INDEX.

ACKNOWLEDGMENT OF DEEDS. See *Illinois.*

1. In aid of the certificate of acknowledgment, or proof of a deed, reference may be had to the instrument itself, or to any part of it. *Carpenter* v. *Dexter*, 513.
2. It will be presumed that a commissioner of deeds, in a particular State, whose authority to act was limited only to his county, exercised his office within the territorial limits for which he was appointed, although the only venue given to his certificate of acknowledgment be that of the "State" where he lived. *Ib.*
3. If such were not the presumption, the defect was held in this particular to be supplied in this case by reference to the deed and the previous certificate of acknowledgment by the same person; in the first of which the grantor designated the county in which he had affixed his hand and seal to the instrument, and in the second of which the county was given in its venue. *Ib.*
4. When a deed showed that one Wooster was a subscribing witness with the officer, and the certificate of proof given by the officer stated that "Wooster, one of the subscribing witnesses," to the officer known, came before him, and being sworn, said, that he saw the grantor execute and acknowledge the deed; *Held*, that there was a substantial compliance with the statute, requiring the officer to certify that he knew the affiant to be a subscribing witness. *Ib.*
5. Unless the statute of a State requires evidence of official character to accompany the official act which it authorizes, none is necessary. And where one State recognizes acts done in pursuance of the laws of another State, its courts will take judicial cognizance of those laws, so far as it may be necessary to determine the validity of the acts alleged to be in conformity with them. *Ib.*

ADMIRALTY. See *Pleading*, 7, 8; *Practice*, 15, 16.

1. The District Courts of the United States, upon which admiralty jurisdiction was exclusively conferred by the Judiciary Act of 1789, can take cognizance of all civil causes of such jurisdiction upon the lakes and waters connecting them, the same as upon the high seas, bays, and rivers navigable from the sea. *The Eagle*, 15.
2. The clause (italicized in the lines below) in the ninth section of the Judiciary Act of 1789, which confers exclusive original cognizance of all civil causes of admiralty jurisdiction upon the District Courts, "*including all seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden, within their respective*

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

ADMIRALTY (*continued*).

districts, as well as upon the high seas," is inoperative since the decision (A. D. 1851) in the *Genesee Chief* (12 Howard, 443), which decided that admiralty jurisdiction was not limited in this country to tide waters, but extended to the lakes and the waters connecting them. *The Eagle*, 15.

3. Nautical rules require, that where a steamship and sailing vessel are approaching from opposite directions, or on intersecting lines, the steamship, from the moment the sailing vessel is seen, shall watch with the highest diligence her course and movements, so as to be able to adopt such timely measures of precaution as will necessarily prevent the two boats coming in contact. *The Carroll*, 302.
4. Porting the helm a point, when the light of a sailing vessel is first observed, and then waiting until a collision is imminent, before doing anything further, does not satisfy the requirements of the law. *Ib.*
5. Fault on the part of the sailing vessel at the moment preceding collision does not absolve a steamer which has suffered herself and a sailing vessel to get in such dangerous proximity, as to cause inevitable alarm and confusion, and collision as a consequence. The steamer, as having committed a far greater fault in allowing such proximity to be brought about, is chargeable with all the damages resulting from the collision. *Ib.*
6. Although the duty of vessels propelled by steam is to keep clear of those moved by wind, yet these latter must not, by changing their course instead of keeping on it, put themselves carelessly in the way of the former, and so render ineffective their movements to give the sailing vessels sufficient berth. *The Potomac*, 590.
7. The confessions of a *master*, in a case of collision, are evidence against the owner. *Ib.*
8. *Restitutio in integrum* is the leading maxim as to the measure of damages in cases of libel in admiralty, for injury to vessels, for collision. In other words, where repairs are practicable, the general rule is, that the damages shall be sufficient to restore the injured vessel to the condition in which she was at the time the collision occurred. And this rule does not allow deduction, as in insurance cases, for the new materials furnished in the place of the old. *The Baltimore*, 377.
9. Although, if a vessel be sunk by collision in so deep water, or otherwise so sunk, that she cannot be raised and repaired, except at an expense equal to or greater than the sum which she would be worth when repaired, the rule cannot apply, still the mere fact that a vessel is sunk is not, of itself, sufficient to show that the loss is total, nor to justify the master and owner in abandoning her and her cargo. *Ib.*

BILL OF ATTAINDER. See *Constitutional Law*, 14.

BILL OF EXCHANGE. See *Negotiable Paper*.

BILL OF EXCEPTION. See *Practice*, 2, 3.

Unless exceptions be drawn up so as to present distinctly the ruling of the court upon the points raised, and unless signed and sealed by the pre-

BILL OF EXCEPTION (*continued*).
siding judge, they cannot be considered by an appellate court. *Young* v. *Martin*, 354.

BILL OF LADING.
1. May be explained by parol evidence in so far as it is a receipt, as distinguished from a contract. *The Lady Franklin*, 325.
2. One given by a person who was agent of several vessels all alike engaged in transporting goods brought to certain waters by a railway line, but having separate owners, and not connected by any joint undertaking to be responsible for one another's breaches of contract—the bill, through mistake of the agent, acknowledging that certain goods had been shipped on the vessel *A.*, when, in fact, they had been previously shipped on vessel *B.*, and a bill of lading given accordingly—will not make the vessel A. responsible, the goods having been lost by the vessel B., and the suit being one by shippers of the merchandise against the owner of the vessel A., and the case being thus unembarrassed by any question of a *bonâ fide* purchase on the strength of the bill of lading. *Ib.*
3. An explosion of the boiler on a steam vessel is not a "peril of navigation" within the meaning of. *Propeller Mohawk*, 153.

BURDEN OF PROOF.
1. In a suit brought by the assignee of a chose in action in the Federal court on a contract assigned, the burden of proof is on the plaintiff, when the instruments and assignment are offered under the plea of the general issue, to show affirmatively that the action could have been sustained if it had been brought by the original obligee. *Bradley* v. *Rhine's Administrator*, 393.
2. A court having fairly submitted to a jury, the evidence in a case, and charged as favorably to a party, as he could properly have asked, may, in the exercise of its discretion, refuse a request by that party to charge as to which side the burden of proof belongs. *Chicopee Bank* v. *Philadelphia Bank*, 641.

CALIFORNIA LAND CLAIMS.
1. Where a Mexican grant of land in California designates the land granted by a particular name, and specifies the quantity, but does not give any boundaries, the grantee is entitled to the quantity specified within the limits of his settlement and possession, if that amount can be obtained without encroachment upon the prior rights of adjoining proprietors. *Alviso* v. *United States*, 337.
2. When the evidence upon a boundary line, between two Mexican grants, is conflicting and irreconcilable, this court will not interfere with the decision of the court below. *Ib.*
3. Parties not claiming under the United States, who are allowed to intervene in proceedings of the District Court to correct surveys of Mexican land grants in California, under the act of June 14th, 1860, must claim under cessions of the former Mexican government. The order of the District Court, allowing a party thus claiming to intervene, is a determination that he possesses such interest derived from

CALIFORNIA LAND CLAIMS (*continued*).

that government as to entitle him to contest the survey; and objection to his intervention, on the ground that he possesses no such interest, cannot be taken for the first time in this court. *Ib.*

4. The United States cannot object to the correctness of a boundary line in an approved survey, if they have not appealed from the decree approving the survey. *Ib.*

CHAMPERTY.

The court expresses its satisfaction that it could, in accordance with principles of law, decide against a party who had bought, and was prosecuting a claim that the original party was not, himself, willing to prosecute. It characterizes such a plaintiff as "a volunteer in a speculation." *Propeller Mohawk*, 154.

COLLISION. See *Admiralty*, 3-9.

COMITY, INTERSTATE. See *Constitutional Law*, 7, 8; *Evidence*, 11.

COMITY, JUDICIAL. See *Constitutional Law*, 13.

1. The Supreme Court will not follow the adjudication of State courts upon the meaning of the statutes of their States, when the former court considers the adjudications wrong in themselves, and when in action their effect is practically, by rendering the power of enforcing obligation ineffective, to impair the obligation of a contract entered into before the adjudications were made, by parties living in the State. *Butz* v. *City of Muscatine*, 575.
2. A question which is pending in one court of competent jurisdiction cannot be raised and agitated in another by adding a new party and raising a new question as to him along with the old one as to the former party. The old question is in the hands of the court first possessed of it, and is to be decided by such court. The new one should be by suit in any proper court, against the new party. *Memphis City* v. *Dean*, 64.

COMMON CARRIER.

