

# INDEX.

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## ABANDONED AND CAPTURED PROPERTY ACT. See *Rebellion*, 1.

1. Under it a party preferring his claim in the Court of Claims, need not, where he has purchased in good faith, prove the loyalty of the person from whom he bought the property whose proceeds he claims. *United States v. Anderson*, 56.
2. The vendor is a competent witness to support the claimant's case, if he never had any claim or right against the government, and is not interested in the suit. *Ib.*
3. In a claim under this act, the Court of Claims may render judgment for a specific sum as due to the claimant. *Ib.*
4. Claimants under the act are not deprived of its benefits because of aid and comfort *not* voluntarily given to the rebellion. *United States v. Padelford*, 531.
5. But voluntarily executing, even through motives of personal friendship, the official bonds of quartermasters or commissaries of the rebel army, was giving such aid and comfort. *Ib.*
6. The mere taking possession of a city by the government forces was not a "capture" of all cotton in it, within the meaning of the act. *Ib.*

## ABANDONMENT. See *Insurance*.

## ACCEPTANCE.

Of work not performed according to contract. What amounts to. *Swain v. Seamens*, 254.

## ADMINISTRATOR. See *Foreign Administrator*; *Pleading*, 2, 3, 7.

## ADMIRALTY. See *Average*, 3; *Barges*; *Bottomry*; *Commercial Law*; *Lien*, 1, 2; *Pleading*, 10, 11; *Practice*, 1, 9-11, 39, 40.

1. Where a lien exists by the maritime law of foreign jurisdictions, our admiralty has power to enforce it here, even though all parties be foreigners. *The Maggie Hammond*, 435.
2. The English "Admiralty Court Act" (24th and 25th Victoria), construed in reference to the English courts. *Ib.*
3. Liens for repairs and supplies, whether express or implied, how far and under what circumstances enforced in; and when a necessity for them is presumed or considered as proven. *The Grapeshot*, 129; *The Guy*, 758.
4. Steamers navigating crowded harbors or channels, or entering ports in the dark or in fogs, are bound to move with the greatest care, and to keep themselves under a headway at all times controllable, and sometimes to stop entirely, and where it is night or misty, to wait till they

ADMIRALTY (*continued*).

- can see. In all such cases they must conform strictly to the rules of navigation. The rule applied in various cases. *The Corsica*, 630; *The Johnson*, 146; *City of Paris*, 634; *The Portsmouth*, 682; *The Syracuse*, 672; *The Suffolk County*, 651.
5. Those having no tows, bound to regard with care those having them. *The Alleghany*, 522; *The Syracuse*, 672.
  6. If either one of two vessels colliding have departed from the rules of navigation established by Congress, it must show cause for such its departure. *The Corsica*, 630.
  7. The case set up by a libelled vessel is not necessarily made out by the libellant's proving, as respects his own vessel, a case somewhat different from the one which his libel alleged. *The Suffolk County*, 651.
  8. A neglect by one vessel, on approaching another in the night, to show proper lights, or her showing a wrong one, does not absolve such other vessel, under the act of Congress of April 29th, 1864, prescribing the lights which sailing vessels shall carry, from obligation to observe the usual laws of navigation, or such reasonable and practicable precautions generally as the circumstances allow. *The Gray Eagle*, 505.
  9. A loss equally divided between two vessels, both being in fault. *Ib.*
  10. Positive and direct oral testimony, in a collision case, not controlled by the shape of the wound on the injured vessel. *The Fairbanks*, 420.

## AFFIRMANCE.

By a Superior Court of a judicial decree in a lower one, does not enlarge the operation of the latter. The effect of it considered. *In the matters of Howard*, 175.

AGENCY. See *Principal and Agent*; *Ratification*, 1, 2.

1. Where a partnership is in the habit of indorsing negotiable paper, having blanks left for the date, and gives the paper so indorsed to a person to use—he to fill the blank when he wishes to use it—the firm is liable on the paper with the date filled in, when, thus complete, it is held by innocent *bonâ fide* holders for value. *Michigan Bank v. Eldred*, 544.
2. The power to fill the blanks for dates implies, in favor of such holders, a power in the person trusted to change the date, after the note has been written, and before it is negotiated. *Ib.*
3. An authority to buy cotton, having in view not merely a single transaction, or a number of specified transactions, but a class of purchasers and a department of business—makes a general agency to buy cotton; and if the agent, holding himself out as the general agent, purchase there under his power, he may bind his principal in violation of special instructions not communicated to his vendors, and of which they had neither knowledge nor reason to suspect the existence. *Butler v. Maples*, 766.

APPEAL. See *Practice*, 1, 7, 11–14, 18, 19; *Court of Claims*, 4.

Where an act of Congress gives, as part of the general system of organization of a court, an appeal from any final judgment or decree which

APPEAL (*continued*).

may *thereafter* be rendered by it, an appeal lies from a judgment rendered under an act which gives the court jurisdiction to pass, in the usual way, and not by any special proceedings, upon a class of cases additional to those of which it already had jurisdiction, even though nothing be said in such act about an appeal. *Ex parte Zellner*, 244.

APPOINTMENT. See *Feme Covert*.

## APPURTENANCE.

A right not connected with the enjoyment or use of a parcel of land cannot be annexed as an incident to that land so as to become appurtenant to it. *Linthicum v. Ray*, 241.

ARBITRATION AND AWARD. See *Pleading*, 8, 9.

1. A submission to two arbitrators named, and "an umpire if needful," is an authority to the arbitrators to appoint the umpire. *Smith v. Morse*, 76.
2. A submission to arbitration implies an agreement to submit to the award. *Ib.*

## ARMY OFFICERS.

Under the Act of July 13th, 1866, amendatory of the 4th section of the Act of March 3d, 1865, an officer in the regular army, who during the rebellion accepted a commission of colonel of volunteers, is not entitled to the three months' pay given by those acts to officers of that grade on being honorably discharged under the terms of the act from "military service;" he resuming his duty and rank in the regular army, and being still in the said service. *United States v. Merrill*, 614.

ASSISTANT QUARTERMASTER. See *War Department*.

## AVERAGE.

1. Where a ship has sustained injuries, owing to a voluntary stranding, and undergone repairs, her contributory value, in general average, is her worth before such repairs were made. In the absence of other proof on this point, her value in the policy of insurance at the port of departure is competent evidence; just deduction being made for deterioration. *Star of Hope*, 203.
2. Sacrifices of part of the cargo necessarily made to raise means to prosecute a voyage from a distant port, are the subject of general average. *Ib.*
3. The expenses of an *ex parte* adjustment made by charterers at the port of delivery are not chargeable in admiralty on the ship or freight, unless the results were adopted and used in the court below by the commissioner who stated the adjustment made under order of the court. *Ib.*

BANKRUPT. See *Practice*, 21.

## BARGES.

The special obligation of the owners of, on our Western rivers, to keep them strong, in reference to the new modes of carrying grain,—that is to say, of carrying it in bulk instead of in sacks, a consequence of



**BARGES** (*continued*).

the use of elevators,—this set forth and explained. *The Northern Belle*, 526.

**BILL OF EXCEPTION.** See *Practice*, 16 (*b, c, d*).

**BOTTOMRY.**

To support hypothecation by, what evidence of necessity required. *The Grapeshot*, 130.

**BOUNTY.** See *Army Officers*.

The 3d section of the act of August 6th, 1861, and the 1st and 5th sections of the act of July 2d, 1861, construed in reference to one class of privates "honorably discharged." *United States v. Hosmer*, 432.

**CALIFORNIA.**

1. The Commissioner of the Land Office cannot grant a patent under the 7th section of the act of July 23d, 1866, "to quiet land titles in," unless the purchaser bring himself by affirmative proofs within the terms of the section. *The Secretary v. McGarrahan*, 298.
2. The Board created under the act of March 3d, 1851, "to ascertain and settle private land claims in," had jurisdiction of a claim made under a grant of a lot by a Mexican governor within the limits of the pueblo of San Francisco; and such claim was not required to be presented in the name of the corporate authorities of the city. *Lynch v. Bernal*, 315.
3. The meaning of the 8th and 14th sections of the last-named act explained. *Ib.*
4. The adjudications of the Board on claims within its jurisdiction, cannot be collaterally assailed for error or irregularity; and this position is not affected by the act of March 3d, 1851. *Ib.*
5. The titles granted under the Van Ness ordinance while the claim of the city to the land was pending, were subject to the final decision on the claim. *Ib.*
6. The exception made in the final decree of confirmation to the city of San Francisco was not limited to parcels of land claimed under perfect grants. *Ib.*
7. Under the 11th section of the above-mentioned act of March 3d, 1851, the District Court possesses the power to open an appeal from the Board of Land Commissioners, for the purpose of hearing newly-discovered evidence upon the title of the claimant. *United States v. Rocha*, 639.
8. In determining the effect of a judgment in ejectment in California, the same principles are applicable as in determining the effect of a judgment in any other common law action. *Merryman v. Bourne*, 592.
9. The Van Ness ordinance, effect of. The act of July 1st, 1864, was a confirmation of the title held under that ordinance, and took effect by relation. *Ib.*
10. Alcalde of San Francisco had authority to make grants of pueblo lands, subject to certain authorities. *Ib.*
11. A decree of one of the Spanish governors, that all the places ceded for ranchos within a particular jurisdiction should remain as provisional

**CALIFORNIA** (*continued*).

grants until the *egidos* (common lands) were set off, construed and determined. *United States v. Rocha*, 640.

**CAPTAIN.** See *Master*.

**CAPTURE.** See *Abandoned and Captured Property Act*, 6.

**CAPTURED AND ABANDONED PROPERTY ACT.** See *Abandoned and Captured Property Act*.

**CHARTER-PARTY.**

Performance of a contract of, the same being absolute in its terms and without provision for any contingency, to proceed to a distant port specified, made during a war and for the obvious purpose of furnishing articles to one of the parties to it, not dispensed with by the fact, learned in the course of the voyage, that the whole purpose of the voyage was defeated by the changed condition of military operations. *The Harriman*, 161.

**CHICAGO.**

Ordinance of May 23d, 1850, granting the North Chicago City Railway Company the right to construct a railway, construed as to its extent in obliging the company to keep the streets in a certain state. *Chicago v. Sheldon*, 50.

**COLLISION.** See *Admiralty*, 4-10.

**COMITY, JUDICIAL.** See *Constitutional Law*, 1, 5, 6.

The decision of the highest court of a State, that an act of the State is not in conflict with a provision of its constitution, is conclusive upon this court. *Gut v. The State*, 35.

