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ADMINISTRATOR.

Where an administrator had been appointed, and after giving the required bonds informed the court that he was unable to act, and resigned the appointment, not having taken possession of the property of the intestate, or attempted to exercise any control over it, it was competent for the court to accept the resignation, and to appoint a new administrator. The power to accept the resignation and to make the second appointment, under these circumstances, were incidents of the power to make the first. *Comstock* v. *Crawford*, 396.

ADMIRALTY

I. JURISDICTION.

1. Where a damage done is done wholly upon land, the fact that the cause of the damage originated on water subject to the admiralty jurisdiction does not make the cause one for the admiralty. *The Plymouth*, 20.

2. Hence, where a vessel lying at a wharf, on waters subject to admiralty jurisdiction, took fire, and the fire, spreading itself to certain storehouses on the wharf, consumed these and their stores, it was held not to be a case for admiralty proceeding. *Ib.*

II. PRACTICE.

3. A libel *in rem* against a vessel and personally against her master may properly under the present practice of the court be joined. And if the libellant have originally proceeded against vessel, master, *owners, and pilot*, the libel may with leave of the court be amended so as to apply to the vessel and master only in the way mentioned. *Newell* v. *Norton and Ship*, 257.

III. GENERAL PRINCIPLES. See *Sureties*.

4. A person who is master and part owner of a vessel in which a cargo has been wrongly sunk by collision from another vessel, may properly represent the insurer's claim for the loss of the cargo, and proceed to enforce it *in rem* and *in personam* through the admiralty. *Ib.*

AGENCY.

1. Whether there is sufficient proof of agency to warrant the admission of the acts and declarations of the agent in evidence, is a preliminary question for the court. *Cliquot's Champagne*, 114.

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AGENCY (*continued*).

2. Whatever is done by an agent, in reference to the business in which he is at the time employed, and within the scope of his authority, is said or done by the principal, and may be proved as well in a criminal as a civil case, in all respects, as if the principal were the actor and the speaker. *Ib.*

AMENDMENT. See *Admiralty*, 3; *Practice*, 6.

APPEAL. See *Practice*, 2, 11, 12, 18.

1. Appeals from the District Courts of California, under the act of 3d March, 1851—which, while giving an appeal from them to this court, makes no provision concerning returns here, and none concerning citations, and which does not impose any limitation of time within which the appeal may be allowed—are subject to the general regulations of the Judiciary Acts of 1789 and 1803, as construed by this court. *Castro* v. *United States*, 46.

Hence, the allowance of the appeal, together with a copy of the record and the citation, when a citation is required, must be returned to the next term of this court after the appeal is allowed. *Ib.*

2. An appeal allowed or writ of error issued must be prosecuted to the next succeeding term; otherwise it will become void. *Ib.*

3. The mere presence of the District Attorney of the United States in court, at the time of the allowance of an appeal, at another term than that of the decision appealed from, and without notice of the motion or prayer for allowance, will not dispense with citation. *Ib.*

4. The general rule that in cases of appeal the transcript of the record must be filed and the case docketed at the term next succeeding the appeal, has however exceptions; and will not apply where the appellant, without fault on his part, is prevented from seasonably obtaining the transcript by the fraud of the other party, or by the ill-founded order of the court below, or by the contumacy of its clerk. *United States* v. *Gomez*, 752.

5. A proceeding in the District or Circuit Court of the United States under the act of March 3d, 1851, for the ascertainment and settlement of private land claims in the State of California, is in the nature of a proceeding in equity. A decree of the Circuit Court in one of these cases transferred to it is therefore subject to appeal to the Supreme Court of the United States under the amendatory Judicial Act of March 3d, 1803. *United States* v. *Circuit Judges*, 673.

6. The court reproves counsel who take appeals without any expectation of reversal, and declares that if it had power to impose a penalty in such cases, as it has when writs of error are sued out for delay merely, it would impose it. *The Douro*, 564.

AVERAGE.

The liability of a cargo to contribute, in general average, in favor of the ship, does not continue after the cargo has been completely separated from the vessel, so as to leave no community of interest remaining. *McAndrews* v. *Thatcher*, 347.

AVERAGE (*continued*).

This principle illustrated in the following case:

A ship was stranded near her port of destination, and the underwriters upon her *cargo* sent an agent to assist the master in getting her off. The master and agent made all proper efforts to do this, for two days; when not succeeding at all, and the water increasing in the vessel, they began to discharge the cargo in lighters, still making efforts to save the ship. This discharge of the cargo occupied four days; by which time the whole of it was taken off, and, with the exception of a very small fraction in the lower hold and not discovered, taken to the ship's agents, who subsequently delivered it to its consignees, they giving the usual average bond. By the time that the cargo was thus all got off, the vessel, not assisted by being lightened, was settling in the sand, with the tide ebbing and flowing through her as she lay. The agent considering her case hopeless, and the consignees of the ship having refused to authorize him to incur any further expense, now went away.

On the next morning, and while the master was yet aboard, the underwriters on the *vessel* sent *their* agent, who got to work to float the vessel. Soon after the new agent came, the crew refused to do duty. The agent got new hands, and the crew went away. They were soon followed by the master, he leaving the vessel after the new agent had been in charge of her for four days. After six weeks' labor, and an expenditure of money somewhat exceeding her value when saved, the new agent succeeded in floating and rescuing the ship. The remnants of the cargo, in a damaged state, were delivered to its consignees.

On a suit by the owners of the ship against the consignees of the cargo, for contribution in general average for the expenses incurred after the master went away—

Held, that the case was not one for contribution; there having been, as the court considered, no community of interest remaining between the ship and cargo, after the master, in the circumstances of the case, had left the ship. *Ib.*

BANKERS. See *Internal Revenue*, 1.

BANKS. See *Internal Revenue*, 3, 4, 5, 6, 7.

BILL OF LADING.

The *primâ facie* legal effect of a bill of lading, as regards the consignee, is to vest the ownership of the goods consigned by it in him. *The Sally Magee*, 451.

BLOCKADE. See *Public Law*, 1–10; *Rebellion*, 3, 4.

INTENT TO VIOLATE.

1. Presumption of an intent to run a blockade by a vessel bound apparently to a lawful port, may be inferred from a combination of circumstances, as *ex. gr.* the suspicious character of the supercargo; the suspicious character of the master, left unexplained, though the case

BLOCKADE (*continued*).

was open for further proof; the fact that the vessel, on her outward voyage, was in the neighborhood of the blockaded place, and within the line of the blockading vessels, by *night*, and that her return voyage was apparently timed so as to be there by night again; that the vessel (though in a leaking condition, that condition having been known to the master before he set sail), paid no attention to guns fired to bring her to, but, on the contrary, crowded on more sail and ran for the blockaded shore; and that one witness testified *in preparatorio* that the master, just before the capture, told him that he intended to run the blockade from the first. *The Cornelius*, 214.

2. Although in such cases it is a possible thing that the intention of the master may have been innocent, the court is under the necessity of acting on the presumption which arises from such conduct, and of inferring a criminal intent. *Ib.*

3. If a vessel is found without a proper license near a blockading squadron under circumstances indicating intent to run the blockade, and in such a position as that if not prevented she might pass the blockading force, she cannot thus, *flagrante facto*, set up as an excuse that she was seeking the squadron with a view of getting an authority to go on her desired voyage. Nor did anything in the language of the President's proclamation of 19th April, 1861, vary this rule of public law in regard to vessels which had actual notice of the blockade established by the government of the United States at the beginning of the Southern rebellion. *The Admiral*, 603; *The Josephine*, 83; *The Cheshire*, 231.

BROKERS. See *Internal Revenue*, 2.

CALIFORNIA.

I. GENERAL LAW. See *Appeal*, 1, 5.

1. Under a statute of California, which provides that new matter in an answer shall on the trial be deemed controverted by the adverse party, witnesses may properly be examined, in a case where *such* an answer having new matter is put in. *Cheang-Kee* v. *United States*, 320.

2. In the Federal courts for the California Circuit (which have herein adopted the practice prevailing in the State courts under the State acts regulating proceedings in civil cases), not only may distinct parcels of land, if covered by one title, be included in one complaint or declaration, but, with a demand for these, may be united a claim for their rents and profits, or for damages for withholding them. *Beard* v. *Federy*, 478.

Under this act, the provision as to the description by metes and bound of the lands sued for, is directory, only. *Ib.*

3. Where it is doubtful whether a mandamus would be effectual to compel the clerk to make a transcript of a record for the Supreme Court—as where the proceedings had been such that the question as to pendency of the appeal itself, could not well be determined without an inspection of the record—a resort to it is not obligatory. In such cases, if

CALIFORNIA (*continued*).

the suit be an appeal in a land case from the California district, in which the United States is a party, it may apply to the district attorney for a transcript; the latter as well as the clerk having power under an act of Congress of March 3d, 1861, in such cases of appeal, to transcribe and certify the record to this court. *United States* v. *Gomez*, 752.

II. IN SUPPORT OF MEXICAN GRANTS.

4. To give jurisdiction to the Board of Land Commissioners to investigate and determine a claim to land alleged to have been derived from the Spanish or Mexican governments, it is not necessary that the petition of the claimant should aver that such claim was supported by any grant or concession in writing; it is sufficient if the petition allege that the claim asserted was by virtue of a right or title derived from either of those governments. The right or title may rest in the general law of the land. *Beard* v. *Federy*, 478.

III. IN DEFEAT OF MEXICAN GRANTS.

5. Written documentary evidence, no matter how formal and complete, or how well supported by the testimony of witnesses, if coming from private hands, is insufficient to establish a Mexican grant if there is nothing in the public records to show that such evidence ever existed; though the court remarks that if the claimant can show to the satisfaction of the court that the grant has been made in conformity to law and *recorded*, and that the record has been lost or destroyed, he will then be permitted to give secondary evidence of its contents. *Peralta* v. *United States*, 434.

6. A bare possession for a year before our conquest of California is insufficient to establish an equity in opposition to the above first-announced rule. *Ib.*

7. In proceedings under the act of March 3, 1851, for the settlement of private land claims in California, where the claimant produces neither a concession nor a grant, and does not prove that he ever had possession of the land described in his petition, the claim is rightly disallowed. *United States* v. *Gomez*, 752.

IV. ACTS OF MARCH 3, 1851, AND OF AUGUST 31, 1862, &c.

8. A proceeding in the District or Circuit Court of the United States, under the act of March 3d, 1851, for the ascertainment and settlement of private land claims in the State of California, is in the nature of a proceeding in equity. A decree of the Circuit Court in one of these cases transferred to it is, therefore, subject to appeal to the Supreme Court of the United States under the amendatory Judicial Act of March 3d, 1803. *United States* v. *Circuit Judges*, 673.