1. Where insurers, to whom the owners have abandoned, take possession, at an intermediate place or port, of goods damaged during a voyage by the fault of the carrier, and there sell them, they cannot hold the carrier liable on his engagement to deliver at the end of the voyage in good order and condition. *Propeller Mohawk*, 153.
2. Insurers, so accepting at the intermediate port, are liable for freight *pro ratâ itineris* on the goods accepted. *Ib.*
3. A common carrier of merchandise is responsible for actual negligence, even admitting his receipt to be legally sufficient to restrict his common law liability. And he is chargeable with actual negligence, unless he exercise the care and prudence of a prudent man in his own affairs. *Express Company* v. *Kountze Brothers*, 343.

CONCLUSIVENESS OF JUDGMENT. See *Fraudulent Conveyance*, 3.

CONFEDERATE MONEY.

1. A contract for the payment of treasury notes of the Confederate States,

CONFEDERATE MONEY (*continued*).
made between parties residing within those States, can be enforced in the courts of the United States; the contract having been made in the usual course of business, and not for the purpose of giving currency to the notes, or of otherwise aiding the rebellion. *Thorington* v. *Smith*, 1.
2. Evidence may be received, that a contract payable in those States during the rebellion, in "dollars," was in fact made for the payment in Confederate dollars. *Ib.*
3. The party entitled to be paid in such dollars can receive but their actual value at the time and place of the contract in lawful money of the United States. *Ib.*

CONFLICT OF JURISDICTION. See *Comity, Judicial; Constitutional Law*, 7, 8; *Jurisdiction*, 1.
FEDERAL AND STATE LEGISLATION.
The mortgage of a vessel, duly recorded, under an act of Congress, cannot be defeated by a subsequent attachment, under a State statute, enacting, that no mortgage of such property shall be valid, as against the interests of third persons, unless possession be delivered to and remain with the mortgagee, or the mortgage be recorded in a manner specified, in which a mortgage, whose lien in this case was the subject of controversy, was not. *White's Bank* v. *Smith* (7 Wallace, 646) affirmed. *Aldrich* v. *Ætna Company*, 491.

CONSTITUTIONAL LAW. See *Conflict of Jurisdiction.*
1. The term "import," as used in that clause of the Constitution which says, that "no State shall levy any imposts or duties on *imports* or exports," does not refer to articles imported from one State into another, but only to articles imported from foreign countries into the United States. *Woodruff* v. *Parham*, 123.
2. And the principle of the preceding decision is applicable to a case, where, although the *mode* of collecting the tax on the article made in the State was different from the mode of collecting the tax on the article brought from another State into it, yet the amount paid was, in fact, the same on the same article in whatever State made. *Hinson* v. *Lott*, 148.
3. The Bay of Mobile being included within the statutory definition of the port of Mobile, contracts for the purchase of cargoes of foreign merchandise before or after the arrival of the vessel in the said bay, where the goods, by the terms of the contract, are not to be at the risk of the purchaser until delivered to him in said bay, do not constitute the purchaser an "importer," and the goods so purchased and sold by him, though in the original packages, may be properly subjected to taxation by the State. *Waring* v. *The Mayor*, 110.
4. The 9th section of the act of July 13th, 1866, amendatory of prior internal revenue acts, and which provides that every National banking association, State bank, or State banking association, shall pay a tax of ten per centum on the amounts of the notes of any State bank, or State banking association, paid out by them after the 1st day

CONSTITUTIONAL LAW (*continued*).

of August, 1866, does not lay a direct tax within the meaning of that clause of the Constitution which ordains that "direct taxes shall be apportioned among the several States, according to their respective numbers." *Veazie Bank* v. *Fenno*, 533.

5. Congress having undertaken, in the exercise of undisputed constitutional power to provide a currency for the whole country, may constitutionally secure the benefit of it to the people by appropriate legislation, and to that end may restrain, by suitable enactments, the circulation of any notes, not issued under its own authority. *Ib.*

6. The tax of ten per centum imposed by the act of July 13th, 1866, on the notes of State banks paid out after the 1st of August, 1866, is warranted by the Constitution. *Ib.*

7. A State statute which enacts that no insurance company not incorporated under the laws of the State passing the statute, shall carry on its business within the State without previously obtaining a license for that purpose; and that it shall not receive such license until it has deposited with the treasurer of the State bonds of a specified character and amount, according to the extent of the capital employed, is not in conflict with that clause of the Constitution of the United States which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," nor with the clause which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States." *Paul* v. *Virginia*, 168.

8. The issuing of a policy of insurance is not a transaction of commerce within the meaning of the latter of the two clauses, even though the parties be domiciled in different States, but is a simple contract of indemnity against loss. *Ib.*

9. A statute of a State which, for the declared purpose "of encouraging the establishment of a charitable institution," and enabling the parties engaged in establishing it "more fully and effectually to accomplish their laudable purpose," gave to the institution a charter, and declared by it that "the property of said corporation shall be exempt from taxation," and that an already existing statutory provision, that every charter of incorporation should be subject to alteration, suspension, or repeal, at the discretion of the legislature, should not apply to *it*, becomes, after the corporation has been organized, "a contract," within the meaning of the Constitution, which says that no State shall pass any law impairing the obligations of contracts, and the property of the corporation is not subject to taxation so long as the corporation owns it and applies it to the purposes for which the charter was granted. *Home of the Friendless* v. *Rouse*, 430.

10. The same principle applies to the case of an institution of learning. *The Washington University* v. *Rouse*, 439.

11. Congress has no power to make paper money a legal tender, or lawful money, in discharge of private debts, which exist in virtue of contracts made prior to its acts attempting to make such paper a legal tender and lawful money for payment of such debts. *Hepburn* v. *Griswold*, 603.

CONSTITUTIONAL LAW (*continued*).

12. When a State has enacted that the notes of a particular bank chartered by it shall be receivable in payment of all taxes due to it, a "contract," attaching itself to the note, and running with it into the hands of any one who has it, is entered into by the State that it will so receive the notes. And a subsequent enactment, that it will not receive them is a law impairing the obligation of contracts, and is void. *Furman* v. *Nichol*, 44.

13. A remedy, which the statutes of a State, on what the Supreme Court considers a plainly right construction of them, give for the enforcement of contracts, cannot be taken away, as respects previously existing contracts, by judicial decisions of the State courts construing the statutes wrongly. *Butz* v. *City of Muscatine*, 575.

14. Section 4 of the constitution of Missouri, which ordains that—

> "No person shall be prosecuted in any civil action for or on account of any act by him done, performed or executed, after the first of January, one thousand eight hundred and sixty-one, by virtue of military authority vested in him by the government of the United States, or that of this State, to do such act, or in pursuance to orders received by him from any person vested with such authority; *and if any action or proceeding shall have heretofore been, or shall hereafter be, instituted against any person for the doing of any such act, the defendant may plead this section in bar thereof*"—

is not a bill of attainder within the meaning of that clause of the Constitution of the United States, which ordains that no State shall pass any such bill. *Drehman* v. *Stifle*, 595.

15. Nor does it impair the obligation of a contract, within the meaning of the same constitution, because, in the case of a contract relating to real property—as, *ex. gr.*, a landlord's covenant that he will keep his tenant in possession—its effect is to prevent a determination under particular State statutes of a party's mere right of possession, irrespectively of the merits of title, and where the same result might have confessedly been lawfully brought about by the State legislature, by a repeal of the particular statute, and without impairing the obligation of any contract. *Ib.*

16. *Semble*, that the case might be different if by giving effect to the provision, the party was precluded from asserting a title and enforcing a right. *Ib.*

CONTINUING OFFER. See *Contract*, 7.

CONTRACT. See *Bill of Lading*, 2; *Constitutional Law*, 9–13; *Equity*, 1, 3, 4; *Implied Covenant*, 1 (i, ii); *Legal Tender; Measure of Damages*, 1, 2; *Monopoly; Salvage*, 1, 2, 3; *Tennessee*, 1, 3; *Trust; United States Mail; War Department.*

1. Where the obligation of one party to a contract requires of him the expenditure of a large sum in preparation to perform, and a continuous readiness to perform, the law implies a corresponding obligation on the other party to do what is necessary to enable the first to comply with his agreement. *United States* v. *Speed*, 77.

2. An act of Congress directing the Secretary of the Navy to enter into a

CONTRACT (*continued*).

contract with certain parties, provided it could be done on terms previously offered by the parties, does not, of itself, create a contract. *Gilbert & Secor* v. *United States*, 358.