**COMMERCIAL LAW.** See *Average*; *Charter-Party*; *Insurance*; *Jettison*; *Master*, 1, 2, 4; *Stranding*.

1. Where a master has neither money nor credit and cannot communicate with his owners, he may sell part of his cargo if he cannot make necessary repairs and prosecute his voyage except by doing so. *Star of Hope*, 203.
2. Obligations of the master of a ship to get cargo forward when his ship is disabled in the course of her voyage, stated. *The Maggie Hammond*, 435.

**COMMON CARRIERS.** See *Barges*; *Commercial Law*; *Master*, 1, 4.

"CONFEDERATE STATES OF AMERICA," THE. See *Rebellion*.

**CONFISCATION.** See *Rebellion*, 7-10, 13.

**CONFLICT OF JURISDICTION.** See *Comity, Judicial*; *Constitutional Law*, 7; *Lex Rei Situs*.

**FEDERAL AND STATE COURTS.**

Injunction from State courts cannot control mandamus from Federal courts to State officers to carry out the decrees of the latter courts. *The Mayor v. Lord*, 409.

CONSTITUTIONAL LAW. See *Comity, Judicial; Internal Revenue; National Banks.*

1. A decree in divorce, valid and effectual by the laws of the State in which it was obtained, is valid and effectual in all other States. *Cheever v. Wilson*, 108.
2. The President had power as commander-in-chief during the late rebellion, to establish Provisional Courts, within the portions of the insurgent territory occupied by the National forces, for adjudicating causes arising under the laws of the State or of the United States; and on the close of the war, and consequent dissolution of the court, Congress had power to transfer to the Circuit Court, judgments, orders, and decrees made by it, and which, under ordinary circumstances, would have been proper for its jurisdiction, and to give to them the quality of decrees of the said Circuit Court. *The Grapeshot*, 129.
3. A law changing the place of trial of an offence after its commission, is not an *ex post facto* law. *Gut v. The State*, 35.
4. The obligation of a contract, valid at the time of making by the laws of the State, or by judicial decision upon the laws, cannot be impaired by any decision of the courts of the State subsequently made. *Chicago v. Sheldon*, 50; *The City v. Lamson*, 478.
5. The provision in the 7th amendment of the Constitution, declaring that no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law, applies to the facts tried by a jury in a cause in a State court. *The Justices v. Murray*, 274.
6. So much of the 5th section of the act of March 3d, 1863, relating to *habeas corpus*, &c., as provides for the removal of a judgment in a State court, and in which the cause was tried by a jury, to the Federal court for a retrial on the facts and law, is unconstitutional. *Ib.*
7. The doctrine which exempts the instrumentalities of the Federal government from the influence of State legislation, is limited by the principle that State legislation which does not impair the usefulness or capability of such instruments to serve that government, is not within the rule of prohibition. *National Bank v. Commonwealth*, 353; *Thomson v. Pacific Railroad*, 579.

CONTRACT. See *Charter-Party; Equity*, 1-4; *Notice to Quit*.

1. How far acceptance of work done not according to the terms of a contract amounts to waiver of right to insist on performance according to terms; and what amounts to acceptance. *Swain v. Seamens*, 254.
2. Where a purchaser of real estate fails to comply with the contract under which he obtained possession, the vendor may treat the contract as rescinded, and regain the possession by ejectment. *Burnett v. Caldwell*, 290.
3. Where doubt exists as to the construction of an instrument prepared by one party, upon the faith of which the other party has incurred obligations or parted with his property, that construction should be adopted which will be favorable to the latter. The principle applied. *Noonan v. Bradley*, 395.



CONTRACT (*continued*).

4. A peculiar one, giving a lien on drafts to be drawn by the government for articles to be delivered to it, construed under special facts subsequently arising. *Bank of Washington v. Nock*, 373.

COUPONS. See *Pleading*, 6.

1. Suit may be brought on, by owner, when detached from the bond to which they once belonged, and though the owner of the coupon be no longer owner of the bond. *The City v. Lamson*, 478.
2. Are not barred, though cut from it, by a less time than would bar the bond to which they belonged. *Ib.*

## COURT AND JURY.

Their respective provinces when any evidence is submitted tending to prove issue. See *Jury*.

COURT OF CLAIMS. See *Abandoned and Captured Property Act*, 1-3.

1. The term "appropriation" in the act of July 4, 1864, relating to the, includes all taking and use of property by the army and navy in the course of the rebellion not authorized by contract with the government. *Filor v. United States*, 45.
2. Has no jurisdiction of claims founded upon equitable considerations merely. *Bonner v. United States*, 156.
3. Proper mode of having that court supply supposed defects in its conclusions deducible from the evidence before it, stated. *United States v. Adams*, 661.
4. The mere making and pendency of a motion in, for a new trial, under the act of June 25th, 1868, § 2, is not a sufficient ground for dismissal of an appeal taken to this court prior to the making of such motion. But the granting of such motion, and the order for a new trial, vacating as it does the judgment appealed from, is. *United States v. Ayres*, 608.

CUSTOM DUTIES. See *Evidence*, 3.DANGERS OF THE NAVIGATION. See *Jettison*.DECREE OF DISTRIBUTION. See *Practice*, 31.DEED. See *Infant*; *Principal and Agent*.

Where a person has bought land and paid for it, the deed subsequently made in consequence does not confer a new title on him; but confirms the right which he had acquired before the deed was made. *Irvine v. Irvine*, 617.

DEPARTMENTS. See *Mandamus*, 1, 2.

## DISTRICT OF COLUMBIA.

Old statutes of Maryland on the subject of judgments against the administrators of a decedent, and proceedings to bind the decedent's realty under them construed; and the independence of the heir from judgments against the administrator set forth. *Ingle v. Jones*, 486.

DIVORCE. See *Domicile*; *Pleading*, 5; *Subrogation*.

A decree in, giving a husband one-third of his wife's rents, these being at the time of the decree subject to a paramount right of dower in her

# DIVORCE (*continued*).

mother, does not carry a third of the third got by the wife on the mother's death and consequent falling in of her dower. *Cheever v. Wilson*, 109.

# DOMICILE.

A wife may acquire a domicile different from her husband's whenever it is proper that she should have such a domicile, and on such a domicile, if the case otherwise allow it, may institute proceedings for divorce, though it be neither her husband's domicile nor have been the domicile of the parties at the time of the marriage or of the offence. *Ib.*

EQUITY. See *Court of Claims*, 2; *Estoppel*; *Marriage Settlement*; *Practice*, 28—38; *Trustee*.

1. Protects and will direct performance of a parol gift of land accompanied by possession, and where the donee has made valuable improvements. The principle applied to an antenuptial promise by a father to give a lady about to marry his son, a lot of ground. *Neale v. Neales*, 1.
2. Will not allow the statute of frauds to be set up where the contract has been largely performed on both sides. *Swain v. Seamens*, 254.
3. Has always jurisdiction of fraud, misrepresentation, and concealment, and this does not depend on discovery. *Jones v. Bolles*, 364.
4. Has jurisdiction of cases where an agreement which it would be a fraud to keep on foot, is perpetual in its nature, and where its cancellation is the only effectual relief against it. *Ib.*
5. What is a sufficient interest in a complainant to sustain such a bill. *Ib.*
6. How far a party may exercise legal rights after by his seeing and silence the other side have been encouraged to lay out money. *Swain v. Seamens*, 254; *Irvine v. Irvine*, 618.
7. Has no jurisdiction of a proceeding to vacate the extension of a patent, of which the extension has expired before the proceeding was begun. *Bourne v. Goodyear*, 811.

ESTOPPEL. See *Equity*, 1, 2, 6.

1. When one makes a deed of land covenanting that he is the owner, and subsequently acquires an outstanding and adverse title, his new acquisition enures to the grantee on the principle of. *Irvine v. Irvine*, 617.
2. A widow held not estopped from a claim on her husband's estate for the proceeds of her separate estate, by her being a formal party to a compromise between heirs at law and residuary legatees, by which the former received a sum of money and the latter the residue of the estate after settlement of it; she having done nothing to conceal her claim. *Walker v. Walker*, 743.

EVICITION. See *Threat of Suit*.

EVIDENCE. See *Abandoned and Captured Property Act*, 2; *Admiralty*, 10; *Patents*, 13; *Practice*, 8, 16, 24; *Missouri*, 1.

1. In ejectment, where the plaintiff's title is that of a voluntary purchaser under an execution void because the lien of the judgment had expired, and the defendant's that of a *bonâ fide* purchaser from the



EVIDENCE (*continued*).

debtor during the continuance of the lien, it is not competent for the plaintiff to prove that the defendant promised the creditor, under whose execution the land was sold, to pay the judgment, and that he did not do so; in consequence of which the lien was suffered to expire. The fact, if proved, would not extend the lien of the judgment. *Norris v. Jackson*, 125.

2. The act of July 2d, 1864, enacting that in courts of the United States, there shall be no exclusion of any witness in civil actions, "because he is a party to or interested in the issue tried;" and the act of March 3d, 1865, making certain exceptions to the rule, apply to civil actions in which the United States are a party. *Green v. United States*, 655.
3. Whether certain imported goods were similar to certain other goods described in the revenue law, for the purposes of customs duties, is a mixed question of law and fact, and cannot, by the mere charge of the court, be wholly withdrawn from the jury. *Barney v. Schmeider*, 249.
4. Evidence may be given by a treasury agent of the contents of a permit to buy cotton; the permit not being produced by the other side on call. *Butler v. Maples*, 766.
5. In a suit against an insurance company for the value of goods lost in the burning of a store, books whose correctness as showing the amount and value of the goods is testified to by the person proving them, are, in connection with his testimony, competent evidence to show such value. *Insurance Company v. Weide*, 677.
6. An abstract made from papers burnt, if these are shown to present correct values, is good as secondary evidence. *Ib.*
7. Where a party had contracted for a thing in a manufactured state, and refused to take it, evidence may be given that material had been so far prepared to manufacture the thing contracted for as that it was injured for anything else; and that there was no sale in the market for the thing contracted for and refused. *Chicago v. Greer*, 726.
8. An admission by the agent of a city, authorized to contract for a thing for the city's use, that he *thought* the city liable, to a certain extent, for a thing which was furnished to it in professed discharge of a contract, *because the city had used the thing*, may go to the jury as an admission of the fact of use, in suit on the contract against the city by the party furnishing the thing, and where the city sets up as a defence that the thing furnished was not the thing agreed to be furnished. *Ib.*
9. A person having had sufficient experience to be an expert in testing the strength of hose, may on such a suit, state that a particular test applied *ex parte*, was not a fair one. *Ib.*
10. At what rates other persons offered or undertook at another time to make a particular thing for a defendant, is not evidence in a suit by a plaintiff on the defendant's contract to pay him a greater sum if he would make the same thing, at the time contracted for. *Ib.*
11. The testimony of a person, not an expert, that fire-hose of a peculiar size which the city had contracted for, would "not answer the city's

**EVIDENCE** (*continued*).

purpose," is inadmissible on a suit by the manufacturer against the city for the contract price. *Chicago v. Greer*, 726.

