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ACCRETION.

Accretion by alluvion upon a street reduced by a lake boundary to less than half its regular width, belongs to the original proprietor of the lot, in whom, subject to the public easement, the fee of the half next the lake remains. *Banks* v. *Ogden*, 57.

ACTION.

RIGHT TO COMMENCE ASSUMPSIT.

Where the purchaser of a claim for a patent agrees that, as soon as the patent is issued, he will give his notes, payable at a future date, the fact that no patent has issued until *after* the day when the last note, if given, would have been payable, is no defence to *assumpsit* for not having given the notes; the patent having finally issued in form. *Read* v. *Bowman*, 591.

ADMIRALTY.

I. JURISDICTION.

1. Property captured *on land* by the officers and crews of a naval force of the United States, is not "maritime prize;" even though, like cotton, it may have been a proper subject of *capture* generally, as an element of strength to the enemy. *Mrs. Alexander's Cotton*, 404.

II. PRACTICE.

2. A libel in prize need not allege for what cause a vessel has been seized, or has become prize of war; as, *ex. gr.*, whether for an attempted breach of blockade or as enemy property. It is enough if it allege the capture generally as prize of war. *The Andromeda*, 481.
3. Libels *in rem* may be prosecuted in any district of the United States where the property is found. *The Slavers* (*Reindeer*), 384.
4. Stipulators in admiralty, who have entered into stipulations to procure the discharge of a vessel attached under a libel for collision, cannot be made liable for more than the amount assumed in their stipulation as the amount which the offending vessel is worth, with costs as stipulated for. *The Ann Caroline*, 538.

III. GENERAL PRINCIPLES.

5. The ordinary and settled rule of navigation, that when two vessels are approaching each other on opposite tacks, both having the wind free, the one on the larboard side shall give way and pass to the right, is

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subject to modification when one is to the windward of the other, and ahead of or above her in a narrow channel, so that an observance of it might probably produce a collision. *Ib.*

6. The true damage incurred by a party whose vessel has been sunk by collision being the value of his vessel, that sum (without interest) was given in a proceeding *in rem*, where the value of the offending vessel was fixed in stipulations that had been entered into to procure her discharge at that identical sum. *Ib.*

7. As a general rule, there is no obligation on a sailing vessel proceeding on her voyage to shorten sail or lie to because the night is so dark that an approaching vessel cannot be seen. *The Morning Light*, 550.

8. A collision resulting from the darkness of the night, and without the fault of either party, is an "inevitable accident." *Ib.*

ADVERSE POSSESSION.

Where parties enter upon land and take possession without title or claim or color of title, such occupation is subservient to the paramount title, not adverse to it. *Harvey* v. *Tyler*, 328.

AGENCY. See *Bank Deposit.*

ALLUVION.

Accretion by alluvion upon a street reduced by a lake boundary to less than half its regular width, belongs to the original proprietor of the lot; in whom, subject to the public easement, the fee of the half next the lake remains. *Banks v. Ogden*, 57.

APPEALS. See *Jurisdiction*, 2, 3, 8, 9; *Practice*, 1, 2, 7.

Appeals from decrees in cases of California surveys, in the name of the United States, acting for intervenors, under the act of June 14, 1860, commonly called the Survey Act, discouraged as being liable to abuse; since, on the one hand, the party wronged by the appeal gets no costs from the Government; while, on the other, the Government is made to pay the expenses of a suit promoted under its name by persons who may be litigious intervenors merely. *United States* v. *Billing*, 444.

ASSIGNEES FOR CREDITORS.

It is the duty of assignees for the benefit of creditors, who have once accepted the trust, not only to appear, but so far as the nature of the transaction, and the facts and circumstances of the case will admit or warrant, to defend the suit. And if a Federal court is already seized of the question of the validity of the trust, they should set up such pending proceeding against any attempt by parties in a *State* court to bring a decision of the case within its cognizance. If, when the Federal court has acquired previous jurisdiction, they submit with a mere appearance, and without any opposition to the jurisdiction of the State court, and pass over to a receiver appointed by *it* the assets of the trust, they will be held personally liable for them all in the Federal court. *Chittenden et al.* v. *Brewster*, 191.

BANK DEPOSIT.

Money collected by one bank for another, placed by the collecting bank with the bulk of its ordinary banking funds, and credited to the transmitting bank in account, becomes the money of the former. Hence, any depreciation in the specific bank bills received by the collecting bank, which may happen between the date of the collecting bank's receiving them and the other bank's drawing for the amount collected, falls upon the former. *Marine Bank* v. *Fulton Bank*, 252.

BANKRUPT ACT OF 1841.

The limitation of the eighth section of the bankrupt act of 1841 does not apply to suits by assignees or their grantees for the recovery of real estate until after two years from the taking of adverse possession. *Banks* v. *Ogden*, 58.

BLOCKADE. See *Rebellion*, 5.

I. MAINTENANCE OF.

1. A blockade may be made effectual by batteries on shore as well as by ships afloat; and, in case of an inland port, may be maintained by batteries commanding the river or inlet by which it may be approached, supported by a naval force sufficient to warn off innocent, and capture offending vessels attempting to enter. *The Circassian*, 135.

II. ON CONTINUANCE OF.

2. The occupation of a city by a blockading belligerent does not terminate a public blockade of it previously existing; the city itself being hostile, the opposing enemy in the neighborhood, and the occupation limited, recent, and subject to the vicissitudes of war. Still less does it terminate a blockade proclaimed and maintained not only against that city, but against the port and district commercially dependent upon it and blockaded by its blockade. *Ib.; S. P. The Baigorry*, 474.

3 A public blockade, that is to say, a blockade regularly notified to neutral governments, and as such distinguished from a simple blockade, or such as may be established by a naval officer acting on his own discretion, or under direction of his superiors, must, in the absence of clear proof of a discontinuance of it, be presumed to continue until notification is given by the blockading government of such discontinuance. *The Circassian*, 135.

4. The fact that the master and mate saw, as they swear, no blockading ships off the port where their vessel was loaded, and from which she sailed, is not enough to show that such a blockade has been discontinued. *The Baigorry*, 474.

5. Nor will continual entries in the log-book, supported by testimony of officers of the vessel seized, that the weather being clear, no blockading vessels were to be seen off the port from which the vessels sailed. *The Andromeda*, 481.

BLOCKADE (*continued*).

III. INTENT TO VIOLATE.

6. Intent to violate a blockade may be collected from bills of lading of cargo, from letters and papers found on board the captured vessel, from acts and words of the owners or hirers of the vessel and the shippers of the cargo and their agents, and from the spoliation of papers in apprehension of capture. *The Circassian*, 135.

7. Or it may be inferred in part from delay of the vessel to sail after being completely laden; and from changing the ship's course in order to escape a ship-of-war cruising for blockade-runners. *The Baigorry*, 474.

IV. NEUTRALS VIOLATING.

8. A vessel and cargo, even when perhaps owned by neutrals, may be condemned as enemy property, because of the employment of the vessel in enemy trade, and because of an attempt to violate a blockade, and to elude visitation and search. *Ib.*

9. A vessel sailing from a neutral port with intent to violate a blockade is liable to capture and condemnation as prize from the time of sailing; and the intent to violate the blockade is not disproved by evidence of a purpose to call at another neutral port, not reached at time of capture, with ulterior destination to the blockaded port. *The Circassian*, 135.

BOUNDARY.

When the title-papers designate the beginning-place of a straight line, and fix its course by requiring that it shall pass a known and ascertained point to its termination at a mountain, such line cannot be varied by the fact that a rough draft (a Mexican diseño) on which it is drawn was not true at all to scale, and that on it the line strikes two ranges of mountains in such a way as to leave certain unnamed elevations on the draft, which, with more or less plausibility, it was conjectured, but only conjectured, were meant to represent certain peaks in nature well known, more to the east or west than by reference to other objects on the draft they in nature held. *The Fossat Case*, 649.