3. If such parties afterwards sign a written agreement with the secretary, on terms less favorable to them than the act of Congress authorized the secretary to make, they must abide by their action in accepting the less favorable terms. *Ib.*

4. A contract made by a surgeon and medical purveyor of a military department of the United States, with parties for furnishing ice, for the use of the sick and wounded in the hospitals of the United States in 1864, was invalid until approved by the Secretary of War. Without such approval the surgeon could not bind the United States in any way. *Parish et al.* v. *United States*, 489.

5. A contract thus approved being executed by the other parties, superseded a previous contract signed by the surgeon, although the latter conformed strictly to proposals made by the parties, and accepted by the surgeon. *Ib.*

6. When an individual who has been absolved from a contract of the government to receive and pay for certain articles which it had agreed to purchase, by the refusal of the proper officer to receive the articles when tendered, afterwards consents to deliver them under a threat of the officer that he will withhold money justly due to the plaintiff, he can only recover the contract price, whatever may have been the current market value of the articles. *Gibbons* v. *United States*, 269.

7. A covenant in a lease giving to the lessee a right or option to purchase the premises leased at any time during the term, is in the nature of a continuing offer to sell. The offer thus made, if under seal, is regarded as made upon sufficient consideration, and therefore one from which the lessor is not at liberty to recede. When accepted by the lessee a contract of sale is completed. *Willard* v. *Tayloe*, 557.

8. The promissory notes of the United States, declared by certain acts of Congress passed in 1862 and 1863 to be a legal tender and lawful money for the payment of private debts, are not a legal tender or lawful money in discharge of debts created by contracts made before the acts were passed. *Hepburn* v. *Griswold*, 603.

9. A statute of a State enacting that notes of a bank chartered by it shall be receivable in payment of taxes due the State, makes a *contract* with all persons taking and holding the notes that the State will so receive them. The contract attaches to the note as long as it lasts, and it binds the State as to notes already issued, even if the statute be repealed. *Furman* v. *Nichol*, 44.

CORPORATION. See *Salvage*, 1.

COURT OF CLAIMS.

Although in the Court of Claims the government is liable for refusing to receive and pay for what it has agreed to purchase, it is not liable, on an implied assumpsit, for the torts of its officers committed while

COURT OF CLAIMS (*continued*).

in its service, and apparently for its benefit. *Gibbons* v. *United States*, 269.

COVENANT. See *Implied Covenant.*

DECLARATIONS. See *Evidence*, 1–6.

DEPARTMENTS. See *Contract*, 2–6; *War Department.*

DIRECT TAX.

A tax laid by Congress on the notes of State banks issued for currency, is not one within the meaning of that clause of the Constitution which ordains, that such taxes shall be apportioned in a particular way. *Veazie Bank* v. *Fenno*, 533.

"DOLLARS."

Meaning of the word under different circumstances. See *Confederate Money; Legal Tender.*

DOMINUS LITIS.

An appeal upon a bill for the infringement of a patent dismissed, it appearing that after the appeal the appellants had purchased a certain patent to the defendants, under which the defendants sought to protect themselves; and that the defendants as compensation had taken stock in the company which had unsuccessfully sought to enjoin them, and was now appellant in the case. *Wood-paper Company* v. *Heft*, 333.

EQUITABLE CONVERSION. See *Trust*, 1 (i, ii, iii).

EQUITY. See *Evidence*, 15; *Pleading*, 6; *Trust.*

1. Where specific execution of a contract, which would work hardship when unconditionally performed, would work equity when decreed on conditions, it will be decreed conditionally. *Willard* v. *Tayloe*, 557.
2. The kind of currency which, on a bill for the specific execution of a contract, a complainant has offered in payment of an obligation, is important only in considering the good faith of his conduct. The condition of the currency in the United States in April, 1864, and the general use of notes of the government at that time, repels any imputation of bad faith in tendering such notes instead of coin in satisfaction of a contract; though at the time, $175 in notes were the equivalent of but $100 in coin. *Ib.*
3. Where a party is entitled to a specific performance of a contract upon the payment of certain sums, and there is uncertainty as to the amount of such sums, he may apply by bill for such specific performance, and submit to the court the question of amount which he should pay. *Ib.*
4. Fluctuations in the value of property contracted for between the date of the contract and the time when execution of the contract is demanded, are not allowed to prevent a specific enforcement of the contract, where the contract, when made, was a fair one, and in its attendant circumstances unobjectionable. *Ib.*
5. Where a party, prior to filing a bill for specific performance of a con-

EQUITY (*continued*).

tract for the sale of land, had sent to the other side for examination, and in professed purpose of execution of the contract, the draft of a mortgage which he was ready, on a conveyance being made, to execute, it is no defence to the bill, if the defendant have wholly refused to execute a deed, that the draft is not in such a form as respected parties and the term of years which the security had to run, as the vendor was bound to accept, especially where such vendor, in returning the draft, had not stated in what particulars he was dissatisfied with it. *Willard* v. *Tayloe*, 557.

ESTOPPEL. See *California Land Claims*, 4.

A record of a judgment on the same subject-matter, referred to in a finding, cannot be set up as an estoppel, when neither the record is set forth, nor the finding shows on what ground the court put its decision: whether for want of proof, insufficient allegations, or on the merits of the case. *United States* v. *Lane*, 185.

EVIDENCE. See *Acknowledgment of Deeds; Burden of Proof; Estoppel; Patent*, 6.

I. In Cases generally.

1. To admit the declarations of a third person in evidence, on the ground that one party to the suit had referred the other party to him, it is necessary that the reference should be for information relating to the matters in issue. *Allen* v. *Killinger*, 480.
2. A conversation between the plaintiff and such third party, in regard to a contract of the plaintiff with the defendant, cannot be given in evidence when the reference by the defendant to such party was not for information concerning such contract. *Ib.*
3. The plaintiff's statements, in such conversation, concerning the terms of the contract, are not evidence in his favor, especially, since he can give his own version of the contract as a witness, but under oath, and subject to cross-examination. *Ib.*
4. The declarations of a party himself, to whomsoever made, are competent evidence, when confined strictly to such complaints, expressions, and exclamations as furnish evidence of a *present* existing pain or malady, to prove his condition, ills, pains, and symptoms, whether arising from sickness, or from an injury by accident or violence. If made to a medical attendant, they are of more weight than if made to another person. *Insurance Company* v. *Mosley*, 397.
5. So is a declaration made by a deceased person, contemporaneously or nearly so, with a main event by whose consequence it is alleged that he died, as to the cause of that event. Though generally the declarations must be contemporaneous with the event, yet where there are connecting circumstances, they may, even when made some time afterwards, form a part of the whole *res gestæ*. *Ib.*
6. Where the principal fact is the fact of bodily injury, the *res gestæ* are the statements of the cause, made by the injured party almost contemporaneously with the occurrence of the injury, and those relating

EVIDENCE (*continued*).

to the consequences, made while the latter subsisted and were in progress. *Insurance Company* v. *Mosley*, 397.

7. An accidental loss or disappearance in a bank of a bill sent to it to collect, from the bank's not taking sufficient care of letters brought to it from the mail, carries with it a presumption of negligence in the bank; and on suit against it, the burden of proof is on the bank to explain the negligence. *Chicopee Bank* v. *Philadelphia Bank*, 641.
8. Where a question is asked of a witness, which is illegal only because it may elicit improper testimony, and the court permits it to be answered against the objection of the other party, if the witness knows nothing of the matter to which he is interrogated, or if his answer is favorable to the objecting party, it is not error of which a revising court can take notice. It works him no injury. *Nailor* v. *Williams*, 107.
9. If it does work the objecting party injury, he can show it by making the answer a part of the bill of exceptions, and unless he does this there is no error of the sort mentioned. *Ib.*
10. Although a bill of lading, in so far as it is a contract, cannot be explained by parol, yet being a receipt as well as a contract, it may in the last regard be so explained, especially when used as the foundation of a suit between the original parties to it. *The Lady Franklin*, 325.
11. Where one State recognizes acts done in pursuance of the laws of another State, its courts will take judicial cognizance of those laws, so far as it may be necessary to determine the validity of the acts alleged to be in conformity with them. *Carpenter* v. *Dexter*, 513.
12. In aid of the certificate of acknowledgment, or proof of a deed, reference may be had to the instrument itself, or to any part of it. *Ib.*
13. Unless the statute of a State requires evidence of official character to accompany the official act which it authorizes, none is necessary. *Ib.*
14. The admissions of the *master* of a vessel are evidence, in cases of collision, against the owner. *The Potomac*, 590.