**EXECUTOR.** See *Administrator*; *Powers*; *Practice*, 26.

**EX POST FACTO LAW.** See *Constitutional Law*, 3.

**FALSE RETURN.**

Where a writ of monition issued upon a libel of information, filed by the United States against a promissory note, commanded the marshal "to attach the note, and to detain the same in his custody until the further order of the court respecting the same;" and the marshal returned that he had "arrested the property within mentioned;" Held, in an action against him for a false return, 1st, that service of the writ required him to take the note into his actual custody and control; and 2d, that the return signified that he had actually done so. *Pelham v. Rose*, 103.

**FEME COVERT.** See *Divorce*; *Domicile*; *Husband and Wife*.

A married woman has the same power as a *feme sole* to pledge rents settled in trust for her to receive, take and enjoy them to her sole and exclusive use and benefit. *Cheever v. Wilson*, 108.

**FOREIGN ADMINISTRATOR.** See *Pleading*, 2, 3, 7; *Practice*, 26.

1. Cannot prosecute a suit in another State, without first obtaining letters there. *Noonan v. Bradley*, 394.
2. But a voluntary payment of a debt to one held good as against the claim of an administrator duly appointed at the domicile of the debtor, in which last place the debt was paid; there having been no creditors of the intestate in this last place, nor any persons there entitled as distributees. *Wilkins v. Ellett, Administrator*, 740.

**FOREIGN JUDGMENT.**

A judgment recovered in England, against a person in the United States, without any notice of the suit other than a personal one served on him in this country, is null. *Bischoff v. Wethered*, 812.

**FRAUDS, STATUTE OF.** See *Equity*, 1, 2.

**GENERAL AVERAGE.** See *Average*.

**GOVERNMENT CONTRACTS.** See *Lien*, 3; *War Department*.

**GOVERNMENT PAPERS.**

Proper mode of proving. *Barney v. Schneider*, 249.

**HUSBAND AND WIFE.** See *Divorce*; *Feme Covert*; *Marriage Settlement*; *Pleading*, 5; *Subrogation*.

1. Covenants for wife's separate maintenance, through trustees, valid; and not the less so because containing a provision looking to reunion. *Walker v. Walker*, 743.
2. Husband may be chargeable as trustee for his wife for her separate income received by him for investment and not invested. *Ib.*

**ILLINOIS.**

The statute of March 1, 1847, and those previous thereto, relating to the late Bank of, construed. *McGoon v. Scales*, 23.

## INFANT.

His deed of lands, voidable only, and while not generally ratified by mere acquiescence may be ratified by any act showing clear intent to affirm. *Irvine v. Irvine*, 617.

## INSURANCE.

Holding a vessel for an unreasonable time to make repairs, is a constructive acceptance of an abandonment, even though this have been unwarrantably made. *Copelin v. Insurance Company*, 461.

## INTEREST.

The estate of a husband who had maltreated his wife charged, through a series of years, with, compounded annually, of moneys settled to her separate use, of which he had received the interest under a promise, not performed, to invest. *Walker v. Walker*, 743.

## INTERNAL REVENUE.

The Internal Revenue Act of March 2, 1867, which makes it a misdemeanor, punishable by fine and imprisonment, to sell, &c., illuminating oil made of petroleum, inflammable at less than a certain temperature, is a police regulation, and accordingly can have no operation within State limits. *United States v. Dewitt*, 41.

## INTERPRETATION.

General principle of, in construing ambiguous instruments. See *Contract*, 3.

## IOWA.

The proviso in the act of May 15th, 1856, for aid in the construction of railroads in the State of Iowa, excludes the lands granted to that State, among others, by the act of September 28th, 1850, known as "the swamp-land grant." *Railroad Company v. Fremont County*, 89; *Railroad Company v. Smith*, 95.

## JETTISON.

A loss of a part of the cargo by, resorted to in order to lighten the boat after she had run aground in consequence of violating a dictate of prudence, is not a loss "by dangers of the navigation" within the meaning of a bill of lading having an exception in those terms. *The Portsmouth*, 682.

JUDGMENT. See *Affirmance*; *Divorce*; *Comity*, *Judicial*; *Constitutional Law*, 1, 6; *Foreign Judgment*.

1. If the court rendering the judgment had jurisdiction, and the officer who sold had authority to sell, the sale, if made to one not a party to the suit, will not be void by reason of errors in the judgment or irregularities in the officer's proceedings, which do not reach the jurisdiction of the one or the authority of the other. It will be valid, though the judgment may afterwards be reversed. *McGoon v. Scales*, 23.
2. A divorce decreeing husband one-third of his wife's rents operates on the state of things existing at its date. *Cheever v. Wilson*, 109.

JURISDICTION. See *Court of Claims*, 2; *Foreign Judgment*; *Practice*, 1-16.



JURISDICTION (*continued*).

## I. OF THE SUPREME COURT OF THE UNITED STATES.

## (a) It HAS jurisdiction.

1. Under the 25th section of the Judiciary Act, where the State court in which a judgment in a suit is given is the highest court of law or equity in the State in which a decision in that suit could be had, although that court may not be actually the highest court of law or equity in the State. *Downham v. Alexandria*, 659.

## (b) It has NOT jurisdiction.

2. Of a cause transferred here from the Circuit Court only by consent of parties. *The Nonesuch*, 504.
3. Nor of a case upon documents not in the cause below filed here by consent as if returned under a writ of diminution. *Hoe et al. v. Wilson*, 501.
4. Nor where a party claims below wholly in virtue of the laws of a State, and the highest court of a State decides that under these laws the claimant has no case. *Worthy v. The Commissioners*, 611.
5. Nor of a cause where, during the pendency of the same, a statute from which the jurisdiction was derived is repealed. *Assessors v. Osborne*, 567.
6. Nor (under the 25th section) of a cause where the issue turns solely on the personal identity of an individual, even though the parties claimed under the Federal government. *Carpenter v. Williams*, 785.

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

7. They have jurisdiction of cases transferred to them from State courts, under the 12th section of the Judiciary Act, though the plaintiffs may claim as assignees of parties who, owing to the restriction of the 11th section, would not themselves be capable of suing there. *Bushnell v. Kennedy*, 387.
8. The jurisdiction of suits between citizens of the same State, in internal revenue cases, conferred by the act of March 2d, 1833, "further to provide for the collection of duties on imports," and the act of June 30th, 1864, "to provide internal revenue," &c., was taken away by the act of July 13th, 1866, "to reduce internal taxation," &c. *Hornthall v. The Collector*, 560; *The Assessors v. Osbornes*, 567.

JURY. See *Evidence*, 3; *Patent*, 1.

1. Questions mixed of fact and law cannot be withdrawn wholly from them. *Barney v. Schneider*, 248.
2. Where there is any evidence *tending* to prove the issue on either side, be the evidence weak or strong, it is error not to submit it to them. *Hickman v. Jones*, 197; *Barney v. Schneider*, 248.

## KENTUCKY.

Its act taxing shares in the National banks, and collecting the tax from the bank itself, held valid. *National Bank v. Commonwealth*, 353.

LACHES. See *Practice*, 33.

## LEX REI SITUS.

The law of the State in which land is situated governs its transfer, and

LEX REI SITUS (*continued*).

the effect and construction of deeds conveying it. This principle applied to the statutes of Wisconsin subjecting lands of the late Bank of Illinois, in Wisconsin, to the proceedings of creditors. *McGoon v. Scales*, 23.

LIEN. See *Admiralty*, 1-3.

1. The fact that the owner of a vessel gave acceptances for the amount charged for repairs, held not to affect a lien in admiralty otherwise existing, the acceptor having been insolvent and unworthy of credit, and the credit having in fact been given to the boat. *The Guy*, 758.
2. A contract of affreightment and consequent maritime lien against a vessel, cannot be implied unless there be some kind of agreement to carry the goods made by parties in some way, express or implied, authorized to act for the owner of the vessel. *The Keokuk*, 517.
3. An agreement that advances by a bank shall be a lien on drafts to be given by the government for articles to be furnished to it, does not give a lien on a judgment against the government for violation of its contract; all drafts drawn by it having been paid. *Bank of Washington v. Nock*, 373.

LIMITATIONS, STATUTE OF. See *Coupons*, 2; *Rebellion*, 6.LOUISIANA. See *Practice*, 17.

1. The Provisional Court of, established by the President's proclamation of October 20th, 1862, was constitutional. *The Grapeshot*, 129.
2. The mortgage implied by the general law of, from a father when guardian of his minor children, in their favor, does not make such a contract between the father and the children as that the legislature may not, by special statute, providing for proper reinvestment, authorize the father to sell his property divested of the mortgage. *Lobrano v. Nelligan*, 295.

## MANDAMUS.

1. Judgment in, against an officer, as if yet in office, ordering the performance of an official duty, when in fact he had gone out after service of the writ, and before the judgment, is void, and cannot be executed against his successor. *The Secretary v. McGarrahan*, 298.
2. Cannot be sustained to compel either the Commissioner of the General Land Office, or the Secretary of the Interior, to issue a patent in cases where the exercise of judgment and discretion is necessary. *Ib.*; *Litchfield v. Register and Receiver*, 575.
3. Is rightly enough directed to the mayor and aldermen of a city, if they constitute the city council and have the government of the city, though the city be incorporated as "the city of —." *Mayor v. Lord*, 409.
4. It is no defence to application for, to compel levy of a tax to pay judgment at law on city bonds, that the bonds were irregularly issued. *Ib.*
5. What amounts to a traverse to a recital in an alternative. *Ib.*
6. The duty of the inferior court receiving one, is to give effect to it in the fullest and most complete manner practicable. The principle illustrated by application to facts. *Ex parte Morris and Johnson*, 605.

**MARRIAGE SETTLEMENT.** See *Equity*, 1.

1. In case of antenuptial promises by a father to settle, on marriage, equity requires only reasonable certainty as to fact and terms of the promise. *Neale v. Neales*, 1.
2. Promises to settle in consideration of marriage, are, if practicable, to be specifically carried out rather than compensated for by damages. *Ib.*

**MASTER.**

1. Of vessel, his obligations stated as to carrying or getting forward his cargo when his vessel is disabled in the course of its voyage. *The Maggie Hammond*, 436; *The Portsmouth*, 682.
2. His right to sell part of the cargo in such a case, and when without either money or credit. *Star of Hope*, 203.
3. Wages of one, on the Mississippi River, fixed under particular circumstances at \$900 a month. *Mephams v. Biessel*, 370.
4. Not held liable for bad stowage, he not having been to blame. *Ib.*

**MEADE, MR. R. W.**

The case of his claims against the United States under the Spanish treaty of February 22d, 1819, considered. *Meade v. United States*, 691.

