

I N D E X.

ACT OF WAR. See *Contract*, 4.

ADMIRALTY.

The laws which, in order to prevent collision, steamers and sailing vessels approaching each other should observe, restated.—*The Lucille*, 676.

ADULT. See *Negligence*.

ADVANCEMENT ON THE DOCKET. See *Practice*, 6.

AGENT.

When a contractor to do work (as *ex. gr.* to build a wharf) becomes the agent of the party building, in such way as that the latter is liable for his negligence in the course of his employment; and when he does not so become. This matter examined. *Railroad v. Hanning*, 649.

AMENDMENT.

A writ of error made returnable to the first Monday of December next ensuing (an old return day abolished lately by act of Congress) instead of to the second Monday of October next ensuing (the now right day) is amendable under the 3d section of the act of June 1st, 1872, to further the administration of justice.—*Hampton v. Rouse*, 684.

APPEAL. See *Jurisdiction*, 10.

Does not lie to this court from the Circuit Court for the discharge of a rule on the marshal, to show cause why he should not make to one, asserting himself to be a purchaser on execution under a judgment, at a marshal's sale, a deed for real estate sold; and ordering the person asking the rule to pay the costs. The remedy is by writ of error. *Burrows v. The Marshal*, 682.

ASSIGNMENT OF ERRORS.

Must be made in conformity with the rules of court, or the errors will not be noticed. *Deitsch v. Wiggins*, 539.

BANKRUPT ACT.

1. To avoid, under the 35th section of the, a sale made within six months of a bankruptcy, by a person insolvent, two things must concur: a fraudulent design on the part of the bankrupt and the knowledge of it on the part of the vendee, or reasonable cause to believe it existed. *Tiffany v. Lucas*, 410.

BANKRUPT ACT (*continued*).

2. A contract or engagement is not provable under the 5th section of the Bankrupt Act of 1841, authorizing proof of "uncertain or contingent demands" so long as it remains wholly uncertain whether a contract or engagement will ever give rise to an actual duty or liability, and there is no means of removing the uncertainty by calculation. The position illustrated by a case relating to a wife's right of dower. *Riggin v. Magwire*, 549.

BANKRUPTCY.

What constitutes a "supervisory jurisdiction" of the Circuit Courts over decrees in bankruptcy, of the District Court, under the 2d section of the Bankrupt Act. *Mead v. Thompson*, 635.

BAPTIST CHURCH. See *Congregational Church; Trustees*.

BONDS. See *Official Bonds; Municipal Bonds*.

BOUNDARY. See *Evidence*, 9.

CALIFORNIA. See *Yosemite Valley*.

Under the statutes of limitations of, a plaintiff in ejectment who has established a legal title in himself, is presumed to have had actual possession of the land within five years next prior to the commencement of his suit, unless an actual adverse possession by another is affirmatively proved. *Dexter v. Hall*, 9.

CHARGE OF COURT.

1. Is not erroneous when it directs the jury, as matter of law, to find for the plaintiff, on an issue of fact raised by a plea in abatement, where the defendant holds the affirmative of the issue, and where the evidence (introduced by the defendant himself) is all in favor of the plaintiff, positive and uncontradicted. *Grand Chute v. Winegar*, 355.
2. Cannot, on error, be assumed by this court to have been erroneous. Hence a judgment cannot be reversed on an allegation of error in a charge, unless the record contain sufficient evidence to enable this court to pass on the case. *Railroad Company v. Hanning*, 649; and see *Flanders v. Tweed*, 450.
3. That it may not have covered an entire case is no ground for reversal, where no specific instructions have been asked for and no error is perceived in those given. *Shutte v. Thompson*, 151.

CHARTER. See *Constitutional Law*, 8.

CHURCH CONTROVERSY. See *Trustees*

COLLECTOR OF INTERNAL REVENUE.

Under the Internal Revenue Act of June 30th, 1864, cannot be sued as a trespasser, if he have a proper warrant from the Assessor to collect. *Haffin v. Mason*, 671.

COLLECTORS AND RECEIVERS OF PUBLIC MONEY. See *Rebellion*, 2.

Though under bond to keep it safely and pay it when required, not bound to render the money at all events. Excused if prevented, without any neglect or fault, by the act of God or the public enemy, from rendering it. Their liability stated. *United States v. Thomas*, 337.

COLLISION.

The laws which steamers and sailing vessels, approaching each other, should observe in order to prevent collision, restated. *The Lucille*, 676.

COMITY, JUDICIAL.

1. Where "all judicial proceedings" against a tenant who has gone through the form of making a *cessio honorum*, or general assignment, have been stayed by order of a court having, in the first instance, jurisdiction over the subject of such assignments or *cessionones*, the landlord's lien on the tenant's goods, given by the law of Louisiana, if he take, within a fixed and limited time, judicial proceeding to seize them, is not lost by his not taking such proceeding within the time in which he would have been bound to proceed if judicial proceedings had not been thus stayed. This even though the *cessio* or assignment be finally decided to have been made by a party who had no right to make one and the whole proceeding be thus declared void. *Holdane v. Sumner*, 600.
2. Effect given by the Supreme Court of the United States to the exposition of State statutes by the Supreme Court of the State. *City of Richmond v. Smith*, 429.

