# INDEX.

ADMIRALTY. See *Practice*, 20–22.

Things immovable, like a bridge, are not the subjects of proceedings in. *The Rock Island Bridge*, 213.

AGENT. See *Bailee, Gratuitous; Insurance*, 2.

ALIEN.

A citizen of the United States, and who, as such, was of course before the admission of a foreign republic into the Union, an alien to that republic, and so, as against office found, incompetent to hold land there, became, on the admission, competent, no office having been previously found. *Osterman* v. *Baldwin*, 116.

ATTORNEY-AT-LAW. See *Evidence*, 4.

AUCTION. See *Public Sales.*

BAILEE, GRATUITOUS.

A gratuitous bailee of money to whom it is given for the purpose of lending it on good and sufficient security, and who, lending it to a person on property worth much more than the sum, and taking a properly executed mortgage, delivers the papers to his principal without having placed them on record, is not responsible for a loss occurring after the efflux of the term for which the money was lent, by non-recording of the papers; the owner of the security having had abundant opportunity to have them recorded himself. *Turton* v. *Dufief*, 420.

BOOK OF RECORD.

The word held to be satisfied within the meaning of a recording act by sheets of paper, not bound nor fastened otherwise than by being folded together and kept in separate bundles; the sheets, however, having been subsequently bound in separate volumes. *Mumford* v. *Wardwell*, 423.

CALIFORNIA. See *San Francisco, Pueblos.*

1. Grants by Mexican governors of the public domain within the limits of California, after July 7th, 1846, though antedated, are void. *Stearns* v. *United States*, 589.
2. The proceeding in the District Court of the United States in California land cases on an appeal from the board of land commissioners, is an original suit, and the whole case is open. *Grisar* v. *McDowell*, 363.

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CALIFORNIA (*continued*).

3. An appeal from a decree of the District Court to the Supreme Court, in such cases, suspends the operation and effect of the decree only when, by a judgment of the Supreme Court, the claim of the confirmee in the premises in controversy may be defeated. *Ib.*
4. The decree of the board of land commissioners in such cases, or of the courts of the United States, where it becomes final, takes effect by relation as of the day when the claim was presented to the board of land commissioners. *Ib.*
5. The statute of California which gives to mechanics a lien upon the flumes or aqueducts "which they may have constructed or repaired," provided suit be brought "within one year after the work is done," construed and held to be confined to that *part* of the canal where the work was done. *Canal Company* v. *Gordon*, 561.

CHARITABLE USES. See *Massachusetts*, 1.

COLLISION. See *Practice*, 20–1.

1. In settling the mere facts of a collision of vessels, on conflicting evidence, the Supreme Court will not readily reverse a decree made by a District Court and affirmed by the Circuit Court. *The Hypodame*, 216.
2. When a steam vessel, proceeding in the dark, hears a hail before it from some source which it cannot or does not see, it is its duty instantly to stop and reverse its engine. *Ib.*
3. The captain of a steam propellor is not a competent lookout; though the propellor be but a river propellor. The lookout should be a person specially appointed. *Ib.*
4. Vessels navigating rivers which have a usage as to the sides which ascending and descending vessels respectively shall observe, are bound to observe the usage. *The Vanderbilt*, 225.

COMMERCIAL LAW. See *Negotiable Paper*.

1. To justify the sale, by the master, of his vessel, good faith in making the sale, and a necessity for it, must both concur; and the purchaser, to have a valid title, must show their concurrence. *The Amelie*, 18.
2. A justifiable sale divests all liens. *Ib.*

CONFIRMATION.

1. Where the government directed that settlers should be "confirmed" in their "possessions and rights," and ordered a particular public officer to examine into the matter, &c., — confirmation by writing not under seal was sufficient. *Reichart* v. *Felps*, 160.
2. A probate court cannot by subsequent order give validity to sales void by the laws of the State where made. *Gaines* v. *New Orleans*, 642.

CONFLICT OF JURISDICTION.

After return of *nulla bona* to an execution from the Circuit Court of the United States against a municipal corporation of a State, bound to levy a tax to pay its debts, *mandamus* lies from such Circuit Court to compel the levy, even though the State court, after the judgment obtained in the Circuit Court, and before the application for the

CONFLICT OF JURISDICTION (*continued*).

*mandamus*, have enjoined such levy. *Riggs* v. *Johnson County*, 166; affirmed in *Weber* v. *Lee County*, 210, and in *United States* v. *Council of Keokuk*, 514, 518.

CONSTITUTIONAL LAW.

1. A statute of a State, that the masters and wardens of a port within it should be entitled to demand and receive, in addition to other fees, the sum of five dollars, whether called on to perform any service or not, for every vessel arriving in that port, is a regulation of commerce within the meaning of the Constitution, and also, a duty on tonnage, and is unconstitutional and void. *Steamship Company* v. *Portwardens*, 31.
2. A special tax on railroad and stage companies for every passenger carried out of the State by them is a tax on the passenger for the privilege of passing through the State by the ordinary modes of travel, not a simple tax on the business of the companies, and is unconstitutional and void. *Crandall* v. *State of Nevada*, 35.
3. Congress has no power to organize a board of revision to annul titles confirmed many years by the authorized agents of the government. *Reichart* v. *Felps*, 160.
4. A statute authorizing a chancellor to appoint a devisee of a life estate in a trust for life, remainder over, to execute the trust, does not violate the obligation of a contract. *Williamson* v. *Suydam*, 723.

CONTRACT. See *Evidence*, 10; *Shrinkage of Soil.*

1. In a contract to make and complete a structure, with agreements for monthly payments, a failure to make a payment at the time specified is a breach which justifies the abandonment of the work, and entitles the contractor to recover a reasonable compensation for the work actually performed. And this, notwithstanding a clause in the contract providing for the rate of interest which the deferred payment shall bear in case of failure. *Canal Company* v. *Gordon*, 561.
2. Where a party, who, by contract, has a right to have and take security to have work finished by a certain day,—no penalty nor any right to terminate the contract for non-completion, being reserved,—permits the other side, after breach, to go on in an effort to complete the contract, he has no right to compel him to complete it in a manner which necessarily involves him in loss. *Clark* v. *United States*, 543.