**MISSOURI.** See *Iowa*; *Swamp Lands*.

1. In a suit to recover lands which the plaintiff claims under one of the railroad grants, made by Congress to the State of Missouri, it is competent to prove by witnesses, who know the lands sued for, that they were swamp and overflowed within the meaning of the swamp-land grant, and therefore excluded from the railroad grant. *Railroad Company v. Smith*, 95.
2. The several acts of Congress of June 12th, 1812, May 26th, 1824, and July 27th, 1831, relating to the lands relinquished or reserved for schools, construed. *Public Schools v. Walker*, 282.

**MUNICIPAL BONDS.** See *Constitutional Law*, 4; *Coupons*; *Mandamus*, 3-6.

A debt for a specific sum contracted by a city, and invalid because a statute which authorized the city to contract a debt did not also limit the extent of it, is made valid by a subsequent statute recognizing the validity of the debt as contracted. *The City v. Lamson*, 478.

**NATIONAL BANKS.** See *Constitutional Law*, 7.

1. Under limitations, States may tax them, under the existing statutes of the United States, and the tax may be collected from the bank itself. *National Bank v. Commonwealth*, 353.
2. By the second limitation in the proviso to the 41st section of the National Banking Act, Congress but requires of each State, as a condition to the exercise of the power to tax, that it should, as far as it had the capacity, tax in like manner the shares of banks of issue of its own creation. The principle applied. *Lionberger v. Rouse*, 468.

**NEGOTIABLE PAPER.** See *Agency*, 1, 2.**NOTICE TO QUIT.**

Not generally necessary in ejectment to recover for non-performance of contract of purchase. *Burnett v. Caldwell*, 290.



OFFICIAL BOND. See *Public Money; Rebellion*, 5, 14.

The obligation on an official bond of a person intrusted with the public money is not that of a mere depositary, but of a person who has made a contract, which he must at his own peril perform. The acts of Congress, of April 29th, 1864, and March 3d, 1865, furnish the only exceptions to this rule which this court can act upon. *United States v. Keebler*, 83.

## PARTNERSHIP.

Evidence that by the articles of partnership one partner had no right to indorse negotiable paper, is inadmissible to defeat a *bonâ fide* holder of such paper, indorsed with the firm name by a member of the firm, and taken by such *bonâ fide* holder for value, and without notice of the articles. *Michigan Bank v. Eldred*, 544.

PATENTS. See *Equity*, 7.

## I. GENERAL PRINCIPLES RELATING TO.

1. On a suit at law, involving a question of priority of invention where a patent under consideration is attempted to be invalidated by a prior patent, counsel cannot require the court to compare the two specifications, and to instruct the jury, as matter of law, whether the inventions therein described are or are not identical. How far a question for the jury under appropriate instructions. *Bishchoff v. Wethered*, 812.
2. Where several executors are appointed by the will of a patentee decedent—provision being made, however, for one alone acting—and but one proves the will and receives the letters of administration, he alone can maintain an action for infringement of the letters patent at common law. *Rubber Company v. Goodyear*, 788.
3. Where a patent is granted by the government to C. G. as executor, he can maintain a suit on the patent in all respects as if he had been designated in the patent as trustee instead of executor. *Ib.*
4. An objection to the authority of an executor to maintain a suit on letters patent should be taken by plea in abatement. *Ib.*
5. A patentee or his representative in a reissue may enlarge or restrict the claim, so as to give it validity and secure the invention. *Ib.*
6. A process and the product of a process may be both new and patentable, and are independent of each other. *Ib.*
7. Extended letters patent cannot be abrogated in any collateral proceeding for fraud. *Ib.*
8. A license to use an invention by a person only at "*his own establishment*," does not authorize a use at an establishment owned by himself and others. *Ib.*
9. An objection that the word "patented" was not affixed by the complainant under section 13 of act of March 2d, 1861, must be taken in the answer, if it is intended to be raised at the hearing or before the master. *Ib.*
10. A decree "for all the profits made in violation of the rights of the complainants under the patents aforesaid, by respondents, by the manufacture, use, or sale of any of the articles named in the bill of complaint," is correct in form. *Ib.*

PATENTS (*continued*).

11. Profits are rightly estimated by the master by finding the difference between cost and sales. *Rubber Company v. Goodyear*, 788.
12. In estimating this cost, the elements of cost of materials, interest, expense of manufacture and sale, and bad debts, considered by a manufacturer in finding his profits, are to be taken into account, and no others. *Ib.*

## II. EVIDENCE IN CASES RELATING TO.

13. In giving notice, under the act of July 4th, 1836, section 15, of the names and places of residence of those by whom he intends to prove a previous use or knowledge of the thing, &c., it is enough if the party giving notice fairly puts his adversary in the way that he may ascertain all that is necessary to his defence or answer. He is not bound by his notice to impose an unnecessary and embarrassing restriction on his own right of producing proof of what he asserts. *Wise v. Allis*, 737.

## III. VALIDITY OF PARTICULAR.

14. Charles Goodyear's for vulcanized rubber sustained. *Rubber Company v. Goodyear*, 788.

PAYMENT, VOLUNTARY or UNDER COMPULSION. See *Rebellion*, 5.

## PLEADING.

## I. IN CASES GENERALLY.

1. Pleading over without reservation to a declaration adjudged good on demurrer, is a waiver of the demurrer. *Watkins v. United States*, 759.
2. In an action by an administrator, the objection that as to the cause of action the plaintiff is not and never has been administrator, may be taken by special plea in bar. *Noonan v. Bradley*, 394.
3. In such an action a plea to merits admits nothing more as respects the plaintiff's representative character, than the title stated in the *narr.* *Ib.*
4. One plea in bar is not waived by another inconsistent one, in bar also. *Ib.*
5. Where a divorced husband brings a claim against a tenant of his wife for a portion of her rents allotted to him by the decree of divorce, the tenant, if he means to take advantage of an alleged nullity of the decree, must make his averment of the nullity in such form as that the husband can take issue. *Cheever v. Wilson*, 108.
6. In suing on coupons detached from a bond, it is proper enough to recite the bonds in such general way as by inducement and way of preamble explains and brings into view the relation which the coupons originally held to the bond, and in some respects still hold; but care must be taken not so to declare as to make the suit one upon the bond. *The City v. Lamson*, 477.
7. In an action in one State by an administrator appointed in another, on a bond given to the intestate, a plea that the bond was *bona notabilia* on the death of the decedent, in the State other than the one which appointed the administrator suing as plaintiff, and that an administrator of the effects of the decedent in that State has been ap-

PLEADING (*continued*).

- pointed and qualified, is a good answer to the action. *Noonan v. Bradley*, 394.
8. Where the covenant in a submission to arbitration, after referring certain claims to the decision of arbitrators, adds the words, "as provided in articles of submission this day executed," and no such articles ever had an existence, the declaration in an action for breach of the covenant need not refer to any such articles. Proof that such articles never had an existence will answer an objection of variance. *Smith v. Morse*, 76.
  9. Where an instrument provides for the settlement of certain claims between certain parties, and the submission of other claims between other parties, the latter parties should only be named in actions upon the covenant of submission, although the instrument be signed by all the parties named therein. *Ib.*

## II. IN ADMIRALTY.

10. A slight error in alleging the *place* of collision, not fatal to a libellant's case, unless the question of exact place is material on the question of fault. *The Suffolk County*, 651.
11. The fact that in a libel for collision a contract of towage is recited in the libel, does not necessarily convert the libel into a proceeding on the contract; the real grievance alleged being a wrong suffered by the libellant in mismanagement of a boat libelled, by which his own was destroyed. *The Quickstep*, 665.

POLICE REGULATION. See *Internal Revenue*.

## POSSESSION.

The possession of a wharf under color and with claim of title is sufficient to put the plaintiff, in an action on the case for obstructing him in its use, upon proof of a better title to the wharf, or, of an equal right with the defendant to its use. *Linthicum v. Ray*, 241.

## POWERS.

Foreign to the proper duties of an executor given by will, do not pass to an administrator, unless the testator's intent that they should do so be clear. *Ingle v. Jones*, 486.

PRACTICE. See *Abandoned and Captured Property Act*, 3; *Appeal*; *Comity, Judicial*; *Court of Claims*, 3, 4; *Jury*; *Recognizance of Bail*.

## I. IN THE SUPREME COURT.

1. Any person who in the State courts, on a proceeding where, under State statute, a boat has been made a party, has substantially made himself a party to the case, by asserting on the record his interest in the vessel, and conducting the defence in the highest court of the State, may prosecute a writ of error in his own name in this court under the 25th section of the Judiciary Act. *Steamboat Burns*, 237.
2. A question of jurisdiction in the court below may be considered here, though not raised by the pleadings nor suggested below. *The Maggie Hammond*, 435.
3. On a plea of *nul tiel record* in a court below, where the court, sitting,



PRACTICE (*continued*).

- as a jury, has found the facts setting forth the record relied on, and the same comes here as part of the record from below, this court can review a decision whether the record to which the plea of *non tuel record* is put in, support or fail to support that plea. *Basset v. United States*, 38.
4. But this court will not review a finding of facts made by the court below sitting in the place of a jury. *Ib.*
  5. Nor answer hypothetical questions. *Irvine v. Irvine*, 618; *Pelham v. Rose*, 103; *Michigan Bank v. Eldred*, 544.
  6. Nor decide whether or not on the transfer of a case from a State court to a Federal court, under the 12th section of the Judiciary Act, a new declaration should be filed. *Insurance Company v. Weide*, 677.
  7. Nor hear, except in support of the decree, a party who does not appeal. *The Quickstep*, 665.
  8. Nor where a witness, when examined in chief, testifies apparently to the correctness of an abstract made from papers burnt in a conflagration, and is cross-examined upon the subject of that correctness, allow the party cross-examining, where he has not caused the cross-examination to be brought up on the bill of exception, to object, on a question, on error, as to the admissibility of the abstract, that the witness has not testified sufficiently to the correctness. *Insurance Company v. Weide*, 677.
  9. Nor entertain an objection, made here for the first time, in an admiralty appeal in collision, of too general an allegation of injury. *The Quickstep*, 665.
  10. Nor listen otherwise than with every presumption that the decrees below were right, to an appeal in admiralty on facts, where both District and Circuit Courts were of one view. *Ib.*
  11. Nor in admiralty allow an omission to state some facts which prove to be material, but which cannot have occasioned any surprise to the opposite party, to work injury to the libellant, on appeal, if the court can see that there was no design on his part in omitting to state them. *Ib.*
  12. Nor sustain an appeal or writ taken where there has been no allowance of it. *Gleason v. Florida*, 779; *Pierce v. Cox*, 786.
  13. Nor sustain an appeal or writ from the District of Columbia when the matter in controversy is less than \$1000. *Pierce v. Cox*, 786.
  14. Nor sustain an appeal in the name of a steamboat, though State legislation authorize such appeals. *Steamboat Burns*, 237.
  15. Nor on error to a State court consider questions not called to its attention. *National Bank v. Commonwealth*, 353.
  16. The 4th section of the act of March 3d, 1865, which establishes the mode in which parties may submit cases to the court without a jury, and the manner in which a review of the law of such cases may be had in this court, construed and explained; and a reasonably strict compliance with its terms held necessary by parties who act upon it. *Norris v. Jackson*, 125; and see *Flanders v. Tweed*, 425; *Copelin v. Insurance Company*, 461.