9. The legislation of Congress requiring all claims to lands in California, by virtue of any right or title derived from the Spanish or Mexican governments, to be presented to the Board of Commissioners created under that act for investigation and settlement, and providing that all claims which are not thus presented within a specified period shall be

CALIFORNIA (*continued*).

considered and treated as abandoned, is not subject to any constitutional objection, so far as it applies to grants of an imperfect character which require further action of the political department of government to render them perfect. *Beard* v. *Federy*, 478.

10. As against the government and parties claiming under the government, a patent of the United States issued upon a confirmation of a claim to land by virtue of a right or title derived from Spain or Mexico—so long as it remains unvacated—is conclusive. *Ib.*

11. The term "third persons," mentioned in the fifteenth section of the act of March 3d, 1851, against whom the decree and patent of the United States are not conclusive, does not embrace all persons other than the United States and the claimants, but only those who hold superior titles, such as will enable them to resist successfully any action of the government disposing of the property. *Ib.*

12. When under the act of August 31st, 1852, relating to appeals from the Board of Land Commissioners to ascertain and settle private land claims in California, created under the act of March 3d, 1851, the attorney-general gave notice that he would not prosecute the appeal, such appeal was for all legal purposes in fact dismissed, and the decree of the board took effect as if no appeal had been taken; and an order or decree of the District Court giving leave to the claimant to proceed upon the decree of the board as upon a final decree was a proper disposition of the case. *Ib.*

13. When the United States and the claimant to whom a Mexican grant has been confirmed are both satisfied with its location, any other person who seeks to contest such a location must show some title, legal or equitable, to some part of the land covered by the survey, before the court will disturb it at his instance, or in his alleged interest. *Dehon* v. *Bernal*, 774.

14. When all the elements of location prescribed by a decree of the District Court cannot possibly be complied with, and a survey conforms as much with the decree confirming the grant as it can well be made to do, this court will not disturb it. *Ib.*

CAPTURING FORCE.

On a question under the act of Congress of July 17th, 1862, which distributes prize-money according to the fact whether the captured vessel is of equal or superior force to the vessel or vessels making the capture, it is proper to consider as the capturing force, not only the flag-ship, leading, actually firing, and by her fire doing the only damage—immense damage—done, but also any other vessel which,—by having diverted the fire of the vessel forced to surrender, by an obviously great force, by its position, conduct, and plain purpose to come at once into the engagement and to inflict perhaps complete destruction,—may have hastened the surrender. *The Iron-clad Atlanta*, 425.

CHARTER PARTY. See *Lien*.

COLLISION. See *Admiralty*, 4; *Damages*, 2.

1. Where the question of fault in a collision lies, on the one hand, between a boat fast at a wharf, out of the track of other vessels, and moored, in all respects of place and signals, or want of them, according to the port regulations of the place, and, on the other, a steamer navigating a channel, of sufficient width for her to move and stop at pleasure, the fault, under almost any circumstances, where there is no unusual action of the elements or other superior force driving her to the place of collision, will be held to be with the steamer. *The Granite State*, 310.
2. Hence a steamer which, in going in the dark from a broad channel into her dock, runs—though in an effort to avoid other steamers coming out of *their* docks—against a barge moored at a wharf according to the port regulations, is responsible for the collision. Nor is it an excuse that the barge was without masts, lay low, and owing to her color was not visible in the dark till you were close by her; nor, if the port regulations of the place do not require them from vessels moored at wharves, that she was without both light and watch. *Ib.*
3. A vessel drifting from her moorings and striking against another vessel aground on a bar out of the channel or course of navigation, will be liable for damage done to the vessel aground, unless the drifting vessel can show affirmatively that the drifting was the result of inevitable accident, or of a *vis major*, which human skill and precaution could not have prevented. *The Louisiana*, 164.
4. The fact that a vessel on arriving at a wharf is moored in a way which, in reference to the state of the tide and wind at that time, is proper, and that in *this* position she is made as fast as she can be, is not an excuse for her breaking away on a change of tide and wind, if ordinary nautical skill would have suggested that such a change would produce different and reversed conditions of risk. *Ib.*

COMITY. See *Conflict of Jurisdiction.*

COMMERCIAL LAW. See *Average; Negotiable Instruments; Lien.*

COMMON CARRIER.

1. The common-law liability of a common carrier for the safe carriage of goods may be limited and qualified by special *contract* with the owner; provided such special contract do not attempt to cover losses by negligence or misconduct. *York Company* v. *Central Railroad*, 107.

   Thus, where a contract for the transportation of *cotton* from Memphis to Boston was in the form of a bill of lading containing a clause exempting the carrier from liability for losses by *fire*, and the cotton was destroyed by fire, the exemption was held sufficient to protect the carrier, the fire not having been occasioned by any want of due care on his part. *Ib.*
2. Where a bill of lading, signed by a master, shows that a voyage to a particular place named on it is but part of a longer transit which it is understood is to be made by the cargo shipped, and that the cargo is

COMMON CARRIER (*continued*).

to be carried forward in a continuous way on its further voyage, the master must be presumed to have contracted in reference to the course of trade connected with getting the cargo forward. *The Convoy's Wheat*, 225.

3. In such a case, if any obstacle should intervene, which by the regular course of the trade is liable to occur and for a short time retard the forwarding, the master cannot, from a mere inability to find storage at the *entrepôt*, turn about, and taking the cargo to some near port, store it there, inform the consignees, and clear out. He should wait. *Ib.*
4. If there is easy telegraphic communication with the consignees, he should notify to them his difficulty, that they may send him, if they please, instructions. *Ib.*
5. The first section of the act of Congress of March 3d, 1851, entitled "An act to limit the liability of ship-owners, and for other purposes," exempts the owners of vessels in cases of loss by fire from liability for the negligence of their officers or agents, in which the owners have not directly participated. *Walker* v. *The Transportation Company*, 150.
6. The proviso to that act allowing parties to make their own contracts in regard to the liabilities of the owners, refers to express contracts. *Ib.*
7. A local custom that ship-owners shall be liable in such cases for the negligence of their agents, is not a good custom; being directly opposed to the statute. *Ib.*

CONFLICT OF JURISDICTIONS.

I. BETWEEN FEDERAL COURTS AND STATE COURTS.

1. The rule that among courts of concurrent jurisdiction, that one which first obtains jurisdiction of a case has the exclusive right to decide every question arising in the case, is subject to some limitations; and is confined to suits between the same parties, or privies, seeking the same relief or remedy, and to such questions or propositions as arise ordinarily and properly in the progress of the suit first brought; and does not extend to all matters which may by possibility become involved in it. *Buck* v. *Colbath*, 334.
2. The case of *Freeman* v. *Howe* (24 Howard, 450)—an action of replevin—decided that property held by the marshal under a writ from the Federal court could not be lawfully taken from his possession by any process issuing from a State court; and decided nothing more. *Ib.*
3. The ground of that decision was, that the possession of the marshal was the possession of the court, and that pending the litigation, no other court of merely concurrent jurisdiction could be permitted to disturb that possession. *Ib.*
4. An action of trespass, for taking goods, does not come within the principle of that case, inasmuch as it does not seek to interfere with the possession of the property attached; but it involves the question, not raised in that case, of the extent to which the Federal courts will protect their officers in the execution of their processes. *Ib.*

CONFLICT OF JURISDICTIONS (*continued*)

5. With reference to this question, all writs and processes of the courts, may be divided into two classes:
   i. Those which point out specifically the property or thing to be seized.
   ii. Those which command the officer to make or levy certain sums of money, out of property of a party named.

   In the first class the officer has no discretion, but must do precisely what he is commanded. Therefore, if the court had jurisdiction to issue the writ, it is a protection to the officer in all courts.

   But in the second class the officer must determine for himself whether the property which he proposes to seize under the process is legally liable to be so taken, and the court can afford him no protection against the consequences of an erroneous exercise of his judgment in that determination. He is liable to suit for injuries growing out of such mistakes in any court of competent jurisdiction. *Ib.*
6. A plea, therefore, which does not deny that the property seized was the property of the plaintiff, or aver that it was liable to the writ under which it was seized, is bad in any court. *Ib.*

II. Between Congress and State Legislatures.

7. A license granted by the United States, under the Internal Revenue Act of July 1, 1862, to carry on the business of a wholesale liquor dealer, in a particular State named, does not, although it have been granted in consideration of a fee paid, give the licensee power to carry on the business in violation of the State laws forbidding such business to be carried on within its limits. *McGuire* v. *The Commonwealth*, 387.
8. No State can, by either its constitution or other legislation, withdraw the Indians within its limits from the operation of the laws of Congress regulating trade with them; notwithstanding any rights it may confer on such Indians as electors or citizens. *United States* v. *Holliday*, 407

CONSTITUTIONAL LAW.

I. Violation of Contract.

1. An enactment by a State, in incorporating a company to build a toll-bridge and take tolls fixed by the act, that it should not be lawful for any person or persons to erect any bridge within two miles either above or below the bridge authorized, is a contract, and inviolable; this, though the charter of the company was without a limit as to the duration of its existence. *The Binghamton Bridge*, 52.
2. A clause in a statute "that it shall not be lawful for any person or persons to erect a bridge within a distance of two miles," means, not only that no person or association of persons shall erect such a bridge without legislative authority, but that the legislature itself will not make it lawful for any person or association of persons to do so by giving them authority. *Ib.*
3. If a State grant no exclusive privileges to one company which it has incorporated, it impairs no contract by incorporating a second one

CONSTITUTIONAL LAW (*continued*).
which itself largely manages and profits by to the injury of the first. *Turnpike Co.* v. *The State*, 210.

II. NAVIGABLE WATERS OF THE UNITED STATES

4. The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie; and includes, necessarily, the power to keep them open and free from any obstruction to their navigation, interposed by the States or otherwise. And it is for Congress to determine when its full power shall be brought into activity, and as to the regulations and sanctions which shall be provided.

5. This power, however, covering as it does a wide field, and embracing a great variety of subjects, some of the subjects will call for uniform rules and national legislation; while others can be best regulated by rules and provisions suggested by the varying circumstances of differing places, and limited in their operation to such places respectively. And to the extent required by these last cases, the power to regulate commerce may be exercised by the States.

To explain. Bridges, turnpikes, streets, and railroads, are means of commercial transportation as well as navigable waters, and the commerce which passes over a bridge may be much greater than that which will ever be transported on the water which it obstructs. Accordingly, in a question whether a bridge may be erected over one of its own tidal and navigable streams, it is for the municipal power to weigh and balance against each other the considerations which belong to the subject—the obstruction of navigation on the one hand, and the advantage to commerce on the other—and to decide which shall be preferred, and how far one shall be made subservient to the other. And if such erection be authorized in good faith, not covertly and for an unconstitutional purpose, the Federal courts are not bound to enjoin it.

6. However, Congress may interpose whenever it shall be deemed necessary, by either general or special laws. It may regulate all bridges over navigable waters, remove offending bridges, and punish those who shall thereafter erect them. Within the sphere of their authority, both the legislative and judicial power of the nation are supreme. *Gilman* v. *Philadelphia*, 713.

