

# I N D E X.

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**ACTION.** See *Public Law*, 1-3.

Where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from such nonfeasance or malfeasance. A mistake as to what his duty is and honest intentions will not excuse him. *Amy v. The Supervisors*, 136.

**ADMINISTRATOR.** See *Public Policy*.

**ADMIRALTY.** See *Conflict of Jurisdiction*, 2-4; *Lookouts; Practice*, 13, 14; *Public Law*, 1, 2.

1. Its jurisdiction declared. Has jurisdiction of a contract of marine insurance. *Insurance Company v. Dunham*, 1.
2. If a vessel at anchor in a gale could avoid a collision threatened by another vessel and does not adopt the means for doing so, she is a participant in the wrong, and must divide the loss with the other vessel. *The Sapphire*, 164.
3. The respective duties of steamer and sailing vessel approaching, defined. *The Fannie*, 238.

**AGENCY.** See *Notice*, 3, 4; *United States*, 1, 2.

**APPEALS.**

The court expresses its dissatisfaction with parties who impose upon it a necessity to examine appeals involving no question of law whatever; and being satisfied after examination with its correctness affirmed the decree below, without stating at large the reasons for which it did so. *Mann v. Rock Island Bank*, 651.

**BANKRUPT ACT.** See *Fraud*, 2; *Jurisdiction*, 3.

*Semble*, that a debt incurred by the members of a partnership individually, even in a matter where the firm is to profit, will not, in case of bankruptcy of the firm, let the person to whom the debt was incurred come for a dividend upon the assets of the firm as distinguished from the assets of the individual partners. *Forsyth v. Woods*, 484.

**BILL OF EXCHANGE.** See *Negotiable Paper*.

**BURDEN OF PROOF.** See *Common Carrier*, 2; *Practice*, 5.

**CALIFORNIA LAND CLAIMS.**

1. Nothing more is contemplated by proceedings under the act of Congress of March 3d, 1851, to ascertain and settle private land claims in California, than the separation of lands owned by individuals from the public domain. *Meador et al. v. Norton*, 442.

**CALIFORNIA LAND CLAIMS** (*continued*).

2. What words, under the Mexican law in force in California in 1846, constituted a deed as distinguished from a license. *Steinbach v. Stewart*, 566.
3. A Mexican deed vague in description, received in evidence, being accompanied with proof of livery of seizin and continuing possession. *Ib.*

**CAPTURED AND ABANDONED PROPERTY.** See *Public Law*, 8.  
**CASES AFFIRMED.**

- Bronson *v.* Rodes (7 Wallace, 229), in *Dewing v. Sears*, 379.  
 Butler *v.* Horwitz (Ib. 258), in same case.  
 De Lovio *v.* Boit (2 Gallison, 398), in *Insurance Company v. Dunham*, 1.  
 Farragut, The (10 Id.), in the *Fannie*, 239.  
 Hanger *v.* Abbott (6 Wallace, 532), and the *Protector* (9 Id. 687), in *United States v. Wiley*, 508.  
 Riggs *v.* Johnson County (6 Id. 265), in *Amy v. The Supervisors*, 186.  
 White *v.* Burnley (20 Howard, 235), in *Cook v. Burnley*, 659.

**CHATTEL MORTGAGE.** See *Fraud*, 2.**CHEROKEE INDIANS.** See *Internal Revenue*, 1.**CITIZENSHIP.** See *Jurisdiction*, 10, 11; *Practice*, 4.**COLLISION.** See *Admiralty*, 2, 3.**COMMERCIAL LAW.** See *Shipping*.**COMMON CARRIER.** See *Evidence*, 4.

1. The terms "dangers of lake navigation" include the peril which arises from shallowness of the waters at the entrance of the lake harbors. *Transportation Company v. Downer*, 129.
2. Where the carrier has given evidence from which the jury may infer that the injury occurred from a cause excepted in the bill of lading, the burden is cast on the plaintiff to show negligence. *Ib.*

**COMPROMISES.** See *Equity*, 1.**COMPTROLLER OF THE CURRENCY.**

Cannot subject the United States to judicial jurisdiction. *Case v. Terrell*, 199.

**CONFISCATION ACTS.** See *Constitutional Law*, 4, 5; *Practice*, 13-15; *Public Law*, 4, 5.

1. Of August 6th, 1861, and July 17th, 1862, are constitutional. Their character described, and mode of making seizure of stocks under. *Miller v. United States*, 268.
2. The owner of property, for the forfeiture of which a libel is filed under the latter act of the above mentioned, is entitled to appear and to contest the charges upon which the forfeiture is claimed, although he was at the time of filing the libel a resident within the Confederate lines, and a rebel; and he can sue out a writ of error from this court to review any final decree of the court below condemning his property. *Ib.*; *McVeigh v. United States*, 259.

## CONFLICT OF JURISDICTION.

## I. FEDERAL AND STATE COURTS.

1. The State and National courts being independent of each other, neither can impede or arrest any action the other may take, within the limits of its jurisdiction, for the satisfaction of its judgments and decrees. *Amy v. The Supervisors*, 136.
2. A suit for mariners' wages *in personam* is maintainable at common law. *Leon v. Galceran*, 185.
3. It is no objection to the jurisdiction of a State court in such a suit that the process of sequestration or attachment has been used to bring the vessel on which the services were rendered under the dominion of the court, for the purpose of subjecting it to such judgment as might be rendered in the cause. *Ib.*
4. And a bond given to relieve the vessel so sequestered or attached is properly sued on in a State court. *Ib.*

II. FEDERAL AND STATE GOVERNMENTS. See *Constitutional Law*, 2

## CONFUSION OF GOODS.

Where distilled spirits forfeited to the United States are mixed with other distilled spirits belonging to the same person (ignorant of the forfeiture) they are not lost to the government by such mixture, either on the principle of confusion of goods, or transmutation of species, even though subsequently run through leaches for the purpose of rectification. The government will be entitled to its proportion of the result. *The Distilled Spirits*, 356.

CONSTITUTIONAL LAW. See *Confiscation Acts*; *Jurisdiction*, 2; *Virginia*; *West Virginia*.

1. The consent of Congress required by the Constitution to validate agreements between the States, need not be by an express assent to every proposition of the agreement. It may be inferred from legislation. *Virginia v. West Virginia*, 39.
2. Congress cannot impose a tax upon the salary of a judicial officer of a State. *The Collector v. Day*, 113.
3. It may supersede by statute a prior treaty. *The Cherokee Tobacco*, 616.
4. It can determine what property of public enemies shall be confiscated. *United States v. Miller*, 269.
5. It is not deprived of the power to make war, to suppress insurrection, to levy taxes, to make rules concerning captures on land and sea, when the necessity for their exercise is called out by domestic insurrection and internal civil war instead of by foreign war. *Tyler v. Defrees*, 331.

CONTRACT. See *Corporation*, 1.CORPORATION. See *Taxation*.

1. May be bound by a written contract, though a private seal of one of its officers was used instead of the corporate seal, and though no record may be found authorizing the officer to make the contract, if other evidence proves that he had such authority, or that the company ratified his act afterwards. *Eureka Company v. Bailey Company*, 488.