PRACTICE (*continued*).

These principles declared in *Norris v. Jackson*, 125:

- (a) The special finding of the facts mentioned in that statute is not a mere report of the evidence, but a finding of those ultimate facts on which the law must determine the rights of the parties.
  - (b) If the finding of facts be general, only such rulings of the court, *in the progress of the trial*, can be reversed as are presented by a bill of exception.
  - (c) In such cases a bill of exceptions cannot be used to bring up the whole testimony for review, any more than in a trial by jury.
  - (d) Objections to the admission or rejection of evidence, or to such rulings or propositions of law as may be submitted to the court, must be shown by bill of exceptions.
  - (e) If the parties desire a review of the law of the case, they must ask the court to make a special finding which raises the question, or get the court to rule on the legal propositions which they present.
17. Some allowance made in a case from Louisiana, where the rules of the common law do not prevail, for an imperfect understanding of the proper practice under the act. *Flanders v. Tweed*, 425.
  18. An appellant has a right to have his appeal dismissed notwithstanding the opposition of the other side. *Latham and Deming's Appeal*, 145.
  19. Though not to have it dismissed for want of a citation when the appellee is in court represented by counsel, and makes no objection to the want of one. *Pierce v. Cox*, 786.
  20. The rules stated which regulate rehearing of a case, and the practice proper to be pursued where a rehearing is desired. *Public Schools v. Walker*, 603.
  21. Where an appellant becomes bankrupt after his appeal taken, his assignee in bankruptcy, upon the production of the deed of assignment of the register in bankruptcy, duly certified by the clerk of the proper court, may, on motion, be substituted as appellant. *Herndon v. Howard*, 664.
- II. IN CIRCUIT AND DISTRICT COURTS. See *Appeal; Jury; Practice*, 2, 5, 7, 9, 14, 16, 18; *Recognizance of Bail*.
- (a) *In cases generally*.
22. A judgment of conviction on confession may for good cause be set aside, at the same term at which it was rendered, though the defendant had entered upon the imprisonment ordered by the sentence. *Basset v. United States*, 38.
  23. In such case the original indictment is still pending, and a bail bond given after this, for the prisoner's appearance from day to day, is valid. *Ib.*
  24. Where there is evidence before the jury—be it weak or strong—which so much as *tends* to prove the issue on the part of either side, it is error if the court refuse to submit it to the jury. *Hickman v. Jones*, 197; *Barney v. Schneider*, 248.
  25. An entry, omitted at the proper time by inadvertence, in the journal

PRACTICE (*continued*).

- record of the clerk, of the issue of a writ of peremptory mandamus; and an amendment by the marshal to his return, so as to show that he had exhibited the original writ to the party served, allowed *nunc pro tunc*, as amendments of common practice. *Supervisors v. Durant*, 786.
26. The Federal courts will enforce, for the furtherance of justice, the same rules in the adjustment of claims against ancillary executors, that the local courts would do in favor of their own citizens. *Walker v. Walker*, 744.
27. Where a defendant pleads in bar inconsistent pleas, the plaintiff's remedy is not by demurrer but by motion to strike out one plea, or for the defendant to elect. *Noonan v. Bradley*, 394.
- (b) *In Equity*.
28. In taking an account, the master is not limited to the date of entering the decree—he can extend it down to the time of the hearing before him. *Rubber Company v. Goodyear*, 788.
29. Amendment to bill allowed upon fair terms, after a cause had been heard, and a case for relief made out, though not the precise case disclosed by the bill. *Neale v. Neales*, 1.
30. Where a bill is dismissed for want of jurisdiction apparent on its face, the general rule is not to allow costs. *Hornthall v. The Collector*, 560.
31. Where there is a fund in court to be distributed among different claimants, a decree of distribution will not preclude a claimant not embraced in its provisions, but, having rights similar to those of other claimants who are thus embraced, from asserting by bill or petition, previous to the distribution, his right to share in the fund; and in the prosecution of his suit, he is entitled, upon a proper showing, to all the remedies by injunction, or order, which a court of equity usually exercises to prevent the relief sought from being defeated. *In the matters of Howard*, 175.
32. The three months allowed by the 69th of the Rules in Equity, for the taking of testimony, has reference to the taking of testimony by both parties. But the court may enlarge the time. Its action herein is hardly matter for review here. *Ingle v. Jones*, 486.
33. A bill of review will not be granted either where the party has been guilty of laches; or where the court is satisfied that upon the case offered to be made out, the decree ought to be the same as has been already given. *Rubber Company v. Goodyear*, 805.
34. Where, on a bill by several for infringement and an account, the court decree damages, a bill cannot be regarded as a cross-bill, which sets up a judgment in another suit against one of the complainants, and asks that the conjoined defendants in the principal suit discover what share of the damages they claim *respectively*, so that the defendant in that suit may set off his judgment as respects the one against whom it is. *Rubber Company v. Goodyear*, 807.
35. As an original bill it cannot be sustained, if it have either been filed before the decree for damages was rendered in the principal suit, or



PRACTICE (*continued*).

have been a judgment in *attachment* only, and where there was no service on the person of the defendant. *Ib.*

36. A bill which is in no wise auxiliary to an original suit, nor in continuation of that proceeding, does not present a case proper for substituted service. *Ib.*
37. Where certain heirs at law seek to set aside a sale of their ancestor's realty made under a decree of a competent court ordering, at a creditor's instance, such sale for the payment of a debt due him, they should make the creditor on whose application the sale was made a party. All the heirs also should be parties. *Hoe et al. v. Wilson*, 501.
38. This court will reverse and remand a case thus defective as to parties, although this deficiency have not been made a point at the bar below. *Ib.*

(c) *In Admiralty*.

39. Where a collision between two vessels results from the fault of both of them, a party injured may recover against both vessels, and they may be proceeded against in the same libel. *The Washington and the Gregory*, 513.
40. The damages so recovered may be apportioned by the decree equally between the two vessels; and at the same time the right be reserved to the libellant to collect the entire amount of either of them in case of the inability of the other to respond for her portion. *Ib.*

PRE-EMPTION. See *Public Lands*.

The Acts of September 4th, 1841, § 12, May 29th, 1830, and January 23d, 1832, relate to pre-emptive rights conferred upon actual settlers, and do not apply to a case where the entry has not been made under any of them. *Irvine v. Irvine*, 618.

PRINCIPAL AND AGENT. See *Agency*; *Public Law*, 3; *Rebellion*, 12.

Where an instrument, executed by an agent, shows on its face the names of the contracting parties, the agent may sign his own name first and add to it, "agent for his principal," or he may sign the name of his principal first, and add, by himself as agent. *Smith v. Morse*, 77.

PROVISIONAL COURTS. See *Constitutional Law*, 2.PUBLIC LANDS. See *Pre-emption*.

1. Occupation and improvement on the public lands with a view to pre-emption, do not confer a vested right in the land so occupied. *Frisbie v. Whitney*, 187.
2. It does confer a preference over others in the purchase of such land by the *bonâ fide* settler, which will enable him to protect his possession against other individuals, and which the land officers are bound to respect. *Ib.*
3. This inchoate right may be protected by the courts against the claims of other persons who have not an equal or superior right, but it is not valid against the United States. *Ib.*
4. The power of Congress over the public lands, as conferred by the Constitution, can only be restrained by the courts, in cases where the land

**PUBLIC LANDS** (*continued*).

has ceased to be government property by reason of a right vested in some person or corporation. *Ib.*

5. Such a vested right, under the pre-emption laws, is only obtained when the purchase-money has been paid, and the receipt of the proper land officer given to the purchaser. *Ib.*
6. Until this is done, it is within the legal and constitutional competency of Congress to withdraw the land from entry or sale, though this may defeat the imperfect right of the settler. *Ib.*

**PUBLIC LAW.**

1. The principle of *relation*, which as respects the rights of either government, regards a treaty as concluded from the date of its signature, does not apply to private rights under it. As affects these, it is not considered as concluded but from the exchange of ratification. *Harver v. Yaker*, 32.
2. Intercourse during war with an enemy is unlawful to parties standing in the relation of debtor and creditor as much as to those who do not. *United States v. Grossmayer*, 72.
3. Conceding that a creditor may have an agent in an enemy's country to whom his debtor there may pay a debt contracted before the war, yet the agent must be one who was appointed before the war. *Ib.*

**PUBLIC MONEYS.** See *Official Bond*.

1. In suits against persons accountable for such moneys, it is not necessary after introducing certified transcripts of the party's accounts, properly adjusted by the Treasury officers, to show that the defendant had notice of the adjustment, or of the balance found against him. *Watkins v. United States*, 759.
2. To allow the set-off a credit on the trial, it must be shown that the claim, after being properly presented by items and with vouchers to the proper accounting officers, had been refused. *Ib.*

**PUBLIC POLICY.** See *Public Law*, 2, 3.**QUARTERMASTER, ACTING ASSISTANT.** See *War Department*.**RATIFICATION.** See *Municipal Bonds*.

1. Cannot be made of an act unlawful in law and void. *United States v. Grossmayer*, 72.
2. A suit on a covenant contained in a submission to arbitrators, is a ratification of the act of a person who has undertaken as agent to make the submission in behalf of the person bringing the suit. *Smith v. Morse*, 76.
3. Ratification of an infant's deed will not be made by mere acquiescence, but any positive act showing intent to ratify will ratify it. The principle applied. *Irvine v. Irvine*, 618.

**REBELLION, THE.** See *Abandoned and Captured Property Act*; *Evidence*, 4; *Seizure*.

1. Is to be regarded, so far as respects rights under the above-mentioned act, as having been "suppressed," August 20th, 1866. *United States v. Anderson*, 56.

REBELLION, THE (*continued*).