7. Annunciating these principles on the one hand and on the other, the court refused to enjoin, at the instance of a riparian owner, to whom the injury would be consequential only, a bridge about to be built, under the authority of the State of Pennsylvania, by the city of Philadelphia, over the River Schuylkill, a small river—tidal and navigable, however, and on which a great commerce in coal was carried on by barges—which river was wholly within the State of Pennsylvania, and ran through the corporate limits of the city authorized to erect the bridge; and on both sides of which citizens in great numbers lived, and on both sides of which municipal authority

CONSTITUTIONAL LAW (*continued*).

was exercised on one as much as on the other; the bridge being a matter of great public convenience every way, and another bridge, just like it, having been erected and in use for many years, over the same stream, about five hundred yards above. *Ib.*

III. INDIANS.

8. The act of Congress of February 13, 1862 (12 Stat. at Large, 339)—by which Congress intended to make it penal to sell spirituous liquor to an Indian under charge of an Indian agent, although sold outside of any Indian reservation and within the limits of a State—is constitutional, and is based upon the power of Congress to regulate commerce with the Indian tribes. *United States* v. *Holliday*, 407.
9. This power extends to the regulation of commerce with the Indian tribes, and with the individual members of such tribes, though the traffic and the Indian with whom it is carried on are wholly within the territorial limits of a State. *Ib.*
10. No State can by either its constitution or other legislation withdraw the Indians within its limits from the operation of the laws of Congress regulating trade with them, notwithstanding any rights it may confer on such Indians as electors or citizens. *Ib.*

CONTRACT. See *Constitutional Law*, 1-3.

I. MEANING OF, WITHIN THE CONSTITUTION.

1. An enactment by a State, in incorporating a company to build a toll-bridge and take tolls fixed by the act, that it should not be lawful for any person or persons to erect any bridge within two miles either above or below the bridge authorized, is a contract, and inviolable; this, though the charter of the company was without limit as to the duration of its existence. *The Binghamton Bridge*, 51.
2. A clause in a statute "that it shall not be lawful for any *person or persons* to erect a bridge within a distance of two miles," means, not only that no person or association of persons shall erect such a bridge without legislative authority, but that the legislature itself will not make it lawful for any person or association of persons to do so by giving them authority. *Ib.*
3. The incorporation by a State of a turnpike company to which it gives no exclusive privileges is not a contract that it will not incorporate a railroad company which itself shall manage and largely profit by to the injury of the first-named company. *Turnpike Co.* v. *The State*, 210.

II. WHEN VOID AS AGAINST PUBLIC POLICY.

4. Promissory notes given for a balance found due on settlement in a transaction itself forbidden by statute and illegal, or for money lent to enable a party to pay bills which the person taking the promissory notes had himself assisted, in violation of statute, to issue and circulate, cannot be enforced.
5. The fact that such promissory notes are given for a balance found due,

CONTRACT (*continued*).

or to enable a principal party in the illegal transaction to pay notes that have got into public circulation and are unpaid, does not purge them from the infirmity which belonged to the original vicious transaction. *Brown* v. *Tarkington*, 377.

III. THOSE OF COMMON CARRIERS. See *Common Carriers*, 2, 5, 6.

6. The common-law liability of a common carrier for the safe carriage of goods may be limited and qualified by special *contract* with the owner; provided such special contract do not attempt to cover losses by negligence or misconduct. *York Co.* v. *Central Railroad*, 107.

COUNTY OFFICERS.

A county "officer" is one by whom the county performs its usual political functions or offices of government; who exercises continuously and as a part of the regular and permanent administration of government its public powers, trusts, or duties. A fixed number of persons specially and by name appointed by the legislature to act as a board of commissioners in a matter about which, though relating immediately to the county, county officers in the exercise of their general powers, as such, and without special authority from the legislature, have not authority to act, are not county "officers." *Sheboygan* v. *Parker*, 93.

Hence when special authority was given by the legislature to the people of a county to say whether or not they would subscribe to a railroad and bind themselves to pay for it, that body, in giving the authority, may properly direct the mode in which such subscription shall be made and paid for: may, *ex. gr.*, appoint special persons to make the subscription and to issue bonds in behalf of the county therefor—even though the constitution of the State in which the county is provides that "all *county officers*" shall be elected by the electors of the county, and though there may be a regular board of county supervisors elected accordingly, then administering the ordinary county affairs. Bonds so executed and issued bind the county. *Ib.*

COUPONS. See *Negotiable Instruments*, 2.

COURT AND JURY.

The question of legitimacy is a question for the jury; the law making no presumptions about it. Hence it is error to instruct a jury that if a man and woman live together as husband and wife, and the man acknowledge the woman as his wife and always treat her as such, and acknowledge and treat the children which she bore him as his children and permit them to be called by his name,—then that the *presumption of law* is in favor of their legitimacy. *Blackburn* v. *Crawfords*, 175.

CUSTOM. See *Common Carrier*, 2.

A custom opposed to a statute is void. *Walker* v. *The Transportation Co.*, 150.

CUSTOMS OF THE UNITED STATES. See *Evidence*, 2, 3, 12.

1. The provision in the Revenue Act of March 3d, 1863—that when foreign goods brought or sent into the United States are obtained otherwise than by purchase, they shall be invoiced at the "actual *market value* thereof at the time and *place* when and where the same were procured or manufactured"—does not mean any locality more limited than the *country* where the goods are bought or manufactured. The standard to be applied is the principal markets in that country. Hence proof of the market value in Paris of wines made at Rheims, a hundred and more miles off, may be given; there being no other evidence on the subject. *Cliquot's Champagne*, 114.

2. The expression in the act of 3d March, 1863, "If any owner, consignee, or agent shall *knowingly* make an entry of goods, &c., by means of any false invoice, certificate, or by means of any other false or fraudulent document," &c., means if such person shall make such entry, &c., of goods knowing that the invoice, &c., does not express their actual market value—swearing falsely and knowing it,—and the expression as used in the act refers to the guilty knowledge on the part of either the owner, consignee, or agent; the act of an agent or consignee being the act of the guilty principal. *Ib.*

3. The proviso in the act of 3d March, 1863, that its provisions shall not apply to invoices of goods, &c., imported from any place beyond Cape Horn or Good Hope until 1st January, 1864, does not apply to cases of fraud. If the guilty means were used after the act took effect, no matter when they were prepared, the offence is complete: revenue laws not being penal laws in the sense which requires them to be construed with great strictness in favor of the defendant. They are remedial laws, rather. *Ib.*

4. In *debt* for custom-house duties, a judgment for so many dollars, "payable in gold (and silver) money of the United States" for duties, is good; [nothing but gold and silver coin having been made a legal tender for this species of debt to the government; though Treasury notes were by a statute of 1862 made a legal tender in regard to most other debts.] *Cheang-Kee* v. *United States*, 320.

5. Under the Tariff Act of June 30, 1864, which lays a specific duty per gallon upon wines, and an *ad valorem* duty also, with a proviso that no *champagne* in bottles shall pay a *less* rate than $6 per dozen (quart) or two dozen (pint) bottles, the effect is that if the specific duty upon the gallon and the *ad valorem* duty *exceed* the sum of six dollars per dozen (quart) or two dozen (pint), the rate thus estimated will be the duty imposed. It is only when the rate falls *under* the sum of $6 that no less sum is chargeable. *Bollinger's Champagne*, 560.

6. Any entry knowingly made by means of false invoices, false certificates to the consul, or by means of any other false or fraudulent documents or papers, forfeits it, irrespective of the fact that if the entry had been truly made, the duty would have been no greater. The penalty is attached to the act of false entry, not to the result which such entry may, in the specific instance, produce on the revenue. *Ib.*

DAMAGES.

1. In suits for the infringement of patents, where there is no established license fee, and evidence of the utility and advantage of the patent infringed over other inventions previously used for producing its results, is resorted to in order to establish the measure of damages, the jury is not to estimate the damages for the whole term of the patent, but only for the period of the infringement. And a recovery does not vest the infringer with the right to continue the use. *The Suffolk Co.* v. *Hayden*, 315.
2. The sum which it will take to repair her is not an incorrect rule of damage, in case of injury from collision to an old barge of a peculiar structure and capacity of usefulness, and from these causes not having any established market value in the particular port where she is injured. *The Granite State*, 310.

DEBTOR AND CREDITOR.

Where a solvent firm owing *bonâ fide* a debt, learns—though by irregular and perhaps improper means on the part of one of their number—that the debt is about to be attached by a creditor of the person to whom they owe it, they may nevertheless pay the debt as soon as they please, and in such securities, including their own negotiable note, as their creditor is willing to accept; and if the debt is actually paid, and so acknowledged by their creditor to be, the creditor of such creditor cannot make them pay it over again to *him;* though his attachment may thus have been provokingly defeated. Neither is there anything in the laws of Tennessee relating to the attachment of debts due by non-residents that militates with this doctrine that a solvent man may at any time pay his just debts not attached by lawful process.—*Simpson & Co.* v. *Dall*, 460.

DECLARATIONS. See *Evidence*, 4.

DEED. See *Texas.*

To constitute delivery of a deed the grantor must, as a general thing, part with the possession of it, or at least with the right to retain possession. Upon a question of delivery, its registry, if by him, is entitled to great consideration, and might, perhaps, in the absence of opposing evidence, justify a presumption of delivery. But where the grantee had no knowledge of the existence of the deed, and the property which it purported to convey always remained in the possession and under the control of the grantor, and where, therefore, any registry was of course without either his assent or knowledge, the presumption of a delivery from the fact of registry is repelled. [N. B. In the case at bar, there was an allegation that the deed registered was a forgery.] *Younge* v. *Guilbeau*, 636.

DELIVERY. See *Deed.*

DEPOSITION. See *Evidence*, 1, 6.

DEPOSITS. See *Internal Revenue*, 3–5.

DISTRICT OF COLUMBIA.

A marriage in the District of Columbia, if celebrated by a clergyman *in facie ecclesiæ* is not invalid for want of a marriage license. *Blackburn v. Crawfords*, 175.

DRAFT. See *Statutes*, 10.

DUTY. See *Customs of the United States.*

EJECTMENT. See *California*, 2; *Illinois*, 5; *Practice*, 14.

ENROLMENT. See *Statutes*, 10.

ENROLMENT AND REGISTRY.