CORPORATION (*continued*).

2. What requisite to make citizenship of, for the purposes of jurisdiction under the Judiciary Act. *Insurance Company v. Francis*, 210.
3. A railroad corporation of one State cannot set up as against *bond fide* holders of its bonds, executed in due form, that a mortgage securing them was executed in another State, or by virtue of resolutions passed at a meeting held in such other State. *Galveston Railroad v. Cowdrey*, 459.

COURT OF CLAIMS. See *Public Law*, 3; *Sovereignty*.CREDITOR AND DEBTOR. See *Fraud*, 2.

## DECREE.

- A decree of a superior court affirming "so far as it affirms" a certain "grant," described in a decree below, is an affirmance of such decree below with a proviso, if that decree have itself been an affirmance with a proviso of the grant in question. *Steinback v. Stewart*, 566.

DEED. See *California*; *Evidence*, 5, 6.EQUITY. See *Laches*; *Notice*; *Patent*, 1; *Pleading*; *Practice*, 8-12.

1. Is disposed to uphold settlements intelligently made for the sake of peace. *May v. Le Claire*, 217; *Eureka Co. v. Bailey Co.* 488.
2. Will follow against a trustee abusing confidence, proceeds of trust property converted by him into money, and mould remedies so as to give the injured *cestui que trust* complete relief. *May v. Le Claire*, 217.
3. And decline to remit parties, on breach of contract, to law for damages, though the contract be no longer capable of fulfilment, unless the remedy at law be as effectual as equity can make it. *Ib.*
4. Can relieve where one man has procured the patent which belonged to another at the time the patent was issued. *Meador v. Norton*, 442.
5. Affects a client profiting by his counsel's inequitable doings with notice of what he inequitably did. *May v. Le Claire*, 217, and see *The Distilled Spirits*, 356.
6. A complaint which is in form and substance such a complaint as is made in "a creditor's bill," is a case of equitable jurisdiction, and one requiring equitable relief as distinguished from legal. *Dunphy v. Kleinsmith et al.*, 610.
7. In a Territory of the United States where the systems of common law and chancery are found as separate systems, equity can alone give relief on such a bill. *Ib.*
8. Will not retain the collection of a tax on the sole ground that a tax is illegal. *Dows v. City of Chicago*, 108.

EVIDENCE. See *Negotiable Paper*; *Patents*, 3, 5.

1. On a question of the exact ancient course of a river in a wild region of our country, maps made by early explorers being but hearsay evidence, so far as they relate to facts within the memory of witnesses—*ex. gr.* since A.D. 1800—are not to control the regularly given testimony of such persons. *Missouri v. Kentucky*, 395.

**EVIDENCE** (*continued*).

2. On a suit on a policy against loss of a stock of groceries in process of retail sale, by fire, it is competent, in the absence of trustworthy books and of specific evidence by persons other than the plaintiffs themselves, to show by witnesses in the town where the fire occurred, engaged in the same business with the plaintiffs, and whose annual sales were as large, that grocery merchants in that city for the six years prior to the fire had not carried, or had on hand at any one time, more than one-fifth of their annual aggregate sales, and that this was the case on the day the fire occurred. *Insurance Company v. Weide*, 439.
3. But the witness can testify only to his personal experience on the subject. He cannot be asked what "the course of trade" was in regard to this particular business. *Ib.*
4. A presumption of negligence from the simple occurrence of an accident seldom arises, except where the accident proceeds from an act of such a character that, when due care is taken in its performance, no injury ordinarily ensues from it in similar cases, or where it is caused by the mismanagement or misconstruction of a thing over which the defendant has immediate control, and for the management or construction of which he is responsible. *Transportation Co. v. Downer*, 129.
5. Statements of a grantor of land inadmissible to invalidate his previous deed of it. *Steinback v. Stewart*, 567.
6. A deed with a vague description received in evidence being accompanied by evidence of identification and occupancy of the land from its date. *Ib.*

**"FALSE, FORGED, AND COUNTERFEIT."**

The terms, in an indictment, in which a note is described as a "false, forged, and counterfeit note of the United States," issued under authority of a statute referred to, imply that the note is not genuine, but only purports to be so. *United States v. Howell*, 432.

**"FINAL JUDGMENT."**

What does not constitute a? *Rankin v. The State*, 380.

**FINDING.** See *Practice*, 5.

**FLORIDA.** See *Treaties of the United States*.

**FORECLOSURE.** See *Practice*, 8.

**FRAUD.**

1. An arrangement between an insolvent railroad company and a city by which a subscription of doubtful validity made by the city to the road was cancelled, held under special circumstances not to be a fraud on creditors of the railroad. *New Albany v. Burke*, 96.
2. A mortgage of personal property without accompanying possession void as against creditors and the provisions of the Bankrupt Act *Bank of Leavenworth v. Hunt, Assignee*, 391.

**INDIANS.** See *Internal Revenue*.

**INDICTMENT.** See *Treasury Notes*.

An indictment pursuing the language of the 6th section of the act of February 25, 1862, to punish the counterfeiting of Treasury notes, which pursues the language of the act, and describes the note passed as "a false, forged, and counterfeit note of the United States," issued under the authority of that statute, &c., is good. *United States v. Howell*, 482.

**INSURANCE.** See *Evidence*.**INTERNAL REVENUE.** See *Confusion of Goods*.

1. The 107th section of the Internal Revenue Act of July 20, 1868, applies to and is in force in the Indian Territory embraced within the Western District of Arkansas, and occupied by the Cherokee nation of Indians. *The Cherokee Tobacco*, 616.
2. The acceptance by the collector of a false and fraudulent bond given for the removal of distilled spirits from a bonded warehouse, will not prevent a forfeiture of such spirits under the 45th section of the Internal Revenue Act of July 13th, 1866, if the removal have been effected by means of a false and fraudulent bond. *The Distilled Spirits*, 356.
3. The 48th section of the Internal Revenue Act of June 30th, 1864, as amended by the act of 1866, is applicable to distilled spirits. *Ib*.

**JUDGMENT.**

Presumption in favor of regularity in. See *Omnia rite acta*.

**JURISDICTION.****I. OF THE SUPREME COURT OF THE UNITED STATES.****(a) It has jurisdiction—**

1. Under the Judiciary Act of 1802, of a certificate of division in opinion between the associate justice of the Supreme Court and the Circuit judge, sitting under the Judiciary Act of 1809.
2. Of controversies between States of the Union concerning their boundaries. *Virginia v. West Virginia*, 39.
- 2a. In cases from the Supreme Court of Louisiana, under the code of that State, when the petition in that court for review set out that a Federal question was raised and decided against, and when that court decided the case in the way in which the lower court decided it. *Stewart v. Kahn*, 493.