II. IN EQUITY.

15. When parties have reduced their contracts to writing, conversations controlling or changing their stipulations are, in the absence of fraud, no more received in a court of equity than in a court of law. *Willard* v. *Tayloe*, 557.

III. IN PATENT CASES. See *Patent*, 5, 6.

16. Where the defendant proposes to maintain at the final hearing of a case in chancery, that his machine does not infringe the complainant's patent, proof of non-infringement should appear in the testimony. *Bennet* v. *Fowler*, 445.

EXCLUSIVE PRIVILEGE. See *Monopoly*.

FRAUDULENT CONVEYANCE.

1. A sale of personal property, made much below its cost, by a man indebted to near or quite the extent of all he had, set aside as a fraud on creditors; it having been made within a month after the property was bought, and before it was yet paid for; made, moreover, on Saturday,

FRAUDULENT CONVEYANCE (*continued*).

while the account of stock was taken on Sunday (the parties being Jews), and the property carried off early on Monday. *Kempner* v. *Churchill*, 362.

2. The statute of 13 Eliz., ch. 5, which is in force in the District of Columbia, does not affect, in favor of subsequent creditors, a voluntary settlement made by a man, not indebted at the time, for his wife and children, unless fraud was intended when the settlement was made. *Sexton* v. *Wheaton* (8 Wheaton, 229; S. C. 1 American Leading Cases, 1), approved and affirmed. *Mattingly* v. *Nye*, 370.
3. A judgment for money due, at a certain time, against the party making the settlement, is conclusive in respect to the parties to it. It cannot be impeached collaterally, and it cannot be questioned upon a creditor's bill. *Ib.*

FREIGHT. See *Common Carrier*, 2.

GOVERNMENT OFFICER.

1. The act of August 23d, 1842, declaring that no officer of the government drawing a fixed salary, shall receive additional compensation for any service, unless it is authorized by law, and a specific appropriation made to pay it, is not repealed by the twelfth section of the act of August 26th, the same year. *Stansbury* v. *United States*, 33.
2. An agreement by the Secretary of the Interior to pay a clerk in his department for services rendered to the government by labors abroad —the clerk still holding his place and drawing his pay as clerk in the Interior—was, accordingly, held void. *Ib.*

HABEAS CORPUS.

1. In all cases where a Circuit Court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it, and has, after inquiring into the cause of detention, remanded him to the custody from which he was taken, the Supreme Court, in the exercise of its appellate jurisdiction, may, by the writ of *habeas corpus*, aided by the writ of *certiorari*, revise the decision of the Circuit Court, and if it be found unwarranted by law, relieve the prisoner from the unlawful restraint to which he has been remanded. *Ex parte Yerger*, 85.
2. The second section of the act of March 27th, 1868, repealing so much of the act of February 5th, 1867, as authorized appeals from the Circuit Courts to the Supreme Court, does not take away or affect the appellate jurisdiction of this court by *habeas corpus*, under the Constitution and the acts of Congress prior to the date of the last-named act. *Ib.*

ILLICIT TRADING. See *Rebellion, The*, 1–5.

ILLINOIS. See *Notice*, 1.

A justice of the peace was not authorized by the laws of Illinois, in 1818, to take the acknowledgment or proof, without the State, of deeds of land situated within the State; but this want of authority was remedied by a statute passed on the 22d of February, 1847. *Carpenter* v. *Dexter*, 513.

IMPLIED COVENANT.

In the case of a contract drawn technically, in form, and with obvious attention to details, a covenant cannot be implied in the absence of language tending to a conclusion that the covenant sought to be set up was intended. The fact that the non-implication of it makes the contract, in consequence of events happening subsequently to its being made, quite unilateral in its advantages, is not a sufficient ground to imply a covenant which would tend to balance advantages thus preponderating. *Hudson Canal Co.* v. *Pennsylvania Coal Co.*, 276.

"IMPORT." See *Constitutional Law*, 1–3.

The term, as used in that clause of the Constitution which says, that "no State shall levy any imposts or duties on *imports* or exports," does not refer to articles imported from one State into another, but only to articles imported from foreign countries into the United States. *Woodruff* v. *Parham*, 123.

INSURERS. See *Constitutional Law*, 8.

Accepting goods abandoned by their owners at an intermediate port, which the carriers were bound to carry to the port of destination, are liable to freight *pro rata itineris*. *Propeller Mohawk*, 153.

INTERNAL REVENUE.

Under the act of June 30th, 1864, to provide internal revenue to support the government, &c., which requires a license to persons exercising certain occupations, and fixes the limit to its duration, the parties to the bond given on the granting of the license, are not bound to answer for any breach of the condition of the bond after the expiration of the license. *United States* v. *Smith*, 587.

INTERSTATE COMMERCE. See *Constitutional Law*, 7, 8.

JUDGMENT.

Cannot be impeached collaterally by a party to a settlement on his family, upon a bill of the judgment creditor to set the settlement aside. *Mattingly* v. *Nye*, 370.

JURISDICTION. See *Mandamus; Practice*, 3, 5, 6.

I. OF THE SUPREME COURT OF THE UNITED STATES.

(*a*) It HAS jurisdiction.

1. To disregard and declare void an act of Congress which it considers as passed in violation of the Constitution. *Hepburn* v. *Griswold*, 603.
2. If the case be otherwise within its cognizance, it has jurisdiction of a judgment rendered on a voluntary submission of a case agreed on for judgment, under the provisions of the code of a State. *Aldrich* v. *Ætna Company*, 491.
3. So it may have (under the same condition) jurisdiction of a case where the allowance of the writ of error is by the chief judge of the court in which the judgment was in fact rendered, though the record, by order of such court, may have been sent to an inferior court, and an additional entry of what was adjudged in the appellate one there entered. *Ib.*

JURISDICTION (*continued*).

4. So it has (under the twenty-fifth section of the Judiciary Act), whenever some one of the questions embraced in the cause was relied on, in the highest court of law or equity in a State, by the party who brings the cause here, and when the right, which he asserted that it gave him, was denied to him, by the State court, provided the record show, either by express averment, or by clear and necessary intendment, that the constitutional provision did arise, and that the court below could not have reached the conclusion and judgment it did reach, without applying it to the case in hand. *Furman* v. *Nichol*, 44.
5. As *ex. gr.* when the record shows that the question in such court was, whether the mortgage of a vessel, duly recorded under an act of Congress, gave a better lien than an attachment issued under a State statute, and the decision was that it did not. *Aldrich* v. *Ætna Company*, 491.
6. It need not appear that the State court erred in its judgment. It is sufficient to confer jurisdiction that the question was in the case, was decided adversely to the plaintiff in error, and that the court was induced by it to make the judgment which it did. *Furman* v. *Nichol*, 44.
7. So it has (under the said twenty-fifth section), when the decree below is silent as to the ground on which it was rendered, if the case show that Federal questions were involved, though it also appears that there were other defences, not re-examinable in this court, if these defences afford no legal answer to the suit. *Maguire* v. *Tyler*, 650.
8. So it may have, although the citation is not signed by the judge who allowed the writ of error, provided the defendant have waived the irregularity by an appearance. *Aldrich* v. *Insurance Company*, 491.
9. So in all cases where a Circuit Court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it, and has, after inquiring into the cause of detention, remanded him to the custody from which he was taken, the Supreme Court, in the exercise of its appellate jurisdiction, has power by the writ of *habeas corpus*, aided by the writ of *certiorari*, to revise the decision of the Circuit Court, and if it be found unwarranted by law to relieve the prisoner from the unlawful restraint to which he has been remanded. *Ex parte Yerger*, 85.
10. And it will assume jurisdiction on appeal for the purpose of reversing a decree rendered by an inferior court not having jurisdiction to proceed in the way in which it has proceeded, and of vacating any unwarranted proceedings of it which stand in the way of a new trial there in a case where, in the judgment of this court, a new trial ought to be granted. And it will in such cases exercise such powers generally as are necessary to do justice. *Morris's Cotton*, 507.

(*b*) It has NOT jurisdiction.

11. Under the twenty-fifth section of the Judiciary Act, unless the *record* show, either by express words or necessary legal intendment, that one of the questions mentioned in that act was before the State court, and was *decided* by it. And in deciding this, neither the argument of

JURISDICTION (*continued*).

counsel nor the opinion of the court below can be looked to for this purpose. *Gibson* v. *Chouteau*, 314.

12. Nor has it jurisdiction of an appeal from a District Court having Circuit Court powers, the appeal having been allowed just after an act had passed, which created a Circuit Court for the same district, and which repealed so much of any act as gave to the District Court Circuit Court powers. *The Lucy*, 307.

