INDEX.

ADMIRALTY. See *Evidence*, 2, 3; *Prize Court*, 1-3.

JURISDICTION.

1. A contract for the transportation of passengers by a steamship on the ocean is a maritime contract, and there is no distinction in principle between it and a contract for the like transportation of merchandise. *The Moses Taylor*, 411.
2. The distinguishing and characteristic feature of a suit in admiralty, is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly. *Ib.*
3. The provision of the ninth section of the Judiciary Act, which vests in the District Courts of the United States exclusive cognizance of civil causes of admiralty and maritime jurisdiction, is constitutional. *Ib.*
4. The grant of admiralty powers to the District Courts of the United States, by the ninth section of the act of September 24th, 1789, is coextensive with this grant in the Constitution, as to the character of the waters over which it extends. *The Hine* v. *Trevor*, 555.
5. The act of February 26th, 1845, is a limitation of the powers granted by the act of 1789, as regards cases arising *upon the lakes and navigable waters connecting said lakes*, in the following particulars:
   (*a*) It limits the jurisdiction to vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and which are employed in commerce and navigation, between ports and places in different States.
   (*b*) It grants a jury trial, if either party shall demand it.
   (*c*) The jurisdiction is not exclusive, but is expressly made concurrent with such remedies as may be given by State laws. *Ib.*
6. The grant of original admiralty jurisdiction by the act of 1789, including as it does all cases not covered by the act of 1845, is exclusive, not only of all other Federal courts, but of all State courts. *Ib.; see also The Moses Taylor*, 411.
7. Therefore, State statutes, which attempt to confer upon State courts a remedy for marine torts and marine contracts, by proceedings strictly *in rem* [that is to say, which authorize actions *in rem* against vessels for causes of action cognizable in the admiralty—*The Moses Taylor*, 411], are void; because they are in conflict with that act of Congress, except as to cases arising on the lakes and their connecting waters. *Ib*

ADMIRALTY (*continued*).

8. These statutes do not come within the saving clause of the ninth section of the act of 1789, concerning a common-law remedy. *Ib.*; see also *The Moses Taylor*, 411.
9. But this rule does not prevent the seizure and sale, by the State courts, of the interest of any owner, or part owner, in a vessel, by attachment or by general execution, when the proceeding is a personal action against such owner, to recover a debt for which he is personally liable. *Ib.*
10. Nor does it prevent any action which the common law gives for obtaining a judgment *in personam* against a party liable in a marine contract, or a marine tort. *Ib.*
11. The jurisdiction of a court of admiralty over a vessel captured *jure belli*, is determined by the fact of capture. The filing of a libel is not necessary to create it. *The Nassau*, 634.

ALLUVION.

The right to alluvion depends upon the fact of contiguity of the estate to the river. Hence where accretion is made before a strip of land bordering on a river, the accretion belongs to *it* and not to the larger parcel behind it and from which the strip when sold was separated. *Saulet* v. *Shepherd*, 502.

ATTAINDER, BILLS OF. See *Attorneys and Counsellors*, 1–8; *Constitutional Law*, 1–13.

ATTORNEYS AND COUNSELLORS. See *Constitutional Law*, 1–11; *Pardon*, 1–3.

1. Attorneys and counsellors of the Supreme Court of the United States are not officers of the United States; they are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character. *Ex parte Garland*, 333.
2. The order of admission is the judgment of the court that the parties possess the requisite qualifications and are entitled to appear as attorneys and counsellors and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court *after opportunity to be heard has been afforded.* Their admission and their exclusion are the exercise of judicial power. *Ib.*
3. The right of an attorney and counsellor, acquired by his admission, to appear for suitors, and to argue causes, is not revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency. *Ib.*
4. The admitted power of Congress to prescribe qualifications for the office

ATTORNEYS AND COUNSELLORS (*continued*).

of attorney and counsellor in the Federal courts cannot be exercised as a means for the infliction of punishment for the past conduct of such officers, against the inhibition of the Constitution, preventing the passage of bills of attainder (under which general designation bills of pains and penalties are included), or that against the passage of an *ex post facto* law. *Ib.*

5. The act of Congress of January 24th, 1865, providing that after its passage no person shall be admitted as an attorney and counsellor to the bar of the Supreme Court, and, after March 4th, 1865, to the bar of any Circuit or District Court of the United States, or Court of Claims, or be allowed to appear and be heard by virtue of any previous admission, or any special power of attorney, unless he shall have first taken and subscribed the oath prescribed in the act of July 2d, 1862—which latter act requires the affiant to swear or affirm that he has never voluntarily borne arms against the United States since he has been a citizen thereof; that he has voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that he has neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; and that he has not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto—operates as a legislative decree excluding from the practice of the law in the courts of the United States all parties who have offended in any of the particulars enumerated. *Ib.*

6. Exclusion from the practice of the law in the Federal courts, or from any of the ordinary avocations of life for *past conduct* is punishment for such conduct. The exaction of the oath is the mode provided for ascertaining the parties upon whom the act is intended to operate. *Ib.*

7. The act being of this character partakes of the nature of a bill of pains and penalties, and is subject to the constitutional inhibition against the passage of bills of attainder, under which general designation bills of pains and penalties are included. *Ib.*

8. In the exclusion which the act adjudges it imposes a punishment for some of the acts specified which were not punishable at the time they were committed, and for other of the acts it adds a new punishment to that before prescribed, and it is thus within the inhibition of the Constitution against the passage of an *ex post facto* law. *Ib.*

BANKS.

1. A tax on the capital of a bank is not the same thing as a tax upon the shares of which the capital is composed. And where a State imposes on the State banks a tax on their *capital* (the *shares* in the hands of the shareholders being exempt from tax), a tax cannot be laid by such State on the *shares* of banks, organized under the act of June 3d, 1864, to provide a national currency; which act, while it allows the State to tax the shares of banks organized under it, does so only on condition that the tax laid shall not exceed the rate imposed upon the

BANKS (*continued*).

shares in any of the banks organized under authority of the State where such association is located. *Van Allen* v. *The Assessors* (3 Wallace, 573), affirmed. *Bradley* v. *The People*, 459.

2. Shares in banks, whether State banks or those organized under the act of June 3d, 1864, "to provide a national currency," &c., are liable to taxation by the State under certain limitations (set forth in section forty-first of the act), without regard to the fact that the capital of such banks is invested in bonds of the United States, declared, by statutes creating them, to be exempted from taxation by or under State authority. *Van Allen* v. *The Assessors* (3 Wallace, 573), affirmed. *People* v. *The Commissioners*, 244.

3. If the rate of taxation by the State on such shares is the same as, or not greater, than upon the moneyed capital of the individual citizen which is subject or liable to taxation; that is to say, if no greater proportion or percentage of tax on the valuation of the shares is levied than upon other moneyed taxable capital in the hands of its citizens, the shares are taxed in conformity with that proviso of the forty-first section, which says that they may be assessed, "but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." *Ib.*

BILLS OF ATTAINDER. See *Attorneys and Counsellors*, 1–8; *Constitutional Law*, 1–13.

BILLS OF EXCEPTION. See *Practice*, 3–7.

CALIFORNIA. See *Mexican Law*, 1–3.

CAPTURED PROPERTY. See *Prize Court*, 1–3.

Demands against property captured as prize of war must be adjusted in a prize court. The property arrested as prize is not attachable at the suit of private parties. If such parties have claims which, in their view, override the rights of captors, they must present them to the prize court for settlement. *The Nassau*, 634.

