

# I N D E X.

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ACKNOWLEDGMENT. See *Feme Covert*.

ADVERSE POSSESSION. See *New Jersey*.

## ASSUMPSIT.

Receiving the price of goods sold and to be delivered, the refusal to deliver, and a conversion, constitute plenary evidence of an implied promise to refund the price paid for them, and an action for money had and received is an appropriate remedy on such refusal to deliver. *Nash v. Towne*, 689.

ASSURANCES. See *Legislative Power*, 2, 3; *Statutes*, 6.

## AWARD.

1. Where a resolution of Congress authorized one of the executive departments to settle, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by certain parties who had contracted to manufacture brick for the government, *Provided* "that the said parties first surrender to the United States all the brick made, together with all the machines and appliances, and other personal property prepared for executing the said contract, and that said contract be cancelled," an award is not within the resolution, which, taking a surrender of *real estate*—the brick-yard—where the brick, machinery, and appliances were, makes allowance for it. *De Groot v. United States*, 420.
2. Where an award exceeds the submission, embracing matters that are not within the submission, as well as those which are, and it is impossible for the court to apportion the parts,—the award is not obligatory on the party disadvantageously affected by it. *Id.*
3. Where a party carrying on an agency for another, becomes thus indebted to this other, and agrees that an accountant shall examine books and ascertain from them the exact amount due, "the amount so found to be due and owing to be final,"—the agreement is not "a submission to arbitration," nor is the amount found by the accountant an "award" in any such sense as will make them subject to the strict rules governing arbitrations and awards. *Kelly v. Crawford*, 785.

BILL OF EXCEPTION. See *Practice*, 5.

CALIFORNIA.

1. The treaty of Guadalupe Hidalgo between the United States and Mexico, does not divest the pueblo, existing at the site of the city of San Francisco, of any rights of property or alter the character of the interests it may have held in any lands under the former government. *Townsend et al v. Greeley*, 326.
2. The act of March 3d, 1851, does not change the nature of estates in land held by individuals or towns. If the claim was held subject to any trust before presentation to the board, the trust was not discharged by the confirmation and the subsequent patent. The confirmation only enured to the benefit of the confirmee so far as the legal title was concerned. *Id.*
3. By the laws of Mexico, in force on the acquisition of the country, pueblos or towns in California were entitled, for their benefit and the benefit of their inhabitants, to the use of lands constituting the site of such pueblos and towns, and of adjoining lands, within certain prescribed limits. The right of the pueblos in these lands was a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation, and to use the remainder for commons, for pasture lands, or as a source of revenue, or for other public purposes. This right of disposition and use was, in all particulars, subject to the control of the government of the country. *Id.*
4. Lands thus held by pueblos or towns, under the Mexican government, are held by them in trust for the benefit of their inhabitants; and are held subject to a similar trust by municipal bodies, created by legislation since the conquest, which have succeeded to the possession of such property. *Id.*
5. The municipal lands held by the city of San Francisco, as successor to the former pueblo existing there, being held in trust for its inhabitants, are not the subject of seizure and sale under judgment and execution against the city. *Id.*
6. A pueblo, or town of Mexico, once formed and officially recognized, became entitled, under the laws of that country, to the use of certain lands, for its benefit and the benefit of its inhabitants, and the lands were upon petition set apart and assigned to it by the government. No other evidence of title than such assignment was required, nor was any other given. The disposition of the lands assigned was subject at all times to the control of the government of the country. *United States v. Pico*, 536.
7. The decree of a governor of California held, under special circumstances, set forth in the case, to constitute only a naked license to occupy the land provisionally; that this license was a personal privilege of the parties, and upon their death did not extend to their heirs, and that a claim for land, resting upon such a license, is not entitled to confirmation under the act of Congress of March 3, 1851. *De Haro v. United States*, 599.
8. The term *titulo*, in the Spanish language, only means the instrument

CALIFORNIA (*continued*).

- which is given as evidence of the right, interest, or estate conferred; it does not indicate the measure of such right, interest, or estate; hence it applies equally to papers which convey title in the usual acceptance of the term, and to those which confer a mere right of occupancy. *Id.*
9. Where two grants in California, made by the Mexican government, were both for specific quantities without designation of location or bounds, except that they were within the same general outboundaries, which included a much larger quantity of land than was specified in both grants, the location by occupation and settlement of the second grantee under a provisional license of an earlier date than the first grant was properly respected in the survey of his land after his grant was confirmed. *United States v. Armijo*, 444.
  10. Where a grant was of a specified quantity within exterior limits embracing a much larger quantity, there is no obligation on the government to allow the quantity to be selected in accordance with the wishes of the grantee. The duty is discharged when the right conferred by the grant to the quantity designated is attached to a specific and defined tract. *Id.*
  11. Under our system the grantee is allowed the privilege of directing a selection of the quantity granted, subject only to the restriction that the selection be made in one body, and in a compact form; but the exercise of the privilege is not permitted to defeat the equitable prior rights of others. *Id.*
  12. As compactness of form often depends upon physical circumstances not to be controlled, it will be sufficient if the survey be in reasonable conformity with the decree of confirmation. *Id.*
  13. Long-continued and undisturbed possession of land in California, whilst that country belonged to Spain or Mexico, under a simple permission to occupy it from a priest of an adjoining mission, or a local military commander, did not create an equitable claim to the land against either of the governments of those countries; nor one entitled to confirmation by the tribunals of the United States under the act of Congress of March 3d, 1851. *Serrano v. United States*, 451.
  14. When, in Mexican grants, boundaries are given, and a limitation upon the quantity embraced within the boundaries is intended, words expressing such intention are generally used. In their absence the extent of the grant is only subject to the limitation upon the power of the governor imposed by the colonization law of 1824. *United States v. Pico*, 536.
  15. Where a doubt arises upon the meaning of the grant as to the quantity ceded, reference may be had to the juridical possession delivered to the grantee. This proceeding had the efficacy of a judicial determination, and binds our government. *Id.*
  16. After the passage by the legislature of California of the act of May 14, 1861, there was no authority for the sale or purchase of salt-marsh or tide-lands within five miles of the city of San Francisco. *O'Neal v. Kirkpatrick*, 791.

CALIFORNIA (*continued*).

17. The holder of the slightest interest, intervening in a California land case, if properly before the court, has the right to insist upon a fair location of the quantity granted, however much such location may clash with the wishes of his co-owners. *United States v. Armijo*, 444.
18. Final decrees in cases of land claims derived from the Spanish or Mexican governments presented to the Land Commissioners for adjudication, whether made by the commissioners or by the District Court, unless an appeal is taken, are conclusive between the United States and the claimants. *Higuera v. United States*, 827.
19. Parties may except to an order or decree of the District Court setting the survey aside and annulling it, or correcting and modifying it, and appeal from the same; but the questions for decision here are those only which are presented in the exceptions. *Id.*
20. Such an appeal does not open the decree of confirmation for revision. *Id.*

## COLLECTOR.

A collector of customs is entitled to retain, under the fifth section of the act of March 3d, 1841 (5 Stat. at Large, 432), a sum not exceeding \$2000 per annum from his receipts, as storage for the custody and safe-keeping of imported merchandise entered for warehousing and stored in bonded warehouses. *United States v. Macdonald*, 647.

COMITY—Between STATE AND FEDERAL COURTS. *See Conflict of Jurisdiction*, 6.

Where a State court, construing a statute of its own State, sustained a trust as against creditors,—this court followed that construction of the statute, and sustained the trust; though they remarked that if the question had been to be treated by them on general principles of jurisprudence, and independently of the State decision on the statute, the judgment would necessarily have been the other way. *Nichols v. Levy*, 433.

COMMERCIAL LAW. *See Customs*, 3; *Lien*, 1, 2.

## COMMON CARRIER.

1. A discharge of goods upon the wharf, giving reasonable notice to the consignee, constitutes a delivery. *The Eddy*, 481.
2. Where goods, after being so discharged are not accepted, the carrier discharges himself from liability on his contract of affreightments by storing them safely and notifying to the consignee that they are so stored, subject to the lien of the ship for the freight and charges. *Id.*

## CONDITIONS.

## I. AS DISTINGUISHED FROM LIMITATIONS.

1. Whether words in a devise constitute common law conditions annexed to an estate, a breach of which, or any one of which, will work a for-

CONDITIONS (*continued*).

feiture, or whether they are regulations for the management of the estate, and explanatory of the terms under which it was intended to have it managed, is to be gathered, not from a particular expression in the devise, but from the whole instrument. *Stanley v. Colt*, 119.

## II. NON-FULFILMENT OF.

2. Where a vast tract was granted in 1750 by the crown of France on condition of improvement and occupancy, and with a view of its being a refuge and protection for travellers against Indians then inhabiting the region, the erection of three or four temporary huts for laborers, clearing a few acres of land around the fort, planting them with corn, and placing upon the tract seven head of cattle and two horses, are an insufficient compliance with the conditions; even when a claim to the land is to be adjudicated "on principles of natural justice," there not having been after 1754 (over a century before the commencement of the suit), any possession or occupancy by the grantees, or their descendants, tenants, or assigns, or further improvement. *United States v. Repentigny*, 211.

## CONFLICT OF JURISDICTION.

I. STATE AND FEDERAL. See *Constitutional Law*, 1, 2.

1. Licenses under the act of June 30, 1864, "to provide internal revenue to support the government," &c. (13 Stat. at Large, 223), and the amendatory acts, conveyed to the licensee no authority to carry on the licensed business within a State. *License Tax Cases*, 462.
2. The requirement of payment for such licenses is only a mode of imposing taxes on the licensed business, and the prohibition, under penalties, against carrying on the business without license, is only a mode of enforcing the payment of such taxes. *Id.*
3. The provisions of the act of Congress requiring such licenses, and imposing penalties for not taking out and paying for them, are not contrary to the Constitution or to public policy. *Id.*
4. The provisions in the act of July 13, 1866, "to reduce internal taxation," &c. (14 Stat. at Large, 93), for the imposing of special taxes, in lieu of requiring payment for licenses, removes whatever ambiguity existed in the previous laws, and are in harmony with the Constitution and public policy. *Id.*
5. The recognition by the acts of Congress of the power and right of the States to tax, control, or regulate any business carried on within its limits, is entirely consistent with an intention on the part of Congress to tax such business for national purposes. *Id.*
6. A license from the Federal government, under the internal revenue acts of Congress, is no bar to an indictment under a State law prohibiting the sale of intoxicating liquors. *Pervear v. The Commonwealth*, 475.

## II. BETWEEN COURTS OF STATES.

7. Where personal property is seized and sold under an attachment, or other writ, issued from a court of the State where the property is,

CONFLICT OF JURISDICTION (*continued*).

the question of the liability of the property to be sold under such writ must be determined by the law of that State, notwithstanding the domicil of all the claimants to the property may be in another State. *Green v. Van Buskirk*, 307.

8. In a suit in any other State growing out of such seizure and sale, the effect of the proceedings by which it was sold, with title to the property, must be determined by the law of the State where those proceedings were had. *Id.*

CONNECTICUT. See *Legislative Power*, 2.

## CONQUEST.

On a conquest by one nation of another, and surrender of the soil and change of sovereignty, those of the former inhabitants who do not remain and become citizens of the victorious sovereign, but, on the contrary, adhere to their old allegiance and continue in the service of the vanquished sovereign, deprive themselves of protection to their property, except so far as it may be secured by treaty. *United States v. Repentigny*, 211.

## CONSTITUTIONAL LAW.

1. Subject to the qualification that they are open to inquiry as to the jurisdiction of the court which gave them, and as to notice to the defendant, the judgment of a State court, not reversed by a superior court having jurisdiction, nor set aside by a direct proceeding in chancery, is, under the Federal Constitution, conclusive in the courts of all the other States where the subject-matter of controversy is the same. *Christmas v. Russell*, 290.
2. A law of a State taxing or prohibiting a business already taxed by Congress, as *ex. gr.*, the keeping and sale of intoxicating liquors,—Congress having declared that its imposition of a tax should not be taken to abridge the power of the State to tax or prohibit the licensed business,—is not unconstitutional. *Pervear v. The Commonwealth*, 475.
3. The provision in the 8th article of the amendments to the Constitution, that "excessive fines" shall not be "imposed, nor cruel and unusual punishments inflicted," applies to National, not to State, legislation. *Id.*

CONTRABAND. See *Public Law*, 5-7.

1. The classification of goods as contraband or not contraband, which is best supported by American and English decisions, divides all merchandise into three classes:
  - I. Articles manufactured, and primarily or ordinarily used for military purposes in time of war.
  - II. Articles which may be and are used for purposes of war or peace, according to circumstances.
  - III. Articles exclusively used for peaceful purposes. *The Peterhoff*, 28.

CONTRABAND (*continued*).

2. Merchandise of the first class destined to a belligerent country or places occupied by the army or navy of a belligerent is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege. *Id.*

## CONTRACT.

1. Where, in part performance of an agreement, a party has advanced money, or done an act, and then stops short and refuses to proceed to its conclusion, the other party being ready and willing to proceed and fulfil all his stipulations according to the contract, such first-named party will not be permitted to recover back what has thus been advanced or done. *Hansbrough v. Peck*, 497.
2. Courts, in the construction of contracts, look to the language employed, the subject-matter, and the surrounding circumstances; and may avail themselves of the same light which the parties enjoyed when the contract was executed. They are, accordingly, entitled to place themselves in the same situation as the parties who made the contract, in order that they may view the circumstances as those parties viewed them, and so judge of the meaning of the words and of the correct application of the language to the things described. *Nash v. Towne*, 689.

## COURT OF CLAIMS.

1. In bringing from the Court of Claims appeals to this court, only such statement of facts is to be brought up as may be necessary to enable this court to decide upon the correctness of the propositions of law ruled below; and this statement is to be presented in the shape of the facts found by that court to be established by the evidence, in such form as to raise the question of law decided by the court. It should not include the evidence in detail. *De Groot v. United States*, 419.
2. If Congress, by a resolution repealing one authorizing a reference of a claim, refer the case to the Court of Claims, it comes to that court with whatever limitations Congress, by its resolution, may prescribe; and the court must accept the resolution as the law of that case. *Id.*

## CUSTOMS.

## I. DUTIES.

1. The latter clause of the fourteenth section of the act of 14th July, 1862, "increasing temporarily the duties on imports," and which section provides that after August 1st, 1862, "there shall be levied, collected, and paid on *all* goods, &c., of the growth, &c., of countries beyond the Cape of Good Hope, when imported from places this side of the Cape, a duty of ten per cent. *ad valorem*, and in addition to the duties imposed on any such articles when imported directly from the place or places of their growth or production," does not qualify the general language of the first clause "on *all* goods, &c.," so as to exclude from

CUSTOMS (*continued*).

- it the articles previously exempt; but means that such articles as already pay a duty when imported directly from these places shall pay a further duty if imported from places this side of the Cape. *Hadden v. The Collector*, 107.
2. The section does not make a discrimination in favor of the ports of the Pacific; the terms "beyond the Cape of Good Hope" indicating the situation of certain countries with reference to the position of the law-makers at the national capital. *Id.*

## II LOCAL.

3. Insufficient, where not general, to displace the ordinary maritime right to demand freight on the delivery of the goods on the wharf. *The Eddy*, 481.
4. Evidence of, not favored in interpreting contracts between parties. *Thompson v. Riggs*, 663.

## DAMAGES.

1. A railroad company which grants the use of its road to another company is responsible for accidents caused to passengers which it itself carries, by the negligence of the trains of the other company thus running by its permission. *Railroad Co. v. Barron et al.*, 90.
2. When a statute—giving a right of action to the executor of a person killed by such an act as would, if death had not ensued, have entitled such person to maintain an action for damages—provides that the amount recovered shall be for the exclusive benefit of the widow, and next of kin, in the proportion provided by law in the distribution of personal property left by persons dying intestate; and that "in every such action the jury may give damages as they shall deem a fair and just compensation with reference to pecuniary injuries resulting from such death, &c., not exceeding, &c.—it is not necessary to the recovery that the widow and kin should have had a legal claim on the deceased, if he had survived, for their support.
3. The damages must depend very much upon all the facts and circumstances of the particular case. *Id.*
4. Where a party pays money on a consideration which fails, and in equity should be refunded—as for goods deliverable *in futuro*, but not delivered—the measure of damages on the recovery back is the sum paid and interest upon it. *Nash v. Towne*, 689.

DESCENTS. See *Illinois*, 1.

DEED. See *Equity*, 3; *Statute of Uses*.

1. Where a deed to A., though executed before a mortgage of the same property to B., is not delivered until after the execution and record of the mortgage, the mortgage will take precedence of it. *Parmelee v. Simpson*, 81.
2. The placing on record of a deed to a party, such party being wholly ignorant of the existence of the deed, and not having authorized or

**DEED** (*continued*).

given his assent to the record, does not constitute such a delivery as will give the grantee precedence of a mortgage executed between such a placing of the deed on record and a formal subsequent delivery. *Id.*

3. As a general thing a ratification of a grantor's unauthorized delivery can be made by the grantee; but not when the effect would be to cut out an intervening mortgage for value. *Id.*

**DELIVERY.** See *Common Carrier*, 1, 2; *Deed*, 1-3.

**EQUITY AND EQUITABLE ESTATES.** See *Laches*, 2; *Legal Estate*.

1. The absence of a plain and adequate remedy at law affords the only test of equity jurisdiction, and the application of this principle to a particular case must depend altogether upon the character of the case, as disclosed in the proceedings. *Watson v. Sutherland*, 74.
2. With the proceedings of inferior tribunals of special jurisdiction, courts of equity will not interfere, unless to prevent a multiplicity of suits or irreparable injury, or unless the proceeding sought to be annulled or corrected is valid upon its face, and the alleged invalidity consists in matters to be established by extrinsic evidence. In other cases the review and correction must be obtained by *certiorari*. *Ewing v. City of St. Louis*, 413.
3. As a general thing, any legal conveyance will have the same effect upon an equitable estate that it would have upon the like estate at law; and whatever is true at law of the latter is true in equity of the former. The rule, in Shelley's case, applies alike to equitable and to legal estates; and an equitable estate tail may be barred in the same manner as an estate tail at law. *Croxall v. Shererd*, 268.

**ESTOPPEL.** See *Res Judicata*.

1. No person can rely on an estoppel growing out of a transaction to which he was neither a party nor a privy, and which in no manner touches his rights. *Deery v. Cray*, 795.
2. Where an heir conveys both as heir and also as executor under a power in a will which his deed recites, the fact that his deed thus acknowledges a will does not estop a party claiming under the deed to assert that the grantor inherited as heir. *Id.*

**EVIDENCE.**

1. The secret deliberations of the jury or grounds of their proceedings while engaged in making up their verdict, are not competent or admissible evidence of the issues or finding; their evidence should be confined to the points in controversy on the former trial, to the testimony given by the parties, and to the questions submitted to the jury for their consideration; and then the record furnishes the only proper proof of the verdict. *Packet Co. v. Sickles*, 580.
2. Where the extrinsic proof of the identity of the cause of action is such that the court must submit the question to the jury as a matter of fact,

EVIDENCE (*continued*).

- any other matters in defence or support of the action, as the case may be, should be admitted on the trial, under proper instructions. *Id.*
3. Where an agent has entered into a written contract in which he appears as principal, parol evidence is inadmissible to show, with a view of exonerating him, that he disclosed his agency and mentioned the name of his principal at the time the contract was executed. *Nash v. Towne*, 689.
  4. Where the evidence leads to the presumption that a large tract of land has been held to this day under an ancient deed, recitals in the deed, consistent with the other evidence in the case, may be used as proof against persons who are not parties to and who claim no right under it. *Deery v. Cray*, 795.

## FEME COVERT.

A certificate by the proper officers, that a *feme covert* being "privately examined, apart from and out of the hearing of her husband," acknowledged, &c., is a sufficient compliance with the Maryland statute of 1807, which requires the examination to be "out of the presence" of the husband. The expressions are equivalent. *Id.*

FURTHER PROOF. See *Practice*, 11, 13-15.

## ILLINOIS.

1. The rule of the common law, commonly called "the rule of shifting inheritance," is not in force in Illinois. *Bates v. Brown*, 710.
2. By the statutes of Illinois, as existing in January, 1857, a contract for a rate of interest exceeding six per cent., did not invalidate the contract. *Hansbrough v. Peck*, 497.
3. Acts, relating to charter of the city of Galena, interpreted. *City of Galena v. Amy*, 705.

## INDIANS.

1. If the tribal organization of Indian bands is recognized by the political department of the National government as existing, the fact that the primitive habits of the tribe, when in a savage state, have been largely broken into by their intercourse with the whites, does not authorize a State government to regard the tribal organization as gone, and the Indians as citizens of the State where they are, and subject to its laws. *The Kansas Indians*, 737; *The New York Indians* 761.
2. A statute of a State authorizing a sale for taxes, whether road, town, or county, of lands occupied by Indian tribes, their ancient homes, and secured to them "without disturbance," by treaty with the United States, is void, even though the statute provide that "no sale, for the purpose of collecting the tax, shall, in any manner, affect the right of the Indians to occupy the land." *The New York Indians*, 761.
3. Where Indians, under arrangements approved by the United States, agree to sell their lands to private citizens, and to give possession of

INDIANS (*continued*).

them at the expiration of a term of years named, any taxation of the lands before the efflux of the term is premature. *Id.*

4. Rules of interpretation favorable to the Indian tribes are to be adopted in construing our treaties with them. *The Kansas Indians*, 737.

## INSURANCE.

One of five trustees of a church edifice, being the agent of an Insurance Company, accepted a risk in it from another of the trustees to whom the church was indebted, the policy being in the individual name of the insuring trustee, with a proviso that in case of loss the amount should be paid to a creditor of him the insuring trustee, to whom, however, the church was not indebted. The insuring trustee paid the premiums out of his own funds but on account of the parish, and with the assent of the trustees; and the fact of two previous insurances in other companies, where the insurance was made in the name of the proprietors of the church generally, was recited in this policy made in the individual name of the one trustee. A loss having occurred—*Held*, that the creditor of the insuring trustee was entitled to recover. *Insurance Company v. Chase*, 509.

INTERNAL REVENUE. See *Conflict of Jurisdiction*, 1-6; *Constitutional Law*, 2; *Jurisdiction*, 10, 11.

Where an article which, under the internal revenue acts, is taxable when made and "sold," but not when made by the party "for his own use," is made by trustees appointed by the party using it, under fixed arrangements with such party's creditors, at an establishment of which the party using the article has apparently the ultimate ownership, but which, till certain debts due by him, are paid, is held and managed exclusively by the trustees, under an arrangement that the party using may have the article at a certain price, and that all clear profits shall be set aside as a sinking fund for the payment of the principal due the creditors,—such article, when furnished to the debtor at a price fixed, is "sold," and taxable. *City of Philadelphia v. The Collector*, 720.

## INTERPRETATION.

I. OF CONTRACTS. See *Contract*, 2.

11. OF STATUTES. See *Statutes*, 1, 2.

## JURISDICTION.

I. OF THE UNITED STATES.

1. Under the treaty of 1783 with Great Britain, at the close of our Revolutionary war, the United States succeeded to all the rights, in that part of old Canada which now forms the State of Michigan, that existed in the King of France prior to its conquest from the French by the British in 1760; and among these rights, with that of dealing with the seigniorial estate of lands granted out as seigniories by the said king after a forfeiture had occurred for non-fulfilment of the

**JURISDICTION** (*continued*).

conditions of the fief. And under our system, a legislative act—after forfeiture from non-fulfilment of the seigniorial conditions,—directing the appropriation and possession of the land,—which is equivalent to the “office found” of the common law,—is sufficient to complete its reunion with the public domain. *United States v. Repentigny*, 211.

**II. OF THE SUPREME COURT OF THE UNITED STATES.**

(a) It HAS jurisdiction—

2. Under the twenty-fifth section of the Judiciary Act, of a writ of error. Where personal property is seized and sold under attachment in one State, and in a suit in another State growing out of such seizure and sale the State court in which such suit may be tried refuses to give to the proceedings of the court under which the property was sold, the same effect in their operation upon the title as they have by law and usage in the State where they took place. *Green v. Van Buskirk*, 307.
3. Of an appeal from decree in a prize cause, which disposes of the whole matter in controversy, upon a claim filed by particular parties; which is final as to them and their rights, and final also so far as the claimants and their rights are concerned as to the United States; which leaves nothing to be litigated between the parties, and awards execution in favor of the libellants against the claimants. *Withenbury v. United States*, 819.

(b) It has NOT jurisdiction—

4. Of a judgment on a motion made by the plaintiff to set aside a writ of restitution which had been issued in favor of the defendant, and to grant a writ of restitution. *Barton v. Forsyth*, 190.
5. Nor in a creditor's bill—several creditors joining—to set aside a conveyance of property as fraudulently made, if the judgment of the creditor appealing do not exceed \$2000. The fact that the fund in litigation exceeds it is not sufficient. *Seaver v. Bigelows*, 208.
6. Nor of a judgment in the Circuit Court of Louisiana in the ordinary action by petition and summons upon a promissory note brought into the Supreme Court by appeal. *Jones v. La Vallette*, 579.
7. Nor when there has been no citation to the adverse party with due return, or waiver by general appearance, or otherwise. *Alviso v. United States*, 824.
8. Nor of an appeal, where the decree was rendered 13th June, 1861, but no appeal was prayed for or allowed until June Term, 1865, when, on motion of the defendants below, an appeal was allowed *nunc pro tunc*, as of 13th June, 1861, there having been no citation to the appellees, and the record not having been brought up at the next term. *Garrison v. Cass County*, 823.
9. Nor can it review the reasons of a State legislature which, setting out reasons at large for the exercise of a chancery power in directing a sale of lands left in trust, has directed such sale accordingly, reinvesting the proceeds for the main purposes of the trust. *Stanley v. Colt*, 119.

JURISDICTION (*continued*).

## III. OF CIRCUIT COURTS OF THE UNITED STATES.

10. Their jurisdiction in original suits between citizens of the same State, in internal revenue cases, conferred or made clear by the act of June 30, 1864, "to provide internal revenue," &c. (13 Stat. at Large, 241), was taken away by the act of July 13, 1866, "to reduce internal taxation," &c. (14 Id. 172). And suits originally brought in the Circuit Court, and pending at the passage of this act, fell. *Insurance Company v. Ritchie*, 541.
11. Their jurisdiction saved in certain internal revenue cases, removed from State courts. *City of Philadelphia v. The Collector*, 720.
12. The act of confirming or setting aside a sale made by a commissioner in chancery belonged, under the acts of Congress, of July 15, 1862, and 3d March, 1863 (12 Stat. at Large, 576 and 807), to the Circuit Court of Wisconsin, and not to the District Court. *The Milwaukee Railroad Company v. Soutter & Knapp*, 660.

IV. OF DISTRICT COURTS OF THE UNITED STATES. See *Jurisdiction*, 12.

13. They have jurisdiction to enforce, by admiralty proceedings *in rem*, contracts of affreightment. *The Eddy*, 481.

## LACHES.

1. Where, in case of a collision of vessels, one of two parties injured institutes proceedings, and at his own expense prosecutes his suit to condemnation of the vessel, another party injured by the same collision, who has stood by during that contest, and taken no part whatever in it, cannot share in the proceeds of the sale of the vessel until the claim of the first party is satisfied in full. *Woodworth v. Insurance Company*, 87.
2. A claim against the government was rejected after a great lapse of time and a large non-fulfilment of conditions, though made under an act of Congress which authorized the making of the claim and directed an adjudication to be made, among other ways, "on principles of natural justice." *Repentigny v. United States*, 211.

## LEGAL ESTATE.

Where, under a will, in some respects peculiar, a devise was made to a society, for its use and benefit, but the possession, superintendence, and direction of the estate, and the letting, leasing, and management of the same, was given to trustees, who were invested with power to perpetuate their authority indefinitely,—the only active duties of the society being to receive the rents and profits for its use and benefit,—Held, that the legal estate was in the trustees, not in the society. *Stanley v. Colt*, 119.

LEGISLATIVE POWER. See *Jurisdiction*, 9.

## I. OF THE FEDERAL LEGISLATURE.

1. Where the head of one of the executive departments, appointed by res-

**LEGISLATIVE POWER** (*continued*).

olution of Congress to settle a claim made against the government, exceeds, in making his award, the powers conferred upon him, Congress may revoke, by a repeal of the resolution appointing him, the authority conferred on him. *De Groot v. United States*, 420.

**II. OF STATE LEGISLATURES.**

2. The legislature of Connecticut (and the same would seem to be implied by the case of the legislatures of other States) has the powers of an English court of chancery to direct a sale of real estate devised to charitable purposes,—even though it be provided by the devise that the estate shall never be sold,—in cases where lapse of time, or changes in the condition of the property or circumstances attending it, make it prudent and beneficial to the charity to alien the specific land and invest the proceeds in other securities; taking care, however, that no diversion of the gift be permitted. *Stanley v. Colt*, 119.
3. That of New Jersey, held to have had power to bar an entail by private act, unfetter an estate, and divide it equally between children in fee, under special circumstances. *Croxall v. Shererd*, 268.

**LIEN.**

1. Presumption is in favor of a ship-owner's lien, but the lien may be modified or displaced by agreements, express or implied. *The Bird of Paradise*, 545; and see *The Eddy*, 481.
2. Insolvency of the shipper occurring while the goods are in transit, or before they are delivered, will not absolve the carrier from an agreement to take an acceptance on time, instead of cash, for the freight, nor authorize him, when he had made such an agreement, to retain the goods until the freight is paid. On the other hand, a bill or note falling due before the unloading of the cargo, and protested and unpaid, is not, in the absence of agreement, a discharge of the lien; and the ship-owner, in such a case, may stand upon it as fully as if the acceptance had never been given. *Id.*

**LIMITATIONS.** See *Conditions*.

**MANDAMUS.** See *Municipal Corporations; Practice*.

Will not be granted to compel the performance of an office such as the issuing of a patent for land, in a case where numerous questions of law and fact arise, some of them depending upon circumstances which rest in parol proof yet to be obtained, and where the exercise of judicial functions, some of them of a high character, is required. Nor where it is reasonable to presume that there are persons at the time in possession under another title, and who therefore should have an opportunity to defend it. *United States v. The Commissioner*, 563.

**MEXICO.** See *California*.

**MUNICIPAL CORPORATIONS.** See *Ratification*, 1-3.

1. Where an act says that a city council "may, if it believe that the public good and the best interests of the city require" it, levy a tax to pay its funded debt, a mandamus will lie, at the suit of a judgment creditor on such debt, to make it levy a tax, if it does not. *City of Galena v. Amy*, 705.
2. Where a city has a power, such as the one above given, it is no return to an alternative mandamus, commanding it to lay a special tax to pay judgments obtained against it for non-payment of its funded debt, that it did, in one year, levy such a tax, and that the funds raised by it are wholly exhausted. *Id.*
3. Nor that it owes other debts, and that if the taxes are collected, other creditors will be entitled to share in the proceeds. *Id.*

**NEW JERSEY.** See *Legislative Power*, 3.

Under the act of the New Jersey legislature, of June 5, 1787 (§ 2), declaring that thirty years' actual possession, where such possession was obtained by a fair and *bonâ fide* purchase of any person supposed to have a legal right and title, shall vest an absolute right and title in the possessor and occupier, no qualification exists as to issue in tail. *Croxall v. Shererd*, 268.

**PLEADING.**

A plea of fraud in obtaining a judgment sued upon, cannot be demurred to generally because not showing the particulars of the fraud set up. Going to a matter of form, the demurrer should be special. *Christmas v. Russell*, 290.

**PRACTICE.** See *Court of Claims; Reversal*.

**I. IN CASES GENERALLY.**

1. A case being properly in this court by appeal, the court has a right to issue any writ which may be necessary to render its appellate jurisdiction effectual, and accordingly will issue the writ of *supersedeas* if such writ be necessary for that purpose. *Ex parte The Milwaukee Railroad Company*, 188.
2. A proceeding in which a creditor has come in and made himself a party to a creditor's bill, will not be reversed because the party so coming in has not obtained an order of court to come in; the want of such order not being objected to and the proceeding having gone on to its conclusion as if it had been obtained. *Myers v. Fenn*, 205.
3. As a general rule, where the United States is a party to a cause and is represented by the Attorney-General, or his assistant, or by special counsel, no counsel can be heard in opposition on behalf of any other of the departments of the government. *The Gray Jacket*, 370.
4. Where, through accident, no bond, or a defective bond, has been filed, this court will not dismiss the appeal,—it being in all other respects quite regular —except on failure to comply with an order to give the

**PRACTICE** (*continued*).

proper security within such reasonable time as it may prescribe. *Seymour v. Freer*, 822.

5. A regular bill of exceptions in the usual way, signed and sealed by the judge, is requisite when the rulings of the court in admitting or rejecting evidence or in giving or refusing instructions are meant to be brought from the Supreme Court of the District of Columbia to this court for review. *Thompson v. Riggs*, 663.

**II. IN PRIZE.**

6. Where a prize court, in the exercise of its discretion, has allowed invocation on first hearing, this, though not regular, will not necessarily cause the decree to be reversed; decrees of condemnation having passed in the cases invoked. *The Springbok*, 1.
7. When the record presents a case in the Supreme Court which has been prosecuted exclusively as prize, the property cannot be here condemned as for a statutory forfeiture. *United States v. Weed*, 62.
8. When the record presents a case prosecuted below on the instance side of the court, for forfeiture under a statute, it cannot in the Supreme Court be condemned as prize. *Id.*
9. In either of these cases, if the facts disclosed in the record justify it, the case will be remanded to the court below for a new libel, and proper proceedings according to the true nature of the case. *Id.*
10. In a case which was prosecuted as prize of war exclusively, but where the facts did not either prove a case of prize, nor show a probable case of violation of any statutes, a decree of the court below dismissing the libel and restoring the property was affirmed. *Id.*
11. A claimant forfeits the right to ask to take further proof by any guilty concealments previously made in the case. *The Gray Jacket*, 342.
12. In proceedings in prize, parties who were not in any way parties to the litigation in the District Court, and are neither appellants nor appellees, cannot come into this court and be heard as "interveners." *The William Bagaley*, 377.
13. Regularly, in cases of prize, no evidence is admissible on the first hearing, except that which comes from the ship, either in the papers or the testimony of persons found on board. *The Sir William Peel*, 517.
14. If upon this evidence the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof. *Id.*
15. If, preparatory to the first hearing, testimony was taken of persons not in any way connected with the ship, such evidence is properly excluded, and the hearing takes place on the proper proofs. *Id.*

**PRIZE.** See *Practice*, 6-15; *Public Law*, 8-13.

1. The innocent owners of a vessel in no way connected with the cargo are not necessarily implicated by the false statements of the captain to such an extent as to infer condemnation of the vessel; though they

**PRIZE** (*continued*).

- may be to the extent of depriving them of costs on the restoration of it. *The Springbok*, 1.
2. Where the papers of a vessel sailing under a charter-party are all genuine and regular, and show a voyage between ports neutral within the meaning of international law; where there has been no concealment nor spoliation of them; and where the aspects of the case generally are as respects the vessel otherwise fair, the vessel will not be condemned because the neutral port to which it is sailing has been constantly and notoriously used as a port of call and transshipment by persons engaged in systematic violation of blockade and in the conveyance of contraband of war, and was meant by the owners of the cargo carried on this ship to be so used in regard to it. *Id.*
  3. A vessel was condemned for intent to run blockade, there being suspicious circumstances and a great many packages of her cargo bearing, in a broken series, numbers complementary in a large degree, to numbers, likewise in a broken series, on packages of similar articles found upon two vessels unquestionably guilty of violating the blockade. *Id.*
  4. CAPTURES RESTORED, under special facts. See *The Dashing Wave*, 170; *The Science*, 178; *The Teresita*, 181; *The Sir William Peel*, 517; *The Volant*, 179.
  5. CAPTURES CONDEMNED, under special facts. See *The Jenny*, 183; *The Pearl*, 574; *The Sea Lion*, 630.
  6. In proceedings in prize, and under principles of international law, mortgages on vessels captured *jure belli*, are to be treated only as liens, subject to being overridden by the capture, not as *jura in re*, capable of an enforcement superior to the claims of the captors. *The Hampton*, 372.

**PUBLIC LAW.** See *Contraband*; *Prize*; *Rebellion*.

1. A blockade is not to be extended by construction. *The Peterhoff*, 28.
2. The mouth of the Rio Grande was not included in the blockade of the ports of the rebel States, set on foot by the National government during the late rebellion; and neutral commerce with Matamoras, a neutral town on the Mexican side of the river, except in contraband destined to the enemy, was entirely free. *Id.*
3. *Seem* that a belligerent cannot blockade the mouth of a river, occupied on one bank by neutrals with complete rights of navigation. *Id.*
4. A vessel destined for a neutral port with no ulterior destination for the ship, or none by sea for the cargo to any blockaded place, violates no blockade. *Id.*
5. The trade of neutrals with belligerents in articles not contraband is absolutely free unless interrupted by blockade; the conveyance by neutrals to belligerents of contraband articles is always unlawful, and such articles may always be seized during transit by sea. *Id.*
6. Contraband articles contaminate the parts not contraband of a cargo if belonging to the same owner; and the non-contraband must share the fate of the contraband. *Id.*

PUBLIC LAW (*continued*).

7. In modern times conveyance of contraband attaches in ordinary cases only to the freight of the contraband merchandise. It does not subject the vessel to forfeiture. But, in determining the question of costs and expenses, the fact of such conveyance may be properly taken into consideration with other circumstances. *Id.*
8. The captain of a merchant steamer, when brought to by a vessel of war, is not privileged by the fact that he has a government mail on board, from sending, if required, his papers on board the boarding vessel for examination. *Id.*
9. A neutral, professing to be engaged in trade with a neutral port, under circumstances which warrant close observation by a blockading squadron, must keep his vessel, while discharging or receiving cargo, so clearly on the neutral side of the blockading line as to repel, so far as position can repel, all imputation of intent to break the blockade. Neglect of that duty may well justify capture and sending in for adjudication; though, in the absence of positive evidence that the neglect was wilful, it might not justify a condemnation. *The Dashing Wave*, 170.
10. Seizure and sending in of a neutral, shipping coin carelessly and so as to excite suspicion, may be justified, though in the absence of proof of an enemy's character a condemnation may not be. *Id.*
11. On such a seizure a decree was made restoring the vessel and cargo, including the coin; but apportioning the costs and expenses consequent on the capture ratably between the vessel and the coin, exempting from contribution the rest of the cargo. *Id.*
12. The liability of property, the product of an enemy country, and coming from it during war, is irrespective of the *status domicilii*, guilt or innocence of the owner. The only qualification of these rules is, that where, upon the breaking out of hostilities or as soon after as possible, the owner in good faith thus removes it, with a view of putting it beyond the dominion of the hostile power. *Id.*
13. These principles apply to property held before the war in partnership as well as to that held in severalty. The war dissolves the partnership. Presumption is against one who suffers his property to remain long in a hostile country. Where the war (a civil war) broke out in April, 1861, a removal on the 30th December, 1863, said to be too late. *The Gray Jacket*, 342; *The William Bagaley*, 377.
14. Neither an enemy, nor a neutral acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters. *The Sir William Peel*, 517.

PUBLIC POLICY. See *Statutes*, 2.

PUEBLO. See *California*, 1-6.

RAILROAD, DEATH BY. See *Damages*, 1-3.

RATIFICATION. See *Deed*, 1-3.

1. Subscriptions originally irregularly made by municipal corporations to

**BATIFICATION** (*continued*).

- railroads, may be subsequently validated in the hands of *bonâ fide* holders for value by acts of the corporation. *Campbell v. City of Kenosha*, 194.
2. A statute which, in the case of such an issue, creates, as part of the municipal government, an officer whose duty it is to attend to the city's interests and concerns in regard to the railroad subscribed to, and who, the act declares, "shall redeem all scrip which has been issued for it," constitutes a ratification. *Id.*
  3. So is the levy of a tax and payment of interest. *Supervisors v. Schenck*, 772.

**REBELLION, THE.** See *Public Law*, 2; *Statutes*, 3.

1. Citizens of the United States, faithful to the Union, who resided in the rebel States at any time during the civil war, but who, during it, escaped from those States, and have subsequently resided in the loyal States or in neutral countries, lost no rights as citizens by reason of temporary and constrained residence in the rebellious portion of the country. *The Peterhoff*, 28.
2. Permits granted during the late rebellion by the proper licensing agents to purchase goods in a certain locality, are *primâ facie* evidence that the locality is properly within the trade regulations of that department. *United States v. Weed*, 62.
3. The proclamation of President Lincoln, made December 8, 1863, granting a pardon to persons (with certain exceptions) who had participated in the then existing rebellion, has no application to cases of capture *jure belli*. *The Gray Jacket*, 342.
4. Neither has the act of July 13, 1861, providing (§ 5) that all goods, &c., coming from a State declared to be in insurrection "into the other parts of the United States," by land or water, shall, together with the vessel conveying the same, be forfeited to the United States; but providing also (§ 8) that the forfeiture may be remitted by the Secretary of the Treasury, &c.; nor has the act of March 3, 1863, "to protect the liens upon vessels in certain cases;" and neither modifies the law of prize in any respect. *The Hampton*, 372; *The Gray Jacket*, 342.
5. Under the act of 13th July, 1861, which forbade to our citizens all commercial intercourse with the inhabitants of the rebellious States, but by which it was enacted that "the President" might, "in his discretion," license and permit intercourse,—Held, that the President alone had the right to license intercourse, and that a license from a special agent of the Treasury Department, though "approved" by the rear admiral commanding the maritime station, was no protection to property captured in coming from a port of a State in insurrection and then under blockade by the government. *The Sea Lion*, 630.

**REVERSAL.**

When it is sought to apply the rule that a court of error will not reverse where an error works no injury, it must appear beyond doubt that the

REVERSAL (*continued*).

error complained of neither did prejudice nor could have prejudiced the party against whom the error was made. *Deery v. Cray*, 795.

## REMAINDER, VESTED AND CONTINGENT.

1. A remainder is to be considered as vested when there is a person in being who would have an immediate right to the possession upon the ceasing of the intermediate particular estate. And it is never to be held contingent when, consistently with intention, it can be held vested. *Croxall v. Shererd*, 268.
2. An estate in vested remainder is liable to debts the same as one in possession, and the same principles in regard to this liability apply. *Nichols v. Levy*, 433.

## RES JUDICATA.

1. Where a matter is directly in issue, and adjudged in a court of common law, that judgment may be set up as an estoppel in a court of admiralty. *Goodrich v. The City*, 566.
2. Where an action is brought against a city for its neglect to do a public duty imposed on it by law, the declaration going upon its neglect to do the thing at all, a judgment that it was not bound to do the thing at all may be used as an estoppel in another suit, where the allegation is, that, being bound, it entered upon its duty, but never finished the work, by which neglect to finish it the injury occurred. *Id.*
3. Where the record of a former suit is offered in evidence, the declaration setting out a special contract, but not saying whether it was written or parol, and where jurors who were empanelled in the former suit are brought to testify that the contract declared on in the second suit was the same contract that was in controversy in the former one, and was passed on by them, testimony may be given on the other side that the contract was a parol one;—so as to let in a defence of the statute of frauds. *Packet Company v. Sickles*, 580.

SAN FRANCISCO. See *California*, 5, 16.

SHELLEY'S CASE, RULE IN. See *Equity and Equitable Estates*, 8.

## STATUTES.

## I. INTERPRETATION OF.

1. The title of an act cannot be used to extend or to restrain any positive provisions contained in the body of the act. It is only when the meaning of these is doubtful that resort may be had to the title, and even then it has little weight. *Hadden v. The Collector*, 107.
2. What is termed the policy of the government with reference to any particular legislation is too unstable a ground upon which to rest the judgment of the court in the interpretation of statutes. *Id.*

STATUTES (*continued*).

- II. OF THE UNITED STATES. See *California*, 2; *Collector*; *Conflict of Jurisdiction*, 1-6. *Customs*, 1, 2; *Internal Revenue*; *Jurisdiction*, 2-12; *Practice*, 5; *Rebellion*, 4, 5.
8. After a proceeding has been instituted under the act of 6th August, 1861, "to confiscate property used for insurrectionary purposes," by the Attorney-General alone, and wholly for the benefit of the United States, and after issue has been joined and proofs furnished by other parties, no person can come in asserting himself to have been the informer, and so share the benefit of the proceeding. *Francis v. United States*, 338.
4. The proviso in the act of Congress of May 15, 1856 (11 Stat. at Large, 9), "That any and all lands heretofore reserved to the United States, by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement," &c.,—operated, in connection with certain subsequent legislation, to reserve for the purpose of aid in the improvement in the navigation of the Des Moines River, an equal moiety, in alternate sections, of the public lands on, and within five miles of, the said river, between the "Raccoon Fork," so called, and the northern boundary of the State. *Wolcott v. Des Moines Company*, 681.
- III. OF STATES. See *California*, 16; *Connecticut*; *Constitutional Law*, 2; *Feme Covert*; *Illinois*, 1-3; *Indians*, 1, 2; *Municipal Corporations*, 1-3; *New Jersey*.
- IV. OF FRAUDS.
5. A contract where performance is to run through a term of years, but which, by its tenor, may be defeated at any time before the expiration of the term, is within the statute of frauds. *Packet Company v. Sickles*, 580.
- V. OF USES.
6. In the conveyance by deed of bargain and sale, the whole force of the statute of uses is exhausted in transferring the legal title in fee simple to the bargainee. The second use remains as a trust. *Crozzall v. Shererd*, 268.