CORPORATION. See *Debtor and Creditor.*

COURT OF CLAIMS.

1. The act of March 3, 1863, concerning the Court of Claims, confers a right of appeal in cases involving over $3000, which the party desiring to appeal can exercise by his own volition, and which is not dependent on the discretion of that court. *United States* v. *Adams*, 101.
2. When the party desiring to appeal signifies his intention to do so in any appropriate mode within the ninety days allowed by that statute for taking an appeal, the limitation of time ceases to affect the case; and such is also the effect of the third rule of the Supreme Court concerning such appeals. *Ib.*

COURT OF CLAIMS (*continued*).

3. It is no ground for dismissing such appeal, that the statement of facts found by the Court of Claims is not a sufficient compliance with the rules prescribed by the Supreme Court on that subject. *United States* v. *Adams*, 101.

4. But the Supreme Court will of its own motion, while retaining jurisdiction of such cases, remand the records to the Court of Claims for a proper finding. *Ib.*

5. A finding which merely recites the evidence in the case, consisting mainly of letters and affidavits, is not a compliance with the rule; but a finding that a certain instrument was not made in fraud or mistake *is* a proper finding without reporting any of the evidence on which the fact was found. *Ib.*

6. A case in the Court of Claims which involves the right of a claimant to a military bounty land-warrant under the acts of Congress of March, 3d, 1855, and May 14th, 1856, is apparently within that part of that section of the act of March 3d, 1863, which provides "that when the judgment or decree will affect a class of cases, or furnish a precedent for the future action of any executive department of the government in the adjustment of such class of cases, . . . and such facts shall be certified to by the presiding justice of the Court of Claims, the Supreme Court shall entertain an appeal on behalf of the United States, without regard to the amount in controversy." *United States* v. *Alire*, 573.

DAMAGES. See *Practice*, 21.

1. Where an intruder, ousted by judgment on *quo warranto* from an office having a fixed salary, and of personal confidence, as distinguished from one ministerial, takes a writ of error, giving a bond to prosecute the same with effect and to answer all costs and damages if he shall fail to make his plea good—thus, by the force of a *supersedeas*, remaining in office and enjoying its salary—does not prosecute his writ with effect,—the measure of damages on suit on his bond by the party who had the judgment of ouster in his favor, is the salary received by the intruding party during the pendency of the writ of error, and consequent operation of the *supersedeas*. *United States* v. *Addison*, 291.

2. The rule which measures damages upon a breach of contract for wages or for freight, or for the lease of buildings, where the party aggrieved must seek other employment, or other articles for carriage, or other tenants, has no application to public offices of personal trust and confidence, the duties of which are not purely ministerial or clerical. *Ib.*

3. On a breach of a contract to pay, as distinguished from a contract to indemnify, the amount which would have been received if the contract had been kept, is the measure of damages if the contract is broken. *Wicker* v. *Hoppuck*, 94.

4. In a suit against a common carrier for not carrying a party according to contract, the allegation of a breach "whereby the plaintiff was subjected to great inconvenience and injury," is not an allegation of special damage. *Roberts* v. *Graham*, 578.

DEBTOR AND CREDITOR. See *Fraudulent Conveyance.*

1. Where a bank charter is forfeited on *quo warranto* and the corporation is dissolved—any surplus of assets above its debts, by general laws of equity, will belong to the stockholders. *Lum* v. *Robertson*, 277.
2. A delinquent debtor cannot in such case plead the judgment of forfeiture as against a trustee seeking to reduce his debt to money for the benefit of the stockholders. *Ib.*

DYING DECLARATIONS. See *Evidence*, 3.

EQUITY. See *Debtor and Creditor; Evidence*, 6; *Notice; Mandamus*, 1; *Public Lands*, 2; *Public Policy; Practice*, 17–19; *Tort Feasors.*

1. Where a plain defect of jurisdiction appears at the hearing or on appeal, a court of equity will not make a decree though no objections have been interposed in the first instance. *Thompson* v. *Railroad Companies*, 134.
2. Where a sale for taxes is impeached for fraud or unfair practices of officer or purchaser, to the prejudice of the owner, a court of equity is the proper tribunal to afford relief. *Slater* v. *Maxwell*, 268.
3. The jurisdiction of a court of equity invoked to enforce a statutory lien, rests upon the statute, and can extend no further. *Canal Company* v. *Gordon*, 561.
4. Where a fact alleged in a bill in chancery is one within the defendant's own knowledge, the defendant must answer positively. *Slater* v. *Maxwell*, 268.
5. A paper put in after the answer filed and after part of the testimony has been taken, stating that the "plaintiffs in the cause hereby join issue with the defendants (naming them), and will hear the cause on bill, answer and proofs against the defendants," is a sufficient replication. *Clements* v. *Moore*, 299.
6. Exceptions to the report of a master in chancery cannot be taken for the first time in this court. *Canal Company* v. *Gordon*, 561.
7. Where a release is fraudulently obtained from one of two joint contractors, the releasing contractor is not an indispensable party to a bill filed by his co-contractor against the other party to the contract. *Ib.*

ESTATE. See *Remainder.*

Though a devise to trustees "and their heirs," passes, as a general thing, the fee, yet where the purposes of a trust and the power and duties of the trustees are limited to objects terminating with lives in being,—where the duties of the trustees are wholly passive, and the trust thus perfectly dry,—the trust estate may be considered as terminating on the efflux of the lives. The language used in creating the estate will be limited to the purposes of its creation. *Doe, Lessee of Poor*, v. *Considine*, 458.

EVIDENCE. See *Practice*, 11.