**(b) It has not jurisdiction—**

3. Of a decree of the Circuit Court exercising the supervisory jurisdiction conferred upon it by the 2d section of the Bankrupt Act of 2d March, 1867. *Morgan v. Thornhill*, 65.
4. Nor of one as "a final decree" where the court below has reversed a judgment of one inferior to itself in such a way as that it must go back for trial on its merits. *Rankin v. The State*, 380.
5. Nor for a case brought directly here from the District Court of the District of Columbia, without review by the Supreme Court of the District. *Garnett v. United States*, 256.
6. Nor of one brought here as under the 25th section of the Judiciary



**JURISDICTION** (*continued*).

Act, where the record shows that the court below have perhaps decided the case on grounds not involving a Federal question. *Insurance Company v. The Treasurer*, 204.

7. Nor under that section where a Federal question was first raised but on argument in the highest court of the State on review of the decision of an inferior court, in which it was not raised in the pleadings or by the evidence, and where the fact of such a question having been raised appears only by the certificate of the presiding judge. *Parmelee v. Lawrence*, 36.
8. Nor of the action of an inferior court upon motion to change the venue, postpone a trial, or supply by copy a lost record. *Cook v. Burnley*, 660, 672.
9. Nor will it entertain a writ to review the action of a court below, proceeding in accordance with a mandate from this court. *Ib.*

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

10. They have NOT jurisdiction in controversies between citizens of different States, where the jurisdiction of the courts of the United States depends upon the citizenship of the parties, if there are several plaintiffs, unless each plaintiff be competent to sue; executors and trustees suing for others' benefit forming no exception to this rule. *Coal Company v. Blatchford*, 172.
11. Nor in a suit by a citizen of one State against a corporation, the declaration averring only that the corporation was created by act of legislature of another State (named), is located in that State, and doing business there under its laws. *Insurance Company v. Francis*, 210.

**LACHES.**

1. What amounts to in equity; the matter considered in a special case where it was held that they existed. *New Albany v. Burke*, 96.
2. Cannot prevail as a defence where the relief sought is grounded on a charge of secret fraud, and it appears that the suit was commenced within a reasonable time after the evidence of the fraud was discovered. *Meador v. Norton*, 443.

**LEGAL TENDER.**

1. A contract to pay a yearly rent of "four ounces, two pennyweights and twelve grains of pure gold in coined money," equivalent at the time the contract was made to \$80, and subsequently to \$87.25, is not discharged by a tender of notes of the United States known as "Legal Tenders." *Dewing v. Sears*, 379.
2. "The Legal Tender Act" valid. *Legal Tender Cases*, 682.

**LIMITATION OF ACTIONS.**

Act of June 11th, 1864, "in relation to the limitation of actions in certain cases," construed and held constitutional. *Stewart v. Kahn*, 493.

**LOOKOUTS.**

Absence of, not important, when their presence would not have been. *The Fannie*, 238.

LOUISIANA. See *Practice*, 6; *Rebellion*, 2; *Treaties of the United States*.

1. The Act of March 3, 1865, authorizing submissions of fact to the court applies to. *Generes v. Campbell*, 193.
2. Congress has adopted for common law cases in the Federal courts the modes of procedure prevailing in the State courts; and where these are violated in the Federal courts, proceedings will be set aside. The acts of May 26, 1824, and March 2, 1867, § 7, herein considered. *Moncure v. Zuntz*, 416.

MISSOURI. See *Treaties of the United States*.

Wolf Island, in the Mississippi, not a part of. *Missouri v. Kentucky*, 395.

MORTGAGE. See *Corporation*, 3; *Fraud*, 2; *Practice*, 8.

1. Although part of a railroad may be entirely built by money raised on a junior mortgage, yet that fact does not give such junior mortgage priority over prior mortgages, even on that portion of the road; provided it was a part of the chartered route, and the company had power to mortgage, and did mortgage the whole road. *Galveston Railroad v. Cowdrey*, 459.
2. A railroad mortgage, as against the company and its privies, although given before the road is built, attaches itself thereto as fast as it is built, and to all property covered by its terms as fast as it comes into existence as property of the company. *Ib.*

MUNICIPAL BONDS. See *Practice*, 5

NATIONAL BANKS. See *United States*, 1, 2.

1. Can make no valid loan or discount on the security of their own stock, unless necessary to prevent loss on a debt previously contracted in good faith. *Bank v. Lanier*, 369.
2. The placing by one bank of its funds on permanent deposit with another bank, is a loan within the spirit of this enactment. *Ib.*
3. Loans by, to their stockholders, do not give a lien to the bank on the stock of such stockholders. *Ib.*
4. How far their certificates of stock, with power of attorney to transfer attached, have a quasi negotiable character. *Ib.*

NATURALIZATION LAWS.

The act of July 14th, 1870, to amend the naturalization laws, repealed the 13th section of the act of Congress of 1813 for the regulation of seamen, &c. *United States v. Tynen*, 88.

NAVIGABLE WATERS OF THE UNITED STATES.

1. What rivers are such. *The Montello*, 411.
2. The Enrolment and Licensing Acts apply only to them. *Ib.*

NEGOTIABLE PAPER. See *National Banks*, 4; *Notice*, 1; *Practice*, 5.

In a suit on a negotiable security when the defendant has shown strong circumstances of fraud in the origin of the instrument, this casts upon the holder the necessity of showing that he gave value for it before maturity. *Smith v. Sac County*, 139.



## NOTICE.

1. One who purchases railroad bonds in open market, supposing them to be valid and having no notice to the contrary, is a holder *bonâ fide*. *Galveston Railroad v. Cowdrey*, 459.
2. A purchaser by deed of quit-claim simply, is not regarded as a *bonâ fide* purchaser without notice. *May v. Le Claire*, 217.
3. The rule that notice to the agent is notice to the principal applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in a prior transaction, and present to his mind at the time he is acting as such agent, provided it be of such a character as he may communicate to his principal without breach of professional confidence. *The Distilled Spirits*, 356.
4. A client profiting by his counsel's inequitable doings, will be affected with his counsel's knowledge. *May v. Le Claire*, 217.

## OMNIA RITE ACTA.

1. Where a court having jurisdiction of the case and of the parties enters a judgment, there is a presumption that all the facts necessary to warrant the judgment have been found, if they are sufficiently averred in the pleadings. *Miller v. United States*, 268.
2. In a collateral proceeding, to set aside a sale made under a judgment of another court, it must be shown that such court had no jurisdiction of the case. It is not enough to show mere errors and irregularity. The doctrine applied to a sale under the Attachment Laws of Tennessee against a rebel absent in the rebel service. *Ludlow v. Ramsay*, 581.

PARTNERSHIP. See *Practice*, 11, 12.

- A party coming in any way into the right of a partner, comes into nothing more than an interest in the partnership, which cannot be tangible, made available, or be delivered but under an account between the partnership and the partner. *Bank v. Carrollton Railroad*, 624.

## PATENTS.

## I. GENERAL PRINCIPLES RELATING TO.

1. Agreements between rival patentees, made after consideration and for the sake of peace, will be upheld unless in clear cases. *Eureka Company v. Bailey Company*, 488.
2. Effect on question of priority; of grant of letters by the commissioner of; effect in showing that oaths were taken, of recitals in letters patent; effect of act of commissioner in accepting a surrender, and granting a reissue; these matters considered. *Seymour v. Osborne*, 516.
3. Practice in equity is to require respondent to give notice in his answer of the names and residences of the persons who he intends to show had prior knowledge, &c. *Ib.*
4. When an invention does not embrace an entire machine, the part embraced or excluded should be pointed out. *Ib.*
5. Parol testimony as to the scope of an original invention inadmissible, on an application for a reissue as the basis of interpolation of new matter. In what way the identity of invention is to be settled. *Ib.*

PATENTS (*continued*).