CALIFORNIA.

I. PILOT LAW OF.

1. The act of the State of California of May 20, 1861, entitled "An Act to establish Pilots and Pilot Regulations for the Port of San Francisco," is not in conflict with the act of Congress of August 30, 1852, "To amend an act, entitled 'An Act to Provide for the better Security of the Lives of Passengers on board of Vessels propelled in whole or in part by Steam.'" *Steamship Company* v. *Joliffe*, 450.

II. ACT OF CONGRESS OF 3D MARCH, 1851.

2. If a California land claim has been confirmed by a decree of the District Court under the act of 3d of March, 1851 (9 Statutes at Large,

CALIFORNIA (*continued*).

631), and the decree of confirmation fixing the boundaries of the tract stands unreversed, a survey under it is the execution of that decree, and must conform to it in all respects. *The Fossat Case*, 649.

3. Such decrees are final, not only as to the questions of title, but as to the boundaries which it specifies; and the remedy for error is by appeal. *Ib.; S. P. United States* v. *Billing*, 444.

4. *Semble*, that in locating land in California, claimed under confirmed Mexican grants, compactness of form and conformity to the lines of the public surveys must be preserved, to the exclusion, if necessary, of selections of the grantee as indicated by his settlement, or by his sale or lease of parcels of the property. *The Sutter Case*, 562.

5. *Semble*, also, that land claimed under a confirmed Mexican grant may be located in two parcels, where, from the character of the country, the entire quantity granted cannot be located in one tract. *Ib.*

6. When the boundaries designated in a decree of the District Court, confirming a claim to land under a Mexican grant in California, embrace a greater tract than the quantity confirmed, the grantees have the right to select the location of this quantity, subject to the restriction that the selection be made in one body and in a compact form; and subject, also, in some instances, to selections made by their previous residence, and by sales or other disposition by them of parcels of the general tract. *United States* v. *Pacheco*, 587.

7. Where the common law prevails, if a decree confirming a Mexican grant mentions a bay as one of the boundaries of the land confirmed, without any further particulars, the line of ordinary high-water mark will be considered as intended. *Ib.*

III. ACT OF CONGRESS 14TH JUNE, 1860 (*Survey Law*).

8. An appeal lies to this court from a decree of the District Court for California, in a proceeding under the act of 14th June, 1860 (12 Statutes at Large, 33), commonly called the Survey Law. *The Fossat Case*, 649.

9. If no appeal from such a decree be taken by the United States, they may appear in this court as appellees, but cannot demand a reversal or change of the decree. *Ib.*

10. Appeals on frivolous grounds, from decrees in cases of California surveys, in the name of the United States, acting for intervenors, under the act of June 14, 1860, are discouraged as being liable to abuse; since, on the one hand, the party wronged by the appeal gets no costs from the Government; while, on the other, the Government is made to pay the expenses of a suit promoted under its name by persons who may be litigious intervenors merely. *United States* v. *Billing*, 444.

11. Under this Survey Law, the District Court has no power to amend or change the decree of confirmation previously made. *The Fossat Case*, 649.

IV. IN DEFEAT OF MEXICAN GRANTS.

12. When a claim to land in California is asserted as derived through the

CALIFORNIA (*continued*).

Mexican Land System, the absence from the archives of the country of evidence supporting the alleged grant, creates a presumption against the validity of such a grant so strong that it can be overcome, if at all, only by the clearest proof of its genuineness, accompanied by open and continued possession of the premises. *Pico* v. *United States*, 279.

V. Explanation of Sutter's Grant.

13. By the terms in the grant to J. A. Sutter, made by Governor Alvarado, June 18, 1840, "lands overflown by the swelling and currents of the rivers," were meant *tule* or swamp lands. *The Sutter Case*, 562.

CAMP LEAVENWORTH.

1. The southern boundary of Camp Leavenworth is the line as established by the surveyor, McCoy, A. D. 1830, for such extent as it was adopted by the subsequent surveys of Captains Johnson and Hunt, A. D. 1839, 1854, and by the Government of the United States. The Secretary of the Interior, in 1861, transcended his authority when he ordered surveys to be made north of it. *United States* v. *Stone*, 525.
2. The treaty of 30th May, 1860, between the United States and the Delaware Indians, conferred a right to locate grants only on that portion of the Delawares' lands near Camp Leavenworth, reserved for their "permanent home" by the treaty of 6th May, 1854, and did not authorize their location on that portion of those lands which, by that treaty, were to be sold for their uses. *Ib.*

CANCELLATION. See *Patent.*

CHARTER-PARTY.

A stipulation in a charter-party that the chartered vessel, then in distant seas, would proceed from one port named (where it was expected that she would be) to another port named (where the charterer meant to load her), "*with all possible despatch,*" is a warranty that she will so proceed, and goes to the root of the contract. It is not a representation simply that she will so proceed, but a condition precedent to a right of recovery. Accordingly, if a vessel, in going to the port where it is agreed she shall go, go to any port out of the direct course thither, the charterer may throw up the charter-party. *Lowber* v. *Bangs*, 728.

Ex. gr. A vessel, while on a voyage to Melbourne, was chartered at Boston for a voyage from Calcutta to a port in the United States. The charter-party contained a clause that the vessel was to "proceed from Melbourne to Calcutta with all possible despatch." Before the master was advised of this engagement, the vessel had sailed from Melbourne to Manilla, which is out of the direct course between Melbourne and Calcutta, and did not arrive at Calcutta either directly or as soon as the parties had contemplated. The defendants refused to load; and upon suit to recover damages for a breach of the charter-party, it was held that the charterers might rightly claim to be discharged. *Ib.*

COMITY, STATE AND FEDERAL. See *Jurisdiction*, 6, 10, 11.

A State statute, enacting that a judgment in ejectment—provided the action be brought in a form which gives precision to the parties and land claimed—shall be a bar to any other action between the same parties on the same subject-matter, is a rule of property as well as of practice, and being conclusive on title in the courts of the State, is conclusive, also, in those of the Union. *Miles* v. *Caldwell*, 35.

COMMERCIAL LAW. See *Charter-Party*.

CONFLICT OF JURISDICTIONS. See *Comity*.

I. BETWEEN FEDERAL COURTS AND STATE COURTS.

1. Where a bill in equity is necessary to have a construction of the orders, decrees, and acts made or done by a Federal court, the bill is properly filed in such Federal court as distinguished from any State court; and it may be entertained in such Federal court, even though parties who are interested in having the construction made would not, from want of proper citizenship, be entitled to proceed by original bill of any kind in a court of the United States. *Minnesota Company* v. *St. Paul Company*, 609.

2. In such a case the question will not be, whether the bill filed is supplemental or original in the technical sense of equity pleading; but whether it is to be considered as supplemental, or entirely new and original, in that sense which the Supreme Court has sanctioned with reference to the line that divides jurisdiction of the Federal courts from that of the State courts. *Ib.*

II. BETWEEN CONGRESS AND STATE LEGISLATURES.

3. The act of the State of California of May 20th, 1861, entitled "An Act to establish pilots and pilot regulations for the *port of San Francisco*," is not in conflict with the act of Congress of August 30th, 1852, "To amend an Act, entitled An Act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam." The object of the latter act is not to establish pilot regulations for *ports*, but to provide a system under which the masters and owners of vessels, propelled in whole or in part by steam, may be required to employ competent pilots to navigate such vessels on their voyage. *Steamship Company* v. *Joliffe*, 450.