1. Under the plea of the general issue in actions of assumpsit evidence may be received to show, not merely that the alleged cause of action never existed, but also to show that it did not subsist at the commencement of the action. *Mason* v. *Eldred et al.*, 231.

EVIDENCE (*continued*).

2. Where a statute authorized a sale of land after notice, &c., and declared that the deed of conveyance should be "*primâ facie* evidence of title," the deed being offered in evidence raises primarily the presumption that the requisite notice had been given. *Mumford* v. *Wardwell*, 423.
3. A will made a short time before a testator's death acknowledging a child as his legitimate and only daughter, is to be regarded, on a question of legitimacy, as an affirmative evidence of great weight; and in the nature of a dying testimony of the testator to the fact. *Gaines* v. *New Orleans*, 642.
4. An attorney-at-law having no power *virtute officii* to purchase for his client at judicial sale land sold under a mortgage held by the client, the burden of proving that he had other authority rests on him. *Savery* v. *Sypher*, 157.
5. Approval by the judge of a bond for prosecution of a writ of error may be inferred from the facts of the transaction. *Silver* v. *Ladd*, 440.
6. In chancery, when an answer which is put in issue admits a fact, and insists on a distinct fact by way of avoidance, the fact admitted is established, but the fact insisted upon must be proved. *Clements* v. *Moore*, 299.
7. Where a creditor shows facts that raise a strong presumption of fraud in a conveyance made by his debtor, the history of which is necessarily known to the debtor only, the burden of proof lies on him to explain it; his estate being insolvent. *Ib.*
8. Statements, either oral or written, made by the vendor after a sale, are incompetent evidence against the purchaser. *Ib.; Thompson* v. *Bowman*, 316.
9. A special verdict not received by the court, nor in any way made matter of record, is of no weight as evidence for any purpose. *United States* v. *Addison*, 291.
10. The practical interpretation which parties interested have by their conduct given to a written instrument, in cases of an ancient grant of a large body of land asked for and granted by general description, is always admitted as among the very best tests of the intention of the instrument. *Cavazos* v. *Trevino*, 773.

FEE SIMPLE. See *Estate.*

FRAUDULENT CONVEYANCE.

1. A debtor in failing circumstances cannot sell and convey his land, even for a valuable consideration, by deed without reservations, and yet secretly reserve to himself the right to possess and occupy it, for even a limited time, for his own benefit. Nor will this rule of law be changed by the fact that the right thus to occupy the property for a limited time is a part of the consideration of the sale, the money part of the consideration being on this account proportionably abated. *Lukens* v. *Aird*, 78.
2. A purchaser of a stock of goods from a debtor confessedly insolvent, where the purchaser knows that the debtor's purpose is to hinder and delay a particular creditor, and also that if the debtor intended a fraud

FRAUDULENT CONVEYANCE (*continued*).

on his creditors generally, the purchase would necessarily be giving him facilities in that direction, is not responsible in equity (the sale being an open one, for a fair price, and followed by change of possession) for any part of the consideration-money which the debtor had applied to payment of his debts; but is responsible for any part which he has diverted from such payment. *Clements* v. *Moore*, 299.

INDIANA.

Under the civil code of Indiana, the "order of sale" in proceedings for the foreclosure of a mortgage comes within the function and supplies the purpose of an execution. Consequently, the code requiring executions to be sealed with the seal of the court, such order of sale, if not so sealed, is void. The sheriff could not sell without such order. *Insurance Company* v. *Hallock*, 556.

INSURANCE.

1. A taking of a vessel by the naval forces of a now extinct rebellious confederation, whose authority was unlawful and whose proceedings in overthrowing the former government were wholly illegal and void, and which confederation has never been recognized as one of the family of nations, is a "capture" within the meaning of a warranty on a policy of insurance having a marginal warranty "free from loss or expense by capture;"—such rebellious confederation having been at the time sufficiently in possession of the attributes of government to be regarded as in fact the ruling or supreme power of the country over which its pretended jurisdiction extended. *Mauran* v. *Insurance Company*, 1.
2. A policy of insurance issued by a company through an agent fully authorized, is not made a *nullity* by the fact that after the policy had been issued and delivered, the party insured signed a memorandum that it should "take effect when approved by A., general agent." And for a loss occurring before A.'s action, a recovery was had. *Insurance Company* v. *Webster*, 129.

INTERNAL REVENUE.

1. A provision in a defeasance clause in a mortgage given by a railroad company to secure its coupon bonds, that the mortgage shall be void if the mortgagor well and truly pays, &c., the debt and interest, "without any deduction, defalcation or abatement to be made of anything for or in respect of any taxes, charges or assessments whatsoever,"—does not oblige the company to pay the interest on its bonds clear of the duty of five per cent., which, by the 122d section of the revenue act of 1864, such companies "are authorized to deduct and withhold from all payments on account of any interest or coupons due and payable." *Haight* v. *Railroad Company*, 15.
2. A statute of a State requiring savings societies, authorized to receive deposits but without authority to issue bills, and having no capital stock, to pay annually into the State treasury a sum equal to three-fourths of one per cent. on the total amount of their deposits on a

INTERNAL REVENUE (*continued*).

given day, imposes a franchise tax, not a tax on property. *Society for Savings* v. *Coite*, 594.

3. So under the constitution and laws of Massachusetts, as interpreted by its highest court, and by long usage, does one which enacts that every institution for saving incorporated under the laws of that commonwealth, shall pay to the commonwealth "a tax on account of its depositors" of a certain percentage "on the amount of its deposits, to be assessed, one-half of said annual tax on the average amount of its deposits for the six months preceding" certain semi-annual dates named. *Provident Institution* v. *Massachusetts*, 611.
4. So does one which requires corporations having a capital stock divided into shares, to pay a tax of a certain percentage (one-sixth of one per cent.) upon "the excess of the market value" of all such stock over the value of its real estate and machinery. *Hamilton Company* v. *Massachusetts*, 632.
5. Such taxes, being franchise taxes, are valid. *See the three cases last above cited*, 594, 611, 632.
6. Consequently the fact that such savings societies or corporations so taxed have invested a part of their deposits or surplus in securities of the United States, declared by Congress, in the act which authorized their issue, to be exempt from taxation by State authority, does not exempt the body from taxation on its franchise to the extent of deposits so invested. *Ib.*

IOWA.