I. Of Vessels.

1. The act of December 23d, 1852, authorizing foreign vessels wrecked and repaired in the United States, to be registered or enrolled, is to be taken as a part of our system of registration and enrolment. *The Mohawk*, 566.
2. Vessels engaged in the foreign trade are *registered*, and those engaged in the coasting and home trade are *enrolled;* and the words "register" and "enrolment" are used to distinguish the certificates granted to those two classes of vessels. *Ib.*
3. The two statutes providing generally for registry and enrolment of vessels, are the act of December 31st, 1792, applicable exclusively to registry of vessels engaged in foreign commerce, and the act of July 18th, 1793, applicable exclusively to vessels engaged in domestic commerce. *Ib.*
4. The penalty of forfeiture of a vessel for the use of a certificate of registry to which she is not entitled, found in the 27th section of the act of 1792, is not imported into the act of 1793; and there is no forfeiture under that act for the use of a fraudulent enrolment. *Ib.*
5. But the act of March 2d, 1831, concerning vessels used on our northern frontiers, which are necessarily engaged in both the foreign and home traffic at the same time, makes the certificate of enrolment equivalent to both registry and enrolment. *Ib.*
6. This act does, by the *proviso* to its 3d section, apply the penalty of forfeiture contained in the 27th section of the act of 1792 to an enrolment, having the effect of a register, fraudulently obtained. *Ib.*

II. Of Deeds. See *Texas.*

ENTRIES. See *Evidence*, 5, 6, 7.

EQUITY.

I. Injunction. See *Constitutional Law*, 7.

II. Decrees in.

The language of a decree in chancery must be construed in reference to the issue which is put forward by the prayer for relief and other pleadings, and which these show it was meant to decide. Hence, though the language of the decree be very broad and emphatic,—enough so, perhaps, when taken in the abstract merely, to include the decision

EQUITY (*continued*).

of questions between codefendants,—yet where the pleadings, including the prayer for relief, are not framed in the way usual in equity when it is meant to bring the respective claims and rights of codefendants before the court, but are framed as in a controversy between the complainant and defendant chiefly or only—such general language will be held down to these two principal parties alone. *Graham* v. *Railroad Co.*, 704.

EVIDENCE. See *Court and Jury; Judicial Proceedings*, 1; *Maryland*, 1; *Privileged Communication; Rebellion*, 1.

I. In Cases Generally.

1. Where a deposition is taken upon a commission, the general rule is that all objections to it of a formal character, and such as might have been obviated if urged on the examination of the witness, must be raised at such examination, or upon motion to suppress the deposition. It is too late to raise such objections for the first time at the trial. *York Co.* v. *Central Railroad*, 107; *Blackburn* v. *Crawfords*, 175.

So where a deposition, after a motion on grounds set forth has been unsuccessfully made at one term to suppress it, as irregularly taken, is at another read on trial without objection or exception, it cannot be objected to in an appellate court on the grounds that were made for its suppression, or at all. *Brown* v. *Tarkington*, 377.

2. Prices-Current obtained from the agent of a manufacturer or from dealers in the manufactured articles generally, and which have been prepared and used by the parties furnishing them in the ordinary course of their business, are so far evidence of the value of the articles mentioned in them as that they may be submitted to the jury as "throwing light" on the matter; as "some guides to candid men," and for their "consideration." And this rule was held to apply so far as that the *comparative* value, at the town of manufacture (Rheims) and at the capital of the country (Paris), of champagne wines made by one manufacturer (Cliquot), was allowed to be shown by the Prices-Current giving the value of that made by others (Mumm, Moet & Chandon); it not appearing—either by evidence in the case set forth in the bill of exceptions, or by an admission of the judge upon the bill, that such evidence was given—but that the articles were the same in price, kind, and quality. *Cliquot's Champagne*, 114.

3. In order to show the actual market value of articles of merchandise at a particular place in a foreign country, letters by third parties abroad to other third parties—offering to sell at such rates—if written in the ordinary course of the business of the party writing them, and contemporaneously with the transaction which is the subject of the suit—are admissible as evidence, even though neither the writers nor the recipients of the letters are in any way connected with the subject of the suit, and though there is no proof that the writers of the letters are dead. *Fennerstein's Champagne*, 145.

4. Though, on a question of marriage and legitimacy, it is competent, in order to prove an heirship asserted, to give in evidence the declara-

EVIDENCE (*continued*).

tions of any deceased member of *that* family to which the person from whom the estate descends belonged, yet it is not competent to give the declarations of a person belonging to another family,—such person being connected with the person from whom the estate descends only by an asserted intermarriage of a member of each family. *Blackburn* v. *Crawfords*, 175.

5. Independently of statute requiring it to be kept, a baptismal register of a church, in which entries of baptism are made in the ordinary course of the clergyman's business, is admissible to prove the *fact* and *date* of baptism, but not to prove other facts, as, *ex. gr.*, that the child was baptized as the *lawful* child of the parents, and hence to infer a marriage between them. *Ib.*

6. Where there has been no official registry of marriages kept in the church where a clergyman ministered, a private memorandum, in which the minister, in the ordinary course of his business, has entered or intended to enter, as it occurred, each marriage celebrated by him, is admissible on a question whether such minister ever did or did not celebrate a particular marriage in question. *Ib.*

But the memorandum ought itself to be produced; and if the testimony of the minister proving the memorandum is taken by commission, the memorandum ought itself to be annexed to the deposition; or—if the deposition is taken in a foreign country and the possessor of the memorandum be unwilling to part with the original—a proved copy. *Ib.*

7. On a question whether a particular priest of the Roman Church ever celebrated a marriage at a particular church between parties who had been previously living in fornication, his statement that no official registry of marriages was kept, but that he kept a private memorandum for himself (producing and annexing it as above specified), and that the alleged marriage did not appear in it; that he was aware the law imposed a penalty for performing the ceremany without a license; that he never married parties without a license; that he always required the presence of two witnesses; and that he never celebrated a secret marriage between parties living in sin, one or both of whom would only be married on the condition that such marriage was to be kept secret—is admissible. *Ib.*

8. Reputation being sufficient to establish death and heirship, a statement of them in a deposition, by an ancient witness, long and intimately acquainted with the family about which he testifies, and who says that certain children ("as appears from entries in the family Bible, and which I believe to be true,") died at such a time, and another child at another time, "as I am informed and believe,"—is not subject to exception at the trial. *Secrist* v. *Green*, 744.

9. A party offering secondary evidence of the contents of papers must show that he has in good faith exhausted, in a reasonable degree, all the sources of information and means of discovery which the nature of the case would naturally suggest, and which were accessible to him: *Hence*,

EVIDENCE (*continued*).

Where certain original letters had been passing between two attorneys in a case, and one of the attorneys testified that he had looked over his papers for all such documents as related to the case, and that the needed letters were not among them; that he recollected thinking about the letters at the time he was looking over his papers, but (being under the impression that he had left them with his colleague) did not make "any special search for them:"

And where the other attorney testified that he *had* had the letters, but was under the impression that he had returned them to the first attorney; that he had not examined his *files* of letters, and, not finding his letters among the other papers in his possession, supposed that the first attorney had them:

Held, that the secondary evidence of the contents of the letters was wrongly given: the court assuming of course that the search was insufficient. *Simpson & Co.* v. *Dall*, 460.

II. In Patent Cases.

10. In cases for the infringement of a patent, where there is no established license fee, general evidence may be resorted to in order to get at the measure of damages; and evidence of the utility and advantage of the invention over the old modes or devices that had been used for working out similar results is competent and appropriate. *The Suffolk Co.* v. *Hayden*, 315.

III. In Prize Cases.

11. Ownership presumptively in an enemy, by virtue of a bill of lading consigning the goods to him, is not disproved by a test affidavit in prize, stating generally that the goods consigned had been purchased for their consignee contrary to his instructions, and that he had rejected them; and that this appeared "from the correspondence of the parties," which the affiant (an asserted agent of the alleged true owner) swore that he "believed to be true," but which neither he nor any one produced, or accounted for the absence of; and where, though two years had passed between the date of the claim and that of the decree, the consignors and asserted owners, who lived at Rio Janeiro, had not manifested any interest in the result of the prize proceedings, which were at New York, nor, so far as appeared, had been even applied to in the matter. The case would, however, be different if the allegation as to purchase by the consignor, in contravention of orders, and subsequent rejection by the consignee, were sufficiently proved; and proved affirmatively, as it is requisite to prove it. *The Sally Magee*, 451.

IV. In Revenue Cases.

12. The provisions in the 70th and 71st sections of the Revenue Act of 1799, by which when a probable cause of forfeiture is made out to the satisfaction of the judge trying the case, the *onus* of proving innocence is thrown upon the claimant, apply to the act of 3d March, 1863, though not in terms adopted by it; neither of the said sections

EVIDENCE (*continued*).

having been ever repealed, and this rule of *onus probandi* having been always regarded as a permanent feature of our revenue system. *Cliquot's Champagne*, 114.

EXECUTION.

Levy of an execution, even if made on personal property sufficient to satisfy the execution, is not *per se* satisfaction of the judgment, and, accordingly, therefore, does not extinguish it if the levy have been abandoned at the request of the debtor and for his advantage; as *ex. gr.* the better to enable him to find purchasers for his property. *United States* v. *Dashiel*, 688.

ILLINOIS.

1. By the laws of Illinois, a copy of a will proved in one State, and with its probate and letters duly authenticated under the act of Congress for the authentication of records to be used in others, may, after certain formalities gone through, be recorded in the county courts of a county of Illinois, where the testator had property. And when so recorded, certified copies of such county court records are evidence; being so under the general laws of the State. *Secrist* v. *Green*, 744.
2. When a decree finds that due legal notice of intended proceedings in partition had been given to all the heirs of a decedent, the finding is, in Illinois, *primâ facie* though not conclusive evidence of the fact. *Ib.*
3. An acknowledgment, on the day of its date, before a master of chancery, in New York, of a deed executed 3d March, 1818—probate being made by a subscribing witness personally known to the master, of the identity of the party professing to grant with the party presenting himself to acknowledge—and the record of acknowledgment certifying that the grantor "consented that the deed might be recorded where necessary"—was a sufficient acknowledgment of the deed, by the laws of New York regulating the subject, at the date when the deed was made. *Ib.*
4. Having been so, and conveying land in Illinois, such deed was entitled to be recorded in Illinois; the laws of that State allowing deeds for lands in the State, executed out of it but within the United States, to be recorded when acknowledged or proved in conformity with the law of the State where executed; and when so recorded, it was properly read without other proof of execution. *Ib.*
5. In Illinois, and under its statutes relating to ejectment, when a question of fraud in obtaining a title to real estate has been submitted, in a suit in ejectment, to a jury, and determined against the party setting it up, such party, notwithstanding the nature of the action, cannot go into equity and ask relief there, setting up essentially the same frauds, and sustaining them by the same evidence that he relied on to make out his case in the suit in ejectment at law. *Blanchard* v. *Brown*, 245.

INDIANS.

1. By the act of February 13th, 1862 (12 Stat. at Large, 339), relating to the Indians, Congress intended to make it penal to sell spirituous

INDIANS (*continued*).

liquor to an Indian under charge of an Indian agent, although it was sold outside of any Indian reservation and within the limits of a State. *United States* v. *Holliday*, 407.