4. A tax laid by a State on banks, "on a *valuation* equal to the amount of their capital stock paid in, or secured to be paid in," is a tax on the property of the institution; and when that property consists of stocks of the Federal Government, the law laying the tax is void. *Bank Tax Case*, 200.

5. The State of New York was allowed by the judgment of the court, equally divided, and so affirming a decree below of necessity, to build a bridge across the Hudson at Albany. *Albany Bridge Case*, 403.

CONSTITUTIONAL LAW. See *Rebellion*.

1. When Congress has passed an act admitting a Territory into the Union as a State, but omitting to provide, by such act, for the disposal of

CONSTITUTIONAL LAW (*continued*).

cases pending in this court on appeal or writ of error, it may constitutionally and properly pass a subsequent act making such provision for them. *Freeborn* v. *Smith*, 160.

2. A State statute, repealing a former statute, which made the *stock* of stockholders in a chartered company liable to the *corporation's* debts, is, as respects creditors of the corporation existing at the time of the repeal, a law impairing the obligation of contracts, and void. And this is so, even though the liability of the stock is in some respects conditional only; and though the stockholder was not made, by the statute repealed, liable, in any way, in his *person* or property generally, for the corporation's debts. *Hawthorne* v. *Calef*, 10.

3. A State legislature may, constitutionally, pass a private act authorizing a court to decree, on the petition of an administrator, *private* sale of the real estate of an intestate to pay his debts, even though the act should not require notice to heirs or to any one, and although the same general subject is regulated by general statute much more full and provident in its nature. This declared at least in a case where the courts of the State itself had acted on that view. *Florentine* v. *Barton*, 210.

CONTRACT. See *Pleading; Surety.*

I. Obligation of, generally.

1. Performance of a contract to build a house for another on the soil of such person, and that the work shall be executed, finished, and ready for use and occupation, and be delivered over so finished and ready to the owner of the soil, at a day named, is not excused by the fact that there was a latent defect in the soil, in consequence of which the walls sank and cracked, and the house, having become uninhabitable and dangerous, had to be partially taken down and rebuilt on artificial foundations. *Dermott* v. *Jones*, 1.

2. A stipulation in a charter-party that the chartered vessel, then in distant seas, would proceed from one port named (where it was expected that she would be) to another port named (where the charterer meant to load her), "*with all possible despatch*," is a warranty that she will so proceed, and goes to the root of the contract. It is not a representation simply that she will so proceed; but is a condition precedent to any right of recovery. *Lowber* v. *Bangs*, 728.

II. How far to Govern, when departed from.

3. While a special contract remains executory the plaintiff must sue upon *it*. When it has been fully executed according to its terms, and nothing remains to be done but the payment of the price, he may sue either on it, or in *indebitatus assumpsit*, relying, in this last case, upon the common counts; and in either case the contract will determine the rights of the parties. *Ib.*

4. When he has been guilty of fraud, or has wilfully abandoned the work, leaving it unfinished, he cannot recover in any form of action. Where

CONTRACT (*continued*).

he has in good faith fulfilled, but not in the manner nor within the time prescribed by the contract, and the other party has sanctioned or accepted the work, he may recover upon the common counts in *indebitatus assumpsit*. *Ib.*

5. He must produce the contract upon the trial, and it will be applied as far as it can be traced; but if, by fault of the defendant, the cost of the work or material has been increased, in so far the jury will be warranted in departing from the contract prices. In such case the defendant is entitled to recoup for the damages he may have sustained by the plaintiff's deviations from the contract, not induced by himself, both as to the manner and time of the performance. *Ib.*

III. MEANING OF, WITHIN THE CONSTITUTION.

6. A State statute repealing a former statute, which made the *stock* of stockholders in a chartered company liable to the *corporation's* debts, is, as respects creditors of the corporation existing at the time of the repeal, a law impairing the obligation of contracts, and void. And this is so, even though the liability of the stock is in some respects conditional only; and though the stockholder was not made, by the statute repealed, liable, in any way, in his *person* or property generally, for the corporation's debts. *Hawthorne* v. *Calef*, 10.

IV. WHEN VOID, OR NOT SO, AS AGAINST PUBLIC POLICY.

7. An agreement for compensation to procure a contract from the Government to furnish its supplies, is against public policy, and cannot be enforced by the courts. *Tool Company* v. *Norris*, 45.

8. After a partnership contract confessedly against public policy has been carried out, and money contributed by one of the partners has passed into other forms,—*the results* of the contemplated operation completed,—a partner, in whose hands the profits are, cannot refuse to account for and divide them on the ground of the illegal character of the original contract. *Brooks* v. *Martin*, 70.

V. THOSE OF FEME COVERTS.

9. A paper, executed under seal, for the husband's benefit, by husband and wife, acknowledged in separate form by the wife, and meant to be a mortgage of her separate lands, but with blanks left for the insertion of the mortgagee's name and the sum borrowed, and to be filled up by the husband, is no deed as respects the wife, when afterwards filled up by the husband and given to a lender of money, though one *bonâ fide* and without knowledge of the mode of execution. The mortgagee, on cross-bill to a bill of foreclosure, was directed to cancel *her* name. *Drury* v. *Foster*, 24.

VI. MISCELLANEOUS MATTERS, RELATING TO.

10. The term "month," when used in contracts or deeds, must be construed, where the parties have not themselves given to it a definition, and there is no legislative provision on the subject, to mean calendar, and not lunar months. *Sheets* v. *Selden's Lessee*, 178.

CONTRACT (*continued*).

11. In the interpretation of contracts, where time is to be computed from a particular day, or a particular event, as when an act is to be performed within a specified period *from* or *after* a day named, the general rule is to exclude the day thus designated, and to include the last day of the specified period. *Ib.*

12. When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right, which stands independent of the statute. *Steamship Company* v. *Joliffe*, 450.

Ex. gr. Where a pilot, licensed under a statute, had tendered his services to pilot a vessel out of port, and such services were refused, his claim to the half-pilotage fees, allowed by the statute in such cases, became perfect; and the subsequent repeal of the statute did not affect a judgment rendered in an action brought to recover the claim, or the jurisdiction of this court to review the judgment on writ of error. *Ib.*

COURT OF CLAIMS.

The Supreme Court of the United States has no jurisdiction of appeals from the Court of Claims. *Gordon* v. *United States*, 561.

CROSS-BILL. See *Equity*, 3.

DEED. See *Feme Covert; Ejectment*, 3.

1. When a deed is executed on behalf of a State by a public officer duly authorized, and this fact appears upon the face of the instrument, it is the deed of the State, notwithstanding the officer may be described as one of the parties, and may have affixed his individual name and seal. In such case the State alone is bound by the deed, and can alone claim its benefits. *Sheets* v. *Selden's Lessee*, 177.

2. Land will often pass without any specific designation of it in the conveyance as land. Everything essential to the beneficial use and enjoyment of the property designated is, in the absence of language indicating a different intention on the part of the grantor, to be considered as passing by the conveyance. *Ib.*

3. Accordingly, where the conveyance was of a division or branch of a canal, "including its *banks*, *margins*, *tow-paths*, *side-cuts*, *feeders*, *basins*, *right of way*, *dams*, *water-power*, *structures*, and all the appurtenances thereunto belonging," certain adjoining parcels of land belonging to the grantor, which were necessary to the use of the canal and water-power, and were used with it at the time, but which could not be included in any of the terms above, in italics, passed by the conveyance. *Ib.*

DISTRICT OF COLUMBIA.