Under the act of Congress admitting Iowa into the Union, the "Process Act" of May 19th, 1828, became applicable to the Federal courts of that State. *United States* v. *Council of Keokuk*, 514.

JUDGMENT.

The rule of the common law (contrary to what seems decided in *Sheehy* v. *Mandeville & Jamesson*, 6 Cranch, 254) declared to be, that a judgment against one upon a contract merely joint of several persons, bars an action against the others; and that the entire cause of action is merged in the judgment. *Mason* v. *Eldred et al.*, 231.

JUDICIAL SALES. See *Public Sales*.

JURISDICTION.

I. Of the Supreme Court of the United States.

(*a*) It has jurisdiction—

1. Where a decision in the highest court of a State is against the validity of a patent granted by the United States for land, drawn in question in such court, although the other side have also set up as their case a similar authority, whose validity is by the same decision affirmed. *Reichart* v. *Felps*, 160.
2. Of appeals on judgments in *habeas corpus* cases rendered by Circuit Courts in the exercise of original jurisdiction, under the act of Feb-

**JURISDICTION** (*continued*).

ruary 5th, 1867 (14 Stat. at Large, 385), to amend the Judiciary Act of 1789. *Ex parte McCardle*, 318.

3. Though the original writ be lost or destroyed before it reaches the Supreme Court, if the clerk of the Circuit Court have sent here a transcript in due time. *Mussina* v. *Cavazos*, 355.
4. Or, though it describes the parties as plaintiffs and defendants in error, as they appear in the Supreme Court, instead of describing them as plaintiffs and defendants, as they stood in the court below, if the names of all the parties are given correctly. *Ib.*

(*b*) It has NOT jurisdiction—

5. Upon political questions, as *ex. gr.*, where one of the United States seeks to enjoin officers who represent the Executive authority of the United States from carrying into execution certain acts of Congress, on the ground that such execution would annul and totally abolish the existing State government of the State, and establish another and different one in its place. *State of Georgia* v. *Stanton*, 50.
6. Nor (under the 25th section of the Judiciary Act), unless it appear that one of the questions mentioned in that section was raised in the State court, and actually decided by it; that is to say, received the consideration or attention of the court; it not being sufficient that this court can see that it ought to have been raised, and that it might have been decided. *The Victory*, 382; *Hamilton Company* v. *Massachusetts*, 632.
7. Nor where a State court, in deciding a question which might properly be reviewed under that section, if the decision had been confined to matter within the purview of that section, has rested its judgment on some point in the case not within its purview, and that point is broad enough to sustain the judgment. *Rector* v. *Ashley*, 142.
8. Nor where it appears no otherwise than by the opinion of the court, as distinguished from the record (even though opinions be required by statute of the State to be filed among the papers of the case in which they are given), that the case was within the section. *Ib.*
9. Nor unless it appear by the record itself that the case was within the section. *Walker* v. *Villavaso*, 124.
10. Nor where the writ of error is made returnable to a day different from the return day fixed by statute as the day on which the term commences. *Agricultural Company* v. *Pierce County*, 246.

II. OF CIRCUIT COURTS OF THE UNITED STATES.

(*a*) They have jurisdiction—

11. Of proceedings relating to a seizure of land, under the act of August 6th, 1861, "to confiscate property used for insurrectionary purposes." *Union Insurance Company* v. *United States*, 759.

(*b*) They have NOT jurisdiction—

12. Where part-owners or tenants in common, in real estate, ask partition in equity, their co-tenants not being subject to the jurisdiction of the Federal courts. *Barney* v. *Baltimore City*, 280.
13. Nor where a conveyance of the subject of controversy, made for the

JURISDICTION (*continued*).

purpose of vesting an interest in parties competent to litigate in the Federal courts, is colorable only, and the real interest remains in the assignor. *Barney* v. *Baltimore City*, 280.

LAST WILL. See *Evidence*, 3; *Notice*, 2; *Res Judicata*, 1.

The probate of a will of later date by the mere fact of its probate annuls a prior will, so far as the provisions of the two are inconsistent, and so far as the estate was not legally administered under the earlier will. *Gaines* v. *New Orleans*, 642.

LEGAL ESTATE. See *Notice*.

LEGISLATIVE POWER. See *Constitutional Law; Practice*, 12.

A statute authorizing a chancellor to discharge trustees named in a will, and to appoint new ones, is valid if passed at the request of the trustees discharged. *Williamson* v. *Suydam*, 723.

LEGITIMACY. See *Evidence*, 3; *Louisiana*, 1–2.

LIEN. See *Admiralty*.

1. Capture *jure belli*, as prize of war, overrides all previous liens. *The Battle*, 498.
2. A justifiable sale of his ship by a master divests them. *The Amelie*, 18.

LOUISIANA.