2. The act is constitutional, and is based upon the power of Congress to regulate commerce with the Indian tribes. *Ib.*
3. This power extends to the regulation of commerce with the Indian tribes and with the individual members of such tribes, though the traffic and the Indian with whom it is carried on are wholly within the territorial limits of a State. *Ib.*
4. Whether any particular class of Indians are still to be regarded as a tribe, or have ceased to hold the tribal relation, is primarily a question for the political departments of the government, and if they have decided it, this court will follow their lead. *Ib.*

INSURANCE. See *Admiralty*, 4.

INTERNAL REVENUE.

1. Bankers who sell the Federal securities no otherwise than for the United States and for themselves, and who, therefore, do not sell them for others or for a commission, are not liable to pay the duties imposed by the 99th section of the Internal Revenue Act, of June 30th, 1864, amended by the act of March 3d, 1865, imposed upon "brokers and *bankers doing business as brokers.*" *United States* v. *Fisk*, 445.
2. Brokers who sell, for themselves, stocks, bonds, and securities, are subject, under the act of June 30th, 1864, amended as above said, to the same duties as when they sell them for others. *United States* v. *Cutting*, 441.
3. Savings banks which receive deposits and lend the same for the benefit of their depositors, although they may have no capital stock, and neither make discounts nor issue any money for circulation, are "engaged in the business of banking" within the meaning of the first clause of the 110th section of the Revenue Act of 30th June, 1864, which enacts that "there shall be levied, collected, and paid a duty of $\frac{1}{24}$th of 1 *per cent.* each month upon the average amount of the *deposits* of money . . . . . with any person, bank, association, corporation, or company *engaged in the business of banking.*" *Bank for Savings* v. *The Collector*, 495.
4. On the repeal of the proviso to that section, which declared that the section should not apply "to any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking," such savings banks became subject to the duty imposed by the principal enactment. *Ib.*
5. Moneys received by such banks from depositors become "deposits" within the meaning of the act as soon as they are received, and as such are immediately subject to taxation. *Ib.*
6. The act of June 3d, 1864, "To provide a national currency," &c.,

INTERNAL REVENUE (*continued*).

rightly construed, subjects the shares of the banking associations authorized by it, and in the hands of shareholders, to taxation by the States under certain limitations (set forth in its 41st section), without regard to the fact that a part or the whole of the capital of such association is invested in national securities declared by the statutes authorizing them to be "exempt from taxation by or under State authority." *Van Allen* v. *The Assessors*, 573.

7. The act thus construed is constitutional. *Ib.*
8. An act of a State which taxed such shares, but which did not provide that the tax imposed should not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State, is not warranted by the act of Congress, and is void: there having been under the legislation of the State no tax laid on *shares* in State banks, although there was a tax on the *capital* of such banks. *Ib.*

INTERPRETATION OF LANGUAGE. See *Constitutional Law*, 2; *Customs of the United States*, 2; *Equity.*

JOINT TRESPASSER. See *Trespasser.*

JUDGMENT. See *Judicial Proceedings*, 2; *Execution.*

In *debt* for custom-house duties, a judgment for so many dollars, "payable in gold (and silver) money of the United States" for duties, is good; [nothing but gold and silver coin having been made a legal tender for this species of debt to the government; though Treasury notes were by a statute of 1862 made a legal tender in regard to most other debts.] *Cheang-Kee* v. *United States*, 320.

A judgment against one joint trespasser is no bar to a suit against another for the same trespass. Nothing short of full satisfaction, or that which the law must consider as such, can make such judgment a bar. *Lovejoy* v. *Murray*, 1.

JUDICIAL PROCEEDINGS.

REGULARITY OF, PRESUMED.

1. The recital in the record of proceeding of a Probate Court, under a statute of Wisconsin Territory, of facts necessary to give such court jurisdiction, is *primâ facie* evidence of the facts recited. *Comstock* v. *Crawford*, 397.
2. The jurisdiction existing, the subsequent action of the court is the exercise of its judicial authority, and can only be questioned on appeal; the mode provided by the law of the Territory for review of the determinations of the court. *Ib.*

Where a statute of the Territory provided that the real estate of the decedent might be sold to satisfy his just debts when the personalty was insufficient, and authorized the Probate Court of the county where the deceased last dwelt, or in which the real estate was situated, to license the administrator to make the sale upon representa-

JUDICIAL PROCEEDINGS (*continued*).

tion of this insufficiency, and "on the same being made to appear" to the court, and required the court, previously to passing upon the representation, to order notice to be given to all parties concerned, or their guardians, who did not signify their assent to the sale, to show cause why the license should not be granted:

Held, that the representation of the insufficiency of the personal property of the deceased to pay his just debts was the only act required to call into exercise the power of the court. The necessity and propriety of the sale solicited, were matters to be considered at the hearing upon the order to show cause. A license following such hearing involved an adjudication upon these points, and such adjudication was conclusive. *Ib.*

JUDICIAL SALE. See *Judicial Proceedings.*

1. A bidder at a judicial sale at public auction, whose bid has not been accepted,—the sale being adjourned for sufficient cause and finally discontinued—cannot insist, even though he have been the highest and best bidder, on leave to pay the amount of his bid, and have a confirmation of the sale to *him. Blossom* v. *Railroad Company*, 196.
2. The marshal, or other officer, who makes a sale of real property under a decree of foreclosure, possesses the power, for good cause shown, in the exercise of a sound discretion, and in subordination to the superior control of the court over the whole matter of the sale, to adjourn the sale from time to time. *Ib.*
3. In a case where the decree was that the sale should be made *unless the mortgagors should previously pay the mortgage debt*, a few short adjournments for the purpose of enabling the mortgagors to maks an arrangement to pay it, are adjournments for sufficient cause, although such adjournments have been made by direction of the complainant's solicitor. And if, prior to the day to which the sale stands adjourned, the mortgagors come in and pay the complainants the amount of the decree, &c., the sale may properly be discontinued altogether. *Ib.*
4. A second license to an administrator to sell property already sold by him, and a second purchase of it by the same party who had already bought it before, is not evidence of fraud in the first sale. *Comstock* v. *Crawford*, 396.
5. The title of a purchaser at an administrator's sale is not affected by the fact that the proceeds of the sale exceeded the amount of the alleged debts of the decedent, for the payment of which such sale was ordered. *Ib.*

JURISDICTION. See *Practice*, 3.

I. OF THE SUPREME COURT OF THE UNITED STATES.

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

1. It has jurisdiction of a mining claim in Nevada, if of the requisite value, though the land where the claim exists may have never been surveyed nor brought into market. *Sparrow* v. *Strong*, 97.

JURISDICTION (*continued*).

2. It will take jurisdiction of a case where the judgment below purports to affirm generally the judgment of a court inferior to the affirming court; and the only judgment in the record of such inferior court is a general judgment; this, though an appeal has also been taken in the inferior court, under State laws, upon a motion refusing a new trial, and there are some indications in the record that this affirmance was intended to be of that refusal. *Ib.*
3. A suit prosecuted in the State courts to the highest court of such State, against a marshal of the United States for trespass, who defends himself on the ground that the acts complained of were performed by him under a writ of attachment from the proper Federal court, comes within its jurisdiction under the 25th section of the Judiciary Act, when the final decision of the State court is *against* the validity of the authority thus set up by the marshal. *Buck* v. *Colbath*, 334.
4. Where a party is indicted in a State court for doing an act contrary to the statute of the State, and sets up a license from the United States under one of its statutes, and the decision of the State court is against the right claimed under such last-mentioned statute, this court has jurisdiction under the 25th section of the Judiciary Act. *McGuire* v. *The Commonwealth*, 382.
5. The fact that a plaintiff in error who was also plaintiff below, previously to taking his writ of error issued execution and got a partial but not a complete satisfaction on his judgment, is not enough to oust this court of its jurisdiction. *United States* v. *Dashiel*, 688.
6. An appeal in a decree of foreclosure in chancery, will not be dismissed because the complainant below, appellant here, had, after his appeal made, issued execution and got the amount for which the decree he appealed from, gave him. *Merriam* v. *Haas*, 687.
7. Where a decree was obtained by fraud, still if in form correct, it is sufficient as against the appellee to sustain the appeal, correct the error, and dispose of the case. *United States* v. *Gomez*, 752.

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

8. It has not jurisdiction to review, under the 25th section of the Judiciary Act of 1789, a final judgment or decree by the highest court of law or equity of a State, that revenue stamps attached to a deed offered in evidence and objected to as not having stamps proportioned to the value of the land conveyed are sufficient. *Lewis* v. *Campan*, 106.
9. Nor under the act of April 29, 1802 (§ 6),—providing "that whenever *any question* shall occur before a Circuit Court upon which the opinions of the judges shall be opposed, *the point* upon which the disagreement shall happen shall be certified to the Supreme Court, and shall by the said court be finally decided,"—will the court even by consent of parties take jurisdiction, unless the certificate of division present, in a precise form, a point of law upon a part of the case settled and stated. *Daniels* v. *Railroad Company*, 250; *Havemeyer* v. *Iowa County*, 294.
10. Nor will it, unless, besides raising a distinct legal point, sufficient facts are set forth to show the bearing of the question on the rights of the

JURISDICTION (*continued*).

parties. Hence no answer will be given to a proposition merely abstract. *Havemeyer* v. *Iowa County*, 294.

11. Nor, in a suit to recover mineral lands on the Pacific coast, with the mines therein, on an allegation of record, of prior possession of the land for the purpose of taking out the minerals, without an allegation that such possession is had under authority, or by some treaty or statute of the United States, has it jurisdiction to re-examine the case under the 25th section of the Judiciary Act of 1789. *Boggs* v. *Mining Company*, 304.

12. Nor where the decision below is that, as a *matter of fact*, no such license exists; in a case where the courts of the State, to whose highest court of law and equity the writ of error is sent, have the power, under the constitution of its State, to decide both law and fact upon submission of the case by the parties.

II. Of Circuit Courts of the United States.

13. The 12th section of the Judiciary Act of 1789, which gives to the Circuit Courts concurrent jurisdiction of all crimes and offences cognizable in the District Courts, is prospective, and embraces all offences the jurisdiction of which is vested in the District Courts by subsequent statutes. *United States* v. *Holliday*, 407.

14. Therefore, the Circuit Courts have jurisdiction of the offence of selling ardent spirits to an Indian, under the act of February 13th, 1862, although by that act the jurisdiction is vested only in the District Court. *Ib.*

15. Under the second section of the act of 8th August, 1840, "to regulate the proceedings in the Circuit and District Courts," and which, after authorizing the transfer of criminal causes from either court to the other on motion of the district attorney, says that "the court to which such remission is made, shall, after the order of remission is filed therein, act and proceed in the case as if the indictment and all the other proceedings in the same had been originated in said court," an indictment may be remitted from the District Court to the Circuit Court, though it have come into the District Court originally only by being sent there from the Circuit Court. *United States* v. *Murphy*, 649.