1. A question involving the construction of a statute regulating intestacies within the District of Columbia, is not a question of law of "such extensive interest and operation," as that if the matter involved is not of the value of $1000 or upwards, this court will assume jurisdiction under the act of Congress of April 2d, 1816. *Campbell* v. *Read*, 198.
2. The Levy Court of Washington County, in the District of Columbia, if not a corporation in the full sense of the term, is a *quasi* corporation; and can sue and be sued in regard to any matter in which, by law, it has rights to be enforced, or is under obligations which it refuses to fulfil. *Levy Court* v. *Coroner*, 501.
3. The fees allowed by the eighth section of the act of Congress of July 8, 1838, to the coroners of the counties of Washington and Alexandria, and to jurors and witnesses who may be lawfully summoned by them to any inquest, are payable by the Levy Court of the county, not by the Federal Government. *Ib.*
4. Jurors and witnesses summoned in form by the coroner's summons, regularly served, are so far "lawfully summoned" under the eighth section of the act of July 8, 1838, just named, that they may be allowed their fees, though the case of death in which they were summoned was strictly not one for a coroner's view, and though the coroner himself would be entitled to none. Fees advanced by the coroner to jurors and witnesses in such a cause may be properly reimbursed to him, and consistently with a refusal to pay him those claimed as his own. *Ib.*

EJECTMENT. See *Comity*.

1. The reasons which render *in*conclusive one trial in ejectment, have force when the action is brought in the fictitious form practised in England, and known partially among ourselves; but they apply imperfectly, and have little weight, when the action is brought in the form now usual in the United States, and where parties sue and are sued in their own names, and the position and limits of the land claimed are described. They have no force at all where the modern form is prescribed, and where, by statute, one judgment is a bar. *Miles* v. *Caldwell*, 36.
2. A State statute, enacting that a judgment in ejectment—provided the action be brought in a form which gives precision to the parties and land claimed—shall be a bar to any other action between the same parties on the same subject-matter, is a rule of property as well as of practice, and being conclusive on title in the courts of the State, is conclusive, also, in those of the Union. *Ib.*
3. At the common law the grantee of a reversion could not enter or bring ejectment for breach of the covenants of a lease; and the statute of 32 Henry VIII, giving the right of entry and of action to such grantee, is confined to leases under seal. *Sheets* v. *Selden's Lessee*, 178.

EQUITY. See *Evidence*, 2; *Mortgage; Negotiable Instruments; Practice*, 11.

I. Jurisdiction.

1. Courts of equity, acting on their own inherent doctrine of discouraging, for the peace of society, antiquated demands, refuse to interfere in attempts to establish a stale trust, except where,
    (*a*) The trust is *clearly* established.
    (*b*) The facts have been fraudulently and successfully concealed by the trustee from the knowledgee of the *cestui que trust*.

And in cases for relief, the *cestui que trust* should set forth in his bill, specifically, what were the impediments to an earlier prosecution of his claim; how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance; and how and when he first came to a knowledge of his rights. *Badger* v. *Badger*, 87.

II. Pleadings.

2. Stockholders of a corporation, who have been allowed to put in answers in the name of a corporation, cannot be regarded as answering for the corporation itself. In a special case, however, where there is an allegation that the directors fraudulently refused to attend to the interests of the corporation, a court of equity will, in its discretion, allow a stockholder to become a party defendant, for the purpose of protecting—from unfounded and illegal claims against the company—*his own interest* and the interest of such other stockholders as choose to join him in the defence. *Bronson* v. *La Crosse Railroad Company*, 283.
3. The filing of a cross-bill on a petition without the leave of the court is an irregularity, and such cross-bill may be properly set aside. *Ib.*
4. Where a bill in equity is necessary to have a construction of the orders, decrees, and acts made or done by a Federal court, and the bill is objected to as not according to equity pleadings, the question will not be, whether the bill filed is supplemental or original in the technical sense of equity pleading; but whether it is to be considered as supplemental, or entirely new and original, in that sense which the Supreme Court has sanctioned with reference to the line that divides jurisdiction of the Federal courts from that of the State courts. *Minnesota Company* v. *St. Paul Company*, 609.

III. General Principles.

5. When chancery has full jurisdiction as to both persons and property, and decrees that a *master* of the court sell and convey real estate, the subject of a bill before it, a sale and conveyance in conformity to such decree is as effectual to convey the title as the deed of a sheriff, made pursuant to execution on a judgment at law. The defendant whose property is sold need not join in the deed. *Miller* v. *Sherry*, 237.
6. A court of equity, where a mortgage authorizes the payment of the expenses of the mortgagee, may pay, out of funds in his hands, the taxed costs, and also such counsel fees in behalf of the complainants as, in the discretion of the court, it may seem right to allow. *Bronson* v. *La Crosse Railroad Company*, 312.

EQUITY (*continued*).

7. Where one partner, who is in sound health, is made sole agent of the partnership by another, who is not, and who relies on him wholly for true accounts, and the party thus made agent manages the business at a distance from the other, communicating to him no information, the relation of partners, whatever it may be in general, becomes fiduciary, and the law governing such relations applies. *Brooks* v. *Martin*, 70.
8. A creditor's bill, to be a *lis pendens*, and to operate as a notice against real estate, must be so definite in the description of the estate, as that any one reading it can learn thereby what property is the subject of the litigation. If it is not so, it will be postponed to a junior bill, which is. *Miller* v. *Sherry*, 237.
9. The United States may properly proceed by bill in equity to have a judicial decree of nullity and an order of cancellation of a patent issued by itself, ignorantly or in mistake, for lands reserved from sale by law, and a grant of which by patent was, therefore, void. *United States* v. *Stone*, 525.

EVIDENCE. See *Ejectment*, 1; *Negotiable Instruments; Patent*, 4; *Slave Trade.*

1. The introduction of children as witnesses in an angry family quarrel rebuked by the court. *Tobey* v. *Leonards*, 424.
2. Positive statements in an answer to a bill in equity—the answer being responsive to the bill—are not to be overcome, except by more testimony than that of one witness; but by such superior testimony they may be overcome; and where, as was the fact in the case here cited, *seven* witnesses asserted the contrary of what was averred in such answer, the answer will be disregarded. *Ib.*
3. A declaration that a certain improvement, containing in reality one principal and three distinct minor improvements, was patented on a day named, is supported by evidence that four patents—reissues—were subsequently granted on an original patent of the date named; such original having, in its specification, described all and no more than the improvements specified in the four reissues. The reissues relate back. *Read* v. *Bowman*, 591.
4. A man may lawfully transfer all his interest in property which is about to become the subject of suit, for the purpose of making himself a witness in such suit; and while his testimony is to be carefully, and, perhaps, suspiciously scrutinized, when contradicting the positive statements made by a defendant in equity responsively to the complainant's bill, such testimony is still to be judged of by the ordinary rules which govern in the law of evidence, and to be credited or discredited accordingly. *Tobey* v. *Leonards*, 424.
5. In a proceeding to condemn a vessel as engaged in the slave-trade, a wide range of evidence is allowed; and great force is given to circumstances which but lead to an inference that the vessel was about to engage in the slave-trade. If strong suspicions are raised against

EVIDENCE (*continued*).

the vessel she must repel them, under risk of condemnation. *The Slavers*, 350, &c.

6. The fact that A., many years ago, did present to a board of commissioners appointed by law to pass upon imperfect titles to land, a "claim" to certain land, describing it as "formerly" of B., an admitted owner; the fact that the board entered on its minutes that A., "*assignee*" of B., presented a claim, and that the board granted the land to "the *representatives*" of B.; and the fact that A., with his family, was in possession of the land many years ago, and cultivating it, are facts which tend to prove an assignment; and as such, in an ejectment where the fact of an assignment is in issue, should be submitted as evidence to the jury. *Hogan* v. *Page*, 605.

FEME COVERT.

A paper, executed, under seal, for the husband's benefit, by husband and wife, acknowledged in separate form by the wife, and meant to be a mortgage of her separate lands, but with blanks left for the insertion of the mortgagee's name and the sum borrowed, and to be filled up by the husband, is no deed as respects the wife, when afterwards filled up by the husband and given to a lender of money, though one *bonâ fide* and without knowledge of the mode of execution. The mortgagee, on cross-bill to a bill of foreclosure, was directed to cancel *her* name. *Drury* v. *Foster*, 24.

FIDUCIARY RELATION. See *Equity*, 7.

FIXTURES.

1. The law imposes no obligations on a landlord to pay the tenant for buildings erected on demised premises. The innovation on the common law, that all buildings become part of the freehold, has extended no further than the right of removal while the tenant is in possession. *Kutter* v. *Smith*, 491.
2. A railroad company, owning the whole of a long railroad, and all the rolling stock upon it, *may* assign particular portions of such rolling stock to particular divisions,—certain cars, for example, to one division; the residue of the rolling stock to another,—and mortgage such portions with such divisions, so as to attend them. Whether the company have so mortgaged their rolling stock is a question of intention. In the case here cited it was decided that they had. *Minnesota Company* v. *St. Paul Company*, 609.
3. *Semble*, that rolling stock of a railroad is a fixture. *Ib.*, 645.

HIGHWAY.

1. When a street is bounded on one side by a lake, the owner of the ground on the other side takes only to the centre; while the fee of the half bounded by the lake remains in the proprietor, subject to the easement. *Banks* v. *Ogden*, 57.
2. When a lake boundary so limits a street as to reduce it to less than

HIGHWAY (*continued*).

half its regular width, the street so reduced must still be divided by its centre line between the grantee of the lot bounded by it and the original proprietor. *Ib.*

3. Accretion by alluvion upon a street thus bounded will belong to the original proprietor, in whom, subject to the public easement, the fee of the half next the lake remains. *Ib.*

ILLINOIS.

1. A party entitled to a homestead reservation under the laws of Illinois,—whose property, in which it is, a court of chancery has ordered in general terms to be sold, to satisfy a creditor whom he had attempted to defraud by a secret conveyance of it,—must set up his right, if at all, before the property is thus sold. He cannot set it up collaterally after the sale, and so defeat an ejectment brought by a purchaser to put him out of possession. *Miller* v. *Sherry*, 237.
2. A plat of an addition to a town, not executed, acknowledged, and recorded in conformity with the laws of Illinois, operates in that State as a dedication of the streets to public use, but not as a conveyance of the fee of the streets to the municipal corporation. *Banks* v. *Ogden*, 57.
3. A conveyance, by the proprietor of such an addition, of a block or lot bounded by a street, conveys the fee of the street to its centre, subject to the public use. *Ib.*
4. Under the statute of Illinois which authorizes execution to issue against the lands of a deceased debtor, *provided* that the plaintiff in the execution shall give notice to the executor or administrator, *if there be any*, of the decedent,—a sale without either such notice or *scire facias*, as at the common law (or proof that there were no executors?), is void. On a question of title, *under this statute*, the burden of proving that his purchase was after due notice rests with the purchaser; the record of execution and sale not of itself raising a presumption that notice was given. *Ransom* v. *Williams*, 313.

JUDICIAL PROCEEDINGS.

I. REGULARITY OF, PRESUMED.

1. In making an order of sale under a private act of legislature to pay a decedent's debts, the court is presumed to have adjudged every question necessary to justify such order, viz., the death of the owners; that the petitioners were his administrators; that the personal estate was insufficient to pay the debts; that the private act of Assembly, as to the manner of sale, was within the constitutional power of the legislature; and that all the provisions of the law as to notices which are directory to the administrators have been complied with. Nor need it enter upon the record the evidence on which any fact is decided. Especially does all this apply after long lapse of time. *Florentine* v. *Barton*, 210.
2. Where a statute gives to county courts authority and jurisdiction to

JUDICIAL PROCEEDINGS (*continued*).

hear and determine all cases at common law or in chancery within their respective counties, and "*all such other matters as by particular statute*" might be made cognizable therein, such county courts are courts of general jurisdiction; and when jurisdiction of a matter, such as power to declare a redemption of land from forfeiture for taxes (in regard to which the court could act only "by particular statute") is so given to it,—parties, a subject-matter for consideration, a judgment to be given, &c., being all in view and provided for by the particular statute,—the general rule about the indulgence of presumptions not inconsistent with the record in favor of the jurisdiction, prevails in regard to proceedings under the statute. At any rate, a judgment under it, declaring lands redeemed, cannot be questioned collaterally. *Harvey* v. *Tyler*, 328.

II. REGULARITY OF, NOT PRESUMED.

3. Under the statute of Illinois which authorizes execution to issue against the lands of a deceased debtor, *provided* that the plaintiff in the execution shall give notice to the executor or administrator, *if there be any*, of the decedent,—a sale without either such notice or *scire facias*, as at the common law (or proof that there were no executors?), is void. On a question of title, *under this statute*, the burden of proving that his purchase was after due notice rests with the purchaser; the record of execution and sale not of itself raising a presumption that notice was given. *Ransom* v. *Williams*, 313.

JUDICIAL SALE.

A marshal's sale is not valid where made under the marshal's wrong interpretation of an order which the court did in fact make; not valid in such a case even where the court confirmed of record the marshal's sale; the court's attention not being specifically directed to the marshal's mistake, nor any issue raised as to what the court really meant, nor decision made, on such issue raised, that the marshal's act should remain firm. *Quære*, whether it be valid in any case, unless supported by a judicial order previously made. *Minnesota Company* v. *St. Paul Company*, 609.

JURISDICTION. See *Admiralty*, 1; *Judicial Proceedings*, 2.

I. OF THE SUPREME COURT OF THE UNITED STATES.

(a) *Where it* HAS *jurisdiction.*

1. This court HAS jurisdiction to review a judgment entered in the Circuit Court by the clerk of that court, on the mere finding of a referee appointed by it to hear and determine all the issues in a case. *Heckers* v. *Fowler*, 123.

2. An order of the Circuit Court, on a bill to foreclose a mortgage, ascertaining—in intended execution of a mandate from this court—the amount of interest due on the mortgage, directing payment within one year, and providing for an order of sale in default of payment, IS

JURISDICTION (*continued*).

a "decree" and a "final decree," so far as that any person aggrieved by supposed error in finding the amount of interest, or in the court's below having omitted to carry out the entire mandate of this court, may appeal. *Appeal* is a proper way in which to bring the matter before this court. *Railroad Company* v. *Soutter*, 441.

3. When the sum in controversy is large enough to give the court jurisdiction of a case, such jurisdiction, once properly obtained, IS NOT taken away by a subsequent reduction of the sum below the amount requisite. *Cooke* v. *United States*, 218.

4. The mere fact that an act of Congress authorizes a judgment obtained by the Government against a party, to be discharged by the payment of a sum less than $2000, is NO ground to ask a dismissal of a case of which the court had properly obtained jurisdiction before the act passed. The party may not choose thus to settle the judgment, but prefer to try to reverse it altogether. *Ib.*

5. When an amount due has been passed on and finally fixed by the Supreme Court, and the right of a debtor to pay the sum thus settled and fixed is clear, the court below has then no discretion to withhold the restoration of property which has been handed over to a receiver, and a refusal to discharge the receiver is judicial error; which this court MAY correct, supposing the matter (not itself one in the nature of a final decree) to be in any way fairly before it otherwise. *Railroad Company* v. *Soutter*, 511.

6. Where a bill in equity is necessary to have a construction of the orders, decrees, and acts made or done by a Federal court, the bill IS PROPERLY filed in such Federal court as distinguished from any State court; and it may be entertained in such Federal court, even though parties who are interested in having the construction made would not, from want of proper citizenship, be entitled to proceed by original bill of any kind in a court of the United States. *Minnesota Company* v. *St. Paul Company*, 609.

7. In such a case the question will not be, whether the bill filed is supplemental or original in the technical sense of equity pleading; but whether it is to be considered as supplemental, or entirely new and original, in that sense which the Supreme Court has sanctioned with reference to the line that divides jurisdiction of the Federal courts from that of the State courts. *Ib.*

(b) *Where it has* NOT *jurisdiction.*

8. The Supreme Court of the United States has NO jurisdiction of appeals from the Court of Claims. *Gordon* v. *United States*, 561.

9. A decree in chancery, awarding to a patentee a permanent injunction, and for an account of gains and profits, and that the cause be referred to a master to take and state the amount, and to report to the court, is NOT a final decree, within the meaning of the act of Congress allowing an appeal on a final decree to this court. *Humiston* v. *Stainthorp*, 106.

10. A judgment in a State court against a marshal for making a levy

JURISDICTION (*continued*).

alleged to be wrong, is NOT necessarily a proper subject for review in this court, under the twenty-fifth section of the Judiciary Act, allowing such review in certain cases where "an authority exercised under the United States is drawn in question, and the decision is against its validity." He may be sued not as marshal, but as trespasser. *Day* v. *Gallup*, 97.

11. Where a proceeding in the Federal court is terminated so that no case is pending there, a State court, unless there be some special cause to the contrary, may have jurisdiction of a matter arising out of the same general subject, although, if the proceedings in the Federal court had not been terminated, the State court might not have had it. *Ib.*

12. Error does NOT lie to a refusal of the Circuit Court to award a writ of restitution in ejectment. *Gregg* v. *Forsyth*, 56.

II. OF CIRCUIT COURTS OF THE UNITED STATES. See *supra*, 5, 11.

III. OF DISTRICT COURTS OF THE UNITED STATES. See *Admiralty*, 1, 2.

LANDLORD AND TENANT.

1. The law imposes no obligations on a landlord to pay the tenant for buildings erected on demised premises. The innovation on the common law, that all buildings become part of the freehold, has extended no further than the right of removal while the tenant is in possession. *Kutter* v. *Smith*, 491.

2. Where a lease binds a landlord to pay his tenant, *on the efflux of the term*, for buildings erected by the tenant, or to grant him a renewal, the landlord is not bound to pay when the lease has been determined by *non-payment of rent before such efflux*, and by forfeiture and entry accordingly. And this is true, even though by the terms of the lease the repossession by the landlord is to be "*as in his first and former estate;*" and though the erections were not on the ground at the date of the lease. *Ib.*

LIMITATION OF ACTIONS. See *Bankrupt Act of* 1841; *Equity*, 1.

LIS PENDENS. See *Equity*, 8.

MANDAMUS.

A party asking the Supreme Court for a mandamus to an inferior court to make a rule on one of its ministerial officers, as the marshal, must show clearly his interest in the matter which he presents as the ground of his application. *Ex parte Fleming*, 759.

MARSHAL. See *Judicial Sale*.

"MONTH." See *Contract*, 9.

MORTGAGE. See *Equity*, 6; *Fixtures*, 2.

1. Until the filing of his bill of foreclosure and the appointment of a receiver, a mortgagee has no concern or responsibility for or in the dealings of a mortgagor with third parties, such as confessing judgment, and leasing its property subject to the terms of the mortgage. *Bronson* v. *La Crosse Railroad Company*, 283.
2. Where a mortgage is made in express terms subject to certain bonds secured by prior mortgage, these bonds being negotiable in form, and having in fact passed into circulation before such former mortgage was given, the junior mortgagees, and all parties claiming under them, are estopped from denying the amount or the validity of such bonds so secured, if in the hands of *bonâ fide* holders. *Ib.*

NEGOTIABLE INSTRUMENTS.

1. Coupon bonds, of the ordinary kind, payable to bearer, pass by delivery. And a purchaser of them, in good faith, is unaffected by want of title in the vendor. The burden of proof, on a question of such faith, lies on the party who assails the possession. *Gill* v. *Cubit* (3 Barnewall & Cresswell, 466), denied; *Goodman* v. *Harvey* (4 Adolphus & Ellis, 870), approved; *Goodman* v. *Simonds* (20 Howard, 452), affirmed. *Murray* v. *Lardner*, 110.
2. Parties holding negotiable instruments are presumed to hold them for full value; and whether such instruments are bought at par or below it, they are, generally speaking, to be paid in full, when in the hands of *bona fide* holders, for value. If meant to be impeached, they must be impeached by specific allegations distinctly proved. *Bronson* v. *La Crosse Railroad Company*, 283.

PARTNERSHIP.

Where one partner, who is in sound health, is made sole agent of the partnership by another, who is not, and who relies on him wholly for true accounts, and the party thus made agent manages the business at a distance from the other, communicating to him no information, the relation of partners, whatever it may be in general, becomes fiduciary, and the law governing such relations applies. *Brooks* v. *Martin*, 70.

PATENT.

I. GENERALLY OR VARIOUSLY.

1. The United States may properly proceed by bill in equity to have a judicial decree of nullity and an order of cancellation of a patent issued by itself, ignorantly or in mistake, for lands reserved from sale by law, and a grant of which by patent was, therefore, void. *United States* v. *Stone*, 525.
2. A patent certificate for land, or patent issued, or confirmation made to an original grantee or his "*legal representatives*," embraces, by the long-adopted usage of the Land Office of the United States, representatives of such grantee by contract, as well as those by operation

PATENT (*continued*).

of law; leaving the question open in a court of justice as to the party to whom the certificate, patent, or confirmation should enure. *Hogan* v. *Page*, 605.

II. For Inventions, etc.

3. A claim for a combination of several devices, so combined together as to produce a particular result, is not good, under the Patent Laws, as a claim for "*any mode of combining* those devices which would produce that result," and can only be sustained as a valid claim for the peculiar combination of devices invented and described. *Burr* v. *Duryee*, 1 Wallace, 553, affirmed and applied. *Case* v. *Brown*, 320.

4. A declaration that a certain improvement, containing in reality one principal and three distinct minor improvements, was patented on a day named, is supported by evidence that four patents—reissues—were subsequently granted on an original patent of the date named; such original having, in its specification, described all and no more than the improvements specified in the four reissues. The reissues relate back. *Read* v. *Bowman*, 591.

PILOTAGE. See *Conflict of Jurisdiction*, 3.

PLEADING. See *Equity*, 2, 3, 4.

Where the special and general counts of a declaration set forth the same contract, and an instruction directed to the legality of the contract, is refused with reference to the special counts, it is unnecessary, in order to bring up to this court for consideration the writing thereon, to ask the instruction with reference to the general counts to which it is equally applicable, although upon the special counts the verdict passed for the plaintiff in error. *Tool Company* v. *Norris*, 45.

PRACTICE. See *Admiralty*, 2, 3; *Jurisdiction*, 5; *Mandamus*.

1. Where the Circuit and District Judge agree in parts of a case, and dispose of them by decree finally, but are unable to agree as to others; and certify as to them a division of opinion, both parts of the case may be brought to the Supreme Court at once and heard on the same record. *Brobst* v. *Brobst*, 96.

2. A party allowed to enter an appeal bond, *nunc pro tunc*, in a case where the court supposed it probable that his solicitors had been misled by a peculiar state of the record and mode of bringing up the questions from the court below. *Ib.*

3. References to persons noways connected with the bench, to hear and determine all the issues in a case, are ancient and usual; and in the Federal courts, as in others, proper, if the case referred be of a kind for assistance of that sort. *Heckers* v. *Fowler*, 123.

4. Entry of judgment by the clerk, on the return of the report of such referee, is regular, and is a judgment of the court, though made without any presence or action of the court itself. *Ib.*

5. On a mere petition for a *certiorari*, the court, according to its better and

PRACTICE (*continued*).

more regular practice, will decline to hear the case on its merits, even though the counsel for the petitioner produce a copy of the record admitted on the other side to be a true one. It will wait for a return, in form, from the court below. *Ex parte Dugan*, 134.

6. This court will not hear, on writ of error, matters which are properly the subject of applications for new trial. *Freeborn* v. *Smith*, 160.

7. A party *not* appealing from a decree cannot take advantage of an error committed against himself; as, for example, that the appellant had omitted to prove certain formal facts averred in his bill, and which were prerequisites of his case. But where—assuming the fact averred, but not proved to be true—a decree given against a party in the face of such want of proof is reversed in his favor, it may be reversed with liberty given to the other side to require him to prove that same fact which the appellee, *when seeking here to maintain the decree*, was not allowed to object that the appellant had failed, below, to prove. *Chittenden* v. *Brewster*, 191.

8. In a case where the trial has proceeded on merits, and the error has not been pointed out below, judgment will not be reversed, even though the form of action have been wholly misconceived, and to the case made by *it* a defence plainly exists. *Marine Bank* v. *Fulton Bank*, 252.

9. The court reprehends severely the practice of counsel in excepting to instructions *as a whole*, instead of excepting, as they ought, if they except at all, to each instruction *specifically*. Referring to *Rogers* v. *The Marshal* (1 Wallace, 644), &c., it calls attention anew to the penalty which may attend this unprofessional and slatternly mode of bringing instructions below before this court; the penalty, to wit, that the exception to the whole series of propositions may be overruled, no matter how wrong some may be, if any *one* of them all be correct; and when, if counsel had excepted specifically, a different result might have followed. *Harvey* v. *Tyler*, 328.

10. Though a court below is bound to follow the instructions given to it by a mandate from this, yet where a mandate has plainly been framed, as regards a minor point, on a supposition which is proved by the subsequent course of things to be without base, the mandate must not be *so* followed as to work manifest injustice. On the contrary, it must be construed otherwise, and reasonably. *Railroad Company* v. *Soutter*, 510.

11. The appointment or discharge of a receiver is ordinarily matter resting wholly within the discretion of the court below. But it is not always and absolutely so. Thus, where there is a proceeding to foreclose a mortgage given by a railroad corporation on its road, &c., and the amount due on the mortgage is a matter still unsettled and fiercely contested, the appointment or discharge of a receiver is matter belonging to the discretion of the court in which the litigation is pending. But when the amount due has been passed on and finally fixed by *this* court, and the right of the mortgagor to pay the sum thus settled and fixed is clear, the court below has then no discretion to

PRACTICE (*continued*).

withhold such restoration; and a refusal to discharge the receiver is judicial error, which this court may correct, supposing the matter (not itself one in the nature of a final decree) to be in any way fairly before it otherwise. *Ib.*

If other parties in the case set up claims on the road, which they look to the receiver to provide for and protect, these other claims being disputed, and, in reference to the main concerns of the road, small,—this court will not the less exercise its power of directing discharge. It will exercise it, however, under conditions, such as that of the company's giving security to pay those other claims, if established as liens. *Ib.*

12. An order of the Circuit Court, on a bill to foreclose a mortgage, ascertaining—in intended execution of a mandate from this court—the amount of interest due on the mortgage, directing payment within one year, and providing for an order of sale in default of payment, is a "decree" and a "final decree," so far as that any person aggrieved by supposed error in finding the amount of interest, or in the court's below having omitted to carry out the entire mandate of this court, may appeal. *Appeal* is a proper way in which to bring the matter before this court. *Id.* 440.

PRESUMPTIONS. See *Judicial Proceedings.*

PRIZE. See *Admiralty*, 1; *Rebellion*, 3, 4.

PUBLIC LAW. See *Blockade; Rebellion.*

1. A vessel and cargo, even when perhaps owned by neutrals, may be condemned as enemy property, because of the employment of the vessel in enemy trade, and because of an attempt to violate a blockade, and to elude visitation and search. *The Baigorry*, 474.
2. A vessel and cargo, condemned as enemy property, under circumstances of suspicion,—spoliation of papers in the moment of capture being one of them as regarded the cargo, and a former enemy owner remaining in possession as master of the vessel through a whole year, and through two alleged sales to neutrals, being another, as respected the vessel,—the alleged neutral owners, moreover, who resided near the place where the vessel and cargo were libelled, handing the whole matter of claim and defence over to such former owner as their agent, and giving themselves but slight actual pains to repel the inference raised *primâ facie* by the facts. *The Andromeda*, 482.

PUBLIC POLICY. See *Contract*, 6, 7.

RAILROAD. See *Fixtures*, 2, 3.

REBELLION, THE.

1. The principle, that personal dispositions of the individual inhabitants of enemy territory as distinguished from those of the enemy people

REBELLION, THE (*continued*).

generally, cannot, in questions of capture, be inquired into, applies in civil wars as in international. Hence, all the people of any district that was in insurrection against the United States in the Southern rebellion, are to be regarded as enemies, except in so far as by action of the Government itself that relation may have been changed. *Mrs. Alexander's Cotton*, 404.

2. Our Government, by its act of Congress of March 12th, 1863 (12 Stat. at Large, 591), to provide for the collection of abandoned property, &c., does make distinction between those whom the rule of international law would class as enemies; and, through forms which it prescribes, protects the rights of property of all persons in rebel regions who, during the rebellion, have, in fact, maintained a loyal adhesion to the Government; the general policy of our legislation, during the rebellion, having been to preserve, for *loyal* owners obliged by circumstances to remain in rebel States, all property or its proceeds which has come to the possession of the Government or its officers. *Ib.*

3. Cotton in the Southern rebel districts—constituting as it did the chief reliance of the rebels for means to purchase munitions of war, an element of strength to the rebellion—was a proper subject of capture by the Government during the rebellion on general principles of public law relating to war, though private property; and the legislation of Congress during the rebellion authorized such captures. *Ib.*

4. Property captured *on land* by the officers and crews of a naval force of the United States, is not "maritime prize;" even though, like cotton, it may have been a proper subject of *capture* generally, as an element of strength to the enemy. Under the act of Congress of March 12th, 1863, such property captured during the rebellion should be turned over to the Treasury Department, by it to be sold, and the proceeds deposited in the National Treasury, so that any person asserting ownership of it may prefer his claim in the Court of Claims under the said act; and on making proof to the satisfaction of that tribunal that he has never given aid or comfort to the rebellion, have a return of the net proceeds decreed to him. *Ib.*

5. The blockade of the *coast of Louisiana*, as established there, as on the rest of the coast of the Southern States generally, by President Lincoln's proclamation of 19th April, 1861, was not terminated by the capture of the forts below New Orleans, in the end of April, 1862, by Commodore Farragut, and the occupation of the city by General Butler on and from the 6th of May, and the proclamation of President Lincoln of 12th May, 1862, declaring that after June 1st the blockade of the port of *New Orleans* should cease. Hence, it remained in force at Calcasieu, on the west extremity of the coast of Louisiana, as before. *The Baigorry*, 474.

6. The military occupation of the city of New Orleans by the forces of the United States, after the dispossession of the rebels from that immediate region in May, 1862, may be considered as having been

REBELLION, THE (*continued*).

substantially complete from the publication of General Butler's proclamation of the 6*th* (dated on the 1*st*) of that month; and all the rights and obligations resulting from such occupation, or from the terms of the proclamation, existed from the date of that publication. *The Venice*, 258.

7. This proclamation, in announcing, as it did, that "all rights of property" would be held "inviolate, subject only to the laws of the United States;" and that "all foreigners not naturalized, claiming allegiance to their respective governments, and not having made oath of allegiance to the government of the Confederate States," would be "protected in their persons and property as heretofore under the laws of the United States," did but reiterate the rules established by the legislative and executive action of the national Government, and which may also be inferred from the policy of the war, in respect to the portions of the States in insurrection occupied and controlled by the troops of the Union. It was the manifestation of a general purpose, which seeks the re-establishment of the national authority, and the ultimate restoration of States and citizens to their national relations under better forms and firmer guarantees, without any view of subjugation by conquest. *Ib.*

8. Substantial, complete, and permanent military occupation and control, as distinguished from one that is illusory, imperfect, and transitory, works the exception made in the act of July 13th, 1861 (§ 5), which excepts from the rebellious condition those parts of rebellious States "from time to time occupied and controlled by forces of the United States engaged in the dispersion of the insurgents;" and such military occupation draws after it the full measure of protection to persons and property consistent with a necessary subjection to military government. *Ib.*

9. The President's proclamation of 31st of March, 1863, affected in no respect the general principles of protection to rights and property under temporary government, established after the restoration of national authority. *Ib.*

10. Vessels and their cargoes belonging to citizens of New Orleans, or neutrals residing there and not affected by any attempts to run the blockade, or by any act of hostility against the United States, were protected after the publication of General Butler's proclamation, dated May 1st, 1862, and published on the 6th; though such persons, by being identified by long voluntary residence and by relations of active business with the enemy, may have themselves been "enemies" within the meaning of the expression as used in public law. *Ib.*

REFERENCE.

A reference with direction "to *hear and determine* all the issues" in a case, does not require the referee to *report* them all. It is answered by his reporting the sum due after hearing all the issues. *Heckers* v. *Fowler*, 123.

"REPRESENTATIVES."

By the usage of the Land Office, patents for land are issued to a person and his "representatives;" within which word when found in a patent for land, representatives by contract as well as by operation of law are included; the question as to whom the patent should enure being left open for settlement by law. *Hogan* v. *Page*, 605.

RES JUDICATA.

1. The established rule, that where a matter has been once heard and determined in one court (as of law), it cannot be raised anew and reheard in another (as of equity), is not confined to cases where the matter is made patent in the pleadings themselves. Where the form of issue in the trial, relied on as estoppel, is so vague (as it may be in an action of ejectment), that it does not show precisely what questions were before the jury and were necessarily determined by it, parol proof may be given to show them. *Miles* v. *Caldwell*, 36.
2. The reasons which render *in*conclusive one trial in ejectment, have force when the action is brought in the fictitious form practised in England, and known partially among ourselves; but they apply imperfectly, and have little weight, when the action is brought in the form now usual in the United States, and where parties sue and are sued in their own names, and the position and limits of the land claimed are described. They have no force at all in Missouri, where the modern form is prescribed, and where, by statute, one judgment is a bar. *Ib.*

SLAVE-TRADE.

1. Persons trading to the west coast of Africa, on which coast two kinds of commerce are carried on,—one (the regular trade) lawful, the other (the slave-trade) criminal,—must keep their operations so clear and distinct in their character as to be able to repel the imputation of a purpose to engage in the latter. And if when so trading there be circumstances of any kind unexplained, leading strongly to the idea that a vessel is about to engage in the slave-trade, she will be forfeited. *The Slavers*, 350, &c.
2. Evidence less direct than is necessary to cause a forfeiture, in general, is sufficient—if unexplained by the traders—to cause the forfeiture of a vessel trading to the west coast of Africa, and charged with intent to engage in the slave-trade. *Ib.*
3. A vessel begun to be fitted, equipped, &c., for the purpose of a slave-voyage, in a port of the United States, then going to a foreign port, in order evasively to complete the fitting, equipping, &c., and so completing it, and from such port continuing the voyage, is liable to seizure and condemnation when driven in its subsequent course into a port of the United States. *Ib.* (*Reindeer*), 383.

STATUTES.

I. General Principles, concerning.

Statutes are to be considered as acting prospectively, unless the contrary is declared or implied in them. *Harvey* v. *Tyler*, 328.

II. Of the United States. See *Bankrupt Act of* 1841; *California*, 2, 3, 4, 6, 7, 8, 9, 10, 11; *District of Columbia; Rebellion*, 2, 3, 4; *Slave-Trade.*

1. The act of Congress of August 30th, 1852, "To amend an act entitled An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam," does not establish pilot regulations for *ports;* its object is to provide a system under which the masters and owners of vessels, propelled in whole or in part by steam, may be required to employ competent pilots to navigate such vessels on their voyages. *Steamship Company* v. *Joliffe*, 450.
2. Under the act of Congress of March 12th, 1863 (12 Stat. at Large, 591), such property as cotton—a staple grown in territory then rebel, and an element of rebel strength—captured during the rebellion, should be turned over to the Treasury Department, by it to be sold, and the proceeds deposited in the National Treasury, so that any person asserting ownership of it may prefer his claim in the Court of Claims under the said act; and on making proof to the satisfaction of that tribunal that he has never given aid or comfort to the rebellion, have a return of the net proceeds decreed to him. *Mrs. Alexander's Cotton*, 404.
3. Congress, by its act of March 12th, 1863 (12 Stat. at Large, 591), to provide for the collection of abandoned property, &c., makes distinction between those whom the rule of international law would class as enemies; and, through forms which it prescribes, protects the rights of property of all persons in rebel regions who, during the rebellion, have, in fact, maintained a loyal adhesion to the Government; the general policy of our legislation during the rebellion having been to preserve, for *loyal* owners obliged by circumstances to remain in rebel States, all property or its proceeds which has come to the possession of the Government or its officers. *Ib.*

SURETY.

Any unauthorized variation in an agreement which a surety has signed, that may prejudice him, or may substitute an agreement different from that which he came into, discharges him. *Smith* v. *United States*, 219.

Ex. gr. Where several persons sign a bond to the Government as surety for a Government officer, which bond statute requires shall be approved by a judge, before the officer enters on the duties of his office, an erasure by one of the sureties of his name from the bond—though such erasure be made *before the instrument is submitted to the judge for approval*, and, therefore, while it is uncertain whether it will be ac-

SURETY (*continued*).

cepted by the Government, or ever take effect,—avoids the bond, after approval, as respects a surety who had not been informed that the name was thus erased; the case being one where, as the court assumed, the tendency of the evidence was, that the person whose name was erased signed the bond before or at the same time with the other party, the defendant. *Ib.*

TREATIES OF THE UNITED STATES. See *Camp Leavenworth*, 2.

TRUST. See *Equity*, 1; *Partnership.*

VIRGINIA.

1. The 21st and 22d sections of the Virginia statute of 1st April, 1831, "concerning lands returned delinquent for the non-payment of taxes," were not confined to delinquencies *prior* to the passing of that statute. *Harvey* v. *Tyler*, 328.
2. Under the said sections, land is rightly exonerated by the county court of the county in which alone it was always taxed; even though a part of the land lay of later times in another county, a new one, made out of such former county. *Ib.*
3. The county courts of Virginia are courts of general jurisdiction, and their proceedings are entitled to the benignant presumptions made in favor of this class of courts. At all events, a judgment of redemption rendered by one of them, under the 21st and 22d sections of the statute of 1st April, 1831, "concerning lands returned delinquent for the non-payment of taxes," cannot be questioned collaterally.
4. Under the code of Virginia (ch. 135, ? 2), ejectment may be properly brought against persons who have made entries and surveys of any part of the land in controversy, and are setting up claims to it, though not in occupation of it at the time suit is brought. *Ib.*

WISCONSIN.

Judgments recovered against a corporation in Wisconsin, after the date of a mortgage by it, are discharged by a foreclosure of the mortgage. *Bronson* v. *La Crosse Railroad*, 283.