1. By the law of that State, if a man *bonâ fide* believe a woman free to marry him, and with such a belief as this does marry her, such marriage has its civil effects; and the child born of it is legitimate, and can inherit its father's estate. *Gaines* v. *New Orleans*, 642.
2. The fact of marriage being proved, the presumptions of law are all in favor of good faith. *Ib.*
3. The power of executors to make sale of real and personal estate there, under the code in force in 1813, stated. *Ib.; Gaines* v. *De la Croix*, 719.
4. Where each of two parties claim title from one person as a common source, neither, by the law of that State, is at liberty to deny that such person had title. *Ib.*
5. The deed of a sole instituted heir gives no title by the law of that State as against the real and paramount heir. *Ib.*
6. Under the code of that State, which allows general and special pleas, if not inconsistent with each other, an amended answer which but specifies a particular fact in aid of the general denial, is allowable. *Andrews* v. *Hensler*, 254.
7. The fact that the code limited to one year the time in which actions could be brought for the rescission of sales of slaves on account of redhibitory defects, did not necessarily give to the purchaser the same term within which to offer to return them to the vendor. *Ib.*
8. By the law of that State, as well as of those States which have adopted the common law, a person who takes a negotiable note from one intrusted by the owner with the collection of it only, takes it subject

LOUISIANA (*continued*).

to the equities between prior parties to it; and to the consequences of that rule. *Foley* v. *Smith*, 492.

MAINTENANCE.

An owner of personal property, tortiously converted, may make a valid sale of it. He sells the property, not an action. *Tome* v. *Dubois*, 458.

MANDAMUS. See *Conflict of Jurisdiction.*

1. After judgment at law for a sum of money against a municipal corporation, and execution returned unsatisfied, mandamus, not bill in equity, is the proper mode to compel the levy of a tax which the corporation was bound to levy to pay the judgment. *Walkley* v. *City of Muscatine*, 481.
2. Mandamus from this court will not lie to reverse a judgment of a court below, refusing a mandamus against the Secretary of the Treasury, commanding him to pay a sum of money awarded to the relator by the Secretary of War, in pursuance of a joint resolution of Congress, and to compel such court below to issue one. *Ex parte De Groot*, 497.

MARRIAGE AND LEGITIMACY. See *Evidence*, 3; *Louisiana*, 1–2.

MASSACHUSETTS.

1. By the law of that State, the objects of a charity are made sufficiently certain, in a devise of the whole legal estate of real and personal property to two persons, who are to hold it in trust to "manage, invest, and reinvest the same according to their best discretion," and pay over income during certain lives; and who, or *their successors*, as trustees, are, on the efflux of the lives, to select and appoint persons, who are to be informed of the facts by the trustees, and who are to distribute the capital among permanently established and incorporated institutions, for the benefit of the poor. *Lorings* v. *Marsh*, 337.
2. The 25th section of chapter 92 of its Revised Statutes, A.D. 1860, which provides for the issue of any deceased child or children, as in cases of intestacy, "unless it shall appear that such omission was intentional, and not occasioned by any accident or mistake," construed. *Ib.*

MERGER. See *Judgment.*

MICHIGAN.

The rule of the common law, that a judgment against one contractor upon a contract, merely joint, of several persons, bars an action against the other, is altered by statute. *Mason* v. *Eldred et al.*, 231.

MUNICIPAL CORPORATION. See *Mandamus.*

NAVY.

1. Disbursements by a purser stationed at a navy-yard, of moneys which would have been disbursed by a "navy agent," if there had been one at that yard, does not make such purser a navy agent, so as to exempt

NAVY (*continued*).

from liability the persons who are his sureties as purser. *Strong* v. *United States*, 788.

2. Since the act of August 26th, 1842 (if not before), pursers may be directed to purchase supplies for the use of the navy on public account, and to disburse moneys for the use of the navy as appropriated by law. *Ib.*

NEGOTIABLE PAPER.

The alteration of the date in any commercial paper—though the alteration *delay* the time of payment—is a material alteration, and if made without the consent of the party sought to be charged, extinguishes his liability. The fact that it was made by one of the parties signing the paper before it had passed from his hands, does not alter the case as respects another party (a surety), who had signed previously. *Wood* v. *Steele*, 80.

NEW MADRID.

Act of February 17th, 1815, for the benefit of its inhabitants, construed. *Rector* v. *Ashley*, 142.

NEW MEXICO.

Act of 3d March, 1863, giving the District Court of, an extra territorial jurisdiction, construed. *United States* v. *Hart*, 770.

NOTICE.

1. Where it is sought to affect a *bona fide* purchaser for value with constructive notice, the question is not whether he had the means of obtaining, and might by prudent caution have obtained, the knowledge in question, but whether his not obtaining it was an act of gross or culpable negligence. *Wilson* v. *Wall*, 83.
2. A purchaser of property from an executor of a will of one date, who has at the time strong reasons to believe that a later will with different executors and different dispositions of property had been made, is not protected from liability to the parties interested under such later will, if established and received to probate, by the fact that the executor of the first will made the sale under order of court having jurisdiction of such things. He purchases at the risk of the later will's being found, or proved and established. If the later will is found, it relates back and affects such a purchaser with notice of its existence and contents as of the time when he purchased. *Gaines* v. *De la Croix*, 719.
3. Where a complainant is not endeavoring to establish an equitable title, but is asserting a right to the legal estate, it does not follow that he loses that right, because the defendant may have purchased in good faith what he *supposed* was the legal title. *Gaines* v. *New Orleans*, 642.

OREGON.

1. Under the statute of Oregon which provides, that any person *in possession* of real property may maintain a suit in equity against another,

OREGON (*continued*).

who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest, a bill will not lie on a possession without some right, legal or equitable, first shown. *Stark* v. *Starrs*, 402.

2. The act of Congress of September 27th, 1850 (known as "The Oregon Donation Act"); the act of August 14th, 1848, organizing the Territory of Oregon; the general Pre-emption Act of September, 1841; the act of May 23d, 1844 (known as the "Town Site Act"); the act of July 17th, 1854, by which the Town Site Act was extended, though with qualifications, to Oregon Territory, construed. *Ib.*

PARDON.

A full, and amnesty to the owner of property seized under the act of 6th August, 1861, as used, with his consent, in aid of the rebellion, relieves him from forfeiture of the property. *Armstrong's Foundry*, 766.

PARTNERSHIP.