16. Where a contract, under which a party would be prevented, from want of proper citizenship, from suing in the Federal courts, is set out but as inducement to a subsequent one under which he would not be so prevented, the jurisdiction of such courts will not be taken away from the fact of the old contract's being set forth as inducement only somewhat indefinitely. Coming, in such a case, within the principle of a contract defectively stated, but not of one defective, the mode of stating it is cured by the verdict. *De Sobry* v. *Nicholson*, 420.

III. Of District Courts of the United States. See *Admiralty.*

JURY. See *Court and Jury.*

LEGISLATIVE POWER. See *Constitutional Law*, 1, 2, 3, 5, 6, 9; *Municipal Powers*, 1; *Police Regulations.*

1. If the legislature possess the power to authorize an act to be done, it can by a retrospective act cure the evils which existed because the power thus conferred has been *irregularly* executed. *Thomson* v. *Lee County*, 327.
2. No State can by either its constitution or other legislation withdraw the Indians within its limits from the operations of the laws of Congress regulating trade with them; notwithstanding any rights it may confer on such Indians as electors or citizens. *United States* v. *Holliday*, 407.

LEVY. See *Execution.*

LICENSE. See *Police Regulations.*

LIEN. See *Rebellion*, 1.

1. Stipulations in a charter-party requiring the delivery of the cargo within reach of the ship's tackle, and providing that the balance of the charter-money remaining unpaid on the termination of the homeward voyage shall be "payable, one-half in five, and one-half in ten days after discharge" of the cargo, are not inconsistent with the right of the owner to retain the cargo for the preservation of his lien. *The Kimball*, 37.
2. A clause in a charter-party, by which the owner binds the vessel, and the charterers bind the cargo, for the performance of their respective covenants, is sufficient to repel doubt arising upon the construction of other stipulations not plainly controlling them, as to whether the lien for freight was intended to be waived by the parties. *Ib.*
3. By the general commercial law a promissory note does not extinguish the debt for which it is given, unless such be the express agreement of the parties; it only operates to extend until its maturity the period for the payment of the debt. The creditor may return the note when dishonored, and proceed upon the original debt. The acceptance of the note is considered as accompanied with the condition of its payment. And although in Massachusetts the rule is different, and the presumption of law there is that a promissory note extinguishes the debt for which it is given, yet there the presumption may be repelled by evidence that such was not the intention of the parties; and this evidence may arise from the general nature of the transaction, as well as from direct testimony to the fact. *Ib.*
4. Upon this ground it is not to be presumed that the owner of a ship, having a lien upon a cargo for the payment of the freight, intended to waive his lien by taking the notes of the charterers drawn so as to be payable at the time of the expected arrival of the ship in port. The notes being unpaid, he may return them and enforce his lien. *Ib.*
5. To acquire, as against all mortgages and incumbrances, a lien by statute upon the *corpus* of a railroad, in virtue of credit advanced, it is necessary that the statute express in terms not doubtful the intention to give a lien. The fact that, on one side, by not making a particular

LIEN (*continued*).

clause in the statute operate as a lien on the road, you leave it but declaratory of ordinary law, is not enough to give a lien, when, on the other, by making the clause so operate, you would give one where the parties have declined to *take one in ordinary form* and contracted for a pledge of the *capital stock* of the road. *Cincinnati City* v. *Morgan*, 275.

LOOKOUTS. See *Navigation*.

MARRIAGE AND LEGITIMACY. See *Evidence*, 4, 5, 6, 7, 8; *Presumption; Maryland*, 1, 2.

1. Although parties have lived long together, and a marriage has been sworn to and the circumstances particularly described by one of the parties, and other witnesses have testified to facts indicative of wedlock as distinguished from a concubinate, still a jury may find, on counter evidence, that the cohabitation during the whole term was illicit. *Blackburn* v. *Crawfords*, 175.
2. In ejectment, where a regular marriage by a clergyman *in facie ecclesiæ* at a specific time and place is set up as evidence of the legitimacy of children suing as heirs-at-law to recover, and all the testimony in the case clusters about and relates to *such* a marriage, it is error to refer it to the jury to consider whether the parents were *at any time* married; and in such a case, unless they find that a marriage was in fact celebrated, they cannot find that the connection was wedlock or that the issue from it is legitimate. *Ib.*

MARYLAND.

1. By the law of Maryland a finding by a jury—on an issue directed by the Probate Court—that a party who has applied for administration on the estate of one whom he asserts to be his uncle, is illegitimate, and a consequent grant of administration by the court to another party, is conclusive of the illegitimacy *as between these parties*, in an action of ejectment subsequently brought by the party rejected. *Blackburn* v. *Crawfords*, 175.
2. By the law of Maryland if parties having had children in concubinage, marry and after the marriage recognize and treat such children as theirs, such children are regarded as legitimate. *Ib.*

MASSACHUSETTS. See *Practice*, 8.

Although in Massachusetts the presumption of law is that a promissory note extinguishes the debt for which it is given—the rule in that State differing from the rule of commercial law, generally—yet even there the presumption may be repelled by evidence that such was not the intention of the parties; and this evidence may arise from the general nature of the transaction, as well as from direct testimony to the fact. *The Kimball*, 37.

Upon this ground *held*, in a case from Massachusetts, that it was not to be presumed that the owner of a ship, having a lien upon a cargo for

MASSACHUSETTS (*continued*).

the payment of the freight, intended to waive his lien by taking the notes of the charterers drawn so as to be payable at the time of the expected arrival of the ship in port. On the contrary, the notes being unpaid, his return of them, and an enforcement of his lien was held proper. *Ib.*

MINING CLAIM IN NEVADA. See *Jurisdiction*, 1.

MUNICIPAL BONDS. See *County Officers; Municipal Powers*, 1, 2; *Negotiable Instruments.*

1. A contract, valid by the constitution and laws of a State, as expounded by the highest authorities whose duty it was to administer them, at the time when the contract was made, cannot be impaired in its obligation, by any subsequent action by the legislature or judiciary. The case of *Gelpcke* v. *The City of Dubuque* (1 Wallace, 175) herein affirmed and enforced. *Havemeyer* v. *Iowa County*, 294; *Thomson* v. *Lee County*, 327.
2. Power in a municipal corporation to issue bonds being shown, the corporation, as against *bonâ fide* holders of them for value, is estopped to deny that the power was properly executed. *Rogers* v. *Burlington*, 654; *Cincinnati City* v. *Morgan*, 275.

MUNICIPAL POWERS.

1. A county, or other municipal corporation, has no inherent right of legislation, and cannot subscribe for stock in a public improvement, unless authorized to do so by the legislature. But the legislature of a State, unless restrained by the organic law, has the right to authorize a municipal corporation to take stock in a railroad or other work of internal improvement, to borrow money to pay for it, and to levy a tax to repay the loan. And this authority can be conferred in such a manner that the objects can be attained either with or without the sanction of the popular vote. *Thomson* v. *Lee County*, 327.
2. Power "to borrow money for *any* public purpose" gives authority to a municipal corporation to borrow money to aid a railroad company, making its road as a way for public travel and transportation; and, as a means of borrowing money to accomplish this object, such municipal corporation may issue its bonds, to be sold by the railway company to raise the money. *Rogers* v. *Burlington*, 654.

NAVIGATION.

1. Lookouts must be persons of suitable experience, properly stationed on the vessel, and actually and vigilantly employed in the performance of their duty. *The Ottawa*, 268.
2. When acting as officer of the deck, and having charge of the navigation of the vessel, the master of a steamer is not a proper lookout, nor is the helmsman. *Ib.*
3. Lookouts should be stationed on the forward part of the vessel, where the view is not in any way obstructed. The wheel-house is not a

NAVIGATION (*continued*).

proper place, especially if it is very dark and the view is obstructed. *Ib.*

4. Elevated positions, such as the hurricane deck, are said by the court to be not in general as favorable in a dark night as those usually selected on the forward part of the vessel, where the lookout stands nearer the water-line, and is less likely to overlook small vessels deeply laden. *Ib.*

NEGOTIABLE INSTRUMENTS. See *Municipal Bonds*, 2.

1. Bonds with coupons, payable to bearer, are negotiable securities, and pass by delivery; and, in fact, have all the qualities and incidents of commercial paper. *Thomson* v. *Lee County*, 327.
2. If coupons to bonds are drawn so that they can be separated from the bonds, and like the bonds, are negotiable; the owner of them can sue on the coupons without producing the bonds to which they were attached, or without being interested in them. *Ib.*

ONUS PROBANDI. See *Evidence*, 12.

PATENT.

1. Where a party having made application for a patent for certain improvements, afterwards, *with his claim still on file*, makes application for another but distinct improvement in the same branch of art, in which second application he describes the former improvement, but does not in such second application claim it as original, the description in such second application and non-claim of it there, is not a dedication of the first invention to the public. *The Suffolk Co.* v. *Hayden*, 315.
2. Where the patent-office grants a patent for one invention, and afterwards, upon a claim filed previously to that on which such patent has been granted, issues another, the second patent, not the first, is void. *Ib.*
3. In cases for the infringement of patents, where there is no established license fee, general evidence may be resorted to in order to get at the measure of damages; and evidence of the utility and advantage of the invention over the old modes or devices that had been used for working out similar results is competent and appropriate. *Ib.*
4. The jury, in ascertaining the damages, upon this sort of evidence, is not to estimate them for the whole term of the patent, but only for the period of the infringement. And a recovery does not vest the infringer with the right to continue the use. *Ib.*

PARISH RECORD. See *Evidence*, 5, 6, 7.

PAYMENT. See *Promissory Note*.

PLEADING. See *Equity*.

POLICE REGULATIONS.

1 A license granted by the United States, under the Internal Revenue

POLICE REGULATIONS (*continued*).

Act of July 1st, 1862, to carry on the business of a wholesale liquor dealer, in a particular State named, does not, although it have been granted in consideration of a fee paid, give the licensee power to carry on the business in violation of the State laws forbidding such business to be carried on within its limits. *McGuire* v. *The Commonwealth*, 387.

PRACTICE. See *Admiralty*, 3; *Appeal*, 1–5; *California*, 1–3; *Evidence*, 1; *Jurisdiction*, 5–7.