13. Nor by virtue of agreements of counsel or otherwise than under the Constitution and acts of Congress. *Ib.*

14. Nor in general unless a transcript of the record was filed at the next term to that when a decree appealed from was made. *Ib.*

II. OF THE CIRCUIT COURTS OF THE UNITED STATES. See *Pleading*, 1, 4, 5.

15. These courts have no jurisdiction in a suit brought by the assignee of a chose in action in the Federal court on a contract assigned, unless the plaintiff show affirmatively that such action could have been sustained if it had been brought by the original obligee. And the burden of proof in such case is on the plaintiff, when the instrument and its assignment are offered under the plea of the general issue. *Bradley* v. *Rhine's Administrators*, 393.

III. OF THE CIRCUIT AND DISTRICT COURTS RESPECTIVELY.

16. The act of February 22d, 1848, which enacts that the provisions of the act of February 22d, 1847, transferring to the District Courts of the United States, cases of Federal character and jurisdiction begun in the Territorial courts of certain Territories of the United States, and then admitted to the Union (none of which, on their admission as States, however, as it happened, were attached to any judicial circuits of the United States), shall apply to all cases which may be pending in the Supreme or other Superior Courts of *any* Territory of the United States which may be admitted as a State at the time of its admission, is to be construed so as to transfer the cases into District Courts of the United States, if, on admission, the State did not form part of a judicial circuit, but if attached to such a circuit, then into the Circuit Court. *Express Company* v. *Kountze Brothers*, 342.

KANSAS.

The laws of, regulating the foreclosure of mortgages, do not authorize a strict foreclosure which does not find the amount due, and which allows no time for redemption, and is final and conclusive in the first instance. *Clark* v. *Reyburn*, 318.

LEGAL TENDER.

The promissory notes of the United States, declared by certain acts of Congress, passed in 1862 and 1863, to be a legal tender and lawful money for the payment of private debts, are not such a tender or such money in discharge of such debts if created by contracts made before the acts were passed. *Hepburn* v. *Griswold*, 603.

LOUISIANA.

1. The 3333d article of the Civil Code of Louisiana, which in English is as follows:

> "*The registry* preserves the evidence of mortgages and privileges during ten years, reckoning from the day of *their* date; *their* effect ceases even against the contracting parties if the inscriptions have not been renewed before the expiration of this time, in the manner in which they were first made,"

relates to the effect of the inscription, when not renewed, not to the effect of the mortgage. *Patterson* v. *De la Ronde*, 292.

2. The general doctrine, where registry of conveyances and mortgages is required, that knowledge of an existing conveyance or mortgage is, in legal effect, the equivalent to notice by the registry, is the law of Louisiana as expounded by the decisions of her highest court. *Ib.*
3. Prescription of a mortgage and vendor's privilege does not begin to run until the debt secured has matured. *Ib.*
4. By the law of, where property, susceptible of being mortgaged, is to be sold under execution, the sheriff is required to obtain, from the proper office, a certificate of the mortgages, &c., against it, and to read it aloud to the bystanders before he cries the property; and also to give notice that the property will be sold subject to them. The purchaser in such case is obliged to pay to the officer only so much of his bid as may exceed the amount of the mortgages, &c., and is allowed to retain the amount required to satisfy them. *Ib.*

MAIL, UNITED STATES.

Under the act of 28th February, 1861, which authorizes the Postmaster-General to *discontinue*, under certain circumstances specified, the postal service on any route, a "*suspension*" during the late rebellion, at the Postmaster-General's discretion, of a route in certain rebellious States, with a notice to the contractor that he would be *held responsible for a renewal* when the Postmaster-General should deem it safe to renew the service there, was held to be a *discontinuance;* and the mail carrier's contract with the government calling for a month's pay if the postmaster discontinued the service, it was adjudged that he was entitled to a month's pay accordingly. *Reeside* v. *United States*, 38.

MANDAMUS.

The extent to which the writ of mandamus from the Federal courts can give relief against decisions in the State courts, involves a question respecting the process of the Federal courts; and, that being so, it is peculiarly the province of this court to decide all questions which concern the subject. *Butz* v. *City of Muscatine*, 575.

MEASURE OF DAMAGES.

1. Where the plaintiff agreed to pack a definite number of articles for the defendants, and made all his preparations to do so, and was ready to do so, but the defendant refused to furnish the articles to be packed, the measure of damages is the difference between the cost of doing the work and the price agreed to be paid for it, making reasonable

MEASURE OF DAMAGES (*continued*).

deductions for the less time engaged, and for release from the care, trouble, risk, and responsibility attending its full execution. *United States* v. *Speed*, 77.

2. When an individual who has been absolved from a contract made by the government to receive and pay for certain articles which it had agreed to purchase, by the refusal of the proper officer to receive the articles when tendered, afterwards consents to deliver them under a threat of the officer that he will withhold money justly due to the plaintiff, he can only recover the contract price, whatever may have been the current value of the articles at the date of delivery. *Gibbons* v. *United States*, 269.
3. In admiralty, the measure, in cases of injury from collision, is the sum sufficient to restore the vessel to the condition in which she was when the collision occurred. *The Baltimore*, 377.

MISSOURI. See *Constitutional Law*, 14, 15.

The subject of incomplete titles to land in the Territory of, ceded by France in 1803, examined. *Maguire* v. *Tyler*, 650.

MOBILE, AND THE BAY OF. See *Constitutional Law*, 3.

MONOPOLY.

A contract by a city corporation with an existing gas company, by which the corporation conferred upon the company the exclusive privilege for a term of years, and till notified to the contrary, of lighting the city with such public lamps as might be agreed on, and also the right to lay down its pipes and extend its apparatus through all the streets, alleys, lanes, or squares of the city, and which declared that "still further to encourage the company, it would take fifty lamps to begin with, to be extended hereafter as the public wants and increase of the city might demand, and such as might be agreed upon by the company and the city corporation," the company, in consideration of these grants, concessions, and privileges, binding itself to furnish to the city gas at half the price they charged their private consumers, does not give a right to the gas company exclusive of the city corporation's right to subscribe to the stock of a new gas company, whose object was to introduce gas into the same city. *Memphis City* v. *Dean*, 65.

MORTGAGE OF VESSELS.

The mortgage of a vessel, duly recorded, under an act of Congress, cannot be defeated by a subsequent attachment, under a State statute, enacting that no mortgage of such property shall be valid, as against the interests of third persons, unless possession be delivered to and remain with the mortgagee, or the mortgage be recorded in a manner specified, in which a mortgage, whose lien in this case was the subject of controversy, was not. *White's Bank* v. *Smith* (7 Wallace, 646), affirmed. *Aldrich* v. *Ætna Company*, 491.

MUSCATINE, CITY OF.

Acts of 27th January, 1852, by the Iowa legislature, amendatory of its charter, construed. *Butz* v. *City of Muscatine*, 575.

MUTUAL OBLIGATIONS. See *Contract*, 1.

NATIONAL BANKS. See *Constitutional Law*, 4, 5, 6; *Pleading*, 1, 2, 3.

1. The 50th section of the National Bank Act of June 3d, 1864 (13 Stat. at Large, 116), which provides that suits under it, in which officers or agents of the United States are parties, shall be conducted by the district attorney of the district, is in so far but directory, that it cannot be set up by stockholders to defeat a suit brought against them by a receiver, under the act, which receiver, with the approval of the Treasury Department, and after the matter had been submitted to the Solicitor of the Treasury, had employed private counsel, by whom alone suit was conducted. *Kennedy* v. *Gibson and others*, 498.
2. Upon a bill filed under the 50th section of that act, by a receiver, against the stockholders, where the bank fails to pay its notes, it is indispensable, that action on the part of the comptroller of the currency, touching the personal liability of the stockholders, *precede* the institution of any suit by the receiver, and the fact must be averred in the bill. *Ib.*
3. It is no objection to such a bill properly filed against stockholders within the jurisdiction of the court, that stockholders named in the bill, and averred in it to be without the jurisdiction, are not made co-defendants.
4. Creditors of the bank are not proper parties to such a bill. The receiver is the proper party to bring suit, whether at law or in equity. *Ib.*
5. Suits may be brought under the 57th section of the act, *by* any association, as well as *against* it. *Ib.*

NAVY DEPARTMENT. See *Contract*, 2, 3.

NEGLIGENCE. See *Common Carrier*, 3; *Negotiable Paper*, 3, 4.

NEGOTIABLE PAPER.