2. The whole Confederate power must be regarded by the Federal courts as a usurpation of unlawful authority, and its Congress as incapable of passing any valid laws; whatever weight may be given under some circumstances to its acts of force, on the ground of irresistible power, or to the legislation of the *States* in domestic matters; as to which the court decides nothing in the case. *United States v. Keebler*, 83.
3. A prosecution in a so-called "court of the Confederate States of America," for treason, in aiding the troops of the United States in the prosecution of a military expedition against the said Confederate States, is a nullity. *Hickman v. Jones et al.*, 197.
4. A traitor against the United States may recover damages against other traitors, for having maliciously arrested and imprisoned him before a so-called court of the Confederate States, for being a traitor to these; the alleged treason having consisted in his giving aid to the troops of the United States while engaged in suppressing the rebellion. *Ib.*
5. A public debtor of the United States cannot defend against a suit on his official bond by proving that he paid the money due the United States to one of its creditors, under an order of the Confederate authorities, where he shows no force or physical coercion which compelled obedience to such order. *United States v. Keebler*, 83.
6. The doctrine declared in *Hanger v. Abbott* (6 Wallace, 532), that statutes of limitations do not run during the rebellion against a party residing out of the rebellious States, so as to preclude his remedy for a debt against a person residing in one of them, held applicable to the Judiciary Acts of 1789 and 1803, limiting the right of appeal from the inferior Federal courts to this court, to five years from the time when the decree complained of was rendered. *The Protector*, 687.
7. The first clause of the 4th section of the act of June 7th, 1862, "for the collection of direct taxes," &c. (which act must be construed with the act of August 5th, 1861, "to provide increased revenue, &c.") merely declares the ground of forfeiture of the party's title to land on which taxes are not paid, namely non-payment of the taxes, while the second clause works the actual investment of the title in the United States, through a public sale. *Bennett v. Hunter*, 326.
8. Under the act of 1862, payment prior to the sale is sufficient; and it may have been made through any person willing to act on behalf of the owner, and whose act is not disavowed by him. *Ib.*
9. The act of March 23d, 1863, relating to *habeas corpus*, does not apply to suits for matters after the rebellion nor to ejectments. *Bigelow v. Forrest*, 339.
10. Under the act of July 17th, 1862 (which is to be construed with the joint resolution of the same date), nothing beyond a life estate could be sold. *Ib.*
11. A permit by a proper treasury agent, to purchase cotton, in a certain region, raised a *prima facie* presumption of the region being within the occupation of the military lines of the United States. *Butler v. Maples*, 766.
12. Such a permit authorized purchases through an agent. *Ib.*



REBELLION, THE (*continued*).

13. The *seizure* of the property of which a forfeiture is sought by proceedings had under the act of Congress of July 17th, 1862, "to suppress insurrection," &c., is essential to give jurisdiction to the court to decree a forfeiture. *Pelham v. Rose*, 103.
14. Executing as surety official bonds of rebel quartermasters or commissaries, was giving aid and comfort to. *United States v. Padelford*, 531.

## RECOGNIZANCE OF BAIL.

1. Conditioned to appear at the next regular term and at *any subsequent term* thereafter, means only at any subsequent term which may follow in regular succession in the course of business of the court. *Reese v. United States*, 13.
2. A stipulation of record between the government and the prisoner that a trial shall be postponed until the determination of cases pending in another court, is inconsistent with a recognizance thus conditioned, and releases the principal from obligation to appear at any such subsequent term; and it discharges the sureties also. *Ib.*
3. *A fortiori*, the sureties are discharged when it is stipulated that the prisoner may sojourn in a foreign country during the term of delay. *Ib.*

## REHEARING.

Rules which regulate, in the Supreme Court, stated. *Public Schools v. Walker*, 603.

## REPAIRS

To ships. See *Admiralty*, 1-3; *Lien*, 1, 2.

SCHOOL LANDS. See *Missouri*.

SEIZURE. See *False Return*.

As applied to a promissory note—under a statute which directs that the property of rebels be seized, the term means the physical taking into custody. *Pelham v. Rose*, 103.

SET-OFF. See *Official Bond*; *Rebellion*, 5.

SHIPS AND SHIPPING. See *Admiralty*; *Average*; *Commercial Law*; *Jettison*; *Master*; *Stranding*.

SOVEREIGN. See *Evidence*, 2.

STATUTE OF FRAUDS. See *Equity*, 1, 2.

STATUTE OF LIMITATIONS. See *Coupons*, 2; *Rebellion*, 6.

## STATUTES OF THE UNITED STATES.

The following among others referred to, commented on, or construed.

September 24, 1789. See *Jurisdiction*; *Practice*, 1-15; *Rebellion*, 6.

March 3, 1803. See *Rebellion*.

June 12, 1812. See *Missouri*.

May 26, 1824. See *Missouri*.

May 29, 1830. See *Pre-emption*.

July 27, 1831. See *Missouri*.

January 23, 1832. See *Pre-emption*.

March 2, 1833. See *Jurisdiction*.

STATUTES OF THE UNITED STATES (*continued*).

- July 4, 1836. See *Patents*.  
 September 4, 1841. See *Pre-emption*.  
 March 3, 1851. See *California*.  
 June 10, 1852. See *Missouri*.  
 February 24, 1855. See *Appeal*.  
 May 15, 1856. See *Iowa*.  
 March 2, 1861. See *Patent*.  
 July 22, 1861. See *Bounty*.  
 August 5, 1861. See *Rebellion*, 7.  
 August 6, 1861. See *Bounty*.  
 June 7, 1862. See *Rebellion*, 7.  
 July 17, 1862. See *Rebellion*, 10.  
 February 25, 1863. See *National Banks*.  
 March 3, 1863, Section 5. See *Appeal*; *Constitutional Law*.  
 March 12, 1863. See *Appeal*; *Abandoned and Captured Property Act*.  
 March 23, 1863. See *Rebellion*, 9.  
 April 29, 1864. See *Admiralty*.  
 June 3, 1864. See *National Banks*.  
 June 30, 1864. See *Jurisdiction*, 8.  
 July 1, 1864. See *California*, 9.  
 July 2, 1864. See *Evidence*, 2.  
 July 4, 1864. See *Court of Claims*, 1.  
 March 3, 1865. See *Army Officers*; *Evidence*, 2; *Practice*, 16.  
 July 13, 1866. See *Army Officers*; *Jurisdiction*, 8.  
 July 23, 1866, Section 7. See *California*, 1.  
 March 2, 1867. See *Internal Revenue*; *Practice*, 21.  
 June 25, 1868. See *Abandoned and Captured Property Act*, 2; *Court of Claims*, 4.

STRANDING. See *Average*.

1. Of a vessel when "voluntary." *Star of Hope*, 203.
2. If accidental, the captain must take all possible care of the cargo. *The Portsmouth*, 682.

## SUBROGATION.

Principles of to be applied in favor of a husband receiving on a divorce from his wife, a decree for one-third of her rents from her patrimonial realty, yet subject to her mother's dower, *as the said rents should become due, for the education and support of their children*; she having previously to the divorce pledged her said rents, subject to the dower right, to creditors for advances, and becoming subsequently entitled to the dower third by her mother's death. *Cheever v. Wilson*, 168.

SWAMP LANDS. See *Iowa*.

1. The act of June 10th, 1850, concerning swamp and overflowed lands, confirmed a present vested right to such lands, though the subsequent identification of them was a duty imposed upon the Secretary of the Interior. *Railroad Company v. Smith*, 95.
2. They were excepted from the subsequent railroad grants to Iowa and Missouri. *Ib.*

TAXATION. See *Constitutional Law*, 7.

TAX SALES. See *Rebellion*, 7, 8.

Of land owned by United States void. *McGoon v. Scales*, 23.

THREAT OF SUIT.

If a party who has entered into possession of land as a tenant under another is threatened with suit upon a paramount title, the threat, under such circumstances, is equivalent to eviction. He may, thereupon, submit in good faith, and attorn to the party holding a valid title, to avoid litigation. In such case it is incumbent upon him, and those who have profited by his submission, to show the existence and superiority of the title in question. *Merryman v. Bourne*, 592.

TITLE PARAMOUNT. See *Threat of Suit*.

TOWING BOATS.

Bound to make up the tow rightly and strong. *The Quickstep*, 665.

TRAITOR. See *Rebellion*, 4.

TREATY. See *Public Law*, 1.

TRUSTEE. See *Husband and Wife; Wisconsin*.

Who was bound to invest, and did not, deprived of all commissions, and charged with interest compounded annually. *Walker v. Walker*, 44.

TUG. See *Towing Boats*.

VARIANCE. See *Pleading*, 8.

VIRGINIA.

The act of the Virginia legislature of February 27th, 1867, touching appeals to the Supreme Court of Appeals of the State, not inconsistent with the Virginia constitution of 1864. *Downham v. Alexandria*, 659.

VOLUNTARY PAYMENT. See *Rebellion*, 5.

WAIVER.

Of contract. See *Contract*, 1.

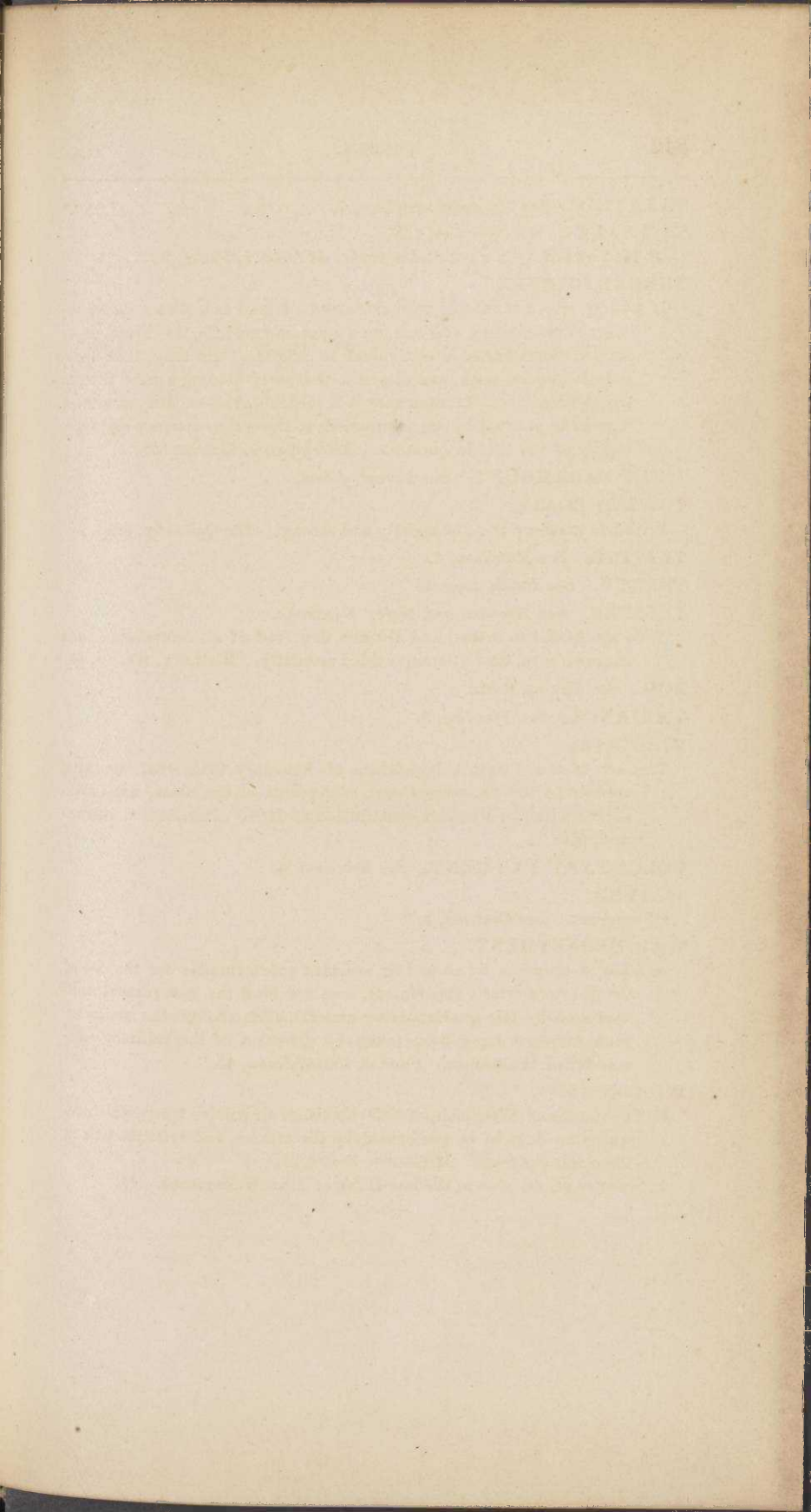
WAR DEPARTMENT.