COMMERCIAL LAW. See *Mortgage of Vessels*.

COMMON CARRIERS.

How far liable for injury occasioned by the contents of packages carried by them, which prove of a noxious or destructive character. *The Nitro-Glycerine Case*, 524.

CONCLUSIVENESS OF MARSHAL'S RETURN.

Of his service of a writ under the Confiscation Act of July 17th, 1862. This matter considered. *Brown v. Kennedy*, 591.

CONCLUSIVENESS OF VERDICT. See *Practice*, 10.

CONFISCATION ACT.

1. Of July 17th, 1862; meaning therein of the words "estate, property, money, stocks, and *credits* of rebels." If the proceedings, including the service of the writ, be in proper form, a forfeiture of a debt due to a rebel may be rightly decreed, though the evidences of the debt have not been actually seized. *Brown v. Kennedy*, 591.
2. Where, under the *forms* of a forfeiture and sale of a rebel's estate, &c., as under this act, nothing, owing to a defect in the proceedings, or in some of them, has really passed to the purchaser, and the rights of the rebel have been uninjured, no damages but nominal ones can be recovered by him of a marshal for an alleged false return. *Pelham v. Way*, 196.

CONGREGATIONAL CHURCH. See *Trustees*.

The mere assemblage in a church body where the congregational government prevails, of a majority of a congregation forcibly and illegally excluded by a minority from a church edifice in which, as part of the congregation, they had been rightfully worshipping—in another place—the majority thus excluded maintaining still the old church

CONGREGATIONAL CHURCH (*continued*).

organization, the same trustees, and the same deacons—is not a relinquishment of rights in the church abandoned, and the majority thus excluded may assert, through the civil courts, their rights to the church property. In a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church. *Bouldin v. Alexander*, 131.

CONSOLIDATION OF RAILROADS.

Where railroad companies are consolidated by act of legislature, the presumption is, that each of the united lines of road will be held with the privileges and burdens originally attaching thereto, unless the contrary is expressed. *Tomlinson v. Branch*, 460

CONSTITUTIONAL LAW.

1. The constitutionality of the acts of Congress of February 25th, 1862, and of subsequent acts in addition thereto, making certain notes of the United States a legal tender in payment of debts, reaffirmed. *Railroad Company v. Johnson*, 195.
2. A statute of a State imposing a tax upon freight taken up within the State and carried out of it, or taken up without the State and brought within it, is unconstitutional. *Case of the State Freight Tax*, 232.
3. A statute of a State imposing a tax upon the gross receipts of railroad companies is not unconstitutional, though the gross receipts are made up in part from freights received for transportation of merchandise from the State to another State, or into the State from another. *State Tax on Railway Gross Receipts*, 284.
4. A law of a State taxing bonds of a debtor within the State, held by a person outside of it, is unconstitutional, and the fact that the bonds are secured by a mortgage on land in the State, does not affect the case. *Case of the State Tax on Foreign-held Bonds*, 300.
5. A State law (whether a State constitution or State statute) which withdraws from the lien of a judgment, property which when the judgment was obtained, the lien, under then existing State statutes, bound, is unconstitutional. *Gunn v. Barry*, 610.
6. The fact that the Congress of the United States may, under the reconstruction acts, have insisted on certain *other* provisions which the State had not adopted, going into the State constitution where such a provision is found, and in certain others still which it had adopted, going out of it, before senators and representatives from the State should be admitted into Congress, does not make the constitution an act of Congress. *Ib.*
7. The 20th section of the act of July 20th, 1868 (to the effect that in no case shall a distiller be assessed for a less amount of spirits than 80 per cent. of the producing capacity of his distillery, and if the spirits actually produced by him exceed this 80 per cent., he shall also be assessed upon the excess), laying, as it does, a tax uniform in its operation, and establishing one rule for all distillers, is constitutional. *United States v. Singer*, 112.
8. How far a provision in the constitution or general statutes of a State

CONSTITUTIONAL LAW (*continued*).

that charters subsequently granted by its legislature shall be subject to alteration, amend'ment, suspension, or repeal, changes the character of an act which might otherwise be invalid as impairing the obligation of a contract. This matter considered. *Tomlinson v. Jessup*, 454; *Miller v. The State*, 478; *Holyoke Company v. Lyman*, 500.

9. A State legislature, unrestricted by constitutional prohibition, has power to exempt specific property from taxation. *Tomlinson v. Branch*, 460.

CONSTRUCTION, RULES OF. See *Water-power*.

I. AS APPLIED TO CONTRACTS.

1. Evidence of custom or usage to explain them when written, and not technical or ambiguous, not favored. *Partridge v. The Insurance Company*, 573.
2. To ascertain the intent of the parties is the fundamental rule in the construction of agreements. When the substantial thing which they have in view can be gathered from the whole instrument, it will control mere formal provisions, which are intended only as a means of attaining the substance. *Canal Company v. Hill*, 94.
3. The state of things and surrounding circumstances in which an agreement is made will be looked at as a means of throwing light upon its meaning, especially for the purpose of ascertaining what is its true subject-matter. *Ib.*

CONTRACT. See *Constitutional Law*, 1, 4, 5, 6, 8; *Construction, Rules of*; *Court of Claims*, 1, 2; *Equity*, 2; *Evidence*, 8; *Water-power*.

1. A party binding himself to deliver personal property can only be relieved in this respect on the ground of clear refusal of the other party to receive or becoming disabled to perform his part of the contract. *Smoot's Case*, 37.
2. Thus, a party agreeing to furnish horses to the government (certain rules then existing as to time and manner for inspection), cannot, on the adoption of new rules, such new rules not rendering it impossible for him to comply with his contract, and neither disabling the government from receiving and paying for the horses, nor being a notification that the government would not have them, abandon it and sue for the profits which he might have made, though he neither bought, nor delivered, nor tendered any horses, as he had agreed to do. *Ib.*
3. Unless ambiguous or technical, evidence of usage or custom to interpret, not favored. *Partridge v. The Insurance Company*, 573.
4. A contract made by a city which had passed a resolution to destroy a certain sort of property, to pay to its owners the value of it, held obligatory, though the resolution and contract were made in view of certain capture of the city by a beleaguering army, and though, as it proved, the property would have been destroyed at all events, and by a wholly different cause, if the city had not destroyed it. *City of Richmond v. Smith*, 429.

CONTRACT (*continued*).

5. A special contract regarding a wharf in the city of Vicksburg; and the effect of the rebellion and of a tax by the city on it. The matter passed upon. *Marshall v. Vicksburg*, 147.

CONTRACTORS WITH THE GOVERNMENT. See *Contract*, 1, 2;
Court of Claims.

CONTRIBUTORY NEGLIGENCE.

In a suit by one against a railroad company for injuries done him, contributory negligence is a defence to be proved by the company. *Railroad Company v. Gladman*, 401.

COUNSEL FEES.

1. The plaintiff's on a successful suit for damages against a treasury agent for illegally seizing and retaining his property, disallowed. *Flanders v. Tweed*, 450.
2. Disallowed also in a like suit on an injunction bond. *Oelrichs v. Spain*, 211.

COURT OF CLAIMS.

1. Jurisdiction of, limited to cases of contracts, express or implied, with the government. *Smoot's Case*, 36.
2. Bound in the construction and enforcement of such contracts, to apply the ordinary principles which govern contracts between individuals. *Ib.*
3. No recovery to be had in, on a contract of charter by which the contractor bears the "marine risks," and the government the "war risks," and where a loss occurs by a risk decided to be of the former kind. *Reybold v. United States*, 202.

"CREDITS."

Meaning of the word in the Confiscation Act of July 17th, 1862. *Brown v. Kennedy*, 591; *Pelham v. Way*, 196.

CUSTOM.

Evidence of, to control the meaning of written contracts not plainly ambiguous or technical, not favored. *Partridge v. The Insurance Company*, 573.

DEED.

Of a lunatic, void. *Dexter v. Hall*, 9.

DEPOSITIONS.

De bene esse, under act of September 2d, 1789. Formalities in the taking of, required by the act, may be waived by the party for whose protection they are intended. What amounts to such waiver. *Shutte v. Thomson*, 151.

DESERTER.

One who was restored to duty by order of his department commander, without trial, on condition that he make good the time lost (about two months), and who complied with the condition, and was honorably

DESERTER (*continued*).

discharged at the expiration of his term of service, *held* entitled to bounty money, notwithstanding his desertion. *United States v. Kelly*, 34.

DISTILLER. See *Official Bonds*; *Transportation of Spirits*.

1. The meaning of the 20th section of the act of July, 1868, relating to the assessment of distiller's spirits is, that in no case shall the distiller be assessed for a less amount of spirits than 80 per cent. of the producing capacity of his distillery, and if the spirits actually produced by him exceed this 80 per cent. he shall also be assessed upon the excess. *United States v. Singer*, 111.
2. The law is constitutional. *Ib.*

DISTRICT OF COLUMBIA.

Effect in the, of the "tacit lien" given by the act of Congress of February 22d, 1867, in favor of landlords. This stated. *Fowler v. Rapley*, 328.

ECCLESIASTICAL AND CIVIL COURTS.

Although the latter sort of courts will not in the case of persons excommunicated by competent church authority, go behind that authority and inquire whether the persons have been regularly or irregularly excommunicated, the said courts may inquire whether the expulsion was the act of the church or of persons who were not the church, and who, consequently, had no right to excommunicate any one. *Boulden v. Alexander*, 132.

ENEMY, PUBLIC. See *Trading with Public Enemy*.**EQUITY.** See *Bankruptcy*; *Louisiana*, 1; *Parties*; *Practice*, 4.

1. Will not restrain the collection of a tax solely on the ground of its illegality, or where the proceedings to collect it are void on their face. Some cause presenting a case of equity jurisdiction must be alleged. *Hannevinkle v. Georgetown*, 547.
2. Nor, unless the vendee has suffered injury by delay not capable of being compensated by damages, rescind a fully executed contract for sale of lands, with a covenant of warranty, where a defect of title existing when the conveyance was made, is offered, before final hearing, to be cured by the tender of a perfect title. *Kimball v. West*, 377.
3. Nor grant relief against payment of a bond where the bill shows a complete defence and full means of relief at law. *Grand Chute v. Winegar*, 373.
4. Jurisdiction in, will be sustained when time, expense, and multiplicity of suits will be saved, as also when the case contains an element of trust. *Oelrichs v. Spain*, 211.
5. An injunction bond given to one who held the legal title to a fund, will enable him at law to recover, to the full extent, damages touching the entire fund; and a court of equity will follow the law in its proper distribution. *Ib.*
6. A release, even when sealed, cannot be set up in equity to defeat those who were not parties to it, and who had separate interests. *Ib.*

EQUITY (*continued*).

7. Estate of a surety bound jointly but not severally with his principal, discharged in law on his death, the other obligor surviving; and in equity also in the absence of equitable circumstances making him liable. *Pickersgill v. Lahens*, 141.
8. A receipt of a woman, before taking out letters of administration, by which she surrendered for an inadequate consideration rights of herself and of her children, in her husband's estate, on which she afterwards took out administration, *held* void, as hastily and inconsiderately made, and when influenced by a friend, himself ignorant of many facts in the case. *Cammack v. Lewis*, 643.
9. A life insurance policy (in \$3000) which, if held to be intended for the benefit of a creditor (to the amount of \$70) who took it out, would owing to the smallness of his debt necessarily be considered a sheer wagering policy, *held* under special circumstances to have been taken by him in trust for the debtor; his own debt, however, to be first provided for. *Ib.*

ERROR.

Though it be error to sustain *in part*, and overrule *in part* a demurrer which is *single*, yet a complainant by amending his bill, and a defendant by answering afterwards both waive their right to allege error; as a defendant specially does in such a case in this court by not appealing. *Marshall v. Vicksburg*, 146.

EVIDENCE.

1. Where an act of Congress granting lands to a State, for school purposes, required the selection of them by the register and receiver of the proper land district—such selection when made and entered in the register's books, to vest the title of the lands in the State—in such case, if the register's book be lost or destroyed, the fact of the selection may be proved by other evidence. *Hedrick v. Hughes*, 124.
2. A book of record kept by a county school commissioner, now dead, of his transactions in selling the school lands in the county, deposited in the county clerk's office, and preserved as a public monument among the county archives, is *de facto* a public record, and proper evidence of the commissioner's official acts. It is also admissible as the entries of a deceased person, made in the course of his official duty, in a matter of public concern, to prove his official transactions. *Ib.*
3. If a township plat be lost or destroyed, it may be proved by a copy; and memoranda on such copy, not contained in the original, if accounted for and explained, will not exclude the copy as evidence of the contents of the original, even though such memoranda be a translation of corresponding memoranda in the original. *Ib.*
4. When evidence has been given tending to show the insanity of a grantor, and other evidence tending to show his sanity, a medical expert cannot be asked his opinion respecting that person's sanity or insanity, forming his opinion from the facts and symptoms detailed in the evidence. *Dexter v. Hall*, 9.
5. Such a witness may be asked his opinion upon a case hypothetically stated, or upon a case where the facts are certain and found; but he

EVIDENCE (*continued*).

- will not be allowed to determine from the evidence what the facts are, and to give his opinion upon them. *Dexter v. Hall*, 9.
6. A vessel condemned for violation of the revenue laws on a clear *prima facie* case made out against her by the government and not rebutted by the claimants. *The John Griffin*, 29.
 7. When a suit turns on the question whether money claimed in it by the plaintiff has been advanced to the defendant, in one capacity or in another, testimony of what a person who had settled an account on the subject with the defendant *said* that the defendant told him, is not evidence, and the fact that the court in allowing the evidence to go to the jury, told them that they might consider it for what it was worth, does not alter the case. *Young v. Godbe*, 562.
 8. Where the language of a written contract is not received to explain it and so establish a new term to it. *Partridge v. The Insurance Company*, 573.
 9. In questions of boundary, reputation in the neighborhood at the present day is not admissible, unless it be traditionary, or derived from ancient sources, or from those who had peculiar means of knowing what the reputation of the boundary was in an ancient day. *Shutte v. Thompson*, 151.
 10. Under a statute enacting that "parol evidence shall not be received to prove any acknowledgment or promise of a party deceased to pay any debt or liability against his succession, in order to take such debt or liability out of prescription, or to revive the same after prescription has run or been completed; but in all such cases the acknowledgment or promise to pay shall be proved by written evidence, signed by the party to be charged, or by his specially authorized agent or attorney in fact;" neither oral statements of conversations and admissions of a decedent, tending to prove an acknowledgment of a debt, as due, within the period of prescription, nor indorsements, by himself, on the bond of payments made of interest up to a term which took it out of that period, are admissible in a suit against his estate to charge it. *Adger v. Alston*, 555.
 11. Evidence which, in connection with other evidence offered, tends to make out a defence, is properly receivable, though it may not itself prove all the facts necessary to constitute a defence. *Deutsch v. Wiggins*, 540.
 12. Where a party knowing of the loss of a vessel has her insured by a written policy (lost or not lost) he cannot by parol proof show that the contract for insurance was made before the loss, though executed and paid for afterwards. *Insurance Company v. Lyman*, 664.
 13. Nor abandon the written instrument as of no value in ascertaining what the contract was and rely on the verbal negotiations. *Ib.*
 14. Certain evidence held insufficient to be submitted to a jury of a parol contract of insurance. *Ib.*
 15. Parol evidence may be given to show that a bill of sale of a vessel in terms absolute was, in fact, but a mortgage. *Morgan's Assignees v. Shinn*, 105.

EXEMPTION LAWS. See *Constitutional Law*, 5, 6.

EXPERT. See *Evidence*, 4, 5.

FEES. See *Counsel Fees*.

On objection, to an allowance below of clerks' or marshals' as excessive, this court will not interfere unless record shows what the fees were. *Flanders v. Tweed*, 450.

FEME COVERT.

A separate estate for, may be created by any language clearly expressing an intent to create it. *Prout v. Roby*, 471.

FINAL DECREE. See *Jurisdiction*, 8; *Practice*, 13-15.

FISHWAYS.

The larger rivers in Massachusetts are subject to the right of the legislature to compel the owners of dams in them to erect fishways in them. *Holyoke Company v. Lyman*, 500.

FORFEITURE. See *Confiscation Act*; *Re-entry*.

FRAUDS, STATUTE OF. See *Evidence*, 10.

FREIGHT, TAX ON. See *Constitutional Law*, 2.

FRIVOLOUS WRITS OF ERROR.

Punished by affirmance, with ten per cent. damages. *Pennywit v. Eaton*, 382.

GROSS RECEIPTS OF RAILWAYS, TAX ON. See *Constitutional Law*, 3.

ILLEGAL TAX. See *Constitutional Law*, 2-4; *Equity*, 1; *Interest*, 1.

INCOME TAX. See *Internal Revenue*, 1.

INFANT. See *Negligence*.

INFORMALITY. See *Plea*, 1.

INJUNCTION BOND.

1. Such bond, given to one who held the legal title to a fund, will enable him at law to recover to the full extent damages touching the entire fund; and a court of equity will follow the law in its proper distribution. *Oelrichs v. Spain*, 211.
2. Counsel fees are not recoverable on such bonds. *Ib.*
3. Sureties in an, cannot go behind the decree to raise a question of illegality as to an agreement on which it is founded. *Ib.*
4. Not required by a statute of New York, which enacts that "the party applying therefor shall execute a bond with one or more sufficient sureties," to be joint merely. *Pickersgill v. Lahens*, 140.

INSANITY. See *Evidence*, 4, 5.

Power of attorney by one insane, void. *Dexter v. Hall*, 9.

INSURANCE. See *Evidence*, 12-14; *Life Insurance*.

INTEREST.

1. Where an illegal tax has been collected, the citizen who has paid it

INTEREST (*continued*).

- and has been obliged to bring suit against the collector is entitled to interest, in the event of recovery, from the time of the alleged exaction. *Erskine v. Van Arsdale*, 75.
2. Where interest as a general thing is due and there is no statute in the place where the account is settled and the transaction takes place, giving interest, in such a case it is to be allowed at a reasonable rate, and conforming to the custom which obtains in the community in dealings of the same character as the one on which the suit arises, by way of damages for unreasonably withholding an overdue account. *Young v. Godbe*, 562.
 3. Interest on loans made previous to, and maturing after, the commencement of the war, ceased to run during the subsequent continuance of the war, although interest was stipulated in the contract. *Brown v. Hiatts*, 177.

INTERNAL REVENUE. See *Collector of Internal Revenue*; *Constitutional Law*, 7; *Distiller*; *Official Bonds*; *Tax Illegally Paid*; *Transportation of Spirits*.

1. The advance in the value of personal property during a series of years does not constitute the "gains, profits, or income" of any one particular year of the series, although the entire amount of the advance be at one time turned into money by a sale of the property. *Gray v. Darlington*, 63.
2. Under the act of Congress of July 13th, 1866, iron castings, cast for thimble-skeins and pipe-boxes, between the 1st of September, 1866, and the 1st of March, 1867, were subject to an internal revenue tax. *Cheney v. Van Arsdale*, 68.
3. Under the act of March 2d, 1867, thimble-skeins and pipe-boxes, made of iron, are exempt from duty, whether cast or wrought. *Erskine v. Van Arsdale*, 75.

JOINT OBLIGOR. See *Equity*, 7.

JURISDICTION. See *Error*; *Practice*, 1, 2, 4.

I. OF THE SUPREME COURT OF THE UNITED STATES.

(a) It has jurisdiction—

1. (Other things allowing) of an appeal by a mortgagor alone where a decree has been against him personally, and against others as trustees. *Railroad v. Johnson*, 8.
2. Under the 25th section, where the record shows that in a suit on a contract the defendants set up that the contract had been rendered of no force by provisions of the Constitution of the United States and of certain acts of Congress, and that the decision of the highest court of the State was against the right, title, privilege, or exemption thus specially set up. *Railroads v. Richmond*, 3.
3. Or where on a bill to enforce a vendor's lien, the vendee set up that the deed which the complainant had given him was insufficiently stamped, and the Supreme Court of a State, disregarding the objection, enforced the lien. *Hall v. Jordan*, 393.

JURISDICTION (*continued*).

4. And this jurisdiction under the 25th section will be entertained where the court can see a Federal question raised under it, though raised somewhat obscurely; and though they had "a very clear conviction" that the decision of the State court was correct. *Pennywit v. Eaton*, 380.

(b) It has not jurisdiction—

5. Under the 25th section, where the decision below on a contract is, that it is good or bad on principles of public policy. *Tarver v. Keach*, 67.
6. Nor where the case *may* have been decided on the form of remedy which the State courts require a plaintiff to adopt; or on the technical insufficiency of the pleading. *Commercial Bank v. Rochester*, 639.
7. Nor where the decision is only that an act of the legislature of the State is repugnant to the constitution of the State. *Salomons v. Graham*, 208.
8. Nor, under the 22d section, as of a "final decree," of a decree of the highest court of a State which, merely dissolving an injunction granted in an inferior court, leaves the whole case to be disposed of on its merits. *Moses v. The Mayor*, 387.
9. Nor, under any section of any act, of the action of the Circuit Court exercising "supervisory jurisdiction" as a court of equity over a decree in bankruptcy, under the 2d section of the Bankrupt Act. *Mead v. Thompson*, 635.

II. OF THE CIRCUIT COURTS OF THE UNITED STATES.

III. OF THE DISTRICT COURTS OF THE UNITED STATES.

IV. OF THE COURT OF CLAIMS.

10. The allowance of an appeal to this court by the Court of Claims, does not absolutely and of itself remove the cause from the jurisdiction of the latter court, so that no order revoking such allowance can be made. *Ex parte Roberts*, 384.

LANDLORD AND TENANT. See *District of Columbia; Comity, Judicial*, 1.

LEGAL TENDER. See *Constitutional Law*, 1.

LIFE INSURANCE. See *Equity*, 9; *Evidence*, 12-14.

1. The rules to be applied, stated in the case of a policy of life assurance, where there is a condition in the instrument that if the assured shall "die by his own hand," the policy shall be void, and the death of the party is in fact by suicide. *Life Insurance Company v. Terry*, 580.
2. A policy for \$3000, taken by one who has no interest in the life of the party assured beyond a debt of \$70, is a sheer wagering policy. *Cammack v. Lewis*, 643.

LIMITATIONS, STATUTE OF. See *Statutes of Limitations*.

LOUISIANA. See *Comity, Judicial*, 1; *Evidence*, 10; *Statutes of Limitations*, 2; *Mesne Profits*.

1. Though in Louisiana a party from whom real estate there has been recovered by suit, have a right to demand that the person recovering pay him the value of the materials and price of workmanship of build-

LOUISIANA (*continued*).

ings on the premises, if such person choose to keep them, yet such a demand will not be enforced where, in a peculiar and complicated case, the party has already in the decree against him been allowed in another form, what, in good conscience, the buildings were worth. *New Orleans v. Gaines*, 624.

2. The statute of 21st January, 1870, declaring the rights of the New Orleans, Mobile, and Chattanooga Railroad Company, confers no exemption on it from its common-law liabilities. *Railroad Company v. Hanning*, 649.

LUNATIC. See *Evidence*, 4, 5.

Power of attorney by one, void. *Dexter v. Hall*, 9.

MANDAMUS.

When ancillary to a jurisdiction already acquired and when not. In the latter case will not lie from the National courts to State officers. *Graham v. Norton*, 427.

MARINE RISKS.

Distinguished from war risks. *Reybold v. United States*, 203.

MARRIED WOMAN.

A separate estate for, created by any words clearly expressing an intent to create it. *Prout v. Roby*, 471.

MARSHAL'S RETURN. See *Conclusiveness of Marshal's Return*.MASSACHUSETTS. See *Constitutional Law*, 8.

The rights of fishery in its larger rivers are public rights, and subject to the right of the State to compel the owners of dams to construct fishways. *Holyoke v. Lyman*, 500.

MERGER. See *Consolidation of Railroads*.

MESNE PROFITS.

1. The possessor, in continuous bad faith, of real estate which the true owner at last recovers, is chargeable, under the claim of such profits, with what the premises are reasonably worth annually, and interest thereon to the time of the trial. Five per cent. interest in a Louisiana case proper. *New Orleans v. Gaines*, 624.
2. On claim by a true owner against a possessor in continuous bad faith of lands in Louisiana, the rule of English equity prevails, and a decree is properly made of profits from the time that the complainant's title accrued. There is nothing in the code of that State which limits it to three years. *Ib.*

MILITARY SERVICE. See *Deserter*.

MINISTERIAL OFFICER.

Cannot be made a trespasser in any case where it is his duty to act. *Haffin v. Mason*, 671.

MISSOURI. See *Evidence*, 1-3.

The act of Congress of March 6th, 1820, admitting the State of into the Union, and the act of March 3d, 1823, respecting grants of land to that State, without further grant or patent, vested in the State the

MISSOURI (*continued*).

16th section of each township for school purposes. The effect of the acts stated, in cases where this section had been sold or disposed of by the government. *Hedrick v. Hughes*, 123.

MORTGAGE OF VESSELS.

1. A bill of sale of a vessel, absolute in its terms, may be shown by parol evidence to be only a mortgage. *Morgan's Assignee v. Shinn*, 105.
2. The facts that the bill of sale was recorded; that the vessel was re-enrolled in the name of the transferee; that a policy of insurance was taken out in his name as owner, and that no note or bond was taken by him, will not overcome positive evidence that the bill was taken as a mere security for a loan. *Ib.*
3. A mortgagee of an interest in a vessel, not in his possession, is under no obligation to contribute for repairs which he did not order. And it makes no difference that the vessel be registered in his name. *Ib.*

MUNICIPAL BONDS.

1. In a suit against a municipal corporation by a *bonâ fide* holder of its bonds, whose title accrued before maturity, the corporation cannot show by way of defence, if the legal authority of the corporation to issue the bonds is sufficiently comprehensive, a want of compliance on its part with formalities required by the statute authorizing the issue of the bonds, or show fraud in their own agents in issuing them. *Grand Chute v. Winegar*, 355.
2. Relief will not be given in equity against the enforcement of, when bill shows a complete defence and full means of relief at law. *Id.* 374.

MUNICIPAL CORPORATIONS. See *Municipal Bonds; Practice*, 6.

1. The trustees or representative officers of a parish, county, or other local jurisdiction, invested with the usual powers of administration in specific matters, and the power of levying taxes to defray the necessary expenditures of the jurisdiction, have no implied authority to issue negotiable securities, payable in future, of such a character as to be unimpeachable in the hands of *bonâ fide* holders, for the purpose of raising money or funding a previous debt. *Police Jury v. Britton*, 566.
2. Their ordinances are not "revenue laws" of the State, within meaning of act of June 30th, 1870, to advance cases on the docket. *Davenport City v. Dows*, 390.

NEGLIGENCE. See *Contributory Negligence*.

In suits against a railroad company, by a person outside the car, for injuries received, where the defence involves the question of the party's own negligence, an infant of tender years is not held to the same law as is an adult. By the adult there must be given that care and attention for his own protection that is ordinarily exercised by persons of intelligence and discretion. Of an infant of tender years less discretion is required, and the degree depends upon his age and knowledge. The caution required is according to the maturity and capacity of the child, a matter to be determined in each case by the circumstances of that case. *Railroad Company v. Gladman*, 401.

NEGOTIABLE SECURITIES. See *Municipal Corporations*, 1.

NOMINAL DAMAGES.

When, under the act of July 17th, "to seize and confiscate the property of rebels," &c., the proceedings have been such that notwithstanding a sale in form, *intended* to divest the rebel of his property, the property has not, after all, been divested in law, and the rebel's rights remain uninjured, he cannot in an action against the marshal for a false return recover more than nominal damages. *Pelham v. Way*, 196.

NON COMPOS MENTIS. See *Evidence*, 4, 5.

Power of attorney by one, void. *Dexter v. Hall*, 9.

NOTICE. See *Trespasser*, 1; *Trustee ex maleficio*.

OFFICIAL BONDS. See *Transportation of Spirits*.

Cover not merely duties imposed by existing law, but duties belonging to and naturally connected with the office or business in which the bonds are given, imposed by subsequent law, provided, however, that the new duties have relation to such office or business. *United States v. Singer*, 112.

PAROL EVIDENCE. See *Evidence*, 10, 12, 15.

PARTIES.

On a bill by the heir of A., grantee of ground on ground rent (of which ground B., the grantor, had improperly taken possession as for non-payment of the ground rent, and received the general rents), the bill being to have an account, and if a certain sum had been received, to have a conveyance of the ground, free of the ground rent, to A. in accordance with a covenant to convey to A. and her heirs on payment of a certain sum—the executor or administrator of A. is not a necessary defendant. *Prout v. Roby*, 471.