1. Although a bill payable at a particular bank, be physically, and in point of fact, in the bank, still, if the bank be wholly ignorant of its being there—as when, *ex. gr.*, a letter in which the bill was transmitted when brought from the post-office to the bank has been laid down with other papers on the cashier's desk, and before being taken up or seen by the cashier has slipped through a crack in the desk, and so disappeared—the fact of the bill being thus physically present in the bank does not make a presentment. *Chicopee Bank* v. *Philadelphia Bank*, 641.

   And this is so, although the acceptor held no funds there, did not call to pay the bill, and in fact did not mean to pay it any where. *Ib.*
2. In such a case, therefore, the holder cannot look to prior parties, even though, by having been informed after inquiry by him, that the bill had not been received at the collecting bank, they could have inferred that it had not been paid at maturity by the acceptor. *Ib.*
3. An accidental loss or disappearance in a bank of a bill sent to it to collect from the bank's not taking sufficient care of letters brought to it

NEGOTIABLE PAPER (*continued*).
from the mail, carries with it a presumption of negligence in the bank; and on a suit against it, the burden of proof is on the bank to explain the negligence. *Chicopee Bank* v. *Philadelphia Bank*, 641.
4. If, through this negligence alone, it is inferable that notice of presentment, demand, and non-payment, were not given to the holder, so as to enable him to hold parties prior to him, the bank guilty of the negligence is responsible to the holder for the amount of the bill, even though the holder himself have not been so entirely thoughtful, active, and vigilant as he might have been. *Ib.*

NOTICE. See *Louisiana.*
1. Under the recording acts of Illinois, which enact that deeds shall take effect as against creditors and subsequent purchasers from the time that they are filed of record, it is necessary, in order to defeat a subsequent purchaser for value, of an unrecorded title, that he have notice of the previous conveyance, or of some fact sufficient to put a prudent man upon inquiry. *Mills* v. *Smith*, 27.
2. A recital in the record of another deed, made seventeen years after a first one unrecorded, between the original grantor and the heir-at-law of the original grantee—the grantor having already sold to a second purchaser whose deed is recorded—"that a sale had been made to such original grantee, but no deed given, or if given, lost," is not constructive notice to a third person purchasing of such second purchaser. *Ib.*
3. If either such second purchaser, or a purchaser from *him*, have been a purchaser in good faith, without notice, then such purchaser is protected. *Ib.*

OFFICIAL CHARACTER. See *Evidence*, 13.

PATENT. See *Dominus Litis; Public Lands*, 1, 2.
I. GENERAL PRINCIPLES RELATING TO.
1. Whether a given invention or improvement shall be embraced in one, two, or more patents, is a matter about which some discretion must be left with the head of the Patent Office; it being one not capable of being prescribed for by a general rule. *Bennet* v. *Fowler*, 445.
2. Where the defendant proposes to maintain at the final hearing of a case in chancery, that his machine does not infringe the complainant's patent, proof of non-infringement should appear in the testimony. *Ib.*
3. Where a limitation of a claim, as found in a patent, has been caused by a mistake of the Commissioner of Patents in supposing that prior inventions would be covered, if the claim was made, as the applicant makes it, more broad, and an inventor has thus been made to take a patent with a claim narrower than his invention, it is the right, and, as it would seem, the duty of the commissioner, upon being satisfied of his mistake, as to the nature of the prior inventions, to grant a reissue with an amended specification and a broader claim. *Morey* v. *Lockwood*, 230.
4. Where the amended specifications and broader claim secure the patentee only the same invention that he had originally described and claimed, the reissue is valid. *Ib.*

PATENT (*continued*).

5. Where, in a suit at law for infringement of a patent, witnesses testify to previous invention, knowledge, or use of the thing patented, the judgment will be reversed unless an antecedent compliance with the requirements of the 15th section of the Patent Act, requiring in the notice of special matter the names and places of residence of those who the defendant intends to prove possessed prior knowledge, and where the same had been used, appear in the record. And this, although no reversal for this cause have been asked by counsel, but the case have been argued wholly on other grounds. *Blanchard* v. *Putnam*, 420.
6. *Semble*, that the only proper comparison on a question of infringement, is of the defendant's machine with that of the plaintiff's, as described in the pleadings; and that it is no answer to the cause of action to plead or prove that the defendant is the licensee of the owner of another patent, and that his machine is constructed in accordance with that patent. *Ib.*

II. VALIDITY OF PARTICULAR.

7. C. & H. Davidson were the true inventors of the syringe known by their name, and patented by an original patent of March 31st, 1857, and by a reissue with an amended specification, April 25th, 1865. The syringe, called the Richardson syringe, is an infringement of the Davidsons' patents and reissue. *Morey* v. *Lockwood*, 230.

"PERILS OF NAVIGATION."

The explosion of a boiler on a steam vessel is not a "peril of navigation" within the term as used in the exception in bills of lading. *Propeller Mohawk*, 153.

PLEADING. See *Comity*, *Judicial*, 2.

I. IN CASES GENERALLY.

1. Upon a bill filed to wind up a National bank under the 50th section of the act of June 3d, 1864 (13 Stat. at Large, 116), by a receiver, against the stockholders, where the bank fails to pay its notes, it is indispensable, that action on the part of the comptroller of the currency, touching the personal liability of the stockholders, *precede* the institution of any suit by the receiver, and the fact must be averred in the bill. *Kennedy* v. *Gibson et al.*, 498.
2. It is no objection to such a bill properly filed against stockholders within the jurisdiction of the court, that stockholders named in the bill, and averred in it to be without the jurisdiction, are not made co-defendants.
3. Creditors of the bank are not proper parties to such a bill. The receiver is the proper party to bring suit, whether at law or in equity. *Ib.*
4. An averment in the declaration, that the plaintiffs were a firm of natural persons, associated for the purpose of carrying on the banking business in Omaha, Nebraska Territory (a place which, at the time of the suit brought, was remote from the great centres of trade and commerce), and had been for a period of eighteen months engaged

PLEADING (*continued*).

in that business, at that place, is equivalent to saying that they had their domicile there, and is a sufficient averment of citizenship to give jurisdiction to the Circuit Court. *Express Company* v. *Kountze Brothers*, 342.

5. An averment that the defendant is a foreign corporation, formed under and created by the laws of the State of New York, is a sufficient averment that the defendant is a citizen of New York. *Ib.*

II. IN EQUITY. See *Trust*, 1 (iii).

6. The general rule is that the parties to the contract are the only proper parties to a suit for its performance. Hence the assignment by the complainant, prior to a bill for specific performance of a partial interest in the entire contract, is no defence to the bill for such performance. *Willard* v. *Tayloe*, 557.

III. IN SALVAGE.

7. A suit for salvage cannot be abated on the objection of claimants that others as well as the libellants are entitled to share in the compensation. The remedy of such others is to become parties to the suit, or to make a claim against the proceeds, if any, in the registry of the court. *The Camanche*, 448.

8. The defence, that the services for which salvage is claimed were rendered under an agreement for a fixed sum payable in any event, is waived unless set up in the answer, with an averment of payment or tender. *Ib.*

PRACTICE. See *Bill of Exception; California Land Claims*, 2; *Comity, Judicial; Dominus Litis; Jurisdiction*, 8; *Mandamus; Patent*, 5.

I. IN THE SUPREME COURT.

1. A clerical mistake in a writ of error may be sometimes amended by the citation. *McVeigh* v. *United States*, 640.

2. Where there is nothing in a bill of exceptions which enables the Supreme Court to say that questions objected to have exceeded the reasonable license which a court, in its discretion, may allow in cross-examination, no error is shown. *Nailor* v. *Williams*, 107.

3. Where the entries of a clerk of a Territorial District Court, state in a general way the proceedings had in that court, and that they were excepted to by counsel, they do not present the action of the court and the exceptions in such form as that they can be considered by this court. *Young* v. *Martin*, 354.

4. A party cannot, in that court, allege as error in the court below, the admission of evidence offered by himself and objected to by the other side. *Avendano* v. *Gay*, 376.

5. But it is error, entitling the aggrieved party to a reversal, for a court, on motion of a plaintiff, to strike out of an answer that which constitutes a good defence, and on which the defendant may chiefly rely. *Mandelbaum* v. *The People*, 310.

6. A statement of facts, made and filed by the judge several days after the issue and service of the writ of error in the case, is a nullity. *Generes* v. *Bonnemer* (7 Wallace, 564), affirmed. *Avendano* v. *Gay*, 376.

PRACTICE (*continued*).