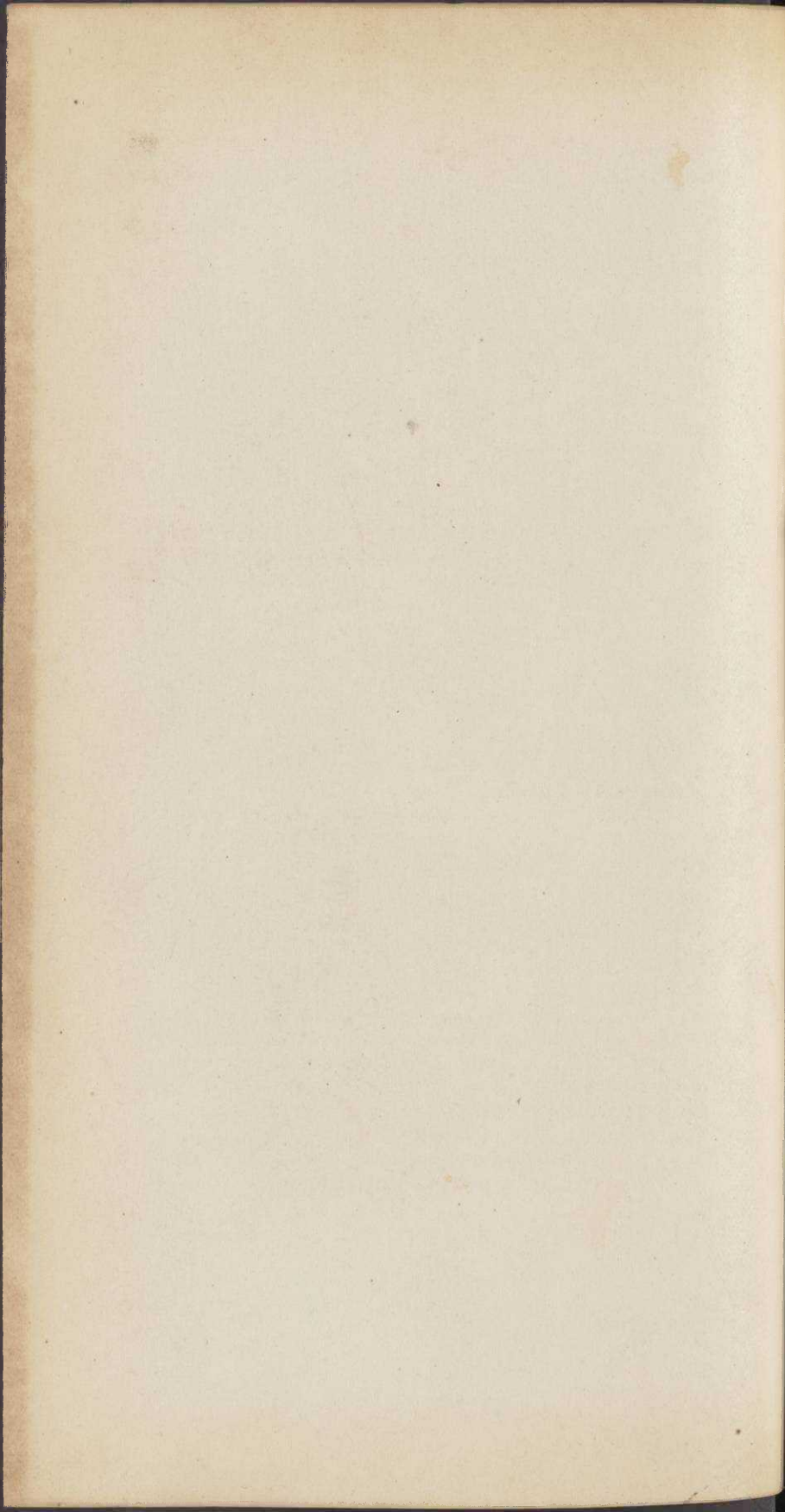
A lease of premises by an acting assistant quartermaster for the use of the quartermaster's department, does not bind the government until approved by the quartermaster-general, even though the action of such assistant have been taken by direction of the military commander of the station. *Filor v. United States*, 45.

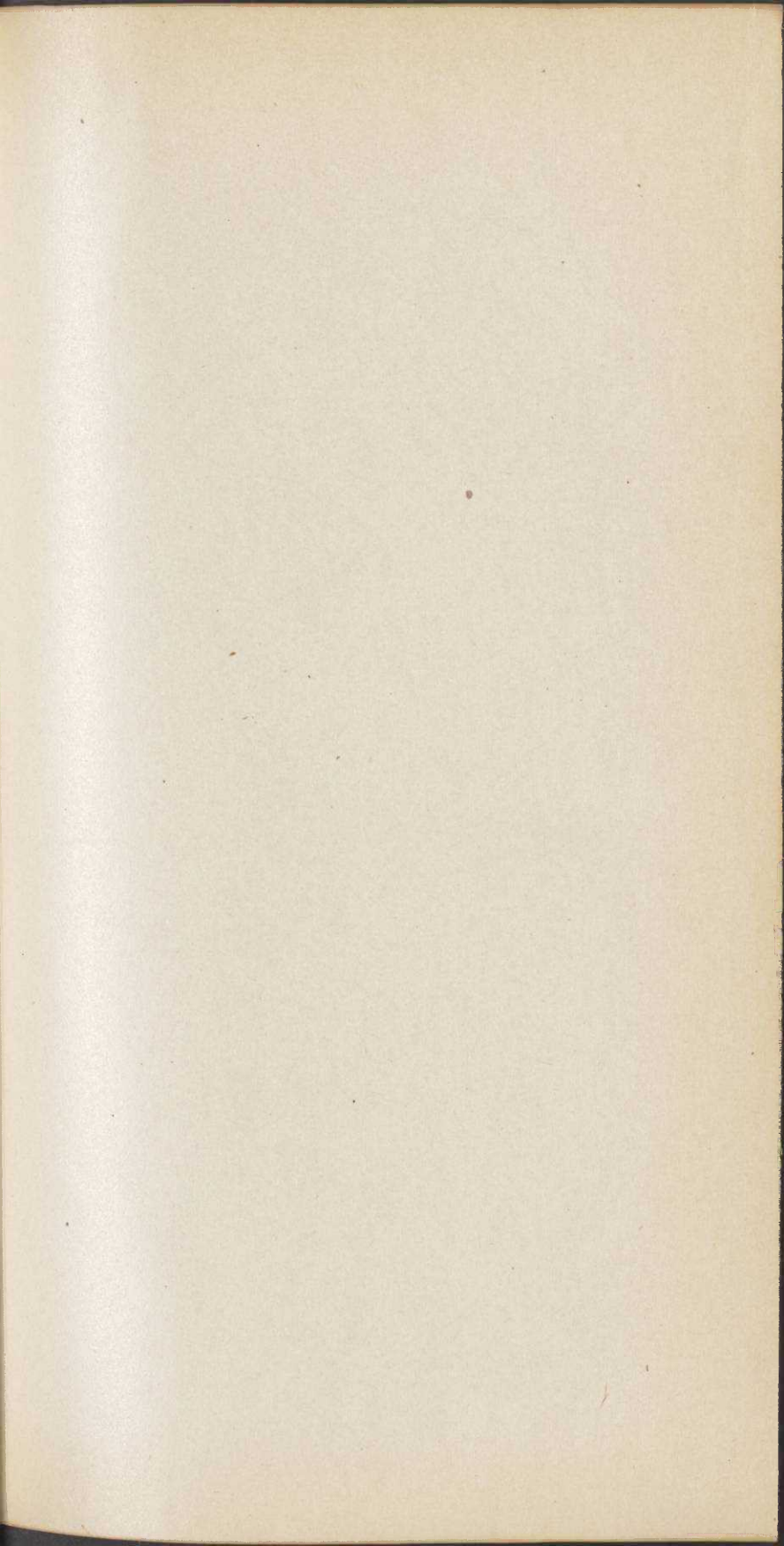
WISCONSIN.