6. Fraud in prosecuting application before commissioner for original or reissued or extended patents cannot be set up on a suit against infringer by him to abrogate them. Can be impeached only by a direct proceeding to set aside. *Ib. Eureka Company v. Bailey Company*, 488.
7. Interpolations in a reissued patent of new features or ingredients or devices not allowed. *Ib.*
8. A claim which might otherwise be held to be bad as covering a function or result, when containing the words "substantially as described," must be construed in connection with the specification, and be limited thereby; and when so construed it may be held to be valid. *Seymour v. Osborne*, 516.
9. Changes in the construction and operation of an old machine, so as to adapt it to a new and valuable use which the old machine had not, are patentable. Of what they may consist. *Ib.*
10. Utility, in the sense of the patent law, what meaning? *Ib.*
11. What sort of experiments confer a right to a patent. *Ib.*
12. Desertion of an alleged prior invention, consisting of a machine never patented, how proved. *Ib.*
13. Under the act of Congress allowing reissues in divisions, it may require the use of several reissues to constitute a complete machine, and on a proceeding for infringement these may be introduced in one bill. *Ib.*
14. What a description in a prior publication must contain and exhibit, in order to defeat a patent. This stated. *Ib.*
15. The extent to which either the inventor of a device or of an entire machine, or of a mere combination, can invoke the aid of the doctrine of equivalents, how far the same. *Ib.*

## II. VALIDITY OF PARTICULAR PATENTS.

16. Those of W. H. Seymour, and of Palmer & Williams, considered. *Seymour v. Osborne*, 516.
17. Those of Nelson Platt, Alfred Churchill, and Byron Dinsmore. *Whiteley v. Kirby*, 678.

## PLEADING.

A bill for a settlement of partnership accounts which, without charging fraudulent confederacy, shows that it is filed not against all the original partners, but against one of them (yet remaining in the administration of the firm concerns), and persons who have succeeded to the rights (not to the obligations), of one or more of the others, presents a misjoinder of the defendants, apparent upon the face of the bill, and it must be dismissed. *Bank v. Carrollton Railroad*, 624.

## POSSESSION

Must accompany a chattel mortgage. *Bank of Leavenworth v. Hunt*, 391.

## POSTMASTER-GENERAL

Is the sole judge whether the exigencies provided for by the act of March 3d, 1863, have arisen, as also to determine the manner and extent of the allowance to be made in case they have. *United States v. Wright*, 648.



POST OFFICE. See *Postmaster-General*.

PRACTICE. See *Final Judgment*; *Jurisdiction*, 2a; *Public Law*, 2.

I. IN THE SUPREME COURT. See *infra*.

1. No difference exists between appeals and writs of error as to the manner in which the names of the parties should be set forth. *The Protector*, 82.
2. Bills of exceptions need not be sealed. It is sufficient that they be signed by the judge. *Generes v. Campbell*, 193.
3. When the bill of exceptions does not purport to set forth all the evidence on any of the subjects to which the exception relates, and the judgment states that it was rendered for "reasons orally assigned," and these are not found in the record, the judgment must be affirmed. *Ib.*
4. When the citizenship of the parties is averred in the bill of complaint, and it thus appears that some of the plaintiffs are disqualified by their citizenship from maintaining the suit, the defect may be taken advantage of by demurrer, or without demurrer, on motion, at any stage of the proceedings. A plea in abatement is required only when the citizenship averred is such as to support the jurisdiction of the court and the defendant desires to controvert the averment. *Coal Company v. Blatchford*, 172.

II. IN CIRCUIT AND DISTRICT COURTS. See *supra*, *Practice*, 2, 4.

(a) *In cases generally.*

5. In a suit on negotiable paper, submitted under the act of March 3d, 1865, to the court, without the intervention of a jury, when the defendant shows strong circumstances of fraud in the origin of the instrument (in which case there rests by law upon the holder a necessity to show that he gave value for the instrument), a finding which finds the facts constituting such fraud, and does not find that the plaintiff gave value for the paper, requires that the judgment be given for the defendant. *Smith v. Sac County*, 139.
6. The act is general in its terms; and Louisiana is accordingly embraced by it. *Generes v. Campbell*, 193.
7. Congress has adopted for common law suits in the Federal courts the modes of procedure prevalent in the State courts, and where these are disregarded in the Federal courts proceedings will be set aside. *Moncure v. Zuntz*, 416.

(b) *In Equity.*

8. Where the trustees of a railroad mortgage or deed of trust are dead, a bill of foreclosure and sale may be filed against the company by one or more of the bondholders on behalf of themselves and all other bondholders, secured by the same mortgage; or, if there be several successive mortgages, the trustees of which are dead, and the complainants hold bonds secured by each mortgage, the bill may be filed on behalf of themselves and all the bondholders under each mortgage. *Galveston Railroad v. Cowdrey*, 459.
9. If a case presented by a creditor's bill is tried by a jury, and a decree is entered on the verdict as a mere conclusion of law upon the facts



PRACTICE (*continued*).

found, and not as the result of the chancellor's own judgment, though of his judgment aided by the finding, it is error. *Dunphy v. Klein-smith*, 610.

10. A decree on a creditor's bill, which makes the defendant who has co-operated with the debtor responsible for damages which the creditor has suffered in consequence of the conveyance sought to be avoided, is erroneous. On such a proceeding he is liable but to account. *Ib.*
11. A bill by an assignee of one partner for a settlement of the partnership accounts will not lie unless all the partners are made parties defendant. *Bank v. Carrollton Railroad*, 624.
12. Although in general a bill in chancery will not be dismissed for want of proper parties, the rule does not apply when this is impossible, and whenever a decree cannot be made without prejudice to one not a party. In such a case the bill must be dismissed. *Ib.*

(c) *In Admiralty.*

13. Stocks and credits are attachable in admiralty and revenue cases by means of the simple service of a notice, without the aid of any statute. *Miller v. United States*, 268.
14. In admiralty and revenue cases when a default has been duly entered to a monition founded on an information averring all the facts necessary to a condemnation, it has substantially the effect of a default to a summons in a court of common law. It establishes the fact pleaded, and justifies a decree of condemnation. *Ib.*

(d) *In special cases.*

15. When under the act of July 17th, 1862, property intended for confiscation has been seized by the marshal, and the seizure is brought before the court by the filing of a libel for the forfeiture of the property, and is recognized and adopted by it, the property is subject to the control of the court in the hands of its officer; and it has jurisdiction of the case so far as a seizure of the *res* is essential to give it. *Tyler v. Defrees*, 331.

PRESUMPTION. See *Evidence*, 4; *Omnia rite acta*.

PROMISSORY NOTE. See *Negotiable Paper*.