COLLISION.

Those established rules of navigation that where a vessel has the wind free, or is sailing before or with the wind, she must keep out of the way of the vessel which is closehauled by the wind or sailing by or against it, and that those closehauled on the wind, or sailing on the starboard tack, must keep their course, do not apply after a vessel advancing in violation of them is so near another vessel that by such other vessel's adhering to them a collision would be inevitable. A departure from them, under such circumstances, by a vessel otherwise not in fault, will not impair her right to recover for injuries occasioned by the collision. *Bentley* v. *Coyne*, 509.

COMITY, State and Federal. See *Mexican Law*, 4.

The interpretation within the jurisdiction of a State of a local law, becomes a part of that law, as much so as if incorporated in the body of it by the legislature. If different interpretations are given in different States to a similar law, that law, in effect, becomes, by the interpretations, so far as it is a rule for action by this court, a different law in one State from what it is in the other. *Christy* v. *Pridgeon*, 196.

COMMON CARRIERS.

1. Although a common carrier of passengers by sea, as a master of a steamship, may properly refuse a passage to a person who has been forcibly expelled by the actual though violent and revolutionary authorities of a town, under threat of death if he return, and when the bringing back and landing of such passenger would in the opinion of such master tend to promote further difficulty—yet this refusal should precede the sailing of the ship. If the passenger have violated no inflexible rule of the ship in getting aboard the vessel, have paid or tendered the passage-money, and have conducted himself properly during the voyage, the master has no right, as matter of law, to stop a returning vessel, put him aboard it, and send him back to the port of departure. And if he do so, damages will be awarded against him on a proceeding in admiralty. *Pearson* v. *Duane*, 605.

2. However, where a person who had been thus banished from a place got on board a vessel going back to it, determined to defy the authorities there and take his chance of life, and the captain, who had not known the history of the case until after the vessel was at sea—on meeting a return steamer, of a line to which his own vessel belonged—stopped his own and sent the man aboard the returning one, to be taken to the port where he embarked—such captain, not acting in any malice, but acting from a humane motive, and from a belief that the passenger, if landed at the port where his own vessel was going, would be hanged —in such a case, the apprehended danger mitigates the act, and the damages must be small. Accordingly, in such a case, this court, on appeal from a decree which had given four thousand dollars damages, modified it by allowing but fifty dollars, with directions, moreover, that each party should pay his own costs on the appeal. *Ib.*

3 In a case such as above described, a passenger is entitled to compensation for the injury done him by being put on board the return vessel, so far as that injury arose from the act of the captain of the other vessel in putting him there. But he is not entitled to damages for injuries that he suffered from obstructions which he afterwards met with in getting to the place from whence he had been expelled and where he wanted to return; and which injuries were not caused by this act, but were owing to the fact that all to whom he afterwards applied for passage to that place knew the power and determination of the authorities there and were afraid to carry him back. *Ib.*

CONSTITUTIONAL LAW. See *Attorneys and Counsellors*, 1–8; *Habeas Corpus*, 4; *Pardon*, 1–3; *Trial by Jury*, 1–4.

I. Ex Post Facto Laws.

1. Under the form of creating a qualification or attaching a condition, the States cannot in effect inflict a punishment for a past act which was not punishable at the time it was committed. *Cummings* v. *The State of Missouri*, 277.
2. Deprivation or suspension of any civil rights for past conduct is punishment for such conduct. *Ib.*
3. A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution bills of attainder include bills of pains and penalties. *Ib.*
4. These bills, though generally directed against individuals by name, may be directed against a whole class, and they may inflict punishment absolutely, or may inflict it conditionally. *Ib.*
5. The clauses of the second article of the constitution of Missouri (set forth in the statement of the case of *Cummings* v. *The State of Missouri*, 4 Wallace, pp. 279–281), which require priests and clergymen, in order that they may continue in the exercise of their professions, and be allowed to preach and teach, to take and subscribe an oath that they have not committed certain designated acts, some of which were at the time offences with heavy penalties attached, and some of which were at the time acts innocent in themselves, constitute a bill of attainder within the meaning of the provision in the Federal Constitution prohibiting the States from passing bills of that character. *Ib.*
6. These clauses presume that the priests and clergymen are guilty of the acts specified, and adjudge the deprivation of their right to preach or teach unless the presumption be first removed by their expurgatory oath: they assume the guilt and adjudge the punishment conditionally. *Ib.*
7. There is no practical difference between assuming the guilt and declaring it. The deprivation is effected with equal certainty in the one case as in the other. The legal result is the same on the principle that what cannot be done directly cannot be done indirectly. *Ib.*
8. The prohibition of the Constitution was intended to secure the rights of the citizen against deprivation for past conduct by legislative enactment, under any form, however disguised. *Ib.*
9. An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required. *Ib.*
10. The clauses of the second article of the constitution of Missouri, already referred to, in depriving priests and clergymen of the right to preach and teach, impose a penalty for some acts which were innocent at the time they were committed, and increase the penalty prescribed for such of the acts specified as at the time constituted public offences, and

CONSTITUTIONAL LAW (*continued*).

in both particulars violate the provision of the Federal Constitution prohibiting the passage by the States of an *ex post facto* law. They further violate that provision in altering the rules of evidence with respect to the proof of the acts specified—thus, in assuming the guilt instead of the innocence of the parties; in requiring them to establish their innocence, instead of requiring the government to prove their guilt; and in declaring that their innocence can be shown only in one way, by an expurgatory oath. *Ib.*

11. Although the prohibition of the Constitution to pass an *ex post facto* law is aimed at criminal cases, it cannot be evaded by giving a civil form to that which is in substance criminal. *Ib.*

12. A statute which simply authorizes the imposition of a tax according to a previous assessment is not retrospective. *Locke* v. *New Orleans*, 172.

13. Retrospective acts embrace such only as impose or affect penalties or forfeitures. *Ib.*

II. Violation of Contract.

14. Where a State, in order to promote the drainage and sale of certain swamp lands belonging to it, and which it was desirous of reclaiming, has passed, by way of encouraging purchasers, a law that such lands "shall be exempt from taxation for the term of ten years," and issued transferable scrip receivable for them, a repeal of the exemption act, so far as it concerns lands paid for either before or after the repeal, with scrip issued before the repeal, impairs a contract of the State with the holders of such scrip. *McGee* v. *Mathis*, 143.

15. Where a statute has authorized a municipal corporation to issue bonds, and to exercise the power of local taxation in order to pay them, and persons have bought and paid value for bonds issued accordingly, the power of taxation thus given is a contract within the meaning of the Constitution, and cannot be withdrawn until the contract is satisfied. The State and the corporation in such a case are equally bound. *Von Hoffman* v. *City of Quincy*, 535.

16. A subsequently passed statute which repeals or restricts the power of taxation so previously given, is, in so far as it affects bonds bought and held under the circumstances mentioned, a nullity; and it is the duty of the corporation to impose and collect the taxes in all respects as if the second statute had not been passed. *Ib.*

17. Certificates of discharge granted under insolvent laws passed by a State cannot be pleaded in bar of an action brought by a citizen of another State in the courts of the United States, or of any other State than that where the discharge was obtained, unless it appear that the plaintiff proved his debt against the defendant's estate in insolvency, or in some manner became a party to the proceedings. *Baldwin* v. *Hale*, 1 Wallace, 223, and *Baldwin* v. *Bank of Newbury*, Id. 234, affirmed. *Gilman* v. *Lockwood*, 409.