1. The statute of Wisconsin of 1850 abolishes all passive trusts which require no duty to be performed by the trustee, and vests the title in the *cestui que trust*. *McGoon v. Scales*, 23.
2. Statutes of, relative to the late Bank of Illinois construed. *Ib.*

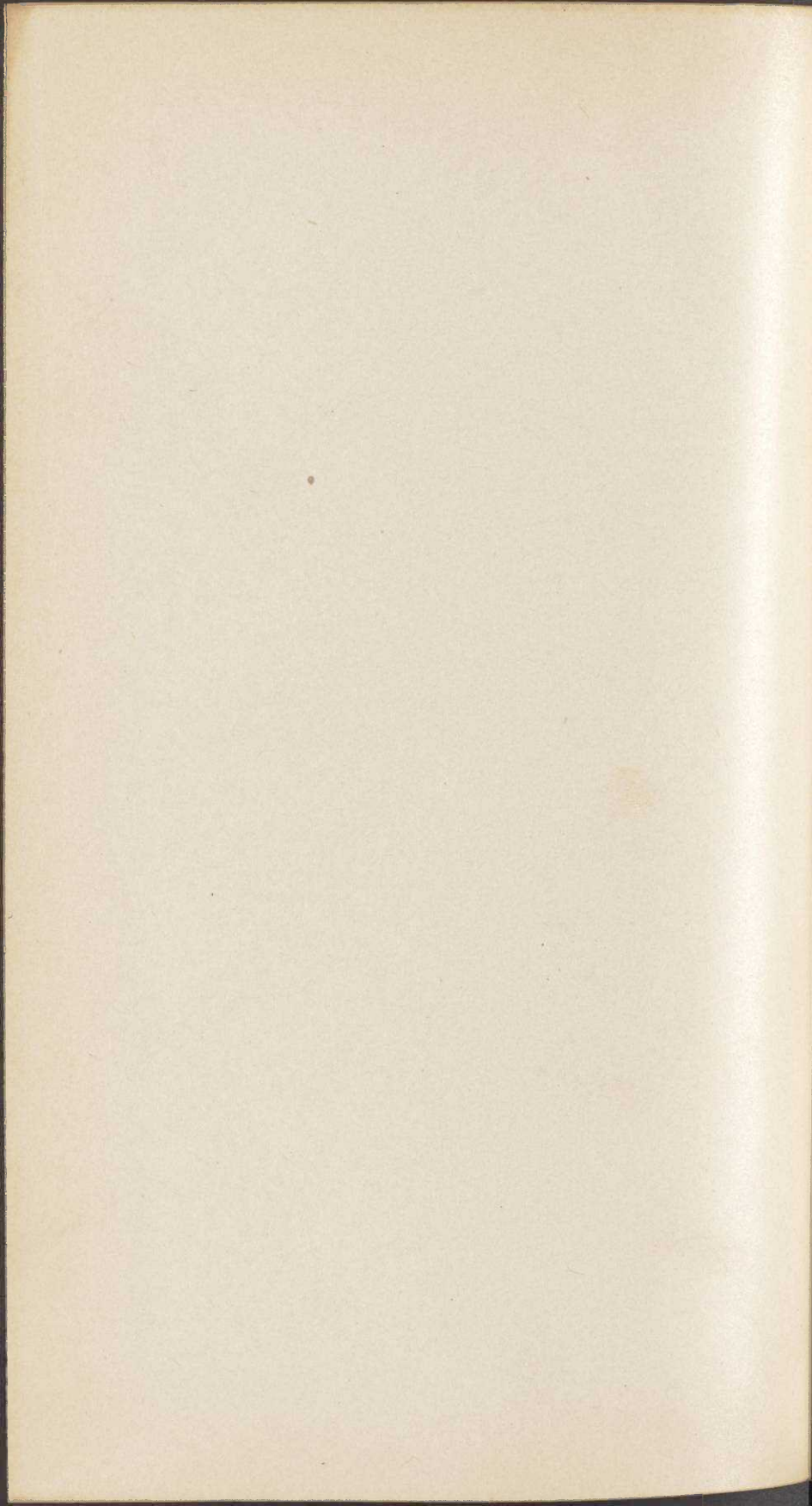


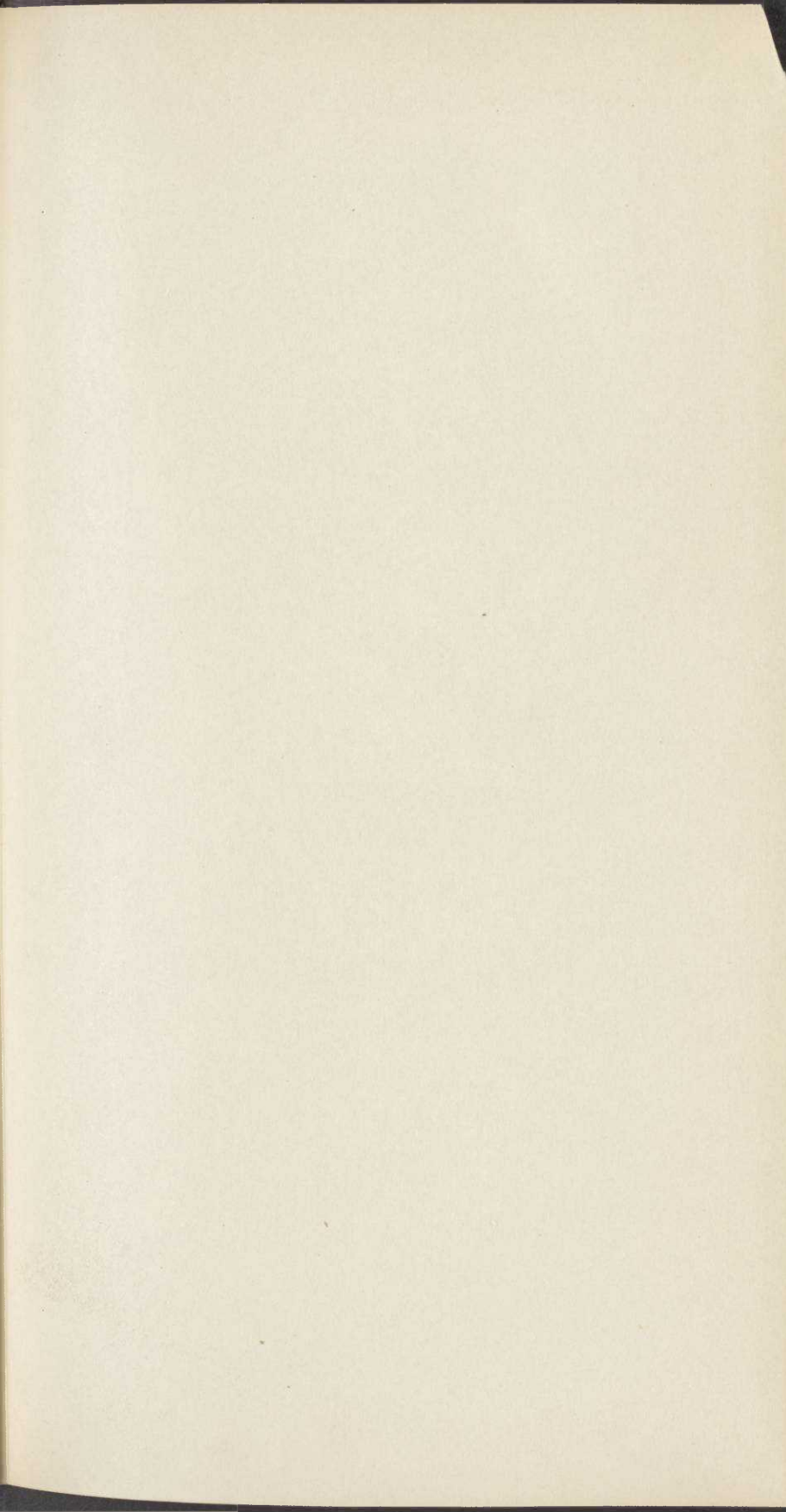






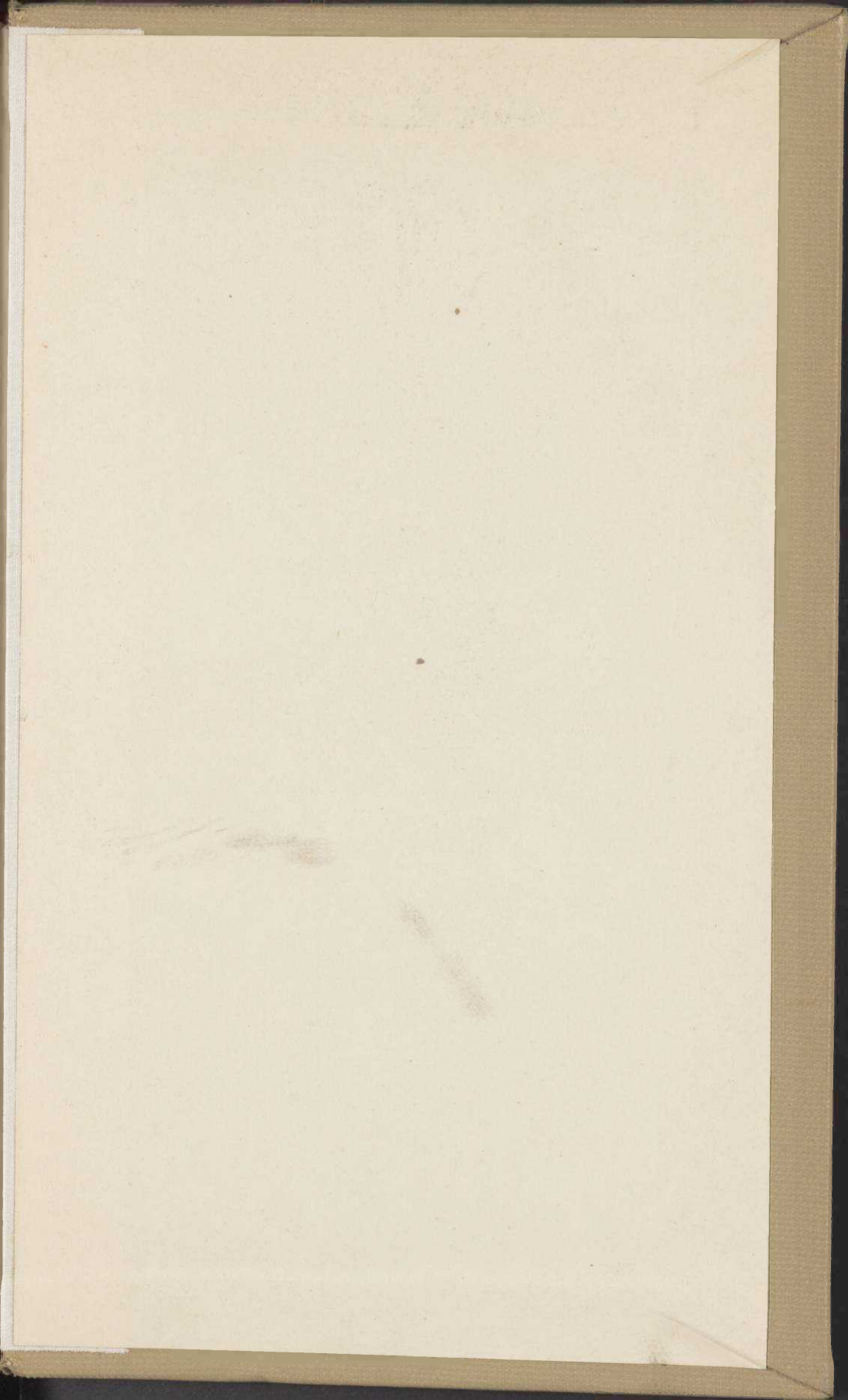












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