I. IN CASES GENERALLY.

1. A motion in the Circuit Court to dismiss a case, from want of proper citizenship in the parties, cannot be made at the trial and after pleading a general issue and special defences. *De Sobry* v. *Nicholson*, 420.
2. Under the ninth rule of the Supreme Court, a writ of error or appeal from any judgment or decree rendered thirty days before the commencement of the term may be docketed and dismissed on motion of the defendant in error or appellee, unless the other side dockets the cause and files the record with the clerk of the court within the first six days of the term. But if no motion to dismiss be previously made, the record may be filed and the cause docketed at any time within the term. *Sparrow* v. *Strong*, 97.
3. The action of a Circuit Court relative to a motion and order for judgment, is a matter within the Circuit Court's discretion, and not a subject for review here. *Cheang-Kee* v. *United States*, 320.
4. Where the court sees no reason to doubt the correctness of a decision below, it will not reverse from doubt in cases where the issue is one entirely of fact, depending on the credibility of witnesses who differ in their statements, and where the District and Circuit Courts have concurred in viewing the merits; nor because an appellant can find in a mass of conflicting testimony enough to support his allegations if the testimony of the other side be wholly rejected, or can raise a *doubt* as to what justice required, by attacking the character of the witnesses of such side. *Newell* v. *Norton and Ship*, 257.
5. The court admitting that within reasonable limits cross-examination is a right, and on many accounts of great value, reflects upon an exercise of it as excessive in an ordinary case of collision in admiralty, where there were between four and five hundred cross-interrogatories. *The Ottawa*, 268.
6. If, in a case relating to custom duties of the United States, and at a time when gold and silver coin were alone a tender for payment of these duties, though notes of the government were so for most debts, judgment have been originally entered "payable in gold coin of the United States," &c., it may be amended during the term by the insertion of the words, "and silver," so as to read "payable in gold and silver coin of the United States." *Cheang-Kee* v. *United States*, 320.
7. Where a deposition, after a motion on grounds set forth has been unsuccessfully made at one term to suppress it, as irregularly taken, is

PRACTICE (*continued*).

at another read on trial without objection or exception, it cannot be objected to here on the grounds that were made for its suppression, or at all. *Brown* v. *Tarkington*, 377.

8. A writ of error from this court is properly directed to the court in which the final judgment was rendered, and by whose process it must be executed, and in which the record remains, although such court may not be the highest court of the State, and although such highest court may have exercised a revisory jurisdiction over points in the case, and certified its decision to the court below. The omission in the record of these points, and the action in the highest court upon them, make no ground for *certiorari* on account of diminution. *McGuire* v. *The Commonwealth*, 382.

9. Where the counsel of a plaintiff in error withdraw their appearance, the defendant in error, under the 16th rule, has the right either to have the plaintiff called and the suit dismissed, or to open the record and pray an affirmance. *Ib.*

10. Under a statute which provides that new matter in an answer shall on trial be deemed controverted by the adverse party, witnesses may properly be examined, in a case where *such* an answer having new matter is put in. *Cheang-Kee* v. *United States*, 320.

11. A petition for an appeal to this court from the Circuit Court, filed in the office of the clerk of the Circuit Court merely, unaccompanied by an allowance of the appeal by that court, does not bring the case up. An appeal thus made will be dismissed. *Barrel* v. *Transportation Company*, 424.

12. The ten days given by the 23d section of the Judiciary Act, to take a writ of error from this court, run from the day when judgment is entered in the court where the record remains; and when judgment is given in the highest court of a State on appeal or writ of error from an inferior one, and, on affirmance, the record is returned to such inferior court with order to enter judgment there, they run from the day when judgment is so there entered. *Green* v. *Van Buskerk*, 448.

13. When a bill of exceptions at all fairly discloses the fact that the exceptions were made in proper time, this court will not allow the right of review by it to be defeated because the bill is unskilfully drawn, or justly open, philologically, to censure. *Simpson & Co.* v. *Dall*, 460.

14. When the pleadings in an action of ejectment do not state the value of the property in controversy, the value may be shown at the trial. *Beard* v. *Federy*, 478.

15. Where under the act of 8th August, 1840, "to regulate the proceedings in the Circuit and District Courts," an indictment has been remitted from the Circuit to the District Court, and there demurred to, a joinder in demurrer may be made when the case is remitted back to the Circuit Court. *United States* v. *Murphy*, 649.

16. Where a demurrer to a declaration in the Circuit Court is improperly sustained, and judgment is rendered accordingly, the case may be reexamined here upon a writ of error without any formal bill of exceptions. *Rogers* v. *Burlington*, 654.

PRACTICE (*continued*).

17. Where a writ of error is taken to this court by a plaintiff below, who previously to taking the writ issues execution below and gets a partial but not a complete satisfaction on his judgment, the writ will not in consequence of such execution merely, be dismissed. *United States* v. *Dashiel*, 688.
18. A motion to dismiss an appeal in a decree of foreclosure, in chancery, refused, though the complainant below, appellant here, had, after his appeal made, issued execution and got the amount for which the decree he appealed from, gave him. *Merriam* v. *Haas*, 687.

II. IN PRIZE

19. Cases of prize are usually heard, in the first instance, upon the papers found on board the vessel, and the examinations taken *in preparatorio;* and it is in the discretion of the court thereupon to make *suâ sponte*, or not to make, an order for further proof. But the *claimant* may move for the order, and show the grounds of the application by affidavit, or otherwise, at any time before the final decree is rendered; and such an order may also be made in this court. The making of it anywhere is controlled by the circumstances of each case. It is made with caution, because of the temptation it holds out to fraud and perjury; and made only when the interests of justice clearly require it. *The Sally Magee*, 451.
20. Prize courts deny damages or costs in cases of seizure made upon "probable cause;" that is to say, where there were circumstances sufficient to warrant suspicion, though not to warrant condemnation *The Thompson*, 155.

PRESUMPTION. See *Court and Jury.*

PRIVILEGED COMMUNICATION.

On a question of marriage and legitimacy, an attorney, who drew a will for the alleged husband now deceased, in which the children of the connection set up as wedlock are described as the "natural children" of the testator, may, without violating professional confidence, testify what was said by the testator about the character of the children and his relations to their mother, in interviews between the testator and himself preceding and connected with the preparation of the will. *Blackburn* v. *Crawfords*, 176.

PRIZE. See *Blockade*, 1–3; *Public Law*, 1–15; *Practice*, 19–20.

PROBABLE CAUSE. See *Public Law*, 15.

PROMISSORY NOTE.

By the general commercial law a promissory note does not extinguish the debt for which it is given, unless such be the express agreement of the parties; it only operates to extend until its maturity the period for the payment of the debt. The creditor may return the note when

PROMISSORY NOTE (*continued*).

dishonored, and proceed upon the original debt. The acceptance of the note is considered as accompanied with the condition of its payment. And although in Massachusetts the rule is different, and the presumption of law there is that a promissory note extinguishes the debt for which it is given, yet there the presumption may be repelled by evidence that such was not the intention of the parties; and this evidence may arise from the general nature of the transaction, as well as from direct testimony to the fact. *The Kimball*, 37.

Upon this ground it is not to be presumed that the owner of a ship having a lien upon a cargo for the payment of the freight, intended to waive his lien by taking the notes of the charterers drawn so as to be payable at the time of the expected arrival of the ship in port. The notes being unpaid, he may return them and enforce his lien. *Ib.*

PUBLIC LAW. See *Blockade*, 1-3; *Evidence*, 11; *Practice*, 19, 20.

1. No trade honestly carried on between neutral ports, whether of the same or of different nations, can be lawfully interrupted by belligerents; but good faith must preside over such commerce: enemy commerce under neutral disguises has no claim to neutral immunity. *The Bermuda*, 514.
2. Neutrals may establish themselves, for the purposes of trade, in ports convenient to either belligerent; and may sell or transport to either such articles as either may wish to buy, subject to risks of capture for violation of blockade or for the conveyance of contraband to belligerent ports. *Ib.*
3. Goods of every description may be conveyed to neutral ports from neutral ports, if intended for actual discharge at a neutral port, and to be brought into the common stock of merchandise of such port; but voyages from neutral ports intended for belligerent ports are not protected in respect to seizure, either of ship or cargo, by an intention, real or pretended, to touch at intermediate neutral ports. *Ib.*
4. Neutrals may convey to belligerent ports, not under blockade, whatever belligerents may desire to take, except contraband of war, which is always subject to seizure when being conveyed to a belligerent destination, whether the voyage be direct or indirect; such seizure, however, is restricted to actual contraband, and does not extend to the ship or other cargo, except in cases of fraud or bad faith on the part of the owners, or of the master with the sanction of the owners. *Ib.*
5. Vessels conveying contraband cargo to belligerent ports not under blockade, under circumstances of fraud or bad faith, or cargo of any description to belligerent ports under blockade, are liable to seizure and condemnation from the commencement to the end of the voyage. *Ib.*
6. A voyage from a neutral to a belligerent port is one and the same voyage, whether the destination be ulterior or direct, and whether with or without the interposition of one or more intermediate ports; and whether to be performed by one vessel or several employed in

PUBLIC LAW (*continued*).

the same transaction and in the accomplishment of the same purpose. *Ib.*

7. Destination alone justifies seizure and condemnation of ship and cargo in voyage to ports under blockade; and such destination justifies equally seizure of contraband in voyage to ports not under blockade; but, in the last case, ship and cargo not contraband are free from seizure, except in cases of fraud or bad faith. *Ib.*
8. Circumstances, such as selection of master, control in lading and destination, instructions for conduct of voyage, and other like acts of ownership by an enemy, may *repel*, in the absence of charter-party or other explanation, presumptions of ownership in a neutral arising from registry or other documents, and will warrant condemnation of a ship captured in the employment of enemies as enemy property. *Ib.*
9. Spoliation of papers, at the time of capture, under instructions and without explanation by production of the instructions, or otherwise, warrants the most unfavorable inferences as to employment, destination, and ownership of the captured vessel. *Ib.*
10. Neutrals who place their vessels under belligerent control, and engage them in belligerent trade; or permit them to be sent with contraband cargoes, under cover of false destination, to neutral ports, while the real destination is to belligerent ports; impress upon them the character of the belligerent in whose service they are employed, and the vessels may be seized and condemned as enemy property. *The Hart*, 559.
11. The property of a commercial house, established in the enemy's country, is subject to seizure and condemnation as prize, though some of the partners may have a neutral domicile. *The Cheshire*, 231.
12. When a vessel is liable to confiscation, as enemy's property, the first presumption is that the cargo is so as well. *The Sally Magee*, 451.
13. Capture at sea of enemy's property clothes the captors with all the rights of the owner which subsisted at the commencement of the voyage; and anything done thereafter, designed to incumber the property or to change its ownership, is a nullity. *Ib.*
14. Prize courts properly deny damages or costs where there has been "probable cause" for seizure. *The Thompson*, 155.
15. Probable cause exists where there are circumstances sufficient to warrant suspicion, even though not sufficient to warrant condemnation. *Ib.*

PUBLIC POLICY.

1. Promissory notes given for a balance found due on settlement in a transaction itself forbidden by statute and illegal, or for money lent to enable a party to pay bills which the person taking the promissory notes had himself assisted, in violation of statute, to issue and circulate, cannot be enforced. *Brown* v. *Tarkington*, 377.
2. The fact that such promissory notes are given for a balance found due, or to enable a principal party in the illegal transaction to pay notes that have got into public circulation and are unpaid, does not purge

PUBLIC POLICY (*continued*).

them from the infirmity which belonged to the original vicious transaction. *Ib.*

QUO WARRANTO.

A proceeding in the nature of a *Quo Warranto*, in one of the Territories of the United States, to test the right of a person to exercise the functions of a judge of a Supreme Court of the Territory, must be in the name of the United States, and not in the name of the Territory. If taken in the name of the Territory the error may be taken advantage of on demurrer, and it is fatal. *Territory* v. *Lockwood*, 236.