7. The Supreme Court will assume jurisdiction on appeal for the purpose of reversing a decree rendered by an inferior court not having jurisdiction to proceed in the way in which it has proceeded, and of vacating any unwarranted proceedings of it which stand in the way of a new trial there in a case where, in the judgment of this court, a new trial ought to be granted. And it will in such cases either reverse the judgment or decree, and direct the proceedings to be dismissed, or remand the cause, with directions to allow the pleadings to be amended, and to grant a new trial, according to law. And if the subject in controversy be a fund lately in the registry of the court, but which has been distributed so that a new trial would be useless unless the fund was restored to the registry where it was before the decree of distribution was executed, it will direct that a writ of restitution issue to the proper parties to restore the fund to the registry. *Morris's Cotton*, 507.
8. Where there are other questions in the record, on which the judgment of the State court might have rested, independently of the Federal question, this court cannot reverse the judgment. *Gibson* v. *Chouteau*, 314.

II. IN CIRCUIT AND DISTRICT COURTS.

(*a*) *In cases generally.*

9. Courts of the United States are not bound to give instructions upon specific requests by counsel for them. If the court charge the jury rightly upon the case generally, it has done all that it ought to do. *Mills* v. *Smith*, 27.
10. When evidence *tends* to prove a contract of a certain character, asserted by a party before a jury, a court should either submit the evidence on the point to the consideration of the jury, or if, in the opinion of the court, there are no material extraneous facts bearing on the question, and the contract relied on must be determined by a commercial correspondence alone, then interpret this correspondence, and inform the jury whether or not it proves the contract to be of the character contended for by the party. *Drakely* v. *Gregg*, 242.
11. A court having fairly submitted to a jury the evidence in a case, and charged as favorably to a party as he could properly have asked, may, in the exercise of its discretion, refuse a request by that party to charge as to which side the burden of proof belongs. *Chicopee Bank* v. *Philadelphia Bank*, 641.
12. A simple omission of a court to charge the jury as fully on some one of the points of a case about which it is charging generally, as a party alleges on error that the court ought to have charged, cannot be assigned for error, when it does not appear that the party himself made any request of the court to charge in the form now asserted to have been the proper one. *Express Company* v. *Kountze Brothers*, 343.

(*b*) *In Equity.*

13. A decree of strict foreclosure, which does not find the amount due, which allows no time for the payment of the debt and the redemption

PRACTICE (*continued*).

of the estate, and which is final and conclusive in the first instance, cannot, in the absence of some special law authorizing it, be sustained. *Clark* v. *Reyburn*, 318.

14. Where, after a mortgage of it, real property has been conveyed in trust for the benefit of children, both those in being and those to be born; all children *in esse* at the time of filing the bill of foreclosure should be made parties. Otherwise, the decree of foreclosure does not take away their right to redeem. A decree in such a case against the trustee alone, does not bind the *cestui que trusts*. *Ib.*

(*c*) *In Admiralty.*

15. Counsel fees are not allowed to the counsel of a gaining side, as an incident to the judgment, beyond the costs and fees allowed by statute. Under the statute now (A.D. 1869) fixing the fees of attorneys, solicitors, and proctors (the statute of 26th February, 1853, 10 Stat. at Large, 161), a docket fee of $20 may be taxed, on a final hearing in admiralty, if the libellant recover $50, but, if he recovers less than $50, only $10. *The Baltimore*, 377.

16. Decrees in salvage will not be disturbed as to their amount, unless for a clear mistake, or gross over-allowance of the court below. *The Camanche*, 448.

PRESENTMENT OF BILLS. See *Negotiable Paper.*

PRESUMPTION. See *Evidence.*

PROMISSORY NOTE. See *Negotiable Paper.*

PUBLIC LANDS.

1. Where a patent for land has issued to one who protests against the survey on which it is made, and the record shows that he never accepted it, the Secretary of the Interior may recall it. *Maguire* v. *Tyler*, 650.
2. Where a patent is issued on a claim which has no certain limits, reserving "all valid adverse rights," a second patent to another claimant for a portion of the same land, is valid and operative to convey the title. *Ib.*
3. Where there is a specific tract confirmed according to ascertained boundaries, the legal effect of the confirmation is to establish the right and locate the claim. But it is otherwise when the claim has no certain limits, and the confirmation is on the condition that the land is to be surveyed. *Ib.*

PUBLIC POLICY.

1. A contract for the payment of Confederate States treasury notes, made between parties residing within the so-called Confederate States, can be enforced in the courts of the United States, the contract having been made on a sale of property in the usual course of business, and not for the purpose of giving currency to the notes or of otherwise aiding the rebellion. *Thorington* v. *Smith*, 1.
2. Evidence may be received that a contract payable in those States, during the rebellion, in "dollars," was in fact made for the payment in Confederate dollars. *Ib.*

RATIFICATION.

If, with a full knowledge of the facts concerning it, a person ratify an agreement which another person has improperly made, concerning the property of the person ratifying, he thereby makes himself a party to it, as much so as if the original agreement had been made with him. No new consideration is required to support the ratification. *Drakely* v. *Gregg*, 242.

REBELLION, THE. See *Public Policy; Tennessee*, 3.

1. The military authorities had no power under the act of July 13th, 1861, to license commerical intercourse between the seceding States and the rest of the United States. *The Ouachita Cotton case* (6 Wallace, 521) affirmed. *McKee* v. *United States*, 163.
2. Such trade was not authorized in March, 1864, by regulations prescribed by the Secretary of the Treasury in pursuance of the said act, but, on the contrary, was at that time forbidden by the then existing regulations of the treasury. *Ib.*
3. Even supposing such trade to have been licensed in March, 1864, in pursuance of the act of July 13th, 1861, the license would not have authorized a purchase by a citizen of the United States from any person then holding an office or agency under the government of the so-called Confederate States; all sales, transfers, or conveyances by such persons being made void by the act of July 17th, 1862. *Ib.*
4. The 8th section of the act of July 2d, 1864, which enacts that it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, did not confer the power to license trading within the military lines of the enemy. *United States* v. *Lane*, 185.
5. By the regulations issued under the act, the purchasing agent could not act at all until the person desiring to sell the Southern products made application, in writing, stating that he owned or controlled them, stating also their kind, quality, and location; and even then the power of the purchasing agent before the delivery of the products was limited to a stipulation (the form was prescribed) to purchase, and to the giving a certificate that such application was made, and to requesting safe conduct for the party and his property. *Ib.*
6. Where a seizure of property on land is made under the acts of July 13th, 1861, or of August 6th, 1861, or July 17th, 1862, passed in suppression of the rebellion, the claimants are entitled to trial by jury, though the suit be in form a libel of information; and the suit can be removed into this court by writ of error alone. *Union Insurance Company* v. *United States* (6 Wallace, 765), and *Armstrong's Foundry* (Ib. 769), affirmed. *Morris's Cotton*, 507.

RECITAL. See *Notice*, 2, 3.

REGISTRATION OF DEEDS AND MORTGAGES. See *Notice; Louisiana.*

RES GESTÆ. See *Evidence*, 5, 6.

SALARY. See *Government Officer.*

SALVAGE.

1. A corporation is not disqualified, by the simple fact of its being a corporation, from maintaining a suit for salvage. Hence, where a service, in its nature otherwise one of salvage, was performed by a stock company, chartered to hire or own vessels manned and equipped to be employed in saving vessels and their cargoes wrecked, and to receive compensation in like manner as private persons, and where the persons actually performing the service had no share in the profits of the company, but were hired and paid under permanent and liberal arrangements and rates of pay—the net profits being divided among stockholders—such service was held to be a salvage service, and the corporation to be entitled to pay as salvors accordingly. *The Camanche*, 448.
2. Nothing short of a contract to pay a fixed sum at all events, whether successful or unsuccessful, will bar a meritorious claim for salvage. *Ib.*
3. A salvage service is none the less so, because it is rendered under a contract which regulates the mode of ascertaining the compensation to be paid, but makes the payment of any compensation contingent upon substantial success. *Ib.*
4. Decrees in salvage will not be disturbed as to their amount, unless for a clear mistake, or gross over-allowance of the court below. *Ib.*

SECRETARY OF WAR. See *War Department.*

SOLDIERS' PAY.

The act of June 20th, 1864, increasing the pay of private soldiers in the army, cannot be construed as having the effect of increasing the allowance to officers for servants' pay. *United States* v. *Gilmore*, 330.

SPECIFIC PERFORMANCE. See *Equity.*

STATE BANKS.