1. In the absence of proof of its purchase with partnership funds for partnership purposes, property held in the joint names of several owners, or in the name of one for the benefit of all, is deemed to be held by them as joint tenants, or as tenants in common; and none of the several owners possesses authority to sell or bind the interest of his co-owners. *Thompson et al.* v. *Bowman*, 316.
2. If persons are copartners in the ownership of land, such land being the only subject-matter of the partnership, the partnership will be terminated by a sale of the land. *Ib.*

PATENT. See *Public Lands*, 2–4.

PLEADING. See *Equity*, 1, 4, 5, 7; *Evidence*, 6; *Damages*, 4; *Louisiana*, 6; *Practice*, 11.

POWERS.

Where two persons, as trustees, are invested by last will with the whole of a legal estate, and are to hold it in trust to "manage, invest, and reinvest the same according to their best discretion," and pay over income during certain lives; and, on their efflux, these persons, or *their successors*, as trustees, are to select and appoint persons, who are to be informed of the facts by the trustees, and who are to distribute the capital among permanently established and incorporated institutions, for the benefit of the poor—the power given to such two persons to select and appoint, is a power which will survive, and on the death of one in the lifetime of the testator, it may be properly executed by the other. *Lorings* v. *Marsh*, 337.

PRACTICE. See *Court of Claims*, 1–5; *Indiana; Jurisdiction.*

I. IN CASES GENERALLY.

1. Where a court has no jurisdiction of a case, it cannot award costs, or order execution for them to issue. *The Mayor* v. *Cooper*, 247.

PRACTICE (*continued*).

2. The writ of error by which a case is transferred from a Circuit Court to the Supreme Court is the writ of the latter court, although it may be issued by the clerk of the Circuit Court; and the original writ should always be sent to this court with the transcript. *Mussina* v. *Cavazos*, 355.
3. Writs of error dismissed where there were but three plaintiffs in error, while the citation presented four. *Kail et al.* v. *Wetmore*, 451.

And so where the names in the citation were different from those in the writ of error; bonds, moreover, in both cases reciting but one person as plaintiff in error, when there were in fact three. *Ib.*

4. An appeal from a very distant State (California) dismissed at the last term for apparent want of a citation, now reinstated, it appearing that a citation had in fact been signed, served and filed in the clerk's office, and that the building in which his office was kept had been afterwards partially destroyed by fire, and a great confusion and some loss of records occasioned in consequence. *Alviso* v. *United States*, 457.
5. A writ of error not sealed until eleven days after the judgment which it would seek to reverse was rendered, cannot operate as a supersedeas. *City of Washington* v. *Dennison*, 495.
6. Nor one where there has been an omission to serve the citation before the return day of the writ. *Ib.*
7. A judgment affirmed under Rule 23 of the Supreme Court, with ten per cent. damages, it appearing from the character of the pleadings, that the writ of error must have been taken only for delay. *Prentice* v. *Pickersgill*, 511.
8. A decree in the Circuit Court dismissing a bill on the merits, reversed where the Circuit Court had not jurisdiction, and a decree of dismissal without prejudice directed. *Barney* v. *Baltimore City*, 280.
9. Where, pending a writ of error to the Supreme Court, subsequently dismissed, the defendant in error dies and the other side wishes to take a new writ, application should be made to the court below for the purpose of reviving the suit in the name of the representative of the deceased. A motion in this court to revive the writ by suggesting the death and substituting the representatives as parties to the record is not regular. *McClane* v. *Boon*, 244.
10. Refusal to grant specific prayers of a party for instruction is not error; the substance of the requested instructions being embraced in the instructions actually given. *Tome* v. *Dubois*, 548.
11. An objection of variance between allegation and proof must be taken when the evidence is offered. It cannot be taken advantage of after it is closed. *Roberts* v. *Graham*, 578.
12. State legislatures cannot abolish in the Federal courts the distinction between actions at law and actions in equity, by enacting that there shall be but one form of action, which shall be called "a civil action," in which "the real parties in interest" must sue. *Thompson* v. *Railroad Companies*, 134.
13. Though a decree have been entered "*as*" of a prior date—the date of an order settling apparently the terms of a decree to be entered there-

PRACTICE (*continued*).

after—the rights of the parties in respect to an appeal are determined by the date of the actual entry, or of the signing and filing of the final decree. *Rubber Company* v. *Goodyear*, 153.

14. The question of sufficiency of an appeal bond is to be determined in the first instance by the judge who signs the citation; but after the allowance of the appeal it becomes cognizable in the Supreme Court. It is not required that the security be in any fixed proportion to the amount of the decree; but only that it be sufficient. *Ib.*

15. The only sort of suit removable from a State court under the 12th section of the Judiciary Act is one regularly commenced by a citizen of the State in which the suit is brought by process served upon a defendant who is a citizen of another State. *West* v. *Aurora City*, 139.

16. Where a party removes, under a statute of the United States, from a State court to the Circuit Court of the United States a case depending in point of merits on the right construction of such statute, the Circuit Court cannot dismiss and remand the case, upon motion, on the ground that it has no jurisdiction because the statute is unconstitutional and void. *The Mayor* v. *Cooper*, 247.

II. IN EQUITY.

17. Where a party desires to file a bill in original jurisdiction in equity in the Supreme Court, it is usual to hear a motion in his behalf for leave to do so. *State of Georgia* v. *Grant*, 241.

18. An objection to an amended bill in chancery because not filed with the leave of the court below (as it is contemplated by Rule 45 of the Equity Rules that such bills should be), or the objection that a replication is not in a sufficient form, under Rule 66 of the same rules, cannot be first made in the Supreme Court. *Clements* v. *Moore*, 299.

19. On an application to a court in equity to refuse confirmation of a master's sale and to order a resale—a case where speedy relief may be necessary—the court may properly hear the application, and act on *ex parte* affidavits on both sides, and without waiting to have testimony taken with cross-examinations. *Savery* v. *Sypher*, 157.