REBELLION, THE.

1. A lien on enemy's property, set up under the act of March 3d, 1863, to protect the liens of loyal citizens upon vessels and other property which belonged to rebels, is not sufficiently proved by the test-oath of the party setting up the lien and asserting it without any specification as to date of origin, "from correspondence" with the parties and "copies of the invoice of the cargo" sworn to as "believed to be true;" the correspondence and copies not being produced, nor their absence accounted for. *The Sally Magee*, 451.
2. The act of July 13th, 1861, "to provide *for the collection of duties on imports*, and for other purposes," and which by one section, on a proclamation by the President, makes intercourse between citizens of those parts of the United States in insurrection against its government, with citizens of the rest of the United States unlawful, "so long as such condition of hostilities should continue," was not a temporary act, though passed during the late rebellion; nor on the cessation of hostilities did forfeitures, which had been incurred, after proclamation, under that section, cease to be capable of enforcement. *The Reform*, 617.
3. The act of 13th February, 1862, by which a sum of money was appropriated "for the purchase of cotton-seed, under the superintendence of the Secretary of the Interior, for general distribution, provided that the said cotton shall be purchased from places where cotton is grown as far north as practicable;" did not give power to the Secretary of the Interior to authorize an agent to transport merchandise to any district where the seed was to be got; such district having been then declared by proclamation, authorized by Congress, to be in a state of insurrection against the authority of the United States, and all intercourse with it prohibited, except where the President in *his* discretion might allow it in pursuance of rules prescribed by the Secretary of the *Treasury*. *Ib.*
4. Nor was a letter from the Secretary of the Interior to a person, which by its terms did no more than authorize and appoint him to "procure" a cargo of such seed "*in*" a prohibited or partially prohibited district (Virginia), and to "bring *it to*" a place not prohibited (Baltimore), even in its terms, such a license. *Ib.*

RECITALS. See *Judicial Proceedings*.

REPUTATION. See *Evidence*, 8.

RES JUDICATA. See *Illinois*, 5; *Maryland*, 1.

1. A plaintiff in attachment who indemnifies the attaching officer, and afterwards takes upon himself the defence when that officer is sued, is concluded by the judgment against that officer where such plaintiff is afterwards sued for the same trespass. *Lovejoy* v. *Murray*, 1.
2. The court—deciding that a case before it was the same in fact as one already twice decided by it in the same way—rebukes, with some asperity, the practice of counsel who attempt to make the judges bear the "*infliction of repeated arguments*" challenging the justice of their well-considered and solemn decrees; and sends the case represented by them out of court, with affirmance and costs. *Minnesota Co.* v. *National Co.*, 332.

SATISFACTION.

1. Levy of an execution, even if made on personal property sufficient to satisfy the execution, is not satisfaction of the judgment, and, accordingly, therefore, does not extinguish it if the levy have been abandoned at the request of the debtor and for his advantage; as *ex. gr.* the better to enable him to find purchasers for his property. *United States* v. *Dashiel*, 688.
2. A judgment against one joint trespasser is no bar to a suit against another for the same trespass. Nothing short of full satisfaction, or that which the law must consider as such, can make such judgment a bar. *Lovejoy* v. *Murray*, 1.

STATUTES.

I. General Principles concerning.

1. In interpreting a section of a statute which remains in force, resort may be had to a proviso to it, although the proviso be repealed. *Bank for Savings* v. *The Collector*, 495.

II. Of the United States. See *Appeal*, 1, 5; *Capturing Force; Common Carrier*, 5, 6; *Customs of the United States*, 1, 2, 3, 5, 6; *Enrolment and Registry of Vessels*, 1–6; *Evidence*, 12; *Indians*, 1, 2; *Jurisdiction*, 1–5; *Rebellion*, 1, 2, 3.

2. The 12th section of the Judiciary Act of 1789, which gives to the Circuit Courts concurrent jurisdiction of all crimes and offences cognizable in the District Courts, is prospective, and embraces all offences the jurisdiction of which is vested in the District Courts by subsequent statutes. *United States* v. *Holliday*, 407.
3. Therefore the Circuit Courts have jurisdiction of the offence of selling ardent spirits to an Indian, under the act of February 12th, 1862 (12 Stat. at Large, 339), although by that act jurisdiction is vested only in the District Court. *Ib.*
4. Under the second section of the act of 8th August, 1840, "to regulate the proceedings in the Circuit and District Courts," which—after authorizing the transfer of criminal causes from either court to the other on motion of the district attorney—says, that "the court to which such remission is made, shall, after the order of remission is

STATUTES (*continued*).

filed therein, act and proceed in the case as if the indictment and all the other proceedings in the same had been originated in said court," —an indictment may be remitted from the District Court to the Circuit Court, though it have come into the District Court originally only by being sent there from the Circuit Court. And a demurrer to the indictment made in the District Court, may properly receive a rejoinder in the Circuit Court. *United States* v. *Murphy*, 649.

5. A license granted by the United States, under the Internal Revenue Act of July 1st, 1862, to carry on the business of a wholesale liquor dealer, in a particular State named, does not, although it have been granted in consideration of a fee paid, give the licensee power to carry on the business in violation of the State laws forbidding such business to be carried on within its limits. *McGuire* v. *The Commonwealth*, 387.
6. Under the Internal Revenue Act of June 30th, 1864, as amended by the act of March 3d, 1865, the sales of stocks, bonds, and securities made by "*brokers*" for themselves are subject to the same duties as those made by them for others. *United States* v. *Cutting*, 441.
7. Under that act, amended as above said, "bankers" who sell Federal securities no otherwise than for the United States and for themselves, and who, therefore, do not sell them for others or for a commission, are not liable to pay the duties imposed by the 99th section, upon "brokers and *bankers doing business as brokers*." *United States* v. *Fisk*, 445.
8. The first section of the act of Congress of March 3d, 1851) 9 Stat. at Large, 635), entitled "An act to limit the liability of ship-owners, and for other purposes," exempts the owners of vessels in cases of loss by fire from liability for the negligence of their officers or agents, in which the owners have not directly participated. *Walker* v. *The Transportation Company*, 150.
9. The proviso to that act allowing parties to make their own contracts in regard to the liabilities of the owners, refers to express contracts. *Ib.*
10. Upon a comparison of the 25th section of the act of 3d March, 1863, passed during the rebellion, "for enrolling and *calling out* the national forces, and for other purposes," with the 12th section of the act of 24th February, 1864, enacting that any person who shall forcibly resist or oppose any *enrolment* of persons for military service, &c., shall be punished, &c.; *held*, that the former act is limited to the prevention of resistance to the *draft*, and the latter to preventing resistance to the *enrolment*. Comparing the two acts together, the latter one is to be regarded as a legislative construction of the first, by which a service in relation to the draft, is not a service in relation to the enrolment. *United States* v. *Scott*, 642; *Same* v. *Murphy*, 649.

SURETY.

An amendment, neither increasing nor diminishing their liability, will not discharge the sureties to the usual bond given on release of a vessel seized by process of the admiralty. *Newell* v. *Norton and Ship*, 357.

TARIFF. See *Customs of the United States.*

TAXATION. See *Internal Revenue.*

TELEGRAPH. See *Common Carrier*, 4.

TERRITORIES. See *Quo Warranto.*

TEXAS.

The statute of Texas, relating to the organization, &c., of its District Courts, which enacts that when a party shall file an affidavit of the loss of an instrument recorded under the statute, or of his inability to procure the original, a certified copy of the record shall be admitted in like manner as the original—does not dispense with the proof which is exacted when the original instrument is filed, in case an affidavit (which the statute also allows) alleging a belief of its *forgery*, is made. It only allows the certified copy to take the plac of the original when that is lost or cannot be procured: and the copy produced under such circumstances will have no greater weight than the original itself. *Younge* v. *Guilbeau*, 636.

To avail himself, therefore, of the statute, the party must, in all cases, file, as therein prescribed, the original or the copy from the record, and give notice of the filing; and even then the statutory proof will be insufficient, if the affidavit alleging a belief of its forgery be made. Such affidavit being filed, the party relying upon the deed must make proof of its execution, with all its essential formalities, as required by the rule of the common law. *Ib.*

TRESPASSER.

1. A bond of indemnity given by a plaintiff in an attachment to induce the officer to hold, after levy, property not subject to the writ, makes such plaintiff a joint trespasser with the officer as to all that is done with the property afterwards. *Lovejoy* v. *Murray*, 1.
2. A judgment against one joint trespasser is no bar to a suit against another for the same trespass. Nothing short of full satisfaction, or that which the law must consider as such, can make such judgment a bar. *Ib.*
3. A plaintiff in attachment who indemnifies the attaching officer, and afterwards takes upon himself the defence when that officer is sued, is concluded by the judgment against that officer where such plaintiff is afterwards sued for the same trespass. *Ib.*

USAGE.

A usage opposed to a statute is void. *Walker* v. *Transportation Co.*, 150.

WISCONSIN. See *Judicial Proceedings.*

TARIFF. See Customs of the United States.

TAXATION. See Internal Revenue.

TELEGRAPH. See Common Carrier, 4, 5.

TERRITORIES. See Ohio Windows.

TEXAS.

The statute of Texas, relating to the organization, &c., of its District Courts, which enacts that when a party shall file an affidavit of the loss of an instrument recorded under the statute, or of his inability to procure the original, a certified copy of the record shall be admitted in like manner as the original,—does not dispense with the proof which is exacted when the original instrument is filed, in case an affidavit (which the statute also allows) alleging a belief of its forgery is made. It only allows the use of the copy to take the place of the original when that is lost or cannot be produced; and the copy produced under such circumstances will have no greater weight than the original itself. Younge v. Guilbeau, 636.

To avail himself, therefore, of the statute, the party must, in all cases such as therein prescribed, file the original or the copy from the record and give notice of the filing; and even then the statutory proof will be insufficient, if the affidavit, alleging a belief of its forgery be filed. Such affidavit being filed, the party relying upon the deed must make proof of its execution, with all its essential formalities, as required by the rule of the common law. Ib.

TRESPASSER.

1. A bond of indemnity given by a plaintiff in an attachment to induce the officer to hold, after levy, property not subject to the writ, makes such plaintiff a joint trespasser with the officer as to all that is done with the property, all the owners. Lovejoy v. Murray, 1.
2. A judgment against one joint trespasser is no bar to a suit against another for the same trespass. Nothing short of full satisfaction, or that which the law must consider as such, can make such judgment a bar. Ib.
3. A plaintiff in attachment who indemnifies the attaching officer, and afterwards takes upon himself the defence when that officer is sued, is concluded by the judgment against that officer where such plaintiff is afterwards sued for the same trespass. Ib.

USAGE.

A usage opposed to a statute is void. Walker v. Transportation Co., 150.

WRONGS, ETC. See Judicial Proceedings.

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