III. The President.

18. The President of the United States cannot be restrained by injunction

CONSTITUTIONAL LAW (*continued*).

from carrying into effect an act of Congress alleged to be unconstitutional, nor will a bill having such a purpose be allowed to be filed. *The State of Mississippi* v. *Johnson*, *President*, 475.

19. It makes no difference whether such incumbent of the Presidential office be described in the bill as President or simply as a citizen of a State. *Ib.*

CONTRACT, OBLIGATION OF. See *Constitutional Law*, 14–16.

CONTRACTOR, LIABILITY OF, IN RELATION TO PRINCIPAL. See *Respondeat Superior*.

CORPORATION. See *Mandamus*, 5.

1. Municipal corporations, such as the county boards of police usual in Mississippi, when authorized by statute to do acts which otherwise they would have no power to do—such, for example, as subscribe to a railroad incorporated and beginning in another State and passing through their own State—cannot modify or alter the subscription as authorized by the statute. A compromise by such board with a railroad company which does so modify or alter the subscription is, accordingly, void. *Bell* v. *Railroad Company*, 598.
2. A provision in the charter of a city corporation authorizing it to borrow money for any public purpose, whenever, in the opinion of the City Council, it shall be expedient to exercise it, is a valid power. *Rogers* v. *Burlington* (3 Wallace, 654), affirmed. *Mitchell* v. *Burlington*, 270.
3. Money borrowed by such a corporation to construct a plank-road, if the road leads from, extends to, or passes through the limits of the corporation, is borrowed for a public purpose within the meaning of the provision. *Ib.*
4. *Havemeyer* v. *Iowa County* (3 Wallace, 294), and *Gelpcke* v. *City of Dubuque* (1 Wallace, 175), affirmed, and the doctrine reasserted, that if municipal bonds, when made, were valid by the constitution and laws of a State as then expounded, by the highest judicial authority whose duty it was to interpret them, no subsequent judicial exposition of an opposite kind, will make them invalid. *Ib.*

CUSTOMS. See *Reciprocity Treaty of* 1854.

DAMAGES. See *Common Carrier*, 2, 3.

Where—on a suit by the United States against a deputy postmaster for damages in not paying over moneys which came to his hands during the six months next preceding the discontinuance (March 13th, 1862) of the office to which he was appointed—the defendant's rejoinder (demurred to), by its whole context, and by its introductory allegations that the office was never supplied with mails after it was discontinued, shows that it means nothing more than that such defendant was wrongfully prevented from earning commissions—such rejoinder

DAMAGES (*continued*).

presents a claim for damages merely. Such a claim cannot be maintained as a defence to a suit such as above described. *Ware* v. *United States*, 617.

DEPOSITIONS. See *Evidence*, 2–3.

DISPUTED CLAIM.

1. A collector of taxes, who under the direction properly given of a county police board has collected a tax which such board was authorized by statute, upon certain conditions, to levy for the benefit of another body, a railroad company, has no right to decide whether such municipal body has laid the tax rightly or not, or to settle differences between the tax-payers, the county, and the third body. If the president of the board of police direct him to pay it to the third body his duty is to pay it. *Bell* v. *Railroad Company*, 598.
2. The fact that the statute made it the duty of such collector before entering upon the duty of collecting to give a bond to the president of the board of police, with sureties to be approved by him, and by which he should bind himself to "keep safely and pay over to the order of the president of the board of police all money collected by him," and that the collector did not give a bond in such form at all, does not affect this obligation. *Ib.*

DISTRICT OF COLUMBIA. See *Jurisdiction*, 10–13.

EJECTMENT.

1. A final judgment pronounced in an action of ejectment, where the claim of title in fee simple absolute by the parties respectively was the sole subject of controversy, and where the suit is not in the fictitious form, but in form between litigants with real names, and where the land is accurately described, is, in those States where no provision is made by statute for a subsequent trial, a valid legal bar to a like action subsequently instituted between the same parties for the same lands or premises, involving the same identical title and rights to the possession of such lands or premises and none other. *Sturdy* v. *Jackaway*, 174.
2. Although when statute abolishing its fictitious forms places the action of ejectment on the same footing with other actions as to the conclusiveness of the judgment, the court will give effect to the same; yet where a plaintiff in ejectment is defeated in one suit, where he claimed through a power of attorney rightly ruled out on the trial as void, he will not be held to be concluded in a subsequent action where he claims under a new deed made by the executors themselves. Having acquired a new and distinct title, he has the same right to assert it, without prejudice from the former suit, as a stranger would have, had it passed to him. *Barrows* v. *Kindred*, 399.
3. Where a party claiming land as owner, under the laws of Pennsylva-

EJECTMENT (*continued*).

nia, brings ejectment in the name of the original warrantee, and recovers, against a father; and subsequently producing a deed-poll from the warrantee, made previously to the date of the ejectment and deraigning title to himself, brings another ejectment in his own name against a son, who on his father's death kept possession of the same land: such two suits are an estoppel and within the act of Assembly of Pennsylvania, of the 13th of April, 1807, which declares that "where two verdicts shall, in any suit of ejectment between the same parties, be given in succession, for the plaintiff or defendant, and judgment be rendered thereon, no new ejectment shall be brought." *Evans* v. *Patterson*, 224.

EQUITY. See *Former Judgment; Injunction*, 1, 2.

A court of equity will set aside a patent of the United States obtained by mistake or inadvertence of the officers of the land office, on a bill filed for that purpose by the government when the patent *primâ facie* passes the title. *Hughes* v. *United States*, 232.

ESTOPPEL.

1 Although no partnership may exist between them, yet where two persons are joint owners of a vessel against which a claim exists for non-delivery of cargo, and one gives a note in the joint name for a balance agreed on as due for such non-delivery—the other party being aware of the making of the note, and of the consideration for which it was given, and making no dissent from the act of his co-owner—such note cannot be repudiated by such other party, he having bought out the share of his co-owner in the vessel and agreed to pay her debts and liabilities. *Newell* v. *Nixon*, 572.

2. If the authorities of a city or town have treated a place as a public street, taking charge of it, and regulating it as they do other streets, they cannot, when sued for an injury growing out of their negligence in care of the street, defend themselves by alleging want of authority in establishing the street originally. *Mayor* v. *Sheffield*, 189.

EVIDENCE.

1. On an issue as to whether certain promissory notes, dated on a particular day, were given for money lost at play and therefore void, it is not allowable to prove that the party giving them was intoxicated on the day of the date of the notes in suit, and that when intoxicated he had a propensity to game. *Thompson* v. *Bowie*, 463.

2. Depositions cannot be used on the trial of a suit in admiralty, which were taken in another suit concerning the same subject-matter, where the party against whom they are offered was not a party to the suit in which they were taken, nor privy to any such party, and had no right to cross-examine the witnesses. *Rutherford* v. *Geddes*, 220.

3. Nor can depositions be read in admiralty any more than at common law, without some sufficient reason being shown why the witness was not produced at the hearing. *Ib.*

EVIDENCE (*continued*).