The tax of ten per centum imposed by the act of July 13th, 1866, on the notes of State banks paid out after the 1st of August, 1866, is warranted by the Constitution. *Veazie Bank* v. *Fenno*, 534.

STATES

May bind themselves permanently by a promise made by one legislature, and which subsequent legislatures cannot set aside, not to tax the property of particular charitable institutions, or institutions of learning; and if the institutions are organized on the faith of such promise, the promise becomes a contract whose obligation the State cannot impair. *Home of the Friendless* v. *Rouse*, and *The Washington University* v. *Rouse*, 430, 439.

STATUTE OF LIMITATIONS, THE.

Has no application to an express trust where there is no disclaimer. *Seymour* v. *Freer*, 202.

STATUTES OF THE UNITED STATES.
The following, among others, referred to, commented on, or construed.
September 24, 1789. See *Admiralty*, 1, 2; *Habeas Corpus*, 1; *Jurisdiction*, 1–16; *Pleading*, 4–5; *Practice*, 1–9.
March 3, 1803. See *Jurisdiction*, 12.
April 14, 1818. See *War Department.*
July 4, 1836. See *Patent.*
July 4, 1836. See *Public Lands.*
August 23, 1842. See *Government Officer.*
August 26, 1842. See *Government Officer.*
February 14, 1847. See *Jurisdiction*, 12, 13.
February 22, 1847. See *Jurisdiction*, 16.
February 22, 1848. See *Jurisdiction*, 16.
August 3, 1848. See *Contract*, 2, 3.
March 3, 1849. See *Public Lands.*
July 29, 1850. See *Mortgage of Vessels.*
February 26, 1853. See *Practice*, 15.
June 14, 1860. See *California Land Claims.*
February 28, 1861. See *Mail, United States.*
March 2, 1861. See *War Department*, 3.
July 13, 1861. See *Rebellion, The*, 1–3, 6; *Trial by Jury.*
August 6, 1861. See *Rebellion, The*, 6; *Trial by Jury.*
February 25, 1862. See *Legal Tender.*
July 11, 1862. See *Legal Tender.*
July 17, 1862. See *Rebellion, The*, 6; *Trial by Jury.*
March 3, 1863. See *Legal Tender.*
June 3, 1864. See *National Banks; Pleading*, 1–3.
June 20, 1864. See *Soldiers' Pay.*
June 30, 1864. See *Internal Revenue.*
July 2, 1864. See *Rebellion, The*, 4, 5.
July 13, 1866. See *Constitutional Law*, 4–6.
February 5, 1867. See *Habeas Corpus.*
March 27, 1868. See *Habeas Corpus.*

STATUTES, IMPLIED REPEAL OF. See *Tennessee.*

STATUTES, RULES OF CONSTRUING.
1. A section of one statute not very reasonable as read in the section itself, may be read by the light of a section of an earlier statute on the same general subject; and the effect of the former largely extended thereby. *Kennedy* v. *Gibson et al.* 498.
2. Constructions of statutes, in relation to the accounts of individuals with the United States, made by the accounting officers of the treasury, especially when so long continued as to become a rule of departmental practice, are entitled to great consideration, and will in general be adopted by this court. *United States* v. *Gilmore*, 330.
3. But when, after such a construction of a particular class of statutes has been long continued, its application to a recent statute of the same class is prohibited by Congress, and following the spirit of that prohibition, the accounting officers refuse to apply the disapproved con-

STATUTES, RULES OF CONSTRUING (*continued*).
struction to a still later statute of the same class, its application will not be enforced. *United States* v. *Gilmore*, 330.

TAX. See *Constitutional Law*, 1-6; 9, 10; *States.*

TAXATION. See *Constitutional Law*, 1-6; 9, 10.

TENDER. See *Legal Tender.*

TENNESSEE.

1. The provision in section 12 of the charter of 1838 of the Bank of Tennessee, "that the bills or notes of said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the treasury of the State, and by all tax collectors and other public officers, in all payments for taxes or other moneys due to the State," made a contract on the part of the State with all persons, that the State would receive for all payments for taxes or other moneys due to it, all bills of the bank lawfully issued, while the section remained in force. The guaranty was not a personal one, but attached to the note if so issued; as much as if written on the back of it. It went with the note everywhere, as long as it lasted, and although after the note was issued, section 12 were repealed. *Furman* v. *Nichol*, 44.
2. Section 603 of the Tennessee code of 1858, which enacted that besides Federal money, controllers' warrants, and wild-cat certificates, the collector should receive "such bank notes as are current and passing at par," did not amount to a repeal of the above quoted 12th section; the words of the code having no words of negation, the two enactments being capable of standing together, and implied repeals not being to be favored. *Ib.*
3. This decision does not apply to issues of the bank while under the control of the insurgents. *Ib.*

TERRITORIAL COURTS. See *Jurisdiction*, 16; *Practice*, 3.
It is no part of the duty of the clerk of, to note in his entries the exceptions taken, or to note any other proceedings of counsel, except as they are preliminary to, or the basis of the orders or judgment of the court. *Young* v. *Martin*, 354.

TORTS.
The Government cannot be proceeded against in the Court of Claims, on an implied assumpsit for the torts of its officers, committed while in its service, and apparently for its benefit. The remedy is through Congress. *Gibbons* v. *United States*, 269.

TRIAL BY JURY.
Where a seizure of property on land is made under the acts of July 13th, 1861, or of August 6th, 1861, or July 17th, 1862, passed in suppression of the rebellion, the claimants are entitled to trial by jury, though the suit be in form a libel of information; and the suit can be removed into this court by writ of error alone. *Union Insurance Company*

TRIAL BY JURY (*continued*).

v. *United States* (6 Wallace, 765), and *Armstrong's Foundry* (Ib. 769), affirmed. *Morris's Cotton*, 507.

TRUST.

1. In May, 1835, an agreement was entered into between Price and Seymour, which provided, on the part of Price, that he should devote his time and best judgment to the selection and purchase of land, to an amount not exceeding $5000, in certain designated States and Territories, or in such of them as he might find most advantageous to the interest of Seymour; that the purchases should be made during the then existing year, and that the contracts of purchase should be made, and the conveyances taken in the name of Seymour; and on the part of Seymour, that he should furnish the $5000; that the lands purchased should be sold within five years afterwards, and that of the profits made by such purchase and sale, one-half should be paid to Price, and be in full for his services and expenses. Under this agreement, lands having been purchased by Price and the title taken in the name of Seymour; *Held*,

i. That Seymour took the legal title in trust for the purposes specified; that is, to sell the property within the time limited, and, after deducting from the proceeds the outlay, with interest and taxes, to pay over to Price one-half of the residue; and that, to this extent, Seymour was a trustee, and Price the *cestui que trust*. *Seymour* v. *Freer*, 202.

ii. That the trust continued after the expiration of the five years, unless Price subsequently relinquished his claim; the burden of proof as to such relinquishment resting with the heirs of Seymour. *Ib.*

iii. That the principle of equitable conversion being applied to the case, and the land which was to be converted into money, being regarded and treated in equity as money, the personal representative of Price was the proper person to maintain this suit, and it was not necessary that his heirs-at-law should be parties. *Ib.*

2. The statute of limitations has no application to an express trust where there is no disclaimer. *Ib.*

UNITED STATES MAIL. See *Mail, United States.*

VESSELS. See *Mortgage of.*

WAR DEPARTMENT.

1. The War Department, by its proper officers, may make a valid contract for the slaughtering, curing, and packing of pork, when that is the most expedient mode of securing army supplies of that kind. *United States* v. *Speed*, 77.

2. Such a contract, when for a definite amount of such work, is valid, though it contains no provision for its termination by the Commissary-General at his option. *Ib.*

3. The act of March 2d, 1861, requiring such contracts to be advertised, authorizes the officer in charge of the matter to dispense with advertising, when the exigencies of the service require it; and it is settled.

WAR DEPARTMENT (*continued*).

that the validity of a contract, under such circumstances, does not depend on the degree of skill or wisdom with which the discretion thus conferred is exercised. *United States* v. *Speed*, 77.

4. A contract made by a surgeon and medical purveyor of a military department of the United States with parties for furnishing ice, for the use of the sick and wounded in the hospitals of the United States, in 1864, was invalid until approved by the Secretary of War. Without such approval the surgeon could not bind the United States in any way. *Parrish et al.* v. *United States*, 489.

5. A contract thus approved being executed by the other parties, superseded a previous contract signed by the surgeon, although the latter conformed strictly to proposals made by the parties, and accepted by the surgeon. *Ib.*

UNI

W