## PUBLIC LAW.

1. A foreign sovereign can bring a civil suit in the courts of the United States. *The Sapphire*, 164.
2. A claim arising by virtue of being such sovereign (such as an injury to a public ship of war) is not defeated, nor does suit therefore abate, by a change in the person of the sovereign. Such change, if necessary, may be suggested on the record. *Ib.*
3. British subjects, if otherwise entitled, may recover by process in our Court of Claims the proceeds of captured and abandoned property. *United States v. O'Keefe*, 178.
4. In the war of the rebellion the United States having had belligerent as well as sovereign rights, had a right to confiscate the property of public enemies wherever found, and also a right to punish offences against their sovereignty. *Miller v. United States*, 269.

**PUBLIC LAW** (*continued*).

5. The right of confiscation exists in case of a civil war as fully as it does when the war is foreign, and rebels in arms against the lawful government or persons inhabiting the territory exclusively within the control of the rebel belligerent, may be treated as public enemies. So may adherents, or aiders and abettors of such a belligerent, though not resident in such enemy's territory. *Ib.*

**PUBLIC OFFICER.** See *Action; Rebellion*, 1.

**PUBLIC POLICY.**

A loss sustained by a surety in the administration bond, who has entered into the suretyship under a representation from a firm of which the administrator was a member, that they intended to take into the possession of the partnership all the assets of the intestate, to make the administration a matter of partnership business, and to share as partners the gains and losses resulting from the administration, so that in signing the bond he would become the surety of the firm and not of the individual partner, cannot be recovered by the surety from the firm. *Forsyth v. Woods*, 484.

**QUIT-CLAIM.**

A purchaser by deed of, simply, not regarded as a *bonâ fide* purchaser without notice. *May v. Le Claire*, 217.

**RAILROAD BONDS.** See *Corporation*, 3; *Mortgage; Notice*, 1.

The rights of different classes of holders as regards each other considered in the case of an insolvent railroad corporation. *Galveston Railroad v. Cowdrey*, 460.

**REBELLION.**

1. Suspended the running of statutes of limitation during its continuance, in regard to the claims of the government against its own citizens resident in the rebellious States. Nor did the act of June 11th, 1864, change this. *United States v. Wiley*, 508.
2. As also as against persons in the loyal States, the running of the prescription given by articles 3505 and 3506 of the Louisiana Code, prescribing bills and notes in five years from their maturity, and providing that this prescription run against minors, interdicted persons, and persons residing out of the State. *Levy v. Stewart*, 244.
3. The doctrine of *Dean v. Nelson* (10 Wallace, 158), that judicial proceedings on a mortgage carried on within the Union lines, against a person driven, by way of retaliation for outrages committed by others, outside of those lines and prohibited from returning within them, does not apply to a person who went and remained voluntarily in rebellion. Such a person cannot complain of legal proceedings regularly prosecuted against him as an absentee. *Ludlow v. Ramsey*, 581.

**RECEIVER OF NATIONAL BANKS.**

Cannot subject the United States to judicial jurisdiction. *Case v. Terrell*, 199.

## SHIPS AND SHIPPING.

1. What constitutes an affreightment sounding in contract as distinguished from an ownership for the voyage. *Reed v. United States*, 591
2. What "a breaking up of a voyage." *Ib.*

## SOVEREIGNTY.

No judgment for the payment of money can be rendered against the United States in any court other than the Court of Claims without a special act of Congress conferring jurisdiction. *Case v. Terrell*, 199.

## STATUTES, IMPLIED REPEAL OF.

1. When impliedly repealed by a subsequent statute. *United States v. Tynen*, 88.
2. When not so impliedly repealed. *Henderson's Tobacco*, 652; *The Distilled Spirits*, 356.

STATUTES OF LIMITATION. See *Rebellion*, 1, 2.

Cannot prevail as defences where the relief sought is grounded on a charge of secret fraud, and it appears that the suit was commenced within a reasonable time after the evidence of the fraud was discovered. *Meador v. Norton*, 443.

## STATUTES OF THE UNITED STATES.

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

- September 24, 1789. See *Jurisdiction*.  
 March 3, 1813. See *Statutes, Implied Repeal of*, 1.  
 May 26, 1824. See *Louisiana*, 2.  
 March 3, 1851. See *California Land Claims*, 1.  
 June 22, 1860. See *Treaties of the United States*.  
 August 6, 1861. See *Confiscation Acts; Practice*, 13-15; *Public Law*, 4, 5.  
 February 25, 1862. See *Indictment*.  
 July 17, 1862. See *Confiscation Acts; Practice*, 13-15; *Public Law*, 4, 5.  
 March 3, 1863. See *Postmaster-General*.  
 June 3, 1864. See *National Banks*.  
 June 11, 1864. See *Limitation of Actions; Rebellion*.  
 June 30, 1864. See *Constitutional Law*, 2; *Internal Revenue*.  
 March 3, 1865. See *Constitutional Law*, 2.  
 March 10, 1866. See *Constitutional Law*, 1.  
 July 13, 1866. See *Constitutional Law*, 2; *Internal Revenue*, 2.  
 March 2, 1867. See *Jurisdiction*, 3; *Louisiana*, 2; *Statutes, Implied Repeal of; Constitutional Law*, 2.  
 July 20, 1868. See *Statutes, Implied Repeal of*, 2.  
 April 10, 1869. See *Jurisdiction*, 1.  
 July 14, 1870. See *Statutes, Implied Repeal of*, 1.

## TAX.

Collection of will not be restrained in equity only because illegal. Grounds for equitable aid must be shown. *Dows v. City of Chicago*, 108.

## TAXATION.

Under a law taxing all property "within" a city, ferry-boats, the property of a corporation incorporated by a State other than that where



**TAXATION** (*continued*).

the city is situated, are not taxable; the boats using the city wharves only as a point of contact and as one of the termini of the ferry, and being laid up at night, and when withdrawn from ferry service, upon the opposite shore, the shore of the incorporating State. *St. Louis v The Ferry Company*, 423.

**TENDER.** See *Legal Tender*.

**TENNESSEE.**

Proceedings under its attachment law sustained against attack collaterally though the requisitions of its code had not been literally complied with. *Ludlow v. Ramsey*, 581.

**TERMS.**

Meaning of particular. See "*False, Forged, and Counterfeit*;" "*Within a City*."

**TEXAS.**

1. Laws relating to rights of railroad corporations to mortgage their roads considered, and the priorities of senior and junior incumbrancers in case of the corporation's insolvency. *Galveston Railroad Company v. Cowdrey*, 459.
2. Title of Juan Cano, under the empessario grant of De Leon, good. *Cook v. Burnley*, 659.
3. When a junior locator of a warrant is deprived of right by the laws of, to claim as an innocent purchaser. *Ib.*

**TRANSFER OF PROPERTY.**

Held to have been effected to a third party, advancing funds on it, in a special case against an attaching creditor and vendor, though the implied condition on which the purchasing debtor bought it—that of paying cash—wholly failed. *Halliday v. Hamilton*, 560.

**TREASURY NOTES.** See *Indictment*.

The 6th section of the act of February 25, 1862, punishing the counterfeiting of, is sensible and valid. *United States v. Howell*, 432.

**TREATIES OF THE UNITED STATES.**

The history of these with France and Spain relative to Louisiana and the Floridas given, and the decisions of the Supreme Court upon the rights of claimants under them, held to be qualified by the act of June 22, 1860, "for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri." *United States v. Lynde*, 632.

**UNITED STATES.** See *Sovereignty*.

1. A receiver of a National bank, whose operations have been suspended by the Comptroller of the Currency for causes specified in the National Currency Act, in no sense represents the government, and cannot subject it to the jurisdiction of the courts. *Case v. Terrell*, 199.
2. Nor can the Comptroller of the Currency, though he be sued himself and submit to it, subject the government to the jurisdiction of the

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**UNITED STATES** (*continued*).

ordinary courts to determine the conflicting claims of the United States and other creditors in the funds of such a bank. *Ib.*

3. The history of her treaties with Spain and France, relative to Louisiana, and the Floridas given; and the right of claimants as fixed by decisions of the Supreme Court upon them, held to be qualified by the act of June 22, 1860. *United States v. Lynde*, 632.

**VENDOR'S LIEN.** See *Transfer of Property*.

**VIRGINIA.** See *West Virginia*.

The statutes of, relative to the creation of West Virginia, and the subject of her admission into the Union considered. *Virginia v. West Virginia*, 39.

**WEST VIRGINIA.**

The ordinance of the convention under which it was organized, and the act of May 13th, 1862, of that commonwealth, construed in reference to the counties of *Jefferson*, *Berkeley*, and others. *Virginia v. West Virginia*, 39.

**"WITHIN A CITY."**

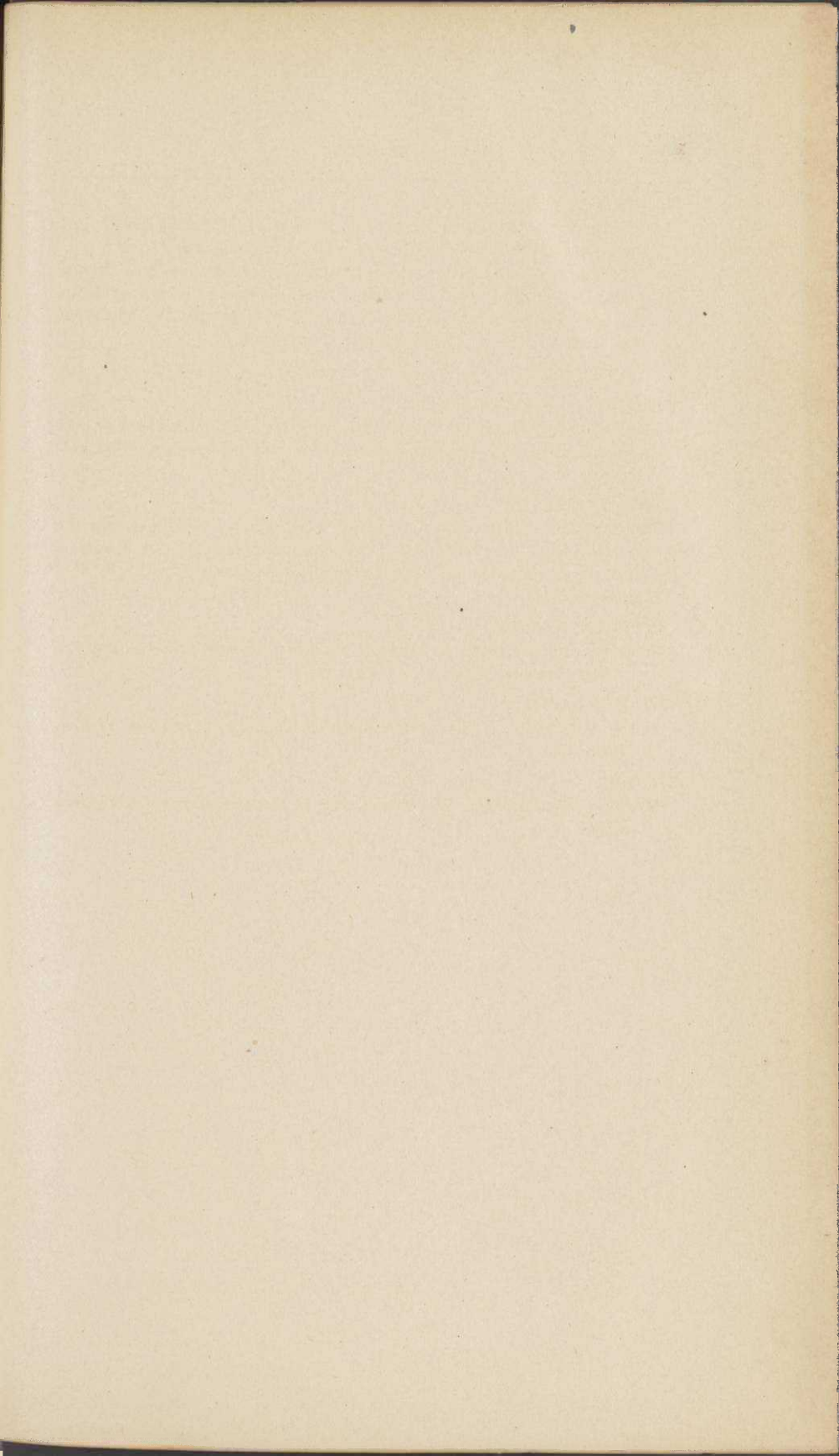
Meaning of these terms as respects taxable property. *St. Louis v. The Ferry Company*, 423.

**WOLF ISLAND,**

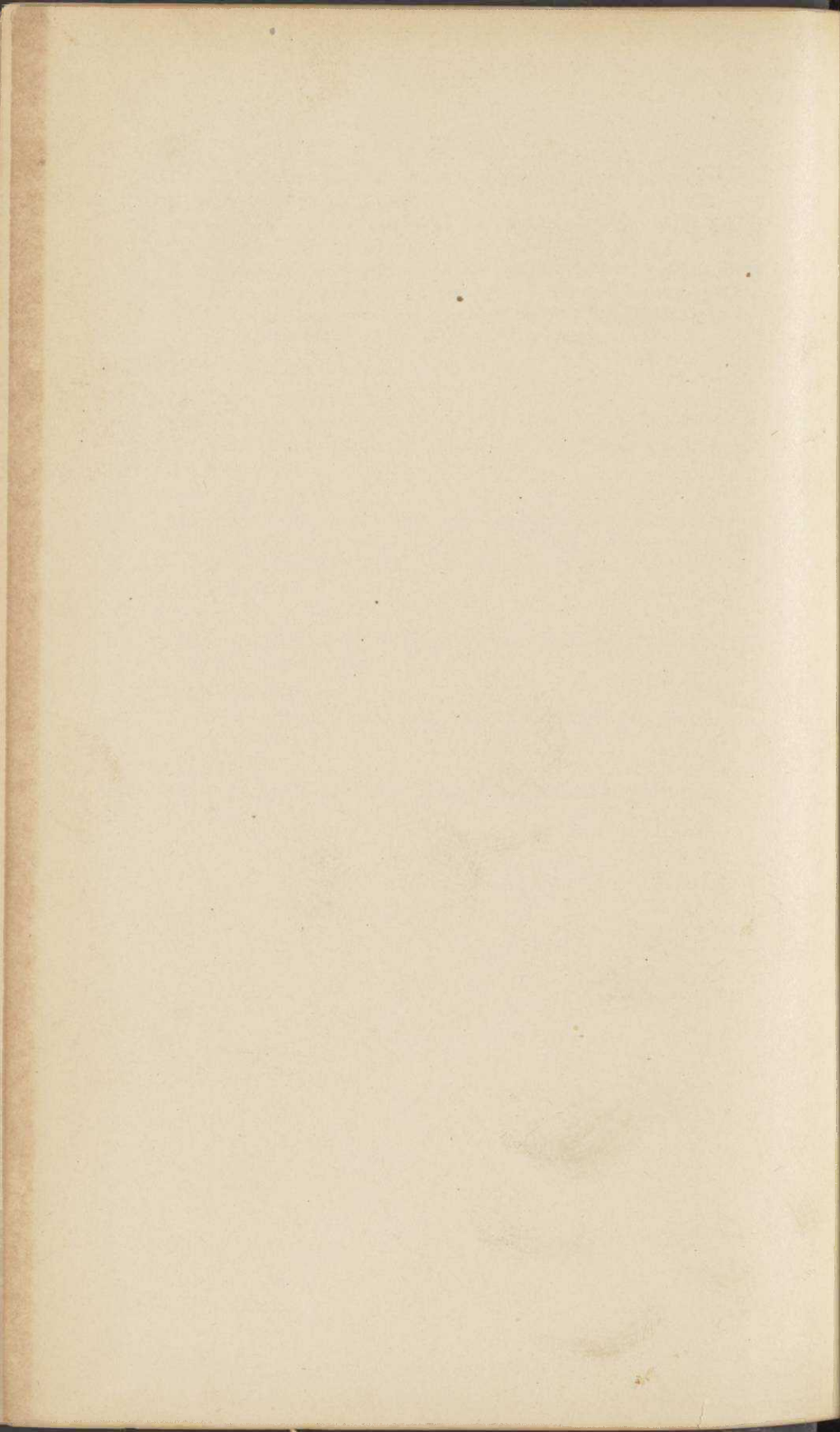
In the Mississippi, is part of the State of Kentucky. *Missouri v. Kentucky*, 395.

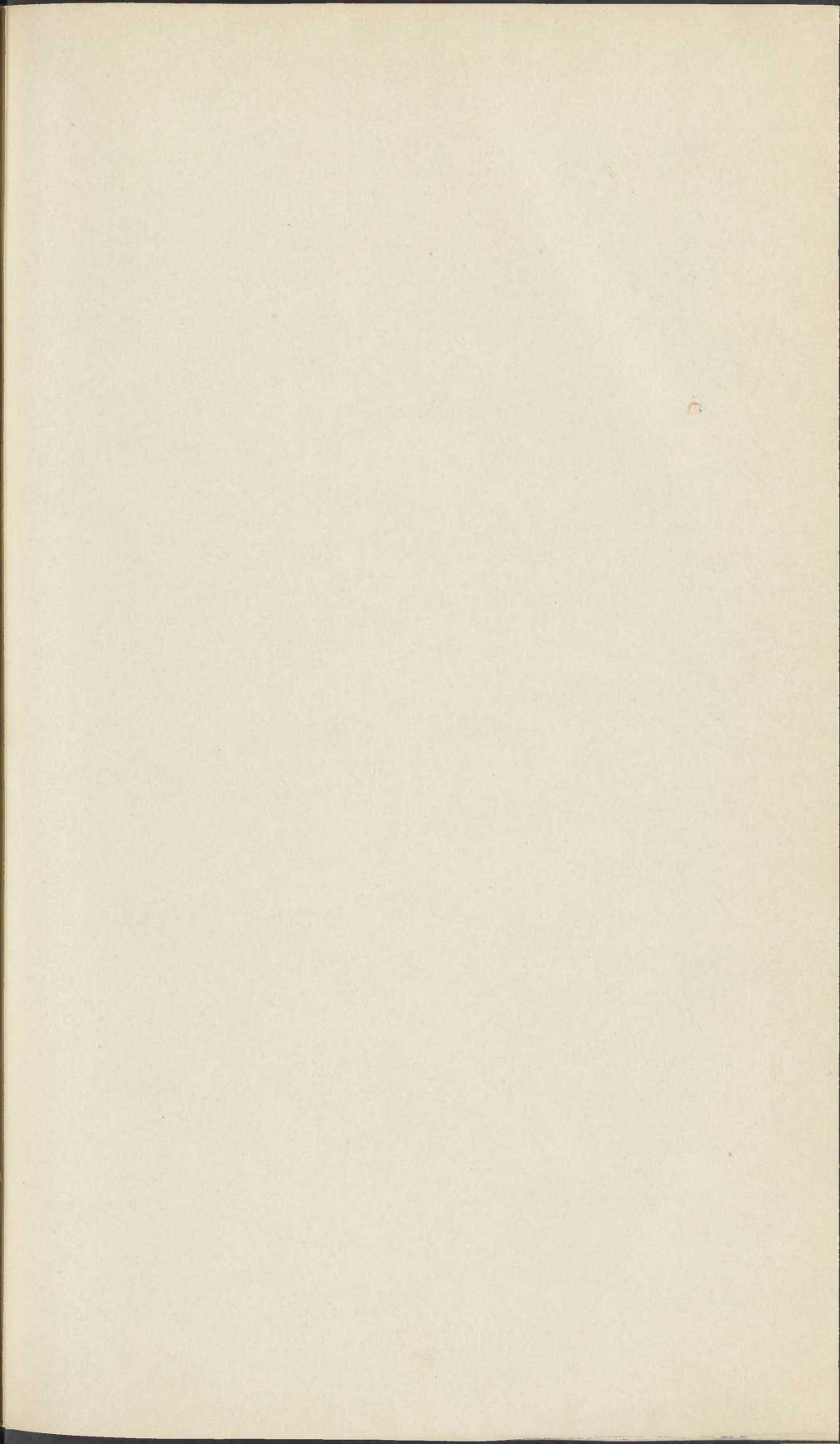
**WORDS.**

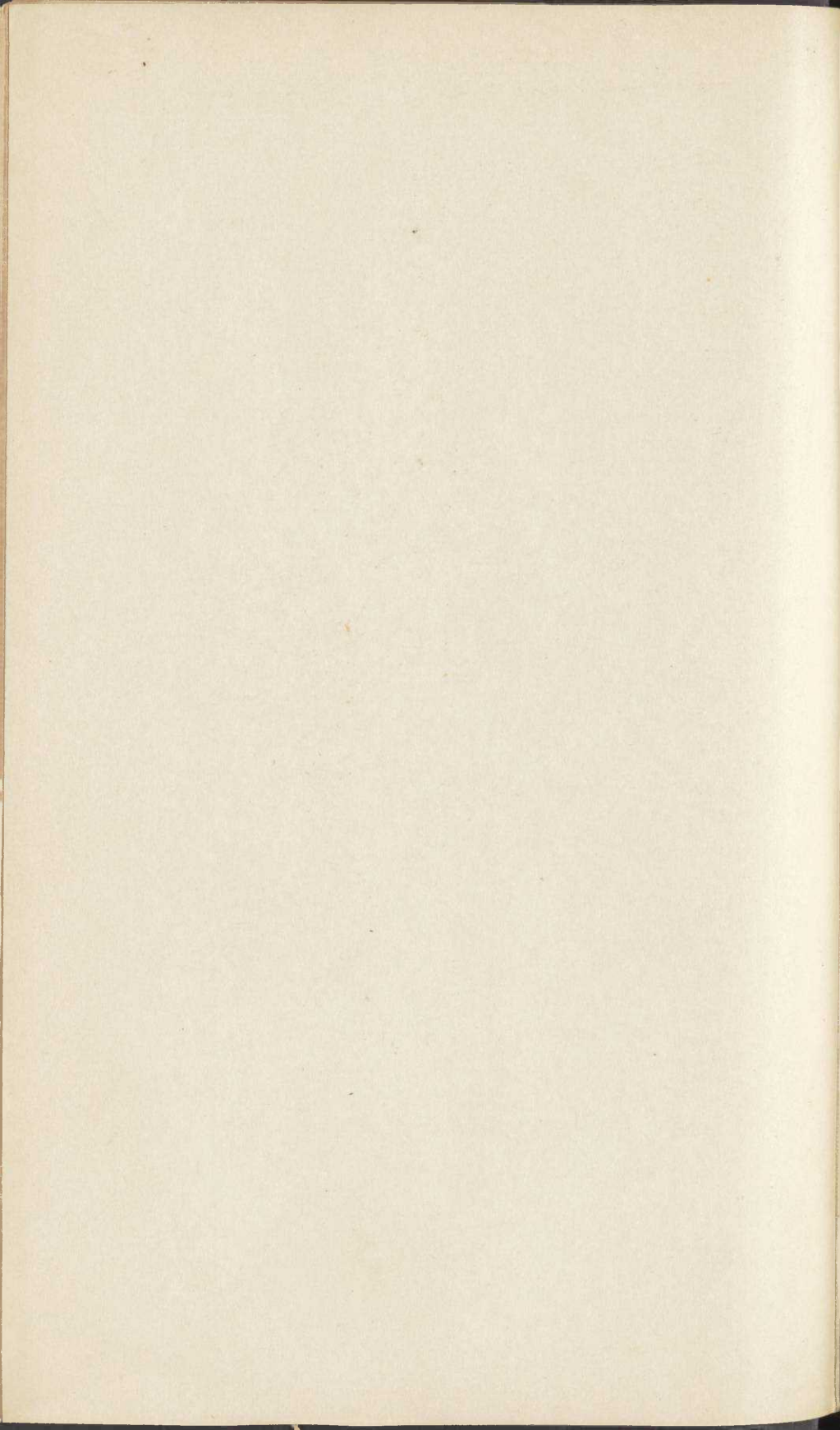
Meaning of particular. See "*False, Forged, and Counterfeit*;" "*Within a City*."



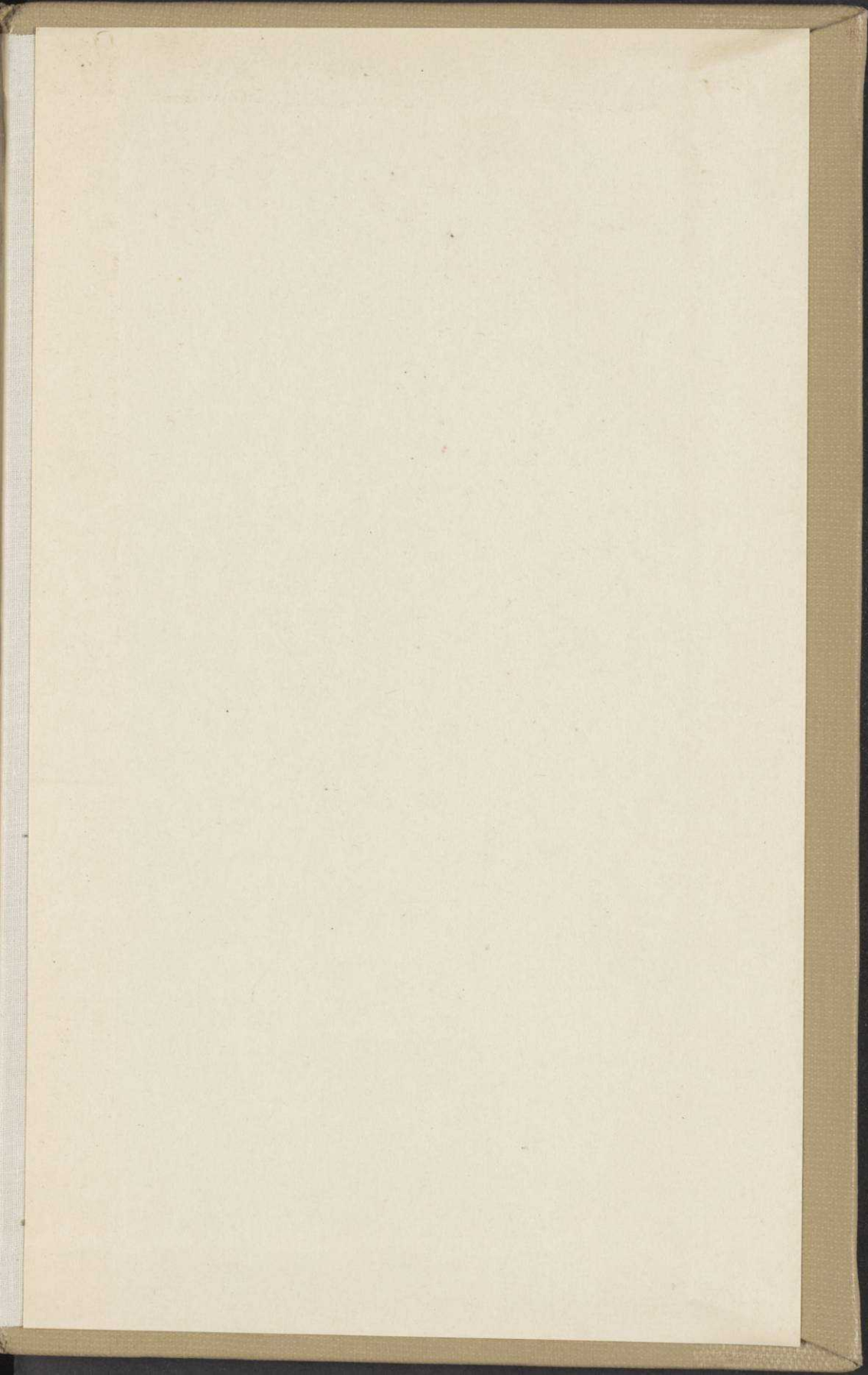












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