4. Where a suit is brought against a shipowner for a sum acknowledged by the owners to be due the shipper, for a breach of contract in delivering merchandise, the production of the bill of lading is not essential. *Newell* v. *Nixon*, 572.
5. When, under the act of Congress of the 25th March, 1862, for the better administration of the law of prize (12 Stat. at Large, 374), the prize commissioners authorized by the act certify to a District Court that a prize vessel has arrived in their district, and has been delivered into their hands, this is sufficient evidence to the court that the vessel is claimed as a prize of war and in its jurisdiction as a prize court. *The Nassau*, 634.

EX POST FACTO LAWS. See *Attorneys and Counsellors*, 1–8; *Constitutional Law*, 1–13.

FEDERAL AND STATE JURISDICTION. See *Admiralty Jurisdiction*, 1–10.

FLORIDA.

The established rule—that a writ of *fieri facias*, tested and issued after the death of the party against whom the judgment is recovered, is void, and confers no power on the ministerial officer to execute it—applies where the proceedings are begun by seizing property under a writ of attachment under the laws of Florida, as at the common law. *Mitchell* v. *St. Maxent's Lessee*, 237.

FORMER JUDGMENT. See *Recovery Over*.

A decree dismissing a bill for matters not involving merits is no bar to a subsequent suit. *Hughes* v. *United States*, 232.

FRAUDS. See *Statute of*.

GAMING CONSIDERATION. See *Evidence*, 1.

HABEAS CORPUS. See *Trial by Jury*, 4.

1. Circuit Courts, as well as the judges thereof, are authorized, by the fourteenth section of the Judiciary Act, to issue the writ of *habeas corpus* for the purpose of inquiring into the cause of commitment, and they have jurisdiction, except in cases where the privilege of the writ is suspended, to hear and determine the question, whether the party is entitled to be discharged. *Ex parte Milligan*, 2.
2. The usual course of proceeding is for the court, on the application of the prisoner for a writ of *habeas corpus*, to issue the writ, and on its return to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the facts presented in the petition, the prisoner, if brought before the court, would be discharged. *Ib.*

HABEAS CORPUS (*continued*).

3 A petition for a writ of *habeas corpus*, duly presented, is the institution of a cause on behalf of the petitioner; and the allowance or refusal of the process, as well as the subsequent disposition of the prisoner, is matter of law and not of discretion. If the Circuit Court renders a final judgment refusing to discharge the prisoner, he may bring the case here by writ of error; and if the judges of the Circuit Court, being opposed in opinion, can render no judgment, he may have the point upon which the disagreement happens certified to this tribunal, under the Judiciary Act of 1802, for final decision. *Ib.*

4. Suspension of the privilege of the writ of *habeas corpus* does not suspend the writ itself. The writ issues as a matter of course; and, on its return, the court decides whether the applicant is denied the right of proceeding any further. *Ib.*

5. A person arrested after the passage of the act of March 3d, 1863, "relating to *habeas corpus* and regulating judicial proceedings in certain cases," and under the authority of the said act, was entitled to his discharge if not indicted or presented by the grand jury convened at the first subsequent term of the Circuit or District Court of the United States for the district. *Ib.*

6. The omission to furnish a list of the persons arrested, to the judges of the Circuit or District Court as provided in the said act, did not impair the right of such person, if not indicted or presented, to his discharge. *Ib.*

INDIANA.

The Federal authority having been always unopposed in the State of Indiana, and the Federal courts open for the trial of offences and the redress of grievances, the trial there, by a Military Commission, of a citizen in civil life, not connected with the military or naval service, for any offence whatever, was unconstitutional. *Ex parte Milligan*, 2.

INJUNCTION.

1. The President of the United States cannot be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional, nor will a bill having such a purpose be allowed to be filed. *The State of Mississippi* v. *Johnson, President*, 475.

2. It makes no difference whether such incumbent of the Presidential office be described in the bill as President or simply as a citizen of a State. *Ib.*

INSOLVENT LAWS OF STATES. See *Constitutional Law*, 17.

INSTANCE COURT. See *Prize Court*, 1–3.

INTEREST.

A party suing, not on a note, but on the consideration for which the note was given—and using the note as evidence rather than as the foundation of the claim—may have lawful interest on the sum due him, INTEREST (*continued*).

although by note given on a settlement the party sued may have promised to pay unlawful interest, and such as the law of the State where the note was given visits with a forfeiture of all interest whatever. *Newell* v. *Nixon*, 572.

INTERPRETATION.

I. OF STATUTES, See *Statutes*, I.

II. OF DEEDS.

A grant in whose language there is some obscurity, and which, if open for construction, might present some ground for an interpretation in one way, may, on a question of location, be explained in a different sense by an official survey referred to in it, and which was before the party when making the grant. *United States* v. *McMasters*, 680.

JUDGMENT. See *Mandamus*, 1, 2; *Principal and Surety*; *Recovery over*, 1–3.

JUDICIARY ACT OF 1802.

1. A petition for a writ of *habeas corpus*, duly presented, is the institution of a cause on behalf of the petitioner; and if the judges of the Circuit Court, being opposed in opinion, can render no judgment on it, the point upon which the disagreement happens may be certified to the Supreme Court, under the act of 29th April, 1802, for final decision. *Ex parte Milligan*, 2.
2. The Supreme Court cannot take jurisdiction where the question certified is one of fact, and which can be determined only by an examination of the evidence in the record. *Brobst* v. *Brobst*, 2.

JURIDICAL POSSESSION. See *Mexican Law*, 1–3

JURISDICTION.

I. OF THE SUPREME COURT OF THE UNITED STATES.

(*a*) *Where the Jurisdiction exists.*

1. A petition for a writ of *habeas corpus* duly presented is the institution of a "cause," within the meaning of the Judiciary Act of 1802, allowing certificates of division in opinion between the judges. And a certificate of division of opinion on such petition is within the jurisdiction of the Supreme Court. *Ex parte Milligan*, 2.

(*b*) *Where the Jurisdiction does not exist.*

2. This court cannot take jurisdiction on a certificate of division, under the Judiciary Act of 1802, in a case where the question certified is one of fact and can only be determined by an examination of the evidence in the record. *Brobst* v. *Brobst*, 2.
3. The jurisdiction of the Supreme Court to re-examine judgments of the Circuit Courts is limited to cases where the matter in dispute *exceeds* $2000. Where it but equals that sum the jurisdiction does not exist. *Walker* v. *United States*, 163.

JURISDICTION (*continued*).

4. In a case brought here from a State court, under the twenty-fifth section of the Judiciary Act, the record must show that some one of the matters mentioned in that section was *necessarily* decided by the court, notwithstanding there may be a certificate from the presiding judge, that such matters were drawn in question. If it appears from the record that the State court might have decided the case on some other ground, this court has no jurisdiction. *Railroad Company* v. *Rock*, 177.
5. This court cannot review the decision of a State court upon the general ground, that such court has declared a contract void, which this court may think to be valid. *Ib.*
6. It must be the Constitution or some statute of the State which impairs the obligation of the contract, or which is otherwise in conflict with the Constitution or laws of the United States; and the decision of the State court must sustain the law of the State in the matter in which this conflict is supposed to exist, or the case for this court does not arise. *Ib.*
7. In cases brought from a State court under the twenty-fifth section of the Judiciary Act, where a decision of the highest court of law or equity of a State is *in favor* of the validity of a statute of or an authority exercised under the United States, drawn in question in such court, this court has no revisory power. *Ryan* v. *Thomas*, 603.
8. The twenty-fifth section of the Judiciary Act does not warrant the review of an adjudication upon a mere question of boundary; nor does the fact that the land to which the boundary relates is held by a title derived from an act of Congress change the result. Location upon the land when the title is admitted, is wholly within the cognizance of the State tribunals, and it is not within the power of the Supreme Court to reverse their action. In such cases its authority is limited to errors relating to the title. *Lanfear* v. *Hunley*, 204.
9. Where two parties held patents for land from the United States, under Mexican grants, both of which included the same lands in part, and one of the parties brought a suit in a State court to vacate the patent of the other, to the extent of the conflict of title, and the State court refused to entertain jurisdiction of the question, and dismissed the complaint, this court has no jurisdiction, under the twenty-fifth section of the Judiciary Act, to review the judgment. *Semple* v. *Hagar*, 431.
10. Under the act of March 3d, 1863, establishing the Supreme Court of the District of Columbia, the action of that court can be examined here in no case in which like action in the Circuit Court of the district, whose place it supplies, could not be re-examined. *Brown* v. *Wiley*, 165.
11. Hence, it can be examined only in those cases where there has been a final judgment, order, or decree. *Ib.*
12. The certificate of the finding of a jury on certain issues involving paternity, marriage, and legitimacy, sent from the Orphans' Court to the Supreme Court of the district, which certificate of finding is

JURISDICTION (*continued*).

transmitted by the Supreme Court to the Orphans' Court, is not such a final judgment, order, or decree as this court can re-examine on error. *Ib.*

13. Nor where the finding of the jury was at special term held by a single judge of the Supreme Court of the District of Columbia, under instructions by such judge, and a motion for new trial on exception to such instructions and other grounds has been heard at general term by all the judges and overruled, is such overruling a final judgment, order, or decree, reviewable on a writ of error by this court. *Ib.*

14. This court will not take jurisdiction of a judgment shown by the context of the record to be but an order affirming a refusal of a court below to grant a new trial; even though the language of the record of affirmance brought here by the writ of error purports to affirm generally the judgment of a court inferior to the affirming court, and the only judgment, in strict language, in the record of such inferior court, is a general judgment. *Sparrow* v. *Strong*, 584.

II. Of Circuit Courts of the United States.

Circuit Courts, as well as the judges thereof, are authorized, by the fourteenth section of the Judiciary Act, to issue the writ of *habeas corpus* for the purpose of inquiry into the cause of commitment, and they have jurisdiction, unless in cases where the privilege of the writ is suspended, to hear and determine the question, whether the party is entitled to be discharged. *Ex parte Milligan*, 2.

III. Of District Courts of the United States.

See *Admiralty*, 1–11; *Prize Court*, 1–3.

LANFEAR, AMBROSE.

The act of Congress of August 16th, 1856, confirming claims in favor of Ambrose Lanfear, confirmed to him whatever he was entitled to by virtue of the original grant referred to in it, conceding that to have been valid. It neither enlarged nor diminished what the grant gave. It extinguished all claim on the part of the United States to the land covered by the surveys; but as regards adverse claimants, it determined nothing, and concluded no one. *Lanfear* v. *Hunley*, 204.

LIABILITY OVER.

Where work done on a public highway *necessarily* causes an obstruction or defect in it, it is no defence, by a principal, to a claim of a municipal corporation which has had to pay damages for injuries done to a passer by from such obstruction or defect, that the defect was caused by an independent contractor. *Robbins* v. *Chicago City*, 657.

LOUISIANA, CIVIL CODE OF.

The article 3499 of the Civil Code of Louisiana, which prescribes that "actions for the payment of freight of ships and other vessels are prescribed by one year," does not apply to a case where the plaintiffs

LOUISIANA, CIVIL CODE OF (*continued*).

were shipbrokers only and not shipowners, and where the contract was not one of affreightment. *Railroad Company* v. *Lindsay*, 650.

MANDAMUS.

1. On application by a creditor for *mandamus* against county officers to levy a tax to pay a judgment, the defendant cannot impeach the judgment by setting up that interest was improperly given in it. This would be to impeach it collaterally. *Supervisors* v. *United States, Ex relatione*, 435.
2. A statute which enacts that when a judgment is given against a county, the county commissioner shall draw a warrant upon the treasurer for the amount, "*which shall be paid as other county debts*," cannot be taken advantage of on error, in case of an application for a *mandamus* to levy a tax to pay a judgment, where such a warrant was applied for and refused, and where there are no funds in the county treasury with which to pay the judgment. *Ib.*
3 Where a statute directs the commissioner of patents to grant a reissue of patents, in certain cases, to "assignees," it is the duty of the commissioner to decide whether the applicant is an assignee with such an interest as entitled him to a reissue within the meaning of the statutory provision on the subject; and if he has thoroughly examined and decided that the applicant is not so, a *mandamus* will not lie commanding him to refer the application to "the proper examiner, or otherwise examine or cause the same to be examined according to law." The preliminary question was within the scope of his authority. If the *mandamus* had ordered the commissioner to allow an appeal, the order under which it issued would have been held correct. *Commissioner of Patents* v. *Whiteley*, 522.
4. *Mandamus* cannot be made to perform the functions of a writ of error. *Ib.*
5. *Mandamus* will lie to compel a municipal corporation to levy and collect taxes which payment of its just debts renders necessary. *Von Hoffman* v. *City of Quincy*, 535.

MARITIME LIEN. See *Prize Court*, 1–3.

MATERIAL-MEN. See *Prize Court*, 1–3.

MEXICAN LAW.

I. LAW OF JURIDICAL POSSESSION.

1. The Mexican law made a formal delivery of possession of real property granted essential, after the execution of the grant, for the investiture of the title. *Graham* v. *United States*, 259.
2. The proceeding had upon such delivery—called, in the language of the country, the delivery of juridical possession—was usually taken by the magistrate of the vicinage, with assisting witnesses, in the presence of the adjoining land proprietors, and involved, when there was any

MEXICAN LAW (*continued*).

uncertainty in the description of the premises, a measurement of the land and the establishment of its boundaries. *Ib.*

3. The record of a proceeding of this nature must control the action of the officers of the United States, in surveying the land granted, when the grant is confirmed. *Ib.*

II. Colonization Law of 1824. See *Comity.*

4. The Mexican colonization law of August 18th, 1824, though general to the Republic of Mexico, was, so far as it affected lands within the limits of Texas, after the independence of that country, a local law of the new State, as much so as if it had originated in her legislation. The interpretation, therefore, placed on it by the highest court of the State, must be accepted as the true interpretation, so far as it applies to titles to lands in that State, whatever may be the opinion of the Federal courts of its original soundness. If in courts of other States carved out of territory since acquired from Mexico, a different interpretation has been adopted, the courts of the United States will follow the different ruling, so far as it affects titles in those States. *Christy* v. *Pridgeon*, 196.

MILITARY COMMISSIONS. See *Habeas Corpus*, 4; *Trial by Jury*, 1–4.

MISSOURI. See *Constitutional Law*, 1–11.

NAVIGABLE WATERS OF THE UNITED STATES. See *Admiralty*, 1–10.

NEGOTIABLE PAPER.

1. A bill of exchange drawn in one State upon a party in another, the known and common purpose of both parties being to carry on a business declared unlawful by statute of the first State, is void as to the drawer in the hands of a party to the bill having notice of its true character. *Davidson* v. *Lanier*, 447.
2. As between the parties the delivery of negotiable paper, signed and indorsed in blank, authorizes the receiver to fill it up in conformity with the authority given him; but it does not authorize him to do more, nor give him power to fill it up at pleasure. In a suit by the drawer upon such paper against drawer or indorser, the burden of proof, that an agreement as to filling up had been violated, is on the defendant; but if he can make the proof it will avail him. *Ib.*

NEVADA.

An appeal from an order denying a motion for a new trial does not, under the legislation of Nevada, carry the original judgment and the whole cause before the appellate court, so that the decision upon the appeal operates as a judgment reversing or affirming the judgment below. *Sparrow* v. *Strong*, 584.

NOTICE. See *Recovery Over.*

1. The equity of a preëmption claimant of land under the laws of the United States who has complied with the conditions imposed by those laws, obtained his certificate by the payment of the purchase-money, and retained uninterrupted possession of the property, cannot be defeated by one whose entry was subsequent, although he has fortified his title with a patent; such person having notice sufficient to put him on inquiry as to the interests, legal or equitable, of the preëmption claimant. *Hughes* v. *United States*, 232.
2. Open, notorious, and exclusive possession of real property by parties claiming it is sufficient to put other persons upon inquiry as to the interests, legal or equitable, held by such parties; and if such other persons neglect to make the inquiry, they are not entitled to any greater consideration than if they had made it and had ascertained the actual facts of the case. *Ib.*

OPEN ACCOUNT.

A demand cannot be regarded as an open account where there is a contract which is the foundation of the claim, and which, though not fulfilled according to its letter, either as to the time or place of delivery, yet with the qualifications which the law under such circumstances imposes, determines the respective liabilities of the parties. *Railroad Company* v. *Lindsay*, 650.

PARDON.

1. The power of pardon conferred by the Constitution upon the President is unlimited except in cases of impeachment. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken or during their pendency, or after conviction and judgment. The power is not subject to legislative control. *Ex parte Garland*, 333.
2. A pardon reaches the punishment prescribed for an offence and the guilt of the offender. If granted before conviction it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction it removes the penalties and disabilities and restores him to all his civil rights. It gives him a new credit and capacity. There is only this limitation to its operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment. *Ib.*
3. A person who has received a full pardon for all offences committed by his participation, direct or implied, in the Rebellion, is relieved from all penalties and disabilities attached to the offence of treason, committed by such participation. He cannot, therefore, be excluded by reason of that offence from continuing in the enjoyment of a previously-acquired right to appear as an attorney and counsellor in the Federal courts. *Ib.*

PATENT. See *Equity; Mandamus*, 3.

1. Where an applicant for reissue of a patent has done all in his power to make his application effectual—has filed his application with the acting commissioner and paid the requisite amount of fees—the application is to be considered as properly before the commissioner. *Commissioner of Patents* v. *Whiteley*, 522.
2. *Semble* that an applicant for a reissue of a patent under the thirteenth section of the Patent Act of 1836, which allows a reissue in certain cases to a patentee, "and in case of his death or any *assignment* by him made of the *original patent*," vests a similar right "in his executors, administrators, or *assignees*," must be an assignee of the whole interest in the patent; and not the assignee of a sectional interest only. At least where the commissioner of patents had thus decided, the Supreme Court, on the question's being raised in connection with other questions, whose decision rendered a decision on *it* unnecessary, say that "as at present advised they were not prepared to say that the decision of the commissioner was not correct." *Ib.*

PENNSYLVANIA. See *Ejectment*, 3.

PLEADING. See *Mandamus*, 1.

1. Where there is a plea to merits, and the parties go to trial accordingly, irregularities previously set up by pleas in abatement and demurrers to them are waived. *Bell* v. *Railroad Company*, 598.
2. Where a plea in answer is but notice of special matter by way of abatement of the amount claimed and so goes to but part of the cause of action, it cannot be relied on as a plea in bar. *United States* v. *Dashiel*, 182.
3. When a contract is alleged by the pleadings to have been made on a certain day, it is no variance to offer in evidence a written contract which took effect on a different day. *United States* v. *Le Baron*, 642.
4. If it be proved that a bond bearing date the first day of the month, did not become obligatory until the fifteenth, this is no variance, although the bond is counted on in the pleadings as a contract made on the first day of the month and bearing that date. *Ib.*
5. An allegation of variance between the averments of a petition and the findings of the court, where there is no allegation that the findings were unwarranted by the proofs, or that the judgment does not conform to the law and justice of the case as presented by the findings, will not be sustained in the Supreme Court on review. *Railroad Company* v. *Lindsay*, 650.
6. Such case comes within the thirty-second section of the Judiciary Act, curing imperfections, defects, or want of form in the pleadings or course of proceedings, except such as are specially demurred to. *Ib.*
7. In a suit caused by a person's falling into an area in a public sidewalk, a declaration charging that the defendant "*dug*, opened, and *made*" the area is sustained by proof that he formed it partially by excavation and partially by raising walls. *Robbins* v. *Chicago City*, 657.

POSTMASTER-GENERAL. See *Post-offices*, 1–3.

POST-OFFICES.

1. By the legislation of Congress the Postmaster-General has the power to "establish *post-offices*" as well where the commissions of the office amount to or exceed one thousand dollars as where they do not. *Ware* v. *United States*, 617.
2. Unless there is some provision in the acts of Congress restraining its exercise, the power to establish post-offices, as interpreted by usage coeval with the creation of the Post-office Department and recognized in Congressional legislation, infers a power to discontinue them. And deputy postmasters occupy their offices subject to the contingency that such offices may be so discontinued. *Ib.*
3. Possessing thus the power to discontinue post-offices, the Postmaster-General may exercise the power, notwithstanding that the deputy postmasters have been appointed by the President, by and with the advice and consent of the Senate, and under a statute which enacts that the appointee shall hold his office for the term of four years unless sooner removed by the President. *Ib.*
4. If he do exercise it, the office of deputy postmaster is, in such cases, gone. There is no longer a deputy postmaster at that place. *Ib.*

PRACTICE. See *Jurisdiction*, 1–14; *Mandamus*, 2–4; *Principal and Surety; Pleading*, 5, 6; *Prohibition*, 1–3.

1. It is not required that a writ of error be allowed by a judge. It is enough that it is issued and served by copy lodged with the clerk of the court to which it is directed. *Davidson* v. *Lanier*, 447.
2. A mistake in the date of the writ of error is not important, when it is clear that such mistake is a clerical one merely, and when, from the judgment described and the number given to it, the party cannot be misled. *Ib.*
3. When a paper which is to constitute a part of a bill of exceptions is not incorporated into the body of the bill, it must be annexed to it, or so marked by letter, number, or other means of identification mentioned in the bill, as to leave no doubt, when found in the record, that it is the one referred to in the bill of exceptions, otherwise it will be disregarded. *Leftwitch* v. *Lecanu*, 187.
4. The fact that a copy of a paper is attached to a pleading in the case, which purports to be the same as the paper mentioned in the bill of exceptions, does not make it a part of that bill, nor can this court presume that it is the same paper read in evidence and excepted to. *Ib.*
5. The practice of making bills of exception a sort of abstract or index to the history of the case, and so of obscuring its merits, condemned. *Evans* v. *Patterson*, 224.
6. It is the duty of a party excepting to evidence to point out the part excepted to, so that the attention of the court may be drawn to it. Hence objections of a very general and indefinite nature to testimony taken under a commission, with interrogatories, and which do not point out except in gross the portion of the answers objected to and

PRACTICE (*continued*).

which embrace matters clearly competent, will not be sustained. If the exception covers any admissible testimony, it is rightly overruled. *United States* v. *McMasters*, 680.

7. Where none of the evidence offered by a plaintiff is objected to below, and no exception taken to the findings of the court there, objection cannot be made in this court. *Railroad Co.* v. *Lindsay*, 650.

8. A motion for a new trial is not a waiver of exceptions. *United States* v. *Dashiel*, 182.

9. A *certiorari* for diminution of the record allowed under special circumstances, and where the cause had been continued till the next term, although the motion for it was made after more than one term had passed since the entry of the case, and contrary, therefore, to a rule of the court. *Stearns* v. *The United States*, 1.

10. A writ of *fieri facias*, tested and issued after the death of the party against whom the judgment is recovered, is void, and confers no power on the ministerial officer to execute it. *Mitchell* v. *St. Maxent's Lessee*, 237.

11. Under the practice prevailing in the Circuit Courts of the United States, the finding of the facts by the court makes a case in the nature of a special verdict and is conclusive as to those facts; and this although the petition sets forth a different state of facts which are neither confessed nor denied by the answer. *Saulet* v. *Shepherd*, 502.

12. When a want of jurisdiction is patent, or can be readily ascertained by an examination of the record in advance of an examination of the questions on the argument of the merits, this court will entertain and act upon a motion to dismiss for want of jurisdiction. *Semple* v. *Hagar*, 431.

13. On the application of a prisoner for a writ of *habeas corpus*, the usual course of proceeding is for the court to issue the writ, and on the return to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the facts as presented in the petition, the prisoner, if brought before the court, would be discharged. *Ex parte Milligan*, 2.

14. If parties setting up a maritime lien for work and materials alleged to have been furnished to a vessel prior to her capture *jure belli* do not present and ask to have it decided in the prize court, before which the captured vessel is brought for adjudication, the question is not properly before this court for review, in a case where the District Court has only dismissed the libel as improperly filed on its instance side. *The Nassau*, 634.

PRESCRIPTION. See *Louisiana, Civil Code of.*

PRESIDENT OF THE UNITED STATES. See *Pardon; Trial by Jury*, 4.

The President cannot be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional, nor will a bill hav-

PRESIDENT OF THE UNITED STATES (*continued*).

ing such a purpose be allowed to be filed. And it makes no difference whether such occupant of the Presidential office be described in the bill as President or simply as a citizen of a State. *The State of Mississippi* v. *Johnson*, 475.

PRINCIPAL AND SURETY.

If a judgment is obtained against a surety, the amount of it being fixed by a judgment previously obtained against his principal, the former judgment cannot be reversed on error as for an amount too small, though the latter should be afterwards reversed as having so been. *United States* v. *Allsbury*, 186.

PRISONER OF WAR.

A person who was a resident, during the Rebellion, of a loyal State, in which he was then arrested; who was never resident in any State engaged in rebellion, nor connected with the military or naval service, cannot be regarded as a prisoner of war, within the meaning of the act of March 3d, 1863, authorizing, on certain conditions, the discharge from imprisonment of persons held "otherwise than as prisoners of war." *Ex parte Milligan*, 2.

PRIVATE BANKING. See *Public Policy*.

PRIZE COMMISSIONERS. See *Evidence*, 5.

PRIZE COURT.

1. Demands against property captured as prize of war must be adjusted in a prize court. The property arrested as prize is not attachable at the suit of private parties. If such parties have claims which, in their view, override the rights of captors, they must present them to the prize court for settlement. *The Nassau*, 634.
2. Whether a maritime lien for work and materials alleged to have been furnished to a vessel prior to her capture *jure belli* is lost by such capture, is a proper subject for investigation and decision by the prize court before which the captured vessel is brought for adjudication; and which the parties setting up such lien can, on presentation of their claim to that tribunal, properly have decided. *Ib.*
3. But if such parties do not so present and ask to have it decided, the question is not properly before this court for review, in a case where the District Court has only dismissed the libel as improperly filed on its instance side. *Ib.*

PROHIBITION.

1. The writ of prohibition can only be used to prevent the doing of some act which is about to be done, and can never be used as a remedy for acts already completed. *United States* v. *Hoffman*, 158.
2. Therefore, where the court to which the writ should be issued, has al-

PROHIBITION (*continued*).

ready disposed of the case, so that nothing remains which that court can do, either by way of executing its judgment or otherwise, no prohibition will be granted. *Ib.*

3 And this is true, though the final disposition of the case was made after service on the judge of a rule to show cause why the writ should not issue, and though other cases of the same character may be pending in the same court. *Ib.*

PUBLIC LANDS. See *Taxes*, 2-4.

PUBLIC MONEYS.

The loss of public money by a receiver and disburser of it, through felonious taking away, though without fault on his part, does not discharge him or his sureties from obligation on his official bond. *United States* v. *Dashiel*, 182.

PUBLIC POLICY.

1. A statute declared by its title to be "an act to suppress private banking," and making it penal to "erect, establish, institute, or put in operation, or to issue any bills or notes for the purpose of erecting, establishing, or putting in operation any banking institution, association, or concern," covers with its prohibition not only the primary steps in establishing and putting into operation the bank, but also the whole range of its transactions, by which illegitimate currency is imposed on a community; and contracts made in furtherance of such transactions are as void as those made to give it original operation. *Davidson* v. *Lanier*, 447.
2. A bill of exchange drawn in one State upon a party in another, the known and common purpose of both parties being to carry on a business declared unlawful by statute of the first State, is void as to the drawer in the hands of a party to the bill having notice of its true character. *Ib.*
3. As between the parties the delivery of negotiable paper, signed and indorsed in blank, authorizes the receiver to fill it up in conformity with the authority given him; but it does not authorize him to do more, nor give him power to fill it up at pleasure. In a suit by the drawee upon such paper against drawer or indorser, the burden of proof, that an agreement as to filling up had been violated, is on the defendant; but if he can make the proof it will avail him. *Ib.*

PUBLIC STREETS. See *Estoppel*, 2.

PUBLIC WORK.

A person building a storehouse on a street, who, in consequence of the city's raising the carriage-way of the street, raises a sidewalk so as to make it conform to the grade of the carriage-way—such person obtaining by his mode of raising the sidewalk, vaults and an area for

PUBLIC WORK (*continued*).

the benefit of his building—does not do a public work, nor relieve himself from the penalty of making a nuisance if a nuisance is made by what he does. *Robbins* v. *Chicago City*, 657.

REBELLION, THE. See *Attorneys and Counsellors*, 4-8; *Constitutional Law*, 1-11; *Habeas Corpus*, 4-6; *Trial by Jury*, 1-4.

1. A person arrested after the passage of the act of March 3d, 1863, "relating to *habeas corpus* and regulating judicial proceedings in certain cases," and under the authority of the said act, was entitled to his discharge if not indicted or presented by the grand jury convened at the first subsequent term of the Circuit or District Court of the United States for the district. *Ex parte Milligan*, 2.
2. The omission to furnish a list of the persons arrested, to the judges of the Circuit or District Court, as provided in the said act, did not impair the right of such person, if not indicted or presented, to his discharge. *Ib.*

RECIPROCITY TREATY OF 1854.

1. Staves for pipes, hogsheads, and other casks, the growth and produce of the Province of Canada, imported in November, 1863, from Canada into the United States, were not free from duty under the reciprocity treaty of 1854 between the United States and Great Britain, by which "timbers and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole or in part," were to be admitted free of duty. They were liable to pay 10 per cent. *ad valorem*, imposed by the sixth section of the act of July 14th, 1862. *United States* v. *Hathaway*, 404.
2. Split white-ash timber, chiefly designed to be used in the manufacture of long shovel handles, the growth and product of the Province of Canada, and imported from there into the United States, were not free from duty under the treaty above named, but were chargeable with a duty of 20 per cent. *ad valorem* under the 24th section of the act of March 2d, 1861. *United States* v. *Quimby*, 408.

RECOVERY OVER.

1. Parties having notice of the pendency of a suit in which they are directly interested must exercise reasonable diligence in protecting their interests, and if instead of doing so they wilfully shut their eyes to the means of knowledge which they know are at hand to enable them to act efficiently, they cannot subsequently turn round and evade the consequences which their own conduct and negligence have superinduced. *Robbins* v. *Chicago City*, 657.
2. The term "parties," as thus used, includes all who are directly interested in the subject-matter, and who had a right to make defence, control the proceedings, examine and cross-examine witnesses, and appeal from the judgment. *Ib.*
3. Express notice to defend is not necessary in order to render a party liable over for the amount of a judgment paid to an injured plaintiff

RECOVERY OVER (*continued*).

If the party knew that the suit was pending, and could have defended it, he is concluded by the judgment as to the amount of the damages. *Chicago City* v. *Robbins* (2 Black, 418), affirmed. *Ib.*

RESPONDEAT SUPERIOR.

Where work done on a public highway *necessarily* constitutes an obstruction or defect in the highway which renders it dangerous as a way for travel and transportation unless properly guarded or shut out from public use, in such case a principal for whom the work was done cannot defeat the just claim of a municipal corporation which has had to pay damages, or of a private party who has suffered injury, by proving that the work which constituted the obstruction or defect was done by an independent contractor. *Chicago City* v. *Robbins* (2 Black, 418), affirmed. *Robbins* v. *Chicago City*, 657.

STATE AND FEDERAL JURISDICTION. See *Admiralty*, 1–10.

STATUTES. See *Admiralty*, 7–10; *Post Offices*, 2.

I. GENERAL PRINCIPLES OF INTERPRETATION IN ONE CLASS OF.

Where power is given by statute to public officers, in permissive language—as that they "*may*, if deemed advisable," do a certain thing—the language used will be regarded as peremptory where the public interest or individual rights require that it should be. *Supervisors* v. *United States*, 435.

II. OF THE UNITED STATES. See *Admiralty*, 3, 4, 6; *Attorneys and Counsellors*, 5–8; *Banks*, 1–3; *Evidence*, 5; *Habeas Corpus*, 5; *Judiciary Act of* 1802, 1, 2; *Jurisdiction*, 3, 4–11; 7–13; *Lanfear, Ambrose; Notice*, 1; *Patent*, 1, 2; *Pleading*, 5, 6; *Post-office*, 1–4; *Rebellion, The*, 1, 2.

III. OF STATES. See *Admiralty*, 7; *Constitutional Law*, 14–17; *Florida; Taxes*, 1–3; *Ejectment*, 3; *Louisiana; Nevada.*

STATUTE OF FRAUDS.

A contract for the exchange of lands is as much within the statute of frauds as a contract for their sale, and a party seeking to enforce a specific execution of a parol contract for that purpose, must bring himself within the same conditions, before he can invoke the aid of a court of equity. *Purcell* v. *Miner*, 513.

He must accordingly make full, satisfactory, and indubitable proof—

First. Of the contract, and of its terms; a proof which must show a contract leaving no *jus deliberandi*, or *locus pœnitentiæ;* and which cannot be made out by mere hearsay, or by evidence of the declarations of a party to mere strangers to the transaction, in chance conversation.

Second. That the consideration has been paid or tendered. And even the payment of the price, in part or in whole, will not, of itself, be

STATUTE OF FRAUDS (*continued*).

sufficient for the interference of a court of equity, if the party have a sufficient remedy at law to recover back the money.

Third. That there has been such a part-performance of the contract that its rescission would be a fraud on the other party, and could not be fully compensated by recovery of damages in a court of law.

Fourth. That delivery of possession has been made in pursuance of the contract, and acquiesced in by the other party; a requisition which is not satisfied by proof of a scrambling and litigious possession. *Ib.*

STATUTE OF LIMITATION. See *Louisiana, Civil Code of.*

SUPREME COURT OF THE DISTRICT OF COLUMBIA. See *Jurisdiction*, 10–13.

TAXES. See *Banks*, 1–3; *Disputed Claim*, 1–2.

1. The different States, as a general rule, have the right of determining the manner of levying and collecting taxes on private property within their limits; and can declare that a tract of land shall be chargeable with taxes, no matter who is the owner, or in whose name it is assessed and advertised; and that an erroneous assessment does not vitiate the sale for taxes. *Witherspoon* v. *Duncan*, 210.
2. Lands originally public are liable to taxation, after they have been entered at the land office, and a certificate of entry has been obtained; and if the taxes remain unpaid, they may be sold like other lands, even though no patent may as yet have issued. *Ib.*
3. The right to tax attaches as well to donation entries as to cash entries; the particular land in either case, when the entry is made and certificate given, being segregated from the mass of public lands, and becoming private property. *Ib.*

TEST OATHS. See *Constitutional Law*, 1–11; *Attorneys and Counsellors*, 1–8.

TEXAS. See *Mexican Law*, 4.

TRIAL BY JURY. See *Habeas Corpus*, 5–6.

1. Military commissions organized during the late civil war, in a State not invaded and not engaged in rebellion, in which the Federal courts were open, and in the proper and unobstructed exercise of their judicial functions, had no jurisdiction to try, convict, or sentence for any criminal offence, a citizen who was neither a resident of a rebellious State, nor a prisoner of war, nor a person in the military or naval service. And Congress could not invest them with any such power. *Ex parte Milligan*, 2.
2. The guarantee of trial by jury contained in the Constitution was intended for a state of war as well as a state of peace; and is equally binding upon rulers and people, at all times and under all circumstances *Ib.*

TRIAL BY JURY (*continued*).

3. In States where the Federal authority was unopposed, and the Federal courts open for the trial of offences and the redress of grievances, the usages of war could not authorize the trial there of a citizen in civil life, not connected with the military or naval service, by a military tribunal, for any offence whatever. *Ib.*

4. Although cases arising in the land or naval forces, or in the militia, in time of war or public danger, are excepted from the necessity of presentment or indictment by a grand jury; and the right of trial by jury, in such cases, is subject to the same exceptions,—yet citizens not connected with the military service, and resident in a State where the courts are open and in the proper exercise of their jurisdiction, cannot, even when the privilege of the writ of *habeas corpus* is suspended, be tried, convicted, or sentenced, otherwise than by the ordinary courts of law. Nor can either the President or Congress disturb this or any other safeguard of civil liberty incorporated into the Constitution, except in so far as the right is given to suspend, in certain cases, the privilege of the writ of *habeas corpus*. *Ib.*

TRUSTEE. See *Disputed Claim.*

VARIANCE. See *Pleading*, 3-6.