III. IN ADMIRALTY.

20. In cases of collision, if the libel have been properly amended, damages awarded exceeding those claimed by the libel originally, and while it was uncertain what the damages would be, may be awarded if within the amount of the stipulation given on the release of the offending vessel. *The Hypodame*, 216.

21. Objections to the amount of damages, as reported by a commissioner and awarded by the admiralty court, will not be entertained in the Supreme Court in a case of collision where it appears that neither party excepted to the report of the commissioner. *The Vanderbilt*, 225.

22. In an appeal where the record does not show that the sum necessary to give the Supreme Court jurisdiction was in controversy below, the court, in a proper case, will allow the appellant a limited time to make proof of the fact. *The Grace Girdler*, 441.

PRACTICE (*continued*).

IV. IN PRIZE.

23. A libel case, charging the vessel and cargo to be prize of war, dismissed because no case of prize was made out by the testimony. But because the record disclosed strong *prima facie* evidence of a violation of certain statutes of the United States, the case was remanded, with leave to file a new libel according to these facts. *The Watchful*, 91.

24. Proceedings relating to a seizure of land under the act of August 16th, 1861, which makes property used in aid of the rebellion the lawful subject of prize and capture, are to have a general conformity to proceedings in admiralty, but should be conformed, in respect to trial by jury and exceptions to evidence to the course of the common law, and can be reviewed only on writ of error. *Union Insurance Company* v. *United States*, 759; *Armstrong's Foundry*, 766.

PRIZE OF WAR. See *Public Law.*

CAPTURES RESTORED, under special facts, though there existed grounds of suspicion. See *The Sea Witch*, 242; *The Flying Scud*, 263; *The Wren*, 582.

CAPTURES CONDEMNED, under special facts. See *The Flying Scud*, 263; *The Adela*, 266.

PROBATE. See *Res Judicata; Last Will.*

PUBLIC LANDS.

1. The President may reserve from sale and set apart for public use, parcels of land belonging to the United States; and modify, by reducing or enlarging it, a reservation previously made. *Grisar* v. *McDowell*, 363.

2. The right to a patent once vested is equivalent, as respects the government dealing with the public lands, to a patent issued; and when issued, it relates, so far as may be necessary to cut off intervening claimants, to the inception of the right of the patentee. *Stark* v. *Starrs*, 402.

3. Patents by the United States for land which it has previously granted, reserved from sale, or appropriated, are void. *Reichart* v. *Felps*, 160.

4. A patent or instrument of confirmation by an officer authorized by Congress to make it, followed by a survey of the land described in the instrument, is conclusive evidence that the land described and surveyed was reserved from sale. *Ib.*

PUBLIC LAW. See *Insurance*, 1.

1. Neither an enemy nor a neutral acting the part of an enemy can demand restitution on the sole ground of capture in neutral waters. *The Adela*, 266.

2. The liability to confiscation, which attaches to a vessel that has contracted guilt by breach of blockade, does not attach to her longer than till the *end* of her return voyage. *The Wren*, 582.

PUBLIC POLICY.

Equity will not enforce a secret agreement made by the plaintiff with

PUBLIC POLICY (*continued*).

certain of several defendants, that if they will desist from resistance to his suit, he will, if he recovers judgment, not levy execution on their property. *Seltz* v. *Unna*, 327.

PUBLIC SALES.

1. Where land is sold for taxes, the inadequacy of the price given is not a valid objection to the sale. *Slater* v. *Maxwell*, 268.
2. Where the tract sold consists of several distinct parcels, the sale of the entire tract in one body does not vitiate the proceeding if bids could not have been obtained upon an offer of a part of it. *Ib.*
3. It is essential to the validity of tax sales and of judicial sales, that they be conducted in conformity with the requirements of the law, and with entire fairness. A perfect truth in the statement of all material facts stated, and similar freedom from all influences likely to prevent competition in the sale, should be strictly exacted. *Ib.; James et al.* v. *Railroad Company*, 752.
4. However, the rules which make void as against public policy agreements that persons competent to bid at them will not bid, forbid such agreements alone as are meant to prevent competition and induce a sacrifice of the property sold. An agreement to bid, the object of it being fair, is not void. *Wicker* v. *Hoppock*, 94.

PUEBLOS. See *San Francisco.*

Their history and nature explained. *Grisar* v. *McDowell*, 363.

PURSER. See *Navy.*

QUO WARRANTO. See *Debtor and Creditor.*

REBELLION, THE. See *Insurance*, 1; *Practice*, 24.

1. The alleged fact that a judgment in a primary State court of the South,—affirmed in the highest State court after the restoration of the Federal authority,—was rendered after the State was in proclaimed rebellion, and by judges who had sworn allegiance to the rebel confederacy, the record not disclosing the fact that the want of authority under the Federal Constitution of such primary court was in such court drawn in question and decided against—will not be regarded by this court as bringing the case within the 25th section of the Judiciary Act. *Walker* v. *Villavaso*, 124; *White* v. *Cannon*, 443.
2. The statute of July 13th, 1861, and the subsequent proclamation of President Lincoln under it, which made all commercial intercourse between any part of a State where insurrection against the United States existed and the citizens of the rest of the United States "unlawful," so long as such condition of hostility should continue, rendered void all purchases of cotton from the rebel confederacy by citizens or corporations of New Orleans, after the 6th of May, 1862. *The Ouachita Cotton*, 521.
3. Under the *proviso* of the above-mentioned statute which gave the President power in his discretion to license commercial intercourse, no one else could give licenses. *Ib.*

REBELLION, THE (*continued*).

4. The title of a purchaser from a citizen of New Orleans, who had himself purchased from the rebel confederacy after the 6th of May, 1862, was not made valid by the fact that such second purchaser was a foreign neutral, purchasing *bonâ fide* for value. *The Ouachita Cotton*, 521.
5. The time during which the courts in the lately rebellious States were closed to citizens of the loyal States, is, in suit brought by them since, to be excluded from the computation of the time fixed by statutes of limitation within which suits may be brought, though exception for such cause be not provided for in the statutes. And this independently of the Act of Congress of June 11th, 1864. *Hanger* v. *Abbott*, 532.

REMAINDER, ESTATES IN.

Estates in remainder vest at the earliest period possible, unless there be a clear manifestation of the intention of the testator to the contrary. And in furtherance of this principle, the expression "*upon* the decease of A., I give and devise the remainder," construed to relate to the time of the enjoyment of the estate, and not the time of the vesting in interest. *Doe, Lessee of Poor*, v. *Considine*, 458.

RES JUDICATA.

1. The probate of a will duly received to probate by a State court of competent jurisdiction, is conclusive of the validity and contents of the will in this court. *Gaines* v. *New Orleans*, 642.
2. A decision in one way on bill and demurrer does not preclude a decision in an opposite way on answer and proofs. *Minnesota Company* v. *St. Paul Company*, 742.

REVOCATION. See *Last Will.*

SALES. See *Maintenance; Public Sales.*

SALVORS.

Where the owners of saw-logs which in a freshet had floated far down a river, and coming thus as waifs to persons along the river, had been saved by them and sawed into boards, affirmed the acts of such persons in saving and sawing them, the salvors, on a claim by the owners to the value of the lumber, are entitled to just compensation for their work and expenses in saving it. *Tome* v. *Dubois*, 548.

SAN FRANCISCO.

1. No assignment of pueblo lands was ever made by the former government to San Francisco. Such assignment was requisite to take away from the government of the United States its right to set apart and appropriate any lands claimed under a pueblo right; or to modify by reduction or enlargement reservations previously made. *Grisar* v. *McDowell*, 363.
2. An act of Congress by which all the right and title of the United States to the land within the corporate limits of San Francisco, confirmed to the city by a decree of the Circuit Court, were relinquished and granted to that city, and the claim of the city was confirmed, subject, however,

SAN FRANCISCO (*continued*).

to the reservations and exceptions designated in the decree, and upon certain specified trusts, disposed of the city claim, and determined the conditions upon which it should be recognized and finally confirmed. *Grisar* v. *McDowell*, 363.

SHIPS, MASTERS' POWER TO SELL. See *Commercial Law.*

SHRINKAGE OF SOIL.

Where a party agrees to build an embankment for a certain sum per cubic yard, at such places as he shall be directed by another, and the place selected by this other is such that there is a natural settling of the batture or foundation while the embankment is building, and a consequent waste and shrinkage of the embankment, any system of measurement which does not allow for the embankment which supplies the place of the settling is not a correct one. *Clark* v. *United States*, 543.

SOVEREIGN. See *United States.*

STATUTES.

I. INTERPRETATION OF.

1. Where the language of a statute, read in the order of clauses as passed, presents no ambiguity, courts will not attempt, by transposition of clauses, and from what it can be ingeniously argued was a general intent, to qualify, by construction, the meaning. *Doe, Lessee of Poor*, v. *Considine*, 458.

2. The admitted rule that penal statutes are to be strictly construed, is not violated by allowing their words to have full meaning, or even the more extended of two meanings, where such construction best harmonizes with the context, and most fully promotes the policy and objects of the legislature. *United States* v. *Hartwell*, 385.

II. DATE OF ENACTMENT OF.

3. Whenever a question arises as to the day when a statute was enacted, resort may be had to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question, the resort being always first to that which in its nature is most appropriate, unless the then positive law has enacted a different rule. *Gardner* v. *The Collector*, 499.

III. OF THE UNITED STATES, CONSTRUED. See *California*, 2–4; *Confirmation*, 1; *Constitutional Law*, 3; *Court of Claims*, 1, 6; *Internal Revenue*, 1–6; *Iowa; Jurisdiction*, 1–13; *Navy; New Madrid; New Mexico; Oregon; Practice*, 3, 4, 5, 6, 12, 13, 14, 15, 22, 24; *Rebellion*, 1–4; *San Francisco*, 12; *Sub-Treasury Acts.*

IV. OF STATES, CONSTRUED. See *Book of Record; California*, 5; *Constitutional Law*, 1, 4; *Internal Revenue*, 2–6; *Louisiana*, 3, 6, 7; *Massachusetts*, 2; *Michigan; Oregon; Texas*, 1.

SUB-TREASURY ACTS.

1. The terms employed in the sixteenth section of the Sub-Treasury Act of August 6th, 1846 (9 Stat. at Large, 59), to designate the persons made

SUB-TREASURY ACTS (*continued*).

liable under it, are not restrained and limited to principal officers. "Clerks" of a certain kind mentioned in the act may come within them. *United States* v. *Hartwell*, 385.

2. The penal sanctions of the third section of the act of June 14th, 1866, "to regulate and secure the safe-keeping of public money," &c. (14 Stat. at Large, 65), is confined to officers of banks and banking associations. *Ib.*

TAX SALES. See *Public Sales.*

TEXAS. See *Alien.*

1. Its statute of limitations construed. *League* v. *Atchison*, 112; *Osterman* v. *Baldwin*, 116.
2. Trusts of real estate may be proved there, at common law, by parol. *Osterman* v. *Baldwin*, 116.

TORT FEASORS.

Equal contributions among tort feasors is not inequitable, and may be voluntarily agreed on, although the action among tort feasors to enforce contribution where the payments have been unequal will not lie. *Seltz* v. *Unna*, 327.

UNITED STATES.

When the United States is plaintiff and the defendant has pleaded a set-off, no judgment for an excess, though ascertained to be due, can be rendered against the government. *United States* v. *Eckford*, 484.

VARIANCE. See *Practice*, 11.

VERDICT, SPECIAL. See *Evidence*, 9.

A case stated and meant to be regarded as a special verdict, treated as such, and passed on, though not presented in the best technical form. *Mumford* v. *Wardwell*, 423.

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