PATENT.

I. GENERAL PRINCIPLES RELATING TO.

1. Where three elements are claimed in a patent, in combination, the use of two of the elements only does not infringe the patent. *Gould v. Res*, 187.
2. The introduction of a newly-discovered element or ingredient, or one not theretofore known to be an equivalent, would not constitute an infringement. *Ib.*

PIPE-BOXES. See *Internal Revenue*, 2, 3.

PLEA. See *Practice*, 11.

1. An admitted informality in one, not a case for error after a traverse of its allegations and issue and trial; there having been no demurrer. *Deitsch v. Wiggins*, 539.
2. *Nil debet* and *non est factum* not necessarily inconsistent. *Grand Chute v. Winegar*, 373.
3. One in bar, which is, in substance, the same as one in abatement, already passed on by a jury against the party setting it up, is properly stricken out by the court before trial. *Ib.*

PRACTICE. See *Appeal*; *Charge of Court*; *Error*; *Fees*; *Mandamus*; *Plea*.

I. IN THE SUPREME COURT.

(a) *In cases generally.*

1. A case entertained where a mortgagor alone appealed, the decree below being against him personally, though there was a decree also against other persons as trustees. *Railroad Company v. Johnson*, 8.
2. The Supreme Court cannot examine the action of the Circuit Court on a motion to dismiss for want of proper citizenship, when the record does not show the facts of the case nor on what grounds the court proceeded. *Kearney v. Denn*, 51; and see *Flanders v. Tweed*, 450.
3. Judgment affirmed with 10 per cent. damages in a case brought here in disregard of the law as already settled by precedents of the court. *Pennywit v. Eaton*, 382.
4. In the jurisprudence of the United States, the objection that there is an adequate remedy at law raises a jurisdictional question, and may be enforced by the court *suâ sponte*, though not raised by the pleadings, nor suggested by counsel. *Oelrichs v. Spain*, 211.
5. Where parties waive a trial by jury and submit all issues of fact to the Circuit Court, they cannot raise, in this court, questions as to the effect of evidence. *City of Richmond v. Smith*, 430.
6. The ordinances of municipal corporations laying taxes cannot be regarded as the revenue laws of the State from which they derive their power of laying taxes, within the meaning of the act of June 30th, 1870, which makes it the duty of the court to give to causes, where the execution of the *revenue laws of any State* are enjoined or suspended by judicial order, preference over all other civil causes. *Davenport City v. Dows*, 390.
7. Where no request is made for specific instructions and no error is perceived in the instructions actually given, the fact that the charge may not have covered the entire case is not ground for reversal. *Shutte v. Thompson*, 151.
8. The court will pass without notice errors meant to be assigned by the plaintiff in error, but which are not assigned in the way prescribed by the rules of court. *Deutsch v. Wiggins*, 539.
9. And dismiss his case where his brief does not conform to these rules. *Portland Company v. United States*, 1.
10. Where on a bill by one asserting himself to be the heir-at-law of another, the answer denies the heirship, and on an issue directed, the heirship is found, and the court decrees for the complainant accordingly, no objection being made to anything that occurred at the trial and no application to set aside the verdict, this court will not, in the absence of the evidence given before the jury, go behind the decree of the court. *Prout v. Roby*, 472.
11. Where it was plain that though (on an objection of its inconsistency with another plea, pleaded with it) a plea had been technically struck out, yet that no evidence was rejected on account of its absence, but that the defendant litigated every question of fact as fully as if that pleading had remained, and that though much evidence offered by the

PRACTICE (*continued*).

defendant was rejected, none was so rejected because of the absence of a proper plea, this court refused to reverse. *Grand Chute v. Winegar*, 356.

II. IN CIRCUIT AND DISTRICT COURTS. See *Practice*, 5.

12. Evidence which, in connection with other evidence offered, tends to make out a defence, is properly receivable, though it may not itself prove all the facts, necessary to constitute a defence. *Deitsch v. Wiggins*, 540.
13. A final decree on the merits cannot be made separately against one of several defendants upon a joint charge against all, where the case is still pending as to the others. *Frow v. De La Vega*, 552.
14. If one of several defendants to a bill making a joint charge of conspiracy and fraud, make default, his default and a formal decree *pro confesso* may be entered, but no final decree on the merits until the case is disposed of with regard to the other defendants. *Ib.*
15. If the bill in such case be dismissed on the merits, it will be dismissed as to the defendant in default, as well as the others. *Ib.*
16. Where, in proceedings in State courts, the laws of a State allow a set-off pleaded to be interposed and tried in the same suit with the claim against which it is pleaded, the same thing may be done when the suit is brought or transferred into the Federal courts from them. *Partridge v. The Insurance Company*, 573.
17. A prayer for instructions which assumes as existing, matters of which no proof is found in the record, and which are simply inferred to be facts by counsel making the prayer, ought not to be granted. *Railroad Company v. Gladman*, 401.

III. IN DISTRICT COURTS.

IV. IN THE COURT OF CLAