant to show that the risk which it had assumed was the same as that insured against by the policy sued on, and the Circuit Court asserted the identity of the insurances, not in the findings of fact, but as a conclusion of law, the question on appeal is not whether that might be true as a presumption or inference of fact from the circumstances stated in the findings, but whether, upon the facts found, it must be true as a matter of law. *Sun Mutual Insurance Company v. Ocean Insurance Company*, 485.
 4. The rule established in *United States v. Pugh*, 99 U. S. 265, as to findings of fact in cases from the Court of Claims, applies to appeals from decrees in admiralty, under the act of Feb. 16, 1875, c. 77. *Id.*

APPEAL BOND.

1. An appeal bond in an ordinary foreclosure suit in a court of the United States does not operate as security for the amount of the original decree; nor for the interest accruing thereon pending the appeal; nor for the balance due after applying the proceeds of the mortgaged premises; nor for the rents and profits, or the use and detention of the property pending the appeal; but only for the costs of the appeal, and the deterioration or waste of the property, and perhaps burdens accruing upon it by non-payment of taxes, and loss by fire if it be not properly insured. *Quære*, Is its mere depreciation in market value any cause of recovery on the bond. *Kountze v. Omaha Hotel Company*, 378.
2. An appeal bond in such a suit, instead of following the statutory requirement, "that the appellant shall prosecute his appeal to effect, and, if he fail to make his plea good, shall answer all damages and costs," superadds the words that he shall "pay for the use and detention of the property covered by the mortgage in controversy during the pendency of the appeal." In an action on the bond, — *Held*, that these words must be rejected, and the bond construed as having its ordinary and proper legal effect, the judge taking it having no right to exact such an addition to the condition of an appeal and *supersedeas*. *Id.*
3. This case distinguished from those in which official bonds, and bonds given to the government for the purpose of enjoying some office or privilege, have been sustained as contracts at common law. *Id.*

ARKANSAS.

1. The statute of Arkansas prescribing the manner in which property assigned for the benefit of creditors shall be sold is mandatory. *Jaffray v. McGehee*, 361.

ARKANSAS (*continued*).

2. An assignment made in the State is void if it vests in the assignee a discretion in conflict with the provisions of that statute, and authorizes him in effect to sell such property in a manner which they do not permit. *Id.*

ARMY. See *Officer of the Army*.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy*.

ASSIGNMENT. See *Equity*, 2; *Gift*; *Receiver*, 2.

ASSIGNMENT FOR CREDITORS. See *Arkansas*.

ATTACHMENT. See *Appeal*, 2; *Bankruptcy*.

ATTORNEY.

A rule was made by the Circuit Court of the United States for the Southern District of Florida, which, after reciting that it had come to the knowledge of the court that W., an attorney of the court, did, on a day specified, engage in and with an unlawful, tumultuous, and riotous gathering, he advising and encouraging thereto, take from the jail of Hillsborough County, and hang by the neck until he was dead, one John, otherwise unknown, thereby showing such an utter disregard and contempt for the law which, as a sworn attorney, he was bound to support, as shows him to be totally unfitted to occupy such position: thereupon cited him to appear at a certain time and show cause why his name should not be stricken from the roll. The attorney appeared, and answered, denying the charge in mass, and excepting to the jurisdiction of the court, (1) because there was no charge against him under oath, (2) because the offence charged was a crime by the laws of Florida for which he was liable to be indicted and convicted. The court overruled the exceptions, and called a witness who proved the charge, showing that the hanging took place before the court-house door, during a temporary recess of the court; thereupon the court made an order striking W.'s name from the roll. On motion made here for a *mandamus* to compel the judge of that court to reverse this order, and he having answered the rule, showing the special circumstances of the case, — *Held*, 1. That although not strictly regular to grant a rule to show cause why an attorney should not be struck off the roll, without an affidavit making charges against him, yet that, under the special circumstances of this case, the want of such affidavit did not render the proceeding void as *coram non judice*. 2. That the acts charged against the attorney constituted sufficient ground for striking his name from the roll. 3. That although, in ordinary cases, where an attorney commits an indictable offence, not in his character of attorney, and does not admit the charge, the courts will not strike his name from the roll until he has been regularly indicted and convicted, yet that the rule is not an inflexible one; that there may be cases in which it is proper for the court to proceed without such previous conviction; and that the present

ATTORNEY (*continued*).

case, in view of its special circumstances, the evasive denial of the charge, the clearness of the proof, and the failure to offer any counter proof, was one in which the court might lawfully exercise its summary powers. 4. That the proceeding to strike an attorney from the roll is one within the proper jurisdiction of the court of which he is an attorney, and does not violate the constitutional provision which requires an indictment and trial by jury in criminal cases; that it is not a criminal proceeding, and not intended for punishment, but to protect the court from the official ministrations of persons unfit to practise as attorneys therein. 5. That such a proceeding is not an invasion of the constitutional provision that no person shall be deprived of life, liberty, or property without due process of law; but that the proceeding itself, when instituted in proper cases, is due process of law. 6. That, as the court below did not exceed its powers in taking cognizance of the case, no such irregularity occurred in the proceeding as to require this court to interpose by the writ of *mandamus*. *Ex parte Wall*, 265.

BANKRUPTCY. See *United States, Claims by and against*.

A State court, in which an action against a bankrupt upon a debt provable in bankruptcy is pending, must, on his application under sect. 5106 of the Revised Statutes, stay all proceedings to await the determination of the court in bankruptcy on the question of his discharge, unless unreasonable delay on his part in endeavoring to obtain his discharge is shown, or the court in bankruptcy gives leave to proceed to judgment for the purpose of ascertaining the amount due; even if an attachment has been sued out in the action more than four months before the commencement of the proceedings in bankruptcy, and has been dissolved by giving bond with sureties to pay the amount of the judgment which might be recovered. And if the highest court of the State denies the application, and renders final judgment against the bankrupt, he may, although he has since obtained his certificate of discharge, bring a writ of error, and his assignee may be heard here in support of the writ. *Hill v. Harding*, 631.

BANKS AND BANKING. See *National Banks*.BEER. See *Customs Duties*, 5.BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Jurisdiction*, 12, 13.BOND. See *Appeal Bond*; *Equity*, 4; *Louisiana*; *Municipal Bonds*; *Public Lands*, 2; *Virginia*.BOTTLES. See *Customs Duties*, 5.BOTTOMRY BOND. See *Maritime Law*.BRIDGES. See *Navigable Waters*.BURDEN OF PROOF. See *Maritime Law*, 2.

CASES AFFIRMED OR FOLLOWED.

The following, among others, expressly approved and affirmed:—

Chy Lung v. Freeman, 92 U. S. 239. See *People v. Compagnie Générale Transatlantique*, 59.

Fosdick v. Schall, 99 U. S. 235. See *Union Trust Company v. Souther*, 591.

Harter v. Kernochan, 103 U. S. 562. See *Pana v. Bowler*, 529.

Hayward v. Andrews, 106 U. S. 672. See *New York Guaranty Company v. Memphis Water Company*, 205.

Henderson v. Mayor of New York, 92 U. S. 275. See *People v. Compagnie Générale Transatlantique*, 59.

Miltenerberger v. Logansport Railway Company, 106 U. S. 286. See *Union Trust Company v. Souther*, 591.

Stark v. Starrs, 6 Wall. 402. See *Missionary Society v. Dalles*, 336.

United States v. Pugh, 99 U. S. 265. See *Sun Marine Insurance Company v. Ocean Insurance Company*, 485.

CASES QUALIFIED OR OVERRULED.

Shelton v. The Collector, 5 Wall. 113. •See *United States v. Phelps*, 320.

CAUSES, REMOVAL OF. See *Civil Rights*, 1; *Jurisdiction*, 6.

1. Section 643 of the Revised Statutes, which provides for removing to the Circuit Courts suits or criminal prosecutions commenced in a State court against "any officer appointed under or acting by authority of any revenue law, or any person acting under or by authority of such officer," applies to marshals of the United States, their deputies and assistants, when engaged in enforcing a revenue law of the United States. *Davis v. South Carolina*, 597.
2. Where such a prosecution is duly removed, the jurisdiction of the Circuit Court completely vests, and the subsequent action of the State court, forfeiting the recognizance of the defendant for his non-appearance there, is *coram non judice* and void. *Id.*
3. The Memphis and Charleston Railroad Company is made by the statutes of Alabama an Alabama corporation; and, although previously incorporated in Tennessee also, cannot remove into the Circuit Court of the United States a suit brought against it in Alabama by a citizen of Alabama. *Memphis and Charleston Railroad Company v. Alabama*, 581.

CEMETERY COMPANY. See *Corporation*, 3.CHARITABLE GIFTS AND DEVISES. See *Will*.

William Russell, of St. Louis, "for the purpose of founding an institution for the education of youth in St. Louis County, Missouri," granted lands and personal property in Arkansas to John S. Horner and his successors, in trust "for the use and benefit of the Russell Institute of St. Louis, Missouri," with directions to the grantee to sell them, and to account for and pay over the proceeds "to Thomas Allen, President of the Board of Trustees of the said Russell Institute at St. Louis, Missouri," whose receipt should be a full discharge to the grantee. *Held*, that this was a charitable gift, valid against

CHARITABLE GIFTS AND DEVISES (*continued*).

the donor's heirs and next of kin, although the institution was neither established nor incorporated in the lifetime of the donor or of Allen. *Russell v. Allen*, 163.

CHICAGO RIVER. See *Navigable Waters*.

CHOSE IN ACTION. See *Equity*, 2; *Gift*.

CITIZENSHIP. See *Causes, Removal of*, 3; *Civil Rights*, 1; *Jurisdiction*, 5, 7-12.

CIVIL RIGHTS.

1. Where the highest court of the State had declared to be unconstitutional her statute whereby, because of their race and color, citizens of African descent were excluded from grand and petit juries, and it had further decided that the officer summoning or selecting jurors must disregard race or color, a person of that descent against whom a criminal prosecution was subsequently instituted in the State court has no just ground for declaring, in advance of a trial, that he was denied, or that in the State tribunals he cannot enforce, the equal civil rights secured to him as a citizen by the Constitution or the statutes of the United States. The case was not, therefore, removable to the Circuit Court, nor should the panel of petit jurors be set aside simply on the ground that it consisted wholly of white persons. *Bush v. Kentucky*, 110.
2. Where pursuant to such a statute, and before its unconstitutionality was so declared, the grand jurors were selected who found the indictment against the prisoner, a person of that descent, the court of original jurisdiction should, on his motion, set aside the indictment. *Id.*

CLAIMS BY AND AGAINST THE UNITED STATES. See *Contract*, 2; *Court of Claims*; *Pension*.

COLLATERAL SECURITY. See *Missouri*; *National Banks*, 1.

COLLECTOR OF CUSTOMS. See *Customs, Collector of*.

COLLISION. See *Admiralty*, 2.

COMITY. See *Jurisdiction*, 7-11.

COMMERCE. See *Constitutional Law*, 1-4; *Ferry*, 4; *Inspection Laws Navigable Waters*; *Wharves and Wharfage*.

COMMON CARRIERS. See *Railroad*.

COMPROMISE. See *Swamp and Overflowed Lands*, 3.

COMPTROLLER OF THE CURRENCY. See *National Banks*, 4.

CONFLICT OF LAWS. See *Municipal Bonds*, 10; *Will*, 3, 4.

CONGRESS. See *Inspection Laws*, 3; *Navigable Waters*; *Officer of the Army*.

CONSPIRACY. See *Equity*, 1.

CONSTITUTIONAL LAW. See *Attorney*; *Civil Rights*; *Corporation*, 3; *Ferry*, 4; *Inspection Laws*, 1, 3; *Louisiana*; *Municipal Bonds*, 2, 3, 11, 12; *Navigable Waters*; *Virginia*; *Wharves and Wharfage*.

1. The statute of New York of May 31, 1881, imposing a tax on every alien passenger who shall come by vessel from a foreign country to the port of New York, and holding the vessel liable for the tax, is a regulation of foreign commerce, and void. *Henderson v. Mayor of New York*, 92 U. S. 259, and *Chy Lung v. Freeman*, id. 275, cited, and the rulings therein made reaffirmed. *People v. Compagnie Générale Transatlantique*, 59.
2. The statute is not relieved from this constitutional objection by declaring in its title that it is to raise money for the execution of the inspection laws of the State, which authorize passengers to be inspected in order to determine who are criminals, paupers, lunatics, orphans, or infirm persons, without means or capacity to support themselves, and subject to become a public charge, as such facts are not to be ascertained by inspection alone. *Id.*
3. The words "inspection laws," "imports," and "exports," as used in cl. 2, sect. 10, art. 1, of the Constitution, have exclusive reference to property. *Id.*
4. This is apparent from the language of cl. 1, sect. 9, of the same article, where, in regard to the admission of persons of the African race, the word "migration" is applied to free persons, and "importation" to slaves. *Id.*
5. A. was convicted of murder in the first degree, and the judgment of condemnation was affirmed by the Supreme Court of Missouri. A previous sentence pronounced on his plea of guilty of murder in the second degree, and subjecting him to an imprisonment for twenty-five years, had, on his appeal, been reversed and set aside. By the law of Missouri in force when the homicide was committed this sentence was an acquittal of the crime of murder in the first degree; but before his plea of guilty was entered the law was changed, so that by force of its provisions, if a judgment on that plea be lawfully set aside, it shall not be held to be an acquittal of the higher crime. *Held*, that as to this case the new law was an *ex post facto* law, within the meaning of sect. 10, art. 1, of the Constitution of the United States, and that he could not be again tried for murder in the first degree. *Kring v. Missouri*, 221.
6. The history of the *ex post facto* clause of the Constitution reviewed in connection with its adoption as a part of the Constitution, and with its subsequent construction by the Federal and the State courts. *Id.*
7. The distinction between retrospective laws, which relate to the remedy or the mode of procedure, and those which operate directly on the offence, is unsound where, in the latter case, they injuriously affect any substantial right to which the accused was entitled under the law as it existed when the alleged offence was committed. *Id.*
8. Within the meaning of the Constitution, any law is *ex post facto* which

CONSTITUTIONAL LAW (*continued*).

is enacted after the offence was committed, and which, in relation to it or its consequences, alters the situation of the accused to his disadvantage. *Id.*

CONTRACT. See *Appeal Bond*; *Insurance*; *Railroad*, 2-6.

1. In construing contracts, a court may look not only to their terms, but to their subject-matter and the surrounding circumstances, and avail itself of the same light which at the time of making them the parties possessed. *Merriam v. United States*, 437.
2. Under the contract sued on in this case, *ante*, p. 437, the United States was not bound to receive a greater quantity of oats than that which is therein specifically mentioned. *Id.*
3. A. made a contract with B. to deliver a specified number of matched barrel-headings, to be properly piled on the land of B., who was to furnish a man to count them, as they were from time to time piled, in order to obtain an approximate estimate of the quantity piled, and thus to determine the amount of advances to A. under his contract; but the inspection and final count was to be made by an inspector appointed by B. at a point to which the latter shipped them. The property in the headings was to pass to B. on the delivery of them on his land. In a suit to recover the contract price of them, — *Held*, 1. That no error was committed by the trial court in admitting evidence of the counts by both parties of the whole number of single pieces of heading, and submitting to the jury the comparison between them, the court having ruled that the inspector's final count, which formed the basis of an estimate and average from which the number of matched headings was deduced, was, if made fairly and in the exercise of his best judgment, binding on the parties, unless its variance from the actual truth was too great to be accounted for by mere error of judgment in the matter of matching. 2. That although there was no evidence to show that all the pieces of heading shipped were in fact delivered at the point to which they had been sent, the jury were not bound to assume a loss in transportation in order to account for the discrepancy between the two counts. *Oil Company v. Van Etten*, 325.

CORPORATION. See *Causes, Removal of*, 3; *Charitable Gifts and Devises*; *Missouri*; *National Banks*; *Railroad*; *Will*, 6-8, 11.

1. Restrictions imposed by the charter of a corporation upon the amount of property that it may hold cannot be taken advantage of collaterally by private persons, but only in a direct proceeding by the State. *Jones v. Habersham*, 174.
2. The provision of the Constitution of Georgia of 1868, which declares that "the General Assembly shall have no power to grant corporate powers and privileges to private companies" (with certain exceptions), "but it shall prescribe by law the manner in which such powers shall be exercised by the courts," does not take away from the General Assembly the power to amend the charters of existing corporations by modifying or enlarging their powers. *Id.*

CORPORATION (*continued*).

3. A cemetery company was incorporated in 1854 by an act of Congress which authorized it to purchase and hold ninety acres of land in the District of Columbia, and to receive gifts and bequests for the purpose of ornamenting and improving the cemetery; enacted that its affairs should be conducted by a president and three other managers, to be elected annually by the votes of the proprietors, and to have power to lay out and ornament the grounds, to sell or dispose of burial lots, and to make by-laws for the conduct of its affairs and the government of lot-holders and visitors; fixed the amount of the capital stock, to be divided among the proprietors according to their respective interests; and provided that the land dedicated to the purposes of a cemetery should not be subject to taxation of any kind, and no highways should be opened through it, and that it should be lawful for Congress thereafter to alter, amend, modify, or repeal the act. Presently afterwards thirty of the ninety acres were laid out as a cemetery, the cemetery was dedicated by public religious services, and a pamphlet was published, containing a copy of the charter, a list of the officers, an account of the proceedings at the dedication, describing the cemetery as "altogether comprising ninety acres, thirty of which are now fully prepared for interments," and the by-laws of the corporation, which declared that all lots should be held in pursuance of the charter. No stock was ever issued. But the owner of the whole tract, named in the charter as one of the original associates, and in the list published in the pamphlet as the president and a manager of the corporation, knowing all the above facts, and never objecting to the appropriation of the property as appearing thereby, for more than twenty years managed the cemetery, sold about two thousand burial lots, and gave to each purchaser a copy of the pamphlet, and a deed of the lot, signed by himself as president, bearing the seal of the corporation, and having the by-laws printed thereon. In 1877 Congress passed an act, amending the charter of the corporation, providing that its property and affairs should be managed, so as to secure the equitable rights of all persons having any vested interest in the cemetery, by a board of five trustees to be elected annually, three by the proprietors of lots owned in good faith upon which a burial had been made, and two by the original proprietors; and that of the gross receipts arising from the future sale of lots one-fourth should be annually paid by the trustees to the original proprietors and the rest be devoted to the improvement and maintenance of the cemetery. *Held*, that the act of 1877 was a constitutional exercise of the power of amendment reserved in the act of 1854; that the owner of the land was estopped to deny the existence of the corporation, the setting apart of the whole ninety acres as a cemetery, and the right of the lot-holders to elect a majority of the trustees; and that he was in equity bound to convey the whole tract to the corporation in fee, and to account to the corporation for three-fourths of the sums received by him from sales of lots since the act of 1877; and

CORPORATION (*continued*).

the corporation to pay him one-fourth of the gross receipts from future sales of lots. *Close v. Glenwood Cemetery*, 466.

COSTS. See *Appeal Bond*, 1, 2.

COTTON LACES AND INSERTINGS. See *Customs Duties*, 6, 7.

COUNTY. See *Swamp and Overflowed Lands*, 3.

- A. conveyed, March 5, 1859, to a county in Nebraska certain lands for a "poor-farm," and they were thereafter used as such. The county, pursuant to its agreement, made one cash payment, and for the remainder of the stipulated consideration gave its notes secured by mortgage, and payable respectively in one, two, three, and four years. A. assigned the notes to B. Some time thereafter, the Supreme Court of the State decided that, by the purchase of lands for such a purpose, a county could not be bound to pay at any specified time the purchase-money, or to secure it by mortgage upon them, but was limited to a payment in cash and to the levy of an annual tax to create a fund wherewith to pay the residue. A. and B., the notes remaining unpaid, filed, Sept. 10, 1877, a bill praying for a reconveyance and an accounting, or, should the county elect to retain the lands, then for a decree for the value of them. *Held*, 1. That in view of that decision, the contract being unauthorized only so far as it relates to the time and mode of paying the purchase-money, and the title to the lands having passed by the conveyance, the county holds that title as a trustee for the benefit of B., and that he is entitled to the relief prayed for. 2. That unless the sum due on account of the purchase-money, after a proper allowance shall be made as a compensation for a failure of A.'s title to a small part of the lands, be paid within a reasonable time, to be fixed by the court below, having reference to the necessity of raising the same by taxation, as prescribed and limited by the statute, the county be required to execute and deliver a deed, releasing to A. all the title acquired under his deed, and that he convey the same to B. 3. That the suit is not barred by the Statute of Limitations. *Chapman v. County of Douglas*, 348.

COUPONS. See *Louisiana; Municipal Bonds*, 5, 8-11; *Virginia*.

COURT OF CLAIMS. See *Customs, Surveyor of*.

1. A party who, under sect. 4 of the act of Aug. 5, 1861, c. 45, is entitled to the drawback there mentioned may, when payment thereof has been refused, maintain a suit therefor in the Court of Claims against the United States. *Campbell v. United States*, 407.
2. In computing the six years after his claim against the United States first accrues within which it may be filed in the Court of Claims, the period must be included when the claimant was unable to sue in that court by reason of the aid he gave to the rebellion. *Kendall v. United States*, 123.
3. The petition is bad on demurrer when it appears therefrom that the claimant's right of action against the United States is barred by the lapse of time. *Id.*

COURTS OF THE UNITED STATES. See *Court of Claims*; *District of Columbia*, 1; *Equity*, 3; *Jurisdiction*; *Louisiana*, 2.

CRIMINAL LAW. See *Attorney*; *Civil Rights*; *Constitutional Law*, 5-8; *Jurisdiction*, 6.

1. The counts of an indictment against the president of a national banking association for making such a false entry on its books as is punishable under sect. 5209 of the Revised Statutes are sufficient if they are in the form hereinafter set forth, *ante*, p. 656, as the offence is thereby alleged in apt terms, and with the requisite averments of time and place. *United States v. Britton*, 655.
2. The counts which charge his fraudulent purchase of shares of the capital stock of the association are bad if they either fail to state for whose use the purchase was made, or if they state that it was made for the use of the association, or if they do not aver that it was not made in order to prevent loss on some previously contracted debt. *Id.*
3. The counts which charge him with having wilfully misapplied the funds of the association should aver that he did so for the benefit of himself or some person or body other than the association, and with intent to injure or defraud the association or some other person or body corporate. *Id.*
4. The counts which charge his fraudulent purchase of the shares of stock, and allege that they were by him held "in trust for the use of said association, and that said shares were not purchased as aforesaid in order to prevent loss upon any debts theretofore contracted with said association in good faith," do not allege with sufficient certainty an offence under said sect. 5209. *Id.*
5. The purchase of stock in violation of sect. 5201, if made with intent to defraud, and by one or more of the officers of the bank named in said sect. 5209, is not a crime punishable under the latter section. *Id.*
6. An indictment for perjury against an officer of a national bank, for a wilfully false declaration or statement in a report made under sect. 5211 of the Revised Statutes is bad, if, prior to the passage of the act of Feb. 26, 1881, c. 82, his oath verifying the report was taken before a notary public appointed by a State, as such a notary had at that time no authority under a law of the United States to administer the oath. *United States v. Curtis*, 671.

CUSTOMS, COLLECTOR OF. See *Customs Duties*, 8.

1. Where a collector of customs brings a writ of error to review a judgment recovered against him for moneys exacted by and paid to him on entries, this court will, if it affirms the judgment, allow interest on it, under rule 23. *Schell v. Cochran*, 625.
2. In such a case, the "final judgment," the amount whereof is payable under sect. 989 of the Revised Statutes, is that rendered by the court below pursuant to the mandate of this court. *Id.*

CUSTOMS, SURVEYOR OF.

A. was surveyor of customs from June 13, 1872, to May, 1876, at Troy, N. Y., which was a port of delivery, but not of entry, in the collection district of the city of New York. At various times during the period from June 13, 1872, to June 22, 1874, there was a surveyor of customs at the port of New York, which was a port of entry, and there were surveyors of customs at two other ports in that district, which were ports of delivery and not ports of entry. In accordance with the uniform practice of the Treasury Department, under sect. 1 of the act of March 2, 1867, c. 188, repealed by sect. 2 of the act of June 22, 1874, c. 391, the Secretary of the Treasury distributed to the collector, naval officer, and surveyor at the port of New York, as such officers, and not as informers or seizing officers, one-fourth part of the proceeds of the fines, penalties, and forfeitures incurred at the port of New York between June 13, 1872, and June 22, 1874. A. made no question in regard to this practice until March, 1874, and when informed, in June of that year, that the department adhered to its construction of the act, he made no further complaint until March, 1877. He sued the United States in the Court of Claims in May, 1877, claiming that under said first section he was entitled to share in said one-fourth equally with the collector and the naval officer at the port of New York, and all the surveyors in the district. The court rejected the claim. *Held*, that the judgment was not erroneous. *Hahn v. United States*, 402.

CUSTOMS DUTIES. See *Court of Claims*, 1; *Inspection Laws*.

1. Dutiable goods cannot lawfully be imported in the foreign mail under the International Postal Treaty of Berne of Oct. 9, 1874. 19 Stat. 577. *Cotzhausen v. Nazro*, 215.
2. Such goods are, in the hands of the receiver of them from the post-office, subject to seizure; and the fact that there was no intent on the part of the sender or the receiver of them to defraud the United States of the duty, does not render the customs officer liable to an action for making the seizure. *Id*.
3. A claim for the appraisement of goods and the reduction of the duty thereon, by reason of the damage which they sustained during the voyage of importation, may be allowed, although not made until after they were entered at the custom-house at their full invoice value and the estimated duties thereon paid. *Shelton v. The Collector*, 5 Wall. 113, so far as it conflicts with this ruling, is overruled. *United States v. Phelps*, 320.
4. Section 2928, Rev. Stat., has exclusive reference to goods taken from a wreck. *Id*.
5. Under schedules B and D of sect. 2504 of the Revised Statutes, ale and beer imported in bottles are subject to a duty of thirty-five cents per gallon, and a further duty of thirty per cent *ad valorem* is imposed on the bottles. *Schmidt v. Badger*, 85.
6. By schedule D of the act of July 30, 1846, c. 74, a duty of twenty-five per cent *ad valorem* was imposed on "cotton laces, cotton insertings,"

CUSTOMS DUTIES (*continued*).

and "manufactures composed wholly of cotton, not otherwise provided for." By sect. 1 of the act of March 3, 1857, c. 98, the duties on the articles enumerated in schedules C and D of the act of 1846 were fixed at twenty-four and nineteen per cent, respectively, "with such exceptions as are hereinafter made" By sect. 2 of the act of 1857, "all manufactures composed wholly of cotton, which are bleached, printed, painted, or dyed, and delaines," were transferred to schedule C. *Held*, that laces and insertings composed wholly of cotton, and bleached or dyed, were dutiable at twenty-four per cent, under the act of 1857. *Barber v. Schell*, 617.

7. The designations qualified by the word "cotton," in the act of 1846, are designations of articles by special description, as contradistinguished from designations by a commercial name or a name of trade, and are designations of quality and material. *Id.*
8. Under the act of March 2, 1799, c. 23, the collector of customs is not entitled to a fee for putting on an invoice a stamp or certificate as to the presentation of the invoice, or for an oath to an entry or for a jurat to such oath, or for his order to the storekeeper to deliver examined packages. *Id.*

DAMAGES. See *Equity*, 1; *Jurisdiction*, 3.

DECREE. See *Admiralty*, 1; *Appeal*, 1, 2, 4; *Appeal Bond*, 1; *District of Columbia*, 2; *Equity Pleading and Practice*; *Jurisdiction*, 2; *Municipal Bonds*, 9; *Prize*.

DEED. See *County*; *Trust Deed*.

DELIVERY. See *Contract*, 3; *Gift*, 2.

DEMURRER. See *Court of Claims*, 3.

DEVISE. See *Will*.

DISTRICT ATTORNEY. See *Patent for Land*, 1.

DISTRICT OF COLUMBIA.

1. The Supreme Court of the District of Columbia is a court of the United States, and its judgment, when suit is brought thereon in any State of the Union, is, under the legislation of Congress, conclusive upon the defendant, except for such cause as would be sufficient to set it aside in the courts of the District. *Embry v. Palmer*, 3.
2. A. recovered judgment in that court against B. and C., who, when sued thereon in a State court, filed their bill to enjoin the collection of so much thereof as they claimed was in excess of the amount due on the original cause of action, and alleged, as a ground of relief, matter available as a defence in the action at law, which they were not prevented from setting up by accident, or by the fraud of A., unconnected with the negligence of themselves or agents. The court perpetually enjoined A. from suing on the judgment on their paying into court that amount. They did so, and A. received it.

DISTRICT OF COLUMBIA (*continued*).

The decree was affirmed by the court of last resort in the State. *Held*, 1. That, according to the law then in force in the District of Columbia, the bill not being sufficient to authorize the relief granted, the decree does not give the required effect to the judgment, and this court has jurisdiction to re-examine it on a writ of error. 2. That A., by accepting the amount so paid, is not estopped from prosecuting that writ. *Id.*

DONATIO CAUSA MORTIS. See *Gift*, 2.

DONATION. See *Municipal Bonds*; *Oregon*, 2.

DRAWBACK. See *Court of Claims*, 1.

DUE PROCESS OF LAW. See *Attorney*.

DUTIES. See *Customs Duties*.

ELECTIONS. See *Municipal Bonds*, 7, 8.

EQUITABLE ASSIGNMENT. See *Gift*, 1.

EQUITY. See *Trust Deed*; *Will*, 10.

1. Where the object of a suit in chancery is the recovery of the damages which the complainant alleges that he has sustained by reason of an unlawful and fraudulent conspiracy to cheat him out of his interest in an original invention, which is the subject-matter of the controversy, the bill should be dismissed, as his remedy is at law. *Ambler v. Choteau*, 586.
2. An assignee of a chose in action, or any other *cestui que trust*, cannot, merely on the ground that his interest is an equitable one, proceed in a court of equity to recover his demand. *Hayward v. Andrews*, 106 U. S. 672, cited upon this point and approved. *New York Guaranty Company v. Memphis Water Company*, 205.
3. The courts of the United States especially, in view of the act of Congress declaring that suits in equity shall not be sustained where there is a plain, adequate, and complete remedy at law, should enforce this rule. *Id.*
4. Certain parties holding bonds secured by a mortgage filed their bill to recover moneys alleged to be due on a contract which the city of Memphis made with the mortgagor, and which was assigned in the mortgage as part of the security for the bonds. *Held*, that the bill will not lie, the demand against the city being cognizable at law in the name of the mortgagor, and no special circumstances shown for a resort to equity. *Id.*

EQUITY PLEADING AND PRACTICE. See *District of Columbia*, 2; *National Banks*, 3.

Pending a bill in equity against the owner of land to compel a conveyance of the title, subject to certain rights of his in the rents and profits, a receiver appointed in another suit against him, and to whom he had by order of court in that suit assigned his interest in the land, applied to be and was made a defendant, and answered,

EQUITY PLEADING AND PRACTICE (*continued*).

and also filed a cross-bill against both the original parties, which was afterwards ordered to be stricken from the files, with leave for him to apply for leave to file a cross-bill; but he never applied for such leave. The case was heard upon pleadings and proofs, and a final decree entered ordering the original defendant to convey to the complainant, and the complainant to account to him or his assigns for part of the rents and profits, and that this decree be without prejudice to the rights of the receiver. *Held*, that the receiver was not aggrieved. *Close v. Glenwood Cemetery*, 466.

ESTOPPEL. See *Corporation*, 3; *District of Columbia*, 2; *Missouri*, 1; *Prize*.

EVIDENCE. See *Contract*, 3; *Jury*; *Letters-patent*, 6; *Missouri*, 1; *National Banks*, 4; *Witness*.

In a suit against a municipal corporation to recover damages for injuries received from a fall caused by a defective sidewalk, which was in an unguarded condition, it is competent for the plaintiff to show that whilst it was in that condition other like accidents had occurred at the same place. *District of Columbia v. Armes*, 519.

EXPORTS. See *Constitutional Law*, 3; *Court of Claims*, 1; *Inspection Laws*.

EX POST FACTO LAWS. See *Constitutional Law*, 5-8.

FALSE ENTRIES. See *Criminal Law*, 1.

FERRY.

1. The fourth section of the act of the legislature of Illinois passed in 1819, touching a ferry across the Mississippi River from a place in Illinois to the city of St. Louis, Missouri, declares: "That the ferry established shall be subject to the same taxes as are now, or hereafter may be, imposed on other ferries within this State, and under the same regulations and forfeitures." *Held*, that the section provides for equality of taxation; that is to say, that the property of the ferry company shall be valued and taxed by the same rule as other like property, and be subject to the same exactions and forfeitures; but the company is not exempted from any license tax on its ferry-boats which the State or a municipal corporation thereunto authorized might impose. *Wiggins Ferry Company v. East St. Louis*, 365.
2. The power to license is a police power, although it may also be exercised for the purpose of raising revenue. *Id.*
3. A State has the power to impose a license fee, either directly or through one of its municipal corporations, upon the ferry-keepers living in the State, for boats which they own and use in conveying from a landing in the State passengers and goods across a navigable river to a landing in another State. *Id.*
4. The levying of a tax upon such boats, although they are enrolled and licensed under the laws of the United States, or the exaction of a license fee by the State within which the property subject to

FERRY (*continued*).

the exaction has its *situs*, is not a regulation of commerce within the meaning of the Constitution of the United States, nor is such tax or fee a duty of tonnage if it be not graduated by the tonnage of the boats or by the number of times they cross the river or land within the limits of the State. *Id.*

FINES, PENALTIES, AND FORFEITURES. See *Customs, Surveyor of*; *Ferry*, 1.

FORECLOSURE. See *Appeal Bond*; *Jurisdiction*, 12; *Receiver*.

FRAUD. See *Criminal Law*, 1-5; *Customs Duties*, 2; *Equity*, 1; *National Banks*, 2.

GARNISHMENT. See *Appeal*, 2.

GEORGIA. See *Corporation*, 2; *Will*, 2, 5, 6, 10.

GIFT. See *Charitable Gifts and Devises*.

1. A certificate of deposit in these terms:—

“EVANSVILLE NATIONAL BANK,
“EVANSVILLE, IND., Sept. 8, 1875.

“H. M. Chaney has deposited in this bank twenty-three thousand five hundred and fourteen $\frac{7}{8}$ % dollars, payable in current funds, to the order of himself, on surrender of this certificate properly indorsed, with interest at the rate of six per cent per annum, if left for six months.

“\$23,514.70.

HENRY REIS, *Cashier*,”

— may, as a subsisting chose in action, be the subject of a valid gift, if the person therein named indorse and deliver it to the donee, and thus vest in him the whole title and interest therein, or so deliver it, without indorsement, as to divest the donor of all present control and dominion over it, and make an equitable assignment of the fund, which it represents and describes. *Basket v. Hassell*, 602.

2. A *donatio mortis causa* must, during the life of the donor, take effect as an executed and complete transfer of his possession of the thing and his title thereto, although the right of the donee is subject to be divested by the actual revocation of the donor, or by his surviving the apprehended peril, or by his outliving the donee, or by the insufficiency of his estate to pay his debts. If by the terms and condition of the gift it is to take effect only upon the death of the donor, it is not such a *donatio*, but is available, if at all, as a testamentary disposition. Where, therefore, during his last illness, and when he was in apprehension of death, the person named in the above certificate made thereon the following indorsement:—

“Pay to Martin Basket, of Henderson, Ky.; no one else; then not till my death. My life seems to be uncertain. I may live through this spell. Then I will attend to it myself.

“H. M. CHANEY,”

— and then delivered it to Basket, and died at his home in Tennessee, — *Held*, that Basket by such indorsement and delivery acquired no title to or interest in the fund. *Id.*

GUARANTY. See *Railroad*, 6.

HYPOTHECATION. See *Maritime Law*.

ILLINOIS. See *Ferry*, 1; *Municipal Bonds*, 5-10; *Navigable Waters*.

IMPORTS. See *Constitutional Law*, 3; *Court of Claims*, 1; *Customs Duties*.

INDIANS. See *Oregon*, 1.

INDICTMENT. See *Civil Rights*; *Criminal Law*; *Jurisdiction*, 6.

INDORSEMENT. See *Gift*; *Jurisdiction*, 12.

INFRINGEMENT. See *Letters-patent*.

INSANITY. See *Witness*, 1.

INSOLVENT DEBTOR. See *Bankruptcy*; *United States, Claims by and against*.

INSPECTION LAWS. See *Constitutional Law*, 1-4.

1. Section 41 of chapter 346 of the laws of Maryland of 1864, as amended and re-enacted by chapter 291 of the laws of 1870, provides as follows: "After the passage of this act, it shall not be lawful to carry out of this State, in hogsheads, any tobacco raised in this State, except in hogsheads which shall have been inspected, passed, and marked agreeably to the provisions of this act, unless such tobacco shall have been inspected and passed before this act goes into operation; and any person violating the provisions of this section shall forfeit and pay the sum of three hundred dollars, which may be recovered in any court of law of this State, and which shall go to the credit of the tobacco fund: *Provided*, that nothing herein contained shall be construed to prohibit any grower of tobacco, or any purchaser thereof, who may pack the same in the county or neighborhood where grown, from exporting or carrying out of this State any such tobacco without having the same opened for inspection; but such tobacco so exported or carried out of this State without inspection shall in all cases be marked with the name in full of the owner thereof, and the place of residence of such owner, and shall be liable to the same charge of outage and storage as in other cases, and any person who shall carry or send out of this State any such tobacco, without having it so marked, shall be subject to the penalty prescribed by this section." Under that proviso, no requirement of the act of 1864 is dispensed with, except that of having the hogshead opened for inspection. The hogshead must still be delivered at a State tobacco warehouse, and there numbered and recorded and weighed and marked, and be found to be of the dimensions prescribed by statute, and to have been packed and marked as required. *Held*, 1. That said section 41, as so amended and re-enacted, is not, in its provisions as to charges for outage and storage, in violation of clause 2 of section 10 of article 1 of the Constitution of the United States, as respects any impost or duty imposed by it

INSPECTION LAWS (*continued*).

on exports, or of the clause of section 8 of article 1 which gives power to the Congress "to regulate commerce with foreign nations and among the several States;" nor is it a regulation of commerce or unconstitutional, as discriminating between the State buyer and manufacturer of leaf tobacco and the purchaser who buys for the purpose of transporting the tobacco to another State or to a foreign country, or as discriminating between different classes of exporters of tobacco. 2. That the charge for outage, thereby made, is an inspection duty, within the meaning of the Constitution, and it is not foreign to the character of an inspection law to require every hogsh-head of tobacco to be brought to a State tobacco warehouse. 3. That dispensing with an opening for inspection of the hogshheads mentioned in the proviso does not, in view of the other provisions of the tobacco inspection statutes of the State, deprive those statutes of the character of inspection laws. *Turner v. Maryland*, 38.

2. The characteristics of inspection laws considered, with references to the legislation of the American colonies and the States on the subject. *Id.*
3. *Quære*, Is it not exclusively the province of Congress to determine whether a charge or duty, under an inspection law, is or is not excessive. *Id.*
4. The charge for outage in this case appears to be a charge for services properly rendered. *Id.*

INSURANCE. *See *Appeal*, 3.

1. It is the duty of the assured to communicate all material facts, and he cannot urge as an excuse for his omission to do so that they were actually known to the underwriters, unless the knowledge of the latter was as full and particular as his own information. *Sun Mutual Insurance Company v. Ocean Insurance Company*, 485.
2. The exaction of information in some instances may be greater in a case of reinsurance than as between the parties to an original insurance. In the former, the party seeking to shift the risk he has taken is bound to communicate such information within his knowledge as would be likely to influence the judgment of an underwriter. *Id.*

INTEREST. See *Appeal Bond*, 1; *Customs, Collector of*, 1; *Jurisdiction*, 4; *Louisiana*; *Municipal Bonds*, 10; *National Banks*, 4; *Tax and Taxation*.

INVENTION. See *Equity*, 1; *Letters-patent*.

IOWA. See *Swamp and Overflowed Lands*, 3.

JUDGMENT. See *Customs, Collector of*, 2; *District of Columbia*.

A judgment entered by consent for a specific amount, subject to any credits which the defendant may produce vouchers for, is good as between the parties themselves and their privies. *Burgess v. Seligman*, 20.

JUDICIAL DISCRETION. See *Receiver*, 1.

JURISDICTION.

I. OF THE SUPREME COURT. See *District of Columbia*, 2; *Missouri*, 2; *Railroad*, 5.

1. This court has jurisdiction to re-examine the judgment of the Supreme Court of a State, rendered adversely to the right and title which a party to the suit specially sets up to land under a patent issued by the United States to another under whom he claims. *Baldwin v. Stark*, 463.
2. This court has no jurisdiction to re-examine the judgment of a State court recognizing as valid the decree of a foreign court annulling a marriage. *Roth v. Ehman*, 319.
3. This court will not re-examine the order of the Circuit Court, refusing to set aside the verdict upon the ground that the jury awarded excessive damages. *Wabash Railway Company v. McDaniels*, 451.
4. Where a cause has been finally disposed of here, by the dismissal of the writ of error, this court has no power, at a subsequent term, to alter its judgment to one of affirmance, although, if there had been a judgment of affirmance, interest during the pendency of the writ would have been allowed on the amount of the judgment below, and in the judgment of dismissal no such interest was allowed. *Schell v. Dodge*, 629.

II. OF THE CIRCUIT COURT. See *Attorney; Causes, Removal of; Wharves and Wharfage*, 5.

5. The Circuit Court cannot take jurisdiction of a suit removed from a State court under the third subdivision of sect. 639 of the Revised Statutes, on account of "prejudice or local influence," unless all the necessary parties on one side of the suit are citizens of different States from those on the other. *Myers v. Swann*, 546.
6. Where the Circuit Court quashes an indictment, found against the prisoner in a State court, wherefrom the cause was on his petition removed, it has no jurisdiction to proceed against him for the crime against the State wherewith he was charged. *Bush v. Kentucky*, 110.

III. IN GENERAL. See *Attorney; Louisiana*, 2.

7. The courts of the United States, in the administration of State laws in cases between citizens of different States, have an independent jurisdiction co-ordinate with that of the State courts, and are bound to exercise their own judgment as to the meaning and effect of those laws. *Burgess v. Seligman*, 20.
8. Where, however, by the course of the decisions of the State courts, certain rules are established which become rules of property and action in the State, and have all the effect of law, — especially with regard to the law of real estate and the construction of State constitutions and statutes, — the courts of the United States always regard such rules as authoritative declarations of what the law is. But where the law has not been thus settled, it is their right and duty to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence: and when contracts and transactions have been entered into and rights

JURISDICTION (*continued*).

- have accrued thereon under a particular state of the decisions of the State tribunals, or when there has been no decision, the courts of the United States assert the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be given by the State courts after such rights have accrued. *Id.*
9. But even in such cases, for the sake of harmony and to avoid confusion, the courts of the United States will lean towards an agreement of views with the State courts, if the question seems to them balanced with doubt. *Id.*
 10. Acting on these principles of comity, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State courts. *Id.*
 11. As, however, the very object of giving to the national courts jurisdiction to administer the laws of the States in controversies between citizens of different States was to institute independent tribunals which it might be supposed would be unaffected by local prejudices and sectional views, it is their duty to exercise an independent judgment in cases not foreclosed by previous adjudication. *Id.*
 12. The indorsee of "a promissory note negotiable by the law merchant," which the maker secured by a mortgage of land to the payee, is not precluded from maintaining a foreclosure suit in a court of the United States by the fact that the maker and the payee are citizens of the same State. *Tredway v. Sanger*, 323.
 13. Where, in an action brought in a court of Virginia against an indorser of promissory notes, payable August, 1861, at Alexandria in that State, the point in controversy being as to the sufficiency of the notices of dishonor, and the court decided in substance that by the general principles of commercial law, if, during the late civil war, he abandoned his residence in loyal territory and went to reside permanently within the Confederate lines before the note matured, a notice left at his former residence was not sufficient to charge him, if his change of residence was known, or by the exercise of reasonable diligence might have been known, to the holder of the note when it matured, — *Held*, that no Federal question was raised by the decision. *Allen v. McVeigh*, 433.
 14. Where the plaintiff's prayer for instructions relates also to the Virginia ordinance of secession and the proclamations of the President of April, 1861, and Aug. 16, 1861, but, as the case stood upon the evidence, neither of them was involved, and no title, right, privilege, or immunity thereunder was claimed by either party, — *Held*, that the prayer was properly refused; and, the only Federal question thereby sought to be raised having been correctly disposed of, this court cannot consider the other errors assigned. *Id.*

JURY. See *Civil Rights*; *Contract*, 3; *Jurisdiction*, 3; *Railroad*, 4.

The jury may be controlled in their determination of a question by a peremptory instruction, if the testimony is of such a conclusive

JURY (*continued*).

character as would compel the court, in the exercise of a sound legal discretion, to set aside a verdict if one were returned in opposition to such testimony. *Montclair v. Dana*, 162.

LAND GRANTS. See *Oregon*; *Patent for Land*; *Pre-emption*; *Public Lands*; *Swamp and Overflowed Lands*.

LAW AND FACT. See *Account Stated*; *Appeal*, 3, 4; *Jury*; *Maritime Law*, 2; *Railroad*, 4.

LEGACY. See *Will*.

LETTERS-PATENT.

1. It is the duty of the court to dismiss a suit brought to restrain the infringement of letters-patent, where the device or contrivance for which they were granted is not patentable, although such defence be not set up. *Slawson v. Grand Street Railroad Company*, 649.
2. The invention described in reissued letters-patent No. 4240, granted to John B. Slawson, Jan. 24, 1871, is not patentable, as it is confined to putting in the ordinary fare-box used on a street car an additional pane of glass opposite to that next the driver, so that the passenger can see the interior of the box. The letters are therefore void. *Id.*
3. Letters-patent No. 121,920, granted to Elijah C. Middleton, Dec. 12, 1871, are void. The fare-box, the head-light of the car, and the reflector are the elements of the contrivance described in the specification and claim for lighting the interior of the box at night, and they are old. What is covered by the letters is not patentable, as it is simply making in the top of the box an aperture through which the rays of the head-lamp are turned by means of a reflector. *Id.*
4. Letters-patent granted to Edwin L. Brady, Dec. 17, 1867, for an improved dredge-boat for excavating rivers, are invalid for want of novelty and invention. *Atlantic Works v. Brady*, 192.
5. The design of the patent laws is to reward those who make some substantial discovery or invention, which adds to our knowledge and makes a step in advance in the useful arts. It was never their object to grant a monopoly for every trifling device, every shadow of a shade of an idea, which would naturally and spontaneously occur to any skilled mechanic or operator in the ordinary progress of manufactures. *Id.*
6. Although letters-patent are not set up by way of defence in an answer, yet if the invention patented thereby is afterwards put into actual use, their date will be evidence of that of the invention on a question of priority between different parties. *Id.*
7. One person receiving from another a full and accurate description of a useful improvement cannot appropriate it to himself; and letters-patent obtained by him therefor are void. *Id.*
8. Whether claim 3 of letters-patent No. 67,046, granted to Joseph L. Hall, July 23, 1867, for an "improvement in connecting doors and casings of safes," — namely, "3. The conical or tapering arbors, 1,

LETTERS-PATENT (*continued*).

in combination with two or more plates of metal, in the doors and casings of safes and other secure receptacles, the arbors being secured in place in the plates by keys, 2, or in other substantial manner," — claims arbors which are tapped into two or more plates, or whether it excludes, as a part of it, screw-threads cut on the arbors, is immaterial in the present case, because, under the former view, the defendants are not shown to have used arbors with screw-threads on any part of the arbor within the plates, and, under the latter view, the claim is invalid. *Hall v. Macneale*, 90.

9. The whole invention is described in letters-patent No. 30,140, granted to Hall, Sept. 25, 1860, for an "improvement in locks," and a cored conical bolt with a screw-thread on it is shown in those letters. A solid conical bolt having existed, adding the screw-thread to it is not an invention. *Id.*
10. Solid conical bolts without screw-threads having been used in two safes made and sold by the inventor more than two years before his letters were applied for, the invention covered by claim 3 was in public use and on sale, with his consent and allowance, so as to make the claim invalid under sects. 7 and 15 of the act of July 4, 1836, c. 357, and sect. 7 of the act of March 3, 1839, c. 88. *Id.*
11. Where, within four months before their expiration, letters-patent, covering a single claim for a combination of several elements, are reissued and extended, with the same description as before, but containing in addition to the original claim one for a combination of some of the elements only, the reissue is invalid as to the new claim. *Gage v. Herring*, 640.
12. Letters-patent for a combination of several elements are not infringed by using less than all the elements. *Id.*
13. In letters-patent for an improvement in cooling and drying meal during its passage from the millstones to the bolts, the claim was for the arrangement and combination of a fan, producing a suction blast; the meal chest; a spout forming a communication between the fan and the meal chest; a dust room above, to catch the lighter part of the meal thrown upwards by the current of air; a rotating spirally-flanched shaft in the meal chest, conveying the meal to the elevator; a similar shaft in the dust room, conveying the meal dust to the elevator; and the elevator, taking the meal to the bolts. Within four months before the expiration of the letters, they were reissued and extended, with two claims, the one a repetition of the original claim, and the other for the combination of the fan, the communicating spout, the meal chest with the conveying shaft in it, and the elevator, but omitting the dust room with its conveying shaft. *Held*, that the reissue is valid for the old claim only; and is not infringed by the use of the fan, spout, meal chest with its conveying shaft, elevator, and dust room, without any conveying shaft in the dust room, or other mechanism performing the same function. *Id.*
14. Reissued letters-patent No. 6673, granted to Mrs. P. Duff, E. A. Kitzmiller, and R. P. Duff, Oct. 5, 1875, for an "improvement in

LETTERS-PATENT (*continued*).

- wash-boards," on the surrender of original letters-patent No. 111,585, granted to Westly Todd, as inventor, Feb. 7, 1871, are not infringed by a wash-board constructed in accordance with the description contained in letters-patent No. 171,568, granted to Aaron J. Hull, Dec. 28, 1875. *Duff v. Sterling Pump Company*, 636.
15. In view of prior inventions, the claims of the letters-patent granted to Todd must be limited to the form which he shows and describes, namely, projections bounded by crossing horizontal and vertical grooves. They do not cover diamond-shaped projections bounded by crossing diagonal grooves. *Id.*
 16. In the field of wash-boards made of sheet metal, with the surface broken into protuberances formed of the body of the metal so as to make a rasping surface, and to strengthen the metal by its shape, and to provide channels for the water to run off, Todd was not a pioneer. He merely devised a new form to accomplish those results; and his letters-patent do not cover a form which is a substantial departure from his. *Id.*
 17. Claims 1, 8, 9, 11, 12, 14, 16, and 19 of reissued letters-patent No. 2224, granted April 10, 1866, to Reuben Hoffheins, for an "improvement in harvesters," the original, No. 35,315, having been granted to him May 20, 1862; and claims 1, 2, 6, 7, and 9 of reissued letters-patent No. 2490, granted Feb. 19, 1867, to him, for an "improvement in harvesters," the original, No. 40,481, having been granted to him Nov. 3, 1863, and reissued in two divisions, one, No. 1888, Feb. 28, 1865, and the other, No. 2102, Nov. 7, 1865; and No. 2490 having been issued on the surrender of No. 2102, — considered; and the difference between the specifications and the drawings of No. 35,315 and those of No. 2224, and that between the raking apparatus and rake-support of No. 2224 and those of the defendants, pointed out. *Hoffheins v. Russell*, 132.
 18. There is no warrant in No. 35,315, for locating the rake-support, or any part of it, on the finger-beam, and as each of the above-named claims of No. 2224 has, as an element, either a rake, or a rake and reel, mounted on, or attached to, the cutting apparatus or the finger-beam, No. 35,315 could not lawfully be reissued with those claims. *Id.*
 19. The defendants devised a new arrangement of rake, which made it possible to mount a rake-support on the heel of the finger-beam, where the rake-support of No. 2224 could not be mounted. The difference between the yielding belt-tightener of No. 2224 and their arrangement for driving the raking apparatus pointed out, and the latter held not to be a mechanical equivalent for the former. *Id.*
 20. No. 40,481 negatives the idea of mounting the rake-post on the finger-beam, while an element in claim 1 of No. 2490 is the mounting of the raking mechanism on the finger-beam. In No. 2490, a driver's seat mounted on the main frame, so as to enable the driver to ride on the machine while the rake is in operation, is an element in claims 1 and 9, while the driver's seat in No. 40,481 is not, and

LETTERS-PATENT (*continued*).

cannot be, in such a position that the driver can ride on the seat while the rake is in operation. *Id.*

21. The raking apparatus is an element in claims 2, 7, and 9 of No. 2490, and, in view of the differences between the two machines, in the construction of the raking mechanism and the arrangement and location of the rake-post, the rake of claims 2, 7, and 9 is to be construed to be such a rake, and one so arranged, on a rake-post so mounted, as is shown and described in the specification, and thus does not include the defendants' raking mechanism or rake-post. *Id.*
22. The driving device in claims 6 and 7 of No. 2490 held not to include the defendants' driving device, the former being an extensible tumbling shaft and the latter a chain belt with open links, and patentability or invention inhering only in the device, and not in its location. *Id.*
23. No cause of action is established against the defendants on either of the patents sued on. *Id.*

LICENSE TAX. See *Ferry*.

LIMITATIONS, STATUTE OF. See *County*; *Court of Claims*, 2, 3.

LOUISIANA.

1. By force of the act of the legislature of Louisiana, known as Act No. 3 of 1874, and the constitutional amendment adopted in that year, which provided that bonds should be issued under that act in exchange for valid outstanding bonds and warrants at the rate of sixty cents in the new bonds for one dollar of the old bonds and warrants, the State entered into a formal contract, the obligation of which it was forbidden by the Constitution of the United States to impair, and thereby stipulated with each holder of the new bonds so issued that an annual tax of five and one-half mills on the dollar of the assessed value of all the real and personal property in the State should be levied and collected, and the income therefrom applied solely to the payment of the bonds and coupons; that the tax levied by the act and confirmed by the Constitution should be a continuing annual tax until the bonds, principal and interest, were paid in full; that the appropriation of the revenue derived therefrom should be a continuing annual appropriation; and that no further authority than that contained in the act should be required to enable the taxing officers to levy and collect the tax, or the disbursing officers to pay out the money as collected in discharge of the coupons and bonds. *Louisiana v. Jumel*, 711.
2. After the said act of 1874 was passed, and the constitutional amendment sanctioning it was adopted, sundry parties, citizens of another State, exchanged their old bonds for new coupon bonds executed pursuant to the requirements of that act, and demanded of the proper State officers payment of the coupons which fell due Jan. 1, 1880, and the application thereto of the funds collected under the levy imposed by the act. Payment was refused solely on the ground that it was forbidden by the third article of the State Debt Ord-

LOUISIANA (*continued*).

nance of the new Constitution adopted July 23, 1879, *ante*, p. 715; and the treasurer claimed to hold the funds only for the purposes for which they were appropriated by the terms of that Constitution. The parties then brought in the State court of Louisiana a suit for a *mandamus* against the auditor and treasurer of state and the other members of the board of liquidation, requiring them to apply the funds in the treasury derived from the taxes levied or to be levied to the retirement of the bonds, and to execute the said act according to its intent and purpose. They also brought in the Circuit Court against the same defendants a suit praying for an injunction forbidding them to recognize as valid said ordinance, and to oppose the full execution of said act and the constitutional amendment. The suit for *mandamus* was removed to the Circuit Court. *Held*, 1. That the ordinance forbade the payment of the interest due January, 1880, and withdrew from the officers of the State the means of carrying her contract into effect. 2. That the execution of the contract cannot be enforced, nor the relief sought be awarded, in a suit to which she is not a party, but which is brought against officers, who are merely obeying the positive orders of the supreme political power of the State. 3. That at the time the bonds were issued or since no statute or judicial decision authorized a suit against Louisiana in her own courts, nor can she be sued in the courts of the United States by a citizen of another State. 4. That the money in her treasury is her property, held by her officers, not in trust for her creditors nor as their agents, but as her servants, and that the courts cannot control them in the administration of her finances, and thus oust the jurisdiction of the political power of the State. *Id.*

MAIL. See *Customs Duties*, 1, 2.

MANDAMUS. See *Attorney; Virginia*, 2, 3.

MARITIME LAW. See *Admiralty: Prize; Wharves and Wharfage*.

1. The master of a vessel can neither sell nor hypothecate the cargo, except in case of urgent necessity; and he can only lawfully do what is directly or indirectly for its benefit, considering the situation in which it has been placed by the accidents of the voyage. *The "Julia Blake,"* 418.
2. The necessity under which he acts is a question of fact, to be determined in each case by its circumstances; and upon his hypothecation of the cargo under his implied authority the lenders are chargeable with notice of the facts on which he appears to rely as his justification, and they must make inquiries and judge for themselves and at their own risk whether the owner, if present, would do or ought to do what, in his absence, the master is undertaking to do for him. Before there can be a recovery against the owner, it must be shown that the circumstances were such as to make it apparently proper for the master to do what he has done. To this extent the burden of proof is clearly on the lenders. *Id.*

MARITIME LAW (*continued*).

3. Where it appears that from the port where the vessel entered in distress the cargo could be forwarded by another vessel, and that it was for the interest of the shipper that it should be so forwarded, instead of being hypothecated to pay for the repairs of the vessel, and that they could not have been effected without an expense to him of very much more than it would cost to reclaim his property, pay all lawful charges on it, and forward it by another vessel, — *Held*, that the master had no authority to pledge the cargo without the consent of the shipper or the consignee. *Id.*
4. Although the bottomry bond cannot be enforced against the cargo, the latter will not be held in that suit for any charges which the vessel may have thereon, where a claim for them is not made in the libel. *Id.*

MARRIAGE. See *Jurisdiction*, 2.

MARYLAND. See *Inspection Laws*.

MASTER AND SERVANT. See *Railroad*, 1.

MEMPHIS AND CHARLESTON RAILROAD COMPANY. See *Causes, Removal of*, 3.

MINERAL LANDS. See *Patent for Land*, 2, 3.

MISSIONARY STATION. See *Oregon*, 1, 2.

MISSOURI. See *Constitutional Law*, 5.

1. By a statute of Missouri, stockholders of a corporation at its dissolution are liable for its debts; but it is provided that no person holding stock as executor, administrator, guardian, or trustee, and no person holding stock as collateral security, shall be personally subject to such liability, but the persons pledging such stock shall be considered as holding the same, and liable; and the estates and funds in the hands of executors, &c., shall be liable. *Held*, 1. That persons to whom a corporation pledges its stock as collateral security are within the exemption of the statute. 2. That certificates of the stock absolute on their face, issued in trust or as collateral security to a creditor, may be shown to be so held by evidence *in pais*. 3. That the person holding such stock in trust, or as collateral security, is not, by his voting thereon, estopped from showing that it belongs to the company, and that he holds it as collateral security. *Burgess v. Seligman*, 20.
2. The Supreme Court of Missouri, after the Circuit Court had decided this case, made a contrary decision against the same stockholders, at the suit of another plaintiff, holding that the clause of exemption in the statute does not extend to persons receiving from the corporation itself stock as collateral security. *Held*, that this court is not bound to follow the decision. *Id.*

MORTGAGE. See *Appeal Bond*; *County*; *Equity*, 4; *Jurisdiction*, 12; *Receiver*; *Trust Deed*.

MUNICIPAL BONDS.

1. The township of Montclair in the county of Essex, New Jersey, had authority to issue bonds to be exchanged for bonds of the Montclair Railway Company. *Montclair v. Ramsdell*, 147.
2. The Constitution of New Jersey provides: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." *Held*, 1. That this provision does not require the title of an act to set forth a detailed statement, or an index or abstract, of its contents; nor does it prevent uniting in the same act numerous provisions having one general object fairly indicated by its title. 2. That the powers, however varied and extended, which a township may exercise, constitute but one object, which is fairly expressed in a title showing nothing more than the legislative purpose to establish such township. *Id.*
3. The conflict between the Constitution and a statute must be palpable, to justify the judiciary in disregarding the latter upon the sole ground that it embraces more than one object, or that, if there be but one, it is not sufficiently expressed in the title. *Id.*
4. The holder of the bonds is presumed to have acquired them in good faith and for value. But if, in a suit upon them, the defence be such as to require him to show that value was paid, it is not, in every case, essential to prove that *he* paid it; for his title will be sustained if any previous holder gave value. *Id.*
5. The General Assembly of Illinois enacted, March 27, 1869, a statute as follows: "The acts of the city council of the city of Quincy, from June 2, 1868, to August 28, 1868, in ordering an election on the proposition to subscribe \$100,000 to the capital stock of the Mississippi and Missouri River Air Line Railroad Company, and the subscription of said stock, and all other acts of said council in connection therewith, are hereby legalized and confirmed." In conformity with the vote of the citizens of Quincy cast at such an election, the council had, by an ordinance of Aug. 7, 1868, subscribed for that amount of said capital stock; but neither the election nor the subscription was authorized by law. After the statute took effect, negotiable coupon bonds were, by virtue of it and the ordinance, issued in the sum of \$100,000 to the company, by the city, and the latter received therefore an equal amount of said stock. In a suit by A., a *bona fide* holder of coupons detached from the bonds, — *Held*, that they are valid obligations of the city. *Quincy v. Cooke*, 549.
6. The act of the General Assembly of Illinois, approved Feb. 24, 1869, amendatory of an act entitled "An Act to incorporate the Illinois Southeastern Railway Company," approved Feb. 25, 1867, removed the limitation of \$30,000 imposed upon the amount which, by the latter act, "any town in any county under township organization is authorized and empowered to donate to said company." *Pana v. Bowler*, 529.

MUNICIPAL BONDS (*continued*).

7. The court reaffirms the ruling in *Harter v. Kernochan*, 103 U. S. 562, that the duly signed and countersigned township bonds, payable to the company or bearer, which recite that they are duly issued in compliance with the vote of the legal voters of the township, cast at an election held by virtue of the above-mentioned acts of Feb. 25, 1867, and Feb. 24, 1869, are valid in the hands of a *bona fide* holder. *Id.*
8. An irregularity in conducting the election will not defeat a recovery on the bonds, or on the coupons thereto attached, nor overcome the presumption that the plaintiff, in the usual course of business, became at their date the holder of them for value. *Id.*
9. A decree *in personam*, rendered by a court of the State of Illinois, declaring the bonds to be void, does not bind a non-resident holder of them who was not named as a party to the suit and did not appear therein, and who had no notice of the pendency thereof other than by a publication addressed to the "unknown holders and owners of bonds and coupons issued by the town of Pana." *Id.*
10. Coupons after their maturity bear interest at the rate prescribed by the law of the place where they are payable. *Id.*
11. Negotiable coupon-bonds were, without authority of law, issued in October, 1872, by a city in Nebraska, for the purpose of raising money wherewith to construct a high-school building within her limits. They were sold, and the proceeds applied accordingly. The legislature, by an act approved Feb. 18, 1873, *ante*, p. 571, legalized the proceedings of the city in the premises. The Constitution of the State then in force declares that "the legislature shall pass no special act conferring corporate powers," and that "no bill shall contain more than one subject, which shall be clearly expressed in its title." A purchaser of the bonds for full value, without notice of any informality in their issue, to whom the city paid the interest thereon for four years, brought suit to recover the amount of the coupons then due and unpaid. *Held*, 1. That as by force of the transaction the city was bound to refund the moneys he paid it in consideration of its void bonds, and as the act, by confirming them, merely recognizes the existence of that obligation, and provides a medium for enforcing it according to the original intention of the parties, no new corporate powers were thereby conferred. 2. That the title of the act is a full and apt description of its contents. *Real v. Plattsmouth*, 568.
12. Under the second section of the act of Nebraska approved Feb. 25, 1875, *ante*, p. 573, the bonds are valid obligations, and neither it nor the said act of Feb. 18, 1873, is in conflict with the Constitution of the State which was then in force. *Id.*

MUNICIPAL CORPORATION. See *Equity*, 4; *Evidence*; *Ferry*, 1, 3; *Municipal Bonds*; *Navigable Waters*.

NATIONAL BANKS. See *Criminal Law ; United States, Claims by and against.*

1. At the time of borrowing money from a national bank, A. delivered to it, as collateral security for the debt thereby created, the certificate of his shares of its capital stock. On his failure to pay at the stipulated time, the bank sold the stock at its full market value, and applied the entire proceeds to his credit. On the ground that sect. 5201 of the Revised Statutes prohibited a loan by the bank "on the security of the shares of its own capital stock," A. brought an action for the proceeds. *Held*, that he is not entitled to recover. *National Bank of Xenia v. Stewart*, 676.
2. Where the holder of shares of stock in a national bank, who is possessed of information showing that there is good ground to apprehend the failure of the bank, colludes with an irresponsible person, with the design of substituting the latter in his place, and thus escaping the individual liability imposed by the provisions of sect. 12 of the act of June 3, 1864, c. 106, and transfers his shares to such person, the transaction is a fraud on the creditors of the bank, and the liability of the transferrer to them is not thereby affected. *Bowden v. Johnson*, 251.
3. A bill in equity filed by the receiver of the bank against the transferrer and transferee to enforce such liability will lie where it is for discovery as well as relief, the transfer being good between the parties, and only voidable at the election of the complainant. *Id.*
4. A letter of the Comptroller of the Currency, addressed to the receiver, directing him to bring suit to enforce the personal liability of every person owning stock at the time the bank suspended, is sufficient evidence that the decision of the Comptroller touching such personal liability preceded the institution of the suit. The liability bears interest from the date of the letter. *Id.*
5. The decree below, dismissing the bill, was entered after a new receiver had been appointed. An appeal to this court was taken in the name of the old receiver, as the complainant, the new receiver becoming a surety in the appeal bond. In this court the new receiver was, on his motion, substituted as the complainant and appellant, without prejudice to the proceedings already had; and the motion of the appellees to dismiss the appeal was denied. *Id.*

NAVIGABLE WATERS. See *Ferry ; Wharves and Wharfage.*

1. The Chicago River and its branches, although lying within the limits of the State of Illinois, are navigable waters of the United States over which Congress, in the exercise of its power under the commerce clause of the Constitution, may exercise control to the extent necessary to protect, preserve, and improve their free navigation; but until that body acts, the State has plenary authority over bridges across them, and may vest in Chicago jurisdiction over the construction, repair, and use of those bridges within the city. *Escanaba Company v. Chicago*, 678.

NAVIGABLE WATERS (*continued*).

2. There is nothing in the ordinance of July 13, 1787, or in the subsequent legislation of Congress, that precludes the State from exercising that authority. *Id.*

NEBRASKA. See *County*; *Municipal Bonds*, 11, 12.

NEGLIGENCE. See *Railroad*, 1.

NEGROES. See *Civil Rights*; *Constitutional Law*, 4.

NEW JERSEY. See *Municipal Bonds*, 1-4.

NEW YORK. See *Constitutional Law*, 1, 2.

NON-RESIDENTS. See *Municipal Bonds*, 9; *Tax and Taxation*.

NOTARY PUBLIC. See *Criminal Law*, 6.

NOTICE. See *Jurisdiction*, 13; *Maritime Law*, 2; *Municipal Bonds*, 9; *Trust Deed*, 1.

OFFICER OF THE ARMY.

The rank and pay of retired officers of the army are subject to the control of Congress. *Wood v. United States*, 414.

OFFICERS OF NATIONAL BANKS. See *Criminal Law*.

OFFICIAL BONDS. See *Appeal Bond*, 3; *Public Lands*, 2.

OREGON.

1. Under the act of Aug. 14, 1848, c. 177, entitled "An Act to establish the territorial government of Oregon," a religious society acquired no title to public lands by reason of its occupation of them as a missionary station among the Indian tribes, unless such occupation actually existed at that date. *Missionary Society v. Dalles*, 336.
2. Where, therefore, a religious society appropriated certain lands in the Territory of Oregon, erected improvements thereon and occupied them for such a missionary station, but its occupation ceased before that date, and a portion of them, after the town-site acts took effect, was, pursuant to their provisions, entered and paid for, and another portion was claimed by a party who had fully complied with the requirements of the act of Sept. 27, 1850, c. 76, commonly called the Donation Act, — *Held*, that the society to which by reason of such occupation a patent had been issued held the title to such portions in trust for the parties claiming respectively under the donation and the town-site acts. *Id.*
3. Prior to the said act of Sept. 27, 1850, no person could, by entry or pre-emption settlement, acquire as against the United States any right or title to public land in Oregon. *Stark v. Starrs*, 6 Wall. 402, cited upon this point and approved. *Id.*

PACIFIC RAILROAD ACTS. See *Patent for Land*, 2.

PATENT. See *Letters-patent*.

PATENT FOR LAND. See *Jurisdiction*, 1; *Oregon*, 2; *Pre-emption*; *Public Lands*.

1. Where a bill was filed in the Circuit Court by the District Attorney in the name of the United States, to vacate a patent for lands, but no objection touching his authority to bring the suit was made, and a duly certified copy of a letter whereby he was directed by the Attorney-General to institute the requisite proceedings was filed here, — *Held*, that the decree for the complainant will not be reversed on such an objection raised here for the first time. *McLaughlin v. United States*, 526.
2. The patent in question, bearing date May 31, 1870, and issued to a railroad company, in professed compliance with the terms and conditions of the grant made by the acts commonly known as the Pacific Railroad Acts, covers lands which, the bill alleges, contain valuable quicksilver and cinnabar deposits, and were known to be "mineral lands" when the grant was made and the patent issued. This court, being satisfied that the material allegations of the bill are true, that as early as 1863 and since cinnabar was mined upon the lands, and that at the time of the application for a patent their character was known to the defendant, the agent of the company, who now claims them under it, affirms the decree cancelling the patent and declaring his title to be null and void. *Id.*
3. *Quære*, What extent of mineral, other than coal and iron, found in lands will exclude them from the said grant; and can the United States maintain a suit to set aside a patent, if, before it was issued, the lands therein mentioned were not known to be mineral; and, if so, what are the rights of innocent purchasers from the patentee. *Id.*

PENSION.

By a special act, B. was allowed a pension of fifty dollars per month, which was paid to him until he claimed and received, under a subsequent general act, seventy-two dollars per month. *Held*, that he is not entitled to take under both acts. *United States v. Teller*, 64.

PERJURY. See *Criminal Law*, 6.

PERPETUITY. See *Will*, 9.

PLEADING. See *Admiralty*, 1; *Court of Claims*, 3.

POLICE POWER. See *Ferry*, 2.

POOR-FARM. See *County*.

POST-OFFICE. See *Customs Duties*, 1, 2.

PRACTICE. See *Admiralty*, 1; *Appeal*; *Attorney*; *Equity Pleading and Practice*; *Evidence*; *Jurisdiction*; *Jury*; *Letters-patent*, 1, 6; *National Banks*, 5; *Witness*, 2.

PRE-EMPTION. See *Oregon*; *Patent for Land*; *Public Lands*.

1. Where the Land Department rejected the claim of a party to pre-empt a tract of public land, it appearing from the evidence sub-

PRE-EMPTION (*continued*).

mitted that he had previously exercised the "pre-emptive right," — *Held*, that the finding of that fact by the department is conclusive. *Baldwin v. Stark*, 463.

2. A person is not entitled, under existing statutes, to more than one such "pre-emptive right," nor, after filing a declaratory statement for one tract, can he file such a statement for another tract. *Id.*

PRIORITY OF PAYMENT. See *Trust Deed*, 1; *United States, Claims by and against*.

PRIZE.

A final decree of acquittal and restitution to the only claimant in a prize cause determines nothing as to the title in the property, beyond the question of prize or no prize; and another person, who actually conducts the defence in the prize cause in behalf and by consent of the claimant, without disclosing his own title under a previous bill of sale from the claimant, is not estopped to contest the claimant's title in a subsequent suit brought by creditors attaching the property or its proceeds as belonging to the claimant. *Cushing v. Laird*, 69.

PUBLIC LANDS. See *Oregon; Patent for Land; Pre-emption; Swamp and Overflowed Lands*.

1. The local land-officers are not required to meet and jointly consider the proof of settlement and cultivation offered by claimants under the pre-emption laws. *Potter v. United States*, 126.
2. In his accounts with the government, a receiver of public moneys in a land district charged himself with money which he, or, during his absence, his authorized agents, had received as the purchase price of public lands entered pursuant to the pre-emption laws. The United States, on his failure to pay over the money, brought suit on his official bond. *Held*, that neither he nor his sureties can defeat a recovery by setting up irregularities in the proceedings by which the entry of the lands was allowed. *Id.*

PURCHASER IN GOOD FAITH. See *Municipal Bonds*, 4, 5, 7, 8, 11; *Patent for Land*, 3.

RAILROAD. See *Causes, Removal of*, 3; *Tax and Taxation*.

1. The same degree of care which a railroad company should take in providing and maintaining its machinery must be observed in selecting and retaining its employés, including telegraphic operators. Ordinary care on its part implies, as between it and its employés, not simply the degree of diligence which is customary among those intrusted with the management of railroad property, but such as, having respect to the exigencies of the particular service, ought reasonably to be observed. It is such care as, in view of the consequences that may result from negligence on the part of employés, is fairly commensurate with the perils or dangers likely to be encountered. *Wabash Railway Company v. McDaniels*, 451.
2. In the absence of a special contract, a railroad company, by receiving cattle for transportation over its own line and other lines therewith

RAILROAD (*continued*).

connected, is only bound to carry the cattle over its own line, and deliver them safely to the next connecting carrier. *Myrick v. Michigan Central Railroad Company*, 102.

3. A contract whereby the liability of the company is sought to be extended beyond such carriage and delivery will not be inferred from loose and doubtful expressions, but must be established by clear and satisfactory evidence. Taking a through fare on the receipt of the cattle does not establish such liability. *Id.*
4. The receipt of the company, *ante*, p. 103, does not of itself constitute such contract. The circumstances under which it was given should have been submitted to the jury, to determine whether in fact a through contract was made. *Id.*
5. In passing upon the rights of the parties, this court will not be controlled by the judicial decisions of the State where the contract of carriage was made. *Id.*
6. A railroad corporation, whose railroad extends across the State of Wisconsin from Lake Michigan to the Mississippi River, and which is authorized, by its charter, to make "such contracts with any other person or corporation whatsoever as the management of its railroad and the convenience and interest of the corporation and the conduct of its affairs may in the judgment of its directors require;" and, by general laws, to make such contracts with any railroad company, whose road terminates on the eastern shore of Lake Michigan, "as will enable them to run their roads in connection with each other in such manner as they shall deem most beneficial to their interest," and "to build, construct, and run, as part of its corporate property, such number of steamboats or vessels as they may deem necessary to facilitate the business operations of such company or companies;" and also "to accept from any other State or Territory of the United States, and use, any powers or privileges applicable to the carrying of persons and property by railway or steamboat in said State or Territory;" has the power, for the purpose of carrying passengers and freight in connection with its own railroad and business, to enter into an agreement with the proprietors of steamboats running, by way of the Great Lakes, between its eastern terminus and Buffalo in the State of New York, by which it guarantees that the gross earnings of each boat for two years shall amount to a certain sum. *Green Bay and Minnesota Railroad Company v. Union Steamboat Company*, 98.

RAILROAD COMPANIES, SUBSCRIPTIONS TO THE CAPITAL STOCK OF. See *Municipal Bonds*.RAILROAD MORTGAGE. See *Receiver*.REBELLION. See *Court of Claims*, 2; *Jurisdiction*, 13, 14.RECEIPT. See *Railroad*, 4.RECEIVER. See *Equity Pleading and Practice*; *National Banks*, 3-5.

1. Where the complainant prays for the appointment of a receiver of

RECEIVER (*continued*).

mortgaged railroad property, pending proceedings for foreclosure, the court, in the exercise of a sound discretion, may, as a condition of granting the prayer, impose such terms touching the application of the income arising during the receivership to the payment of outstanding debts for labor, supplies, equipment, or permanent improvement of the property, as under the circumstances of the case appear reasonable. *Fosdick v. Schall*, 99 U. S. 235, and *Miltenberger v. Logansport Railway Company*, 106 id. 286, cited and approved. *Union Trust Company v. Souther*, 591.

2. An assignment of such claims as are mentioned in *Union Trust Company v. Souther*, p. 591, passes the right of the original holder to payment out of the fund in the hands of the receiver. *Union Trust Company v. Walker*, 596.

RECOGNIZANCE. See *Causes, Removal of*, 2.

REGULATION OF COMMERCE. See *Constitutional Law*, 1-4; *Ferry*, 4; *Inspection Laws*; *Navigable Waters*; *Wharves and Wharfage*.

REISSUED LETTERS-PATENT. See *Letters-patent*.

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

RETIRED OFFICERS OF THE ARMY. See *Officer of the Army*.

REVENUE LAWS. See *Causes, Removal of*, 1, 2; *Ferry*, 2.

RIVER. See *Navigable Waters*.

SALE. See *Contract*, 3.

SHIPS AND SHIPPING. See *Admiralty*; *Maritime Law*; *Wharves and Wharfage*.

SLAVES. See *Constitutional Law*, 4.

STARE DECISIS. See *Jurisdiction*, 7-11.

STATE AUTHORITY. See *Constitutional Law*; *Ferry*; *Inspection Laws*; *Louisiana*; *Navigable Waters*; *Swamp and Overflowed Lands*; *Wharves and Wharfage*.

STATE BONDS. See *Louisiana*; *Virginia*.

STATE COURTS. See *Bankruptcy*; *Causes, Removal of*; *Jurisdiction*, 1, 2, 5-11; *Louisiana*, 2; *Railroad*, 5.

STATE LAWS. See *Jurisdiction*, 7-11.

STATUTES AND CONSTITUTIONS, CONSTRUCTION OF. See *Corporation*, 2, 3; *Ferry*, 1; *Inspection Laws*, 1, 4; *Jurisdiction*, 7-11; *Louisiana*; *Missouri*; *Municipal Bonds*, 2, 3, 5, 6, 11, 12; *Pension*; *Railroad*, 6; *Virginia*; *Will*, 2, 6, 10.

STATUTES OF THE UNITED STATES.

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

Ordinance of July 13, 1787. See *Navigable Waters*.

STATUTES OF THE UNITED STATES (*continued*).

1799. March 2. c. 23. See *Customs Duties*, 8.
 1836. July 4. c. 357, sects. 7, 15. See *Letters-patent*, 10.
 1839. March 3. c. 88, sect. 7. See *Letters-patent*, 10.
 1846. July 30. c. 74. See *Customs Duties*, 6, 7.
 1848. Aug. 14. c. 177. See *Oregon*, 1.
 1850. Sept. 27. c. 76. See *Oregon*, 2, 3.
 1850. Sept. 28. c. 84. See *Swamp and Overflowed Lands*.
 1856. May 15. c. 28. See *Swamp and Overflowed Lands*, 3.
 1857. March 3. c. 98. See *Customs Duties*, 6.
 1861. Aug. 5. c. 45, sect. 4. See *Court of Claims*, 1.
 1864. June 3. c. 106, sect. 12. See *National Banks*, 2.
 1867. March 2. c. 188, sect. 1. See *Customs, Surveyor of*.
 1874. June 22. c. 391. See *Customs, Surveyor of*.
 1875. Feb. 16. c. 77. See *Admiralty*, 1; *Appeal*, 4.
 1881. Feb. 26. c. 82. See *Criminal Law*, 6.
 Rev. Stat., sect. 639. See *Jurisdiction*, 5.
 " " " 643. See *Causes, Removal of*, 1.
 " " " 989. See *Customs, Collector of*, 2.
 " " " 2501. See *Customs Duties*, 5.
 " " " 2928. See *Customs Duties*, 4.
 " " " 3466. See *United States, Claims by and against*.
 " " " 5106. See *Bankruptcy*.
 " " " 5201. See *Criminal Law*, 5; *National Banks*, 1.
 " " " 5209. See *Criminal Law*, 1, 4, 5.
 " " " 5211. See *Criminal Law*, 6.

STOCKHOLDERS. See *Corporation*; *Missouri*; *National Banks*.

SUBSCRIPTIONS TO STOCK. See *Municipal Bonds*.

SURVEYOR OF CUSTOMS. See *Customs, Surveyor of*.

SWAMP AND OVERFLOWED LANDS.

1. The swamp and overflowed lands granted by the act of Sept. 28, 1850, c. 84, are subject to the disposal of the States wherein they respectively lie, and no party other than the United States can question such disposal or enforce the conditions of the grant. *Mills County v. Railroad Companies*, 557.
2. The proviso to the second section of the act, that the proceeds of the lands shall be applied exclusively, as far as necessary, to the purpose of reclaiming the same by levees and drains, imposed an obligation which rests upon the good faith of the States. No trust was thereby attached to the lands, and the title to them, which is derived from either of the States, is not affected by the manner in which she performed that obligation. *Id.*
3. The State of Iowa having granted its swamp and overflowed lands to the counties respectively in which they are situate, Mills County, insisting that certain lands were of this character, made claim thereto. The Burlington and Missouri River Railroad Company claimed them under the act of May 15, 1856, c. 28. These conflict-

SWAMP AND OVERFLOWED LANDS (*continued*).

ing claims gave rise to a suit between the parties, which was decided by the State courts in favor of the county. A writ of error was thereupon brought; and, whilst it was pending here, a compromise was entered into by which the county was to make certain conveyances to the company, and to pay it the sum of \$10,000 for lands previously disposed of. Conveyances were executed accordingly. Afterwards, the county instituted suit to have the compromise declared void, and the company sued for the \$10,000. The State courts having sustained the compromise, and decided against the county in both suits, writs of error were brought here. *Held*, 1. That the county cannot set up that the lands were disposed of contrary to the provisions of the said act of 1850. 2. That although, after the compromise was made, the writ then pending was submitted to this court, and decided in favor of the county, yet that this did not abrogate the compromise, as the parties continued to act under it; and that the decision of the State court in the present cases is not repugnant to, nor in disaffirmance of, the opinion and judgment of this court. *Id.*

TAX AND TAXATION. See *Appeal Bond*, 1; *County*; *Ferry*; *Louisiana*; *Virginia*.

The court (p. 1) denies an application for rehearing in *United States v. Erie Railway Company*, decided at the present term, 106 U. S. 327.

TELEGRAPH EMPLOYÉS. See *Railroad*, 1.

TOBACCO. See *Inspection Laws*.

TONNAGE. See *Ferry*, 4; *Wharves and Wharfage*.

TOWNSHIP BONDS. See *Municipal Bonds*.

TOWN-SITE ACTS. See *Oregon*, 2.

TREASURY DEPARTMENT. See *Customs, Surveyor of*.

TRUST AND TRUSTEE. See *Charitable Gifts and Devises: Corporation*, 3; *County*; *Criminal Law*, 2-4; *Equity*, 2; *Louisiana*, 2; *Oregon*, 2; *Swamp and Overflowed Lands*, 2; *Trust Deed*; *Will*, 1, 6, 10-12.

TRUST DEED.

1. By a trust deed, duly recorded, land was conveyed to the trustees in fee, and they were authorized to release it to the grantor upon payment of the negotiable promissory note thereby secured. Before that note was paid or payable, and after it had been negotiated to an indorsee in good faith for full value, a deed of release, reciting that it had been paid, was made to the grantor by the trustees and by the payee of the note, and recorded; and the grantor executed and recorded a like trust deed to secure the payment of a new note for money lent to him by another person, who had no actual notice that the first note had been negotiated and was unpaid, and who, before

TRUST DEED (*continued*).

he would make the loan, required and was furnished with a conveyancer's abstract of title, showing that the three deeds were recorded and the land free from incumbrance. *Held*, that the legal title was in the trustee, under the second trust deed, and that the note thereby secured was entitled to priority of payment out of the land. *Williams v. Jackson*, 478.

2. Upon a bill in equity by the holder of a debt secured by deed of trust, to set aside a release negligently executed by the trustee to the grantor, the complainant cannot have a decree for the payment of his debt by the trustee personally. *Id.*

UNITED STATES, CLAIMS BY AND AGAINST. See *Contract*, 2; *Court of Claims*; *Pension*.

Section 3466 of the Revised Statutes, *ante*, p. 447, which, in certain cases therein mentioned, gives to the United States priority of payment of debts due to it, does not apply to its demands against an insolvent national bank. *Cook County National Bank v. United States*, 445.

UNITED STATES, COURTS OF THE. See *Court of Claims*; *District of Columbia*, 1; *Equity*, 3; *Jurisdiction*; *Louisiana*, 2.UNITED STATES MARSHALS. See *Causes*, *Removal of*, 1, 2.VERDICT. See *Admiralty*, 1; *Jurisdiction*, 3; *Jury*.

VIRGINIA.

1. By issuing, pursuant to her "funding act" of March 30, 1871, her bonds with interest coupons thereto attached, the State of Virginia entered into a valid contract with every holder of the coupons, whereby she bound herself to receive them at and after their maturity for all taxes and demands due the State. So much of any enactment as forbids the receipt of the coupons for such taxes and demands impairs the obligation of the contract, and is void. *Antoni v. Greenhow*, 769.
2. When the coupons were issued, the holder of them could, by the then existing law of the State, as interpreted by her court of last resort, enforce his right under the contract by suing out of that court a *mandamus* compelling the receipt of them by the proper tax-collector, who had refused to accept them when duly offered in payment of State taxes; and the plaintiff, if on the return to the writ judgment was rendered in his favor, could furthermore recover his costs with such damages as a jury might assess, and have forthwith a peremptory writ. By sect. 4 of an act passed Jan. 14, 1882, *ante*, p. 771, when in such a case a *mandamus* is prayed for against the collector, the law imposes upon him as a duty to answer that he is ready to receive the offered coupon as soon as it shall be ascertained to be genuine and legally receivable for taxes. The taxpayer is then required to pay his taxes in lawful money, and file his coupon in the Court of Appeals, by which it is forwarded to the county court of the county, or to the hustings court of the city, where the taxes are payable,

VIRGINIA (*continued*).

with directions to frame an issue as to whether it is genuine and legally receivable for taxes. Each party is entitled to exceptions and an appeal. If the issue is found for the petitioner, a *mandamus* is issued, and the money he paid is to be refunded to him out of the State treasury, in preference to all other claims. *Held*, that said sect. 4 furnishes an adequate and efficacious remedy substantially equivalent to that which existed at the date when the coupons were issued, whereby the rights of the holder of them, in case the collector refuses to receive them for taxes, can be maintained and enforced, and that the obligation of his contract with the State is not thereby impaired. *Id.*

3. The court does not decide whether the act of the legislature, *ante*, p. 779, approved April 7, 1882, after this suit was brought, repeals said sect. 4 of the act of Jan. 14, 1882, but holds that, if such is its effect, the remedy of the taxpayer is not rendered less efficient, inasmuch as the remaining sections furnish a proceeding which is an exact equivalent of that by *mandamus*, the real matter submitted for determination being whether his coupon ought to have been received in payment of his taxes; and if the issue is found for him, the provision is, without further legislative action, sufficient to authorize and require that the money which he deposited for that purpose shall be refunded to him from the State treasury. *Id.*

WATERS. See *Ferry*; *Navigable Waters*; *Wharves and Wharfage*.

WHARVES AND WHARFAGE.

1. The city of Parkersburg built within its limits a wharf on the bank of the Ohio River, and prescribed by ordinance certain rates of wharfage on vessels "that may discharge or receive freight, or land on or anchor at or in front of any public landing or wharf belonging to the city, for the purpose of discharging or receiving freight." A transportation company, owning duly enrolled and licensed steamers, which ply between Pittsburgh and Cincinnati and touch at the intermediate points, complained that the wharfage was extortionate, and was merely a pretext for levying a duty of tonnage. The Company thereupon filed a bill in the Circuit Court, praying that the prosecution of a suit brought by the city in the State court to collect the wharfage be enjoined, and that the ordinance be declared void, and for other relief. *Held*, that the character of the charges must be determined by the ordinance itself; and as it on its face imposed them for the use of the wharf only, and not for entering the port or lying at anchor in the river, the court, though it might deem them unreasonable and exorbitant, will not entertain an averment that they were intended as a duty of tonnage, nor inquire into the secret purpose of the body imposing them. *Transportation Company v. Parkersburg*, 691.
2. Wharfage is the compensation which the owner of a wharf demands for the use thereof; a duty of tonnage is a charge for the privilege

WHARVES AND WHARFAGE (*continued*).

- of entering, or loading at or lying in, a port or harbor, and can be laid only by the United States. *Id.*
3. The question as to which of these classes, if either, a charge against a vessel or its owner belongs, is one, not of intent, but of fact and law: of fact, whether the charge is imposed for the use of a wharf, or for the privilege of entering a port; of law, whether it is wharfage or a duty of tonnage, as the fact is shown to exist. *Id.*
 4. Although wharves are related to commerce and navigation as aids and conveniences, yet being local in their nature, and requiring special regulations at particular places, the jurisdiction and control thereof, in the absence of congressional legislation on the subject, properly belong to the States in which they are situated. *Id.*
 5. A suit for relief against exorbitant wharfage cannot, as one arising under the Constitution or the laws of the United States, be maintained in the Circuit Court, even though it be alleged that the wharfage was intended as a duty of tonnage; the alleged intent not being traversable. *Id.*

WILL. See *Gift*, 2.

1. In a will containing many legacies, bequests, and devises, each present and immediate in form, to individuals and to charitable institutions, a clause expressing a wish and direction that none of the legacies, bequests, or devises "shall be executed or take effect until" a certain memorial hall (in fact nearly finished at the time of the execution of the will and of the testator's death) on land previously conveyed by the testator in trust, "shall be completed and entirely paid for out of my estate," does not suspend the vesting, but only the payment and carrying out of the various legacies, bequests, and devises. *Jones v. Habersham*, 174.
2. Section 2419 of the Code of Georgia of 1873 does not invalidate a charitable devise contained in a will executed within ninety days before the testator's death, unless he leaves a wife or child or descendants of a child. *Id.*
3. The validity of a charitable devise as against the heir at law depends upon the law of the State where the land lies. *Id.*
4. The validity of a charitable bequest as against the next of kin depends upon the law of the State of the testator's domicile. *Id.*
5. The law of charities is fully adopted in Georgia, as far as is compatible with a free government where no royal prerogative is exercised. *Id.*
6. A parcel of land, with buildings thereon, was devised to the trustees of the Independent Presbyterian Church in Savannah, an incorporated religious society, "upon the following terms and conditions, and not otherwise:" 1st. That the trustees should appropriate annually out of the rents and profits the sum of \$1,000 "to one or more Presbyterian or Congregational Churches in the State of Georgia in such destitute and needy localities as the proper officers of said Independent Presbyterian Church may select, so as to promote the cause

WILL (*continued*).

- of religion among the poor and feeble churches of the State." 2d. That the trustees should not materially alter the pulpit or galleries of the present church edifice, or sell the lot on which the Sabbath-school room of the church stood. 3d. That the trustees should keep in order the burial place of the testator, which he devised to them for that purpose. *Held*, that under the Code of Georgia of 1873, sect. 3157, the charitable purposes named in the first and third conditions were good charitable uses, sufficiently defined; that the trustees were capable of taking the devise, and that its validity was not impaired by the conditions subsequent. *Id.*
7. A devise to a society incorporated "for the relief of distressed widows and the schooling and maintaining of poor children," of buildings and land, to "use and appropriate the rents and profits for the support of the school and charities of said institution, without said lot being at any time liable for the debts or contracts of said society," is a good charitable devise. *Id.*
 8. A devise to a society incorporated "for the relief of indigent widows and orphans in the city of Savannah," of buildings and land, "the rents and profits to be appropriated to the benevolent purposes of said society," is a good charitable devise. *Id.*
 9. The rule against perpetuities does not apply to charities; and if a devise is made to one charity in the first instance, and then over, upon a contingency which may not take place within the limit of that rule, to another charity, the limitation over to the second charity is good. *Id.*
 10. A devise to a historical society of a house containing a collection of books, documents, and works of art, in trust to keep and preserve the same, with the collection therein, and other books and works of art to be purchased by the officers of the society out of the income of a fund bequeathed by the deviser for the purpose, "as a public edifice for a library and academy of arts and sciences," and "to be open for the use of the public" on such terms and under such reasonable regulations as the society may prescribe, is a good charitable devise, and is not invalidated by a requirement to place and keep over the entrance a marble slab with the name of the testator engraved thereon; and if the society is incapable of executing the trust, a court of equity, in the exercise of its ordinary jurisdiction, and under sect. 3195 of the Code of Georgia of 1873, may appoint a new trustee. *Id.*
 11. A devise and bequest in trust for the building, endowment, and maintenance of "a hospital for females within the city of Savannah, on a permanent basis, into which sick and indigent females are to be admitted and cared for in such manner and on such terms as may be defined and prescribed by" certain directresses named and their associates, who are to obtain an act of incorporation for the purpose, is a valid charitable devise and bequest, although no time is limited for the erection of the building or the obtaining of the charter. *Id.*

WILL (*continued*).

12. A bequest "to the first Christian church erected or to be erected in the village of Telfairville in Burke County, or to such persons as may become trustees of the same," is a good charitable bequest. *Id.*

WITNESS.

1. A person affected with insanity is admissible as a witness, if it appears to the court, upon examining him and competent witnesses, that he has sufficient understanding to apprehend the obligation of an oath, and to be capable of giving a correct account of the matters which he has seen or heard in reference to the questions at issue. *District of Columbia v. Armes*, 519.
2. A witness was, on cross-examination, asked if he had not stated to different parties that he wished the plaintiffs to recover, as he would then get his pay. An objection to the question was made, and the defendant's counsel then declared that he did not propose to impeach the witness. *Held*, that the objection was properly sustained. *Oil Company v. Van Etten*, 325.

WORDS.

- "Cotton." See *Barber v. Schell*, 617.
- "Exports." See *People v. Compagnie Générale Transatlantique*, 59.
- "Final judgment." See *Schell v. Cochran*, 625.
- "Imports." See *People v. Compagnie Générale Transatlantique*, 59.
- "Inspection laws." See *People v. Compagnie Générale Transatlantique*, 59.
- "Migration." See *People v. Compagnie Générale Transatlantique*, 59.

WRECK. See *Customs Duties*, 4.

WRIT OF ERROR. See *Bankruptcy*; *District of Columbia*, 2; *Jurisdiction*, 4.

WRITTEN INSTRUMENTS. See *Contract*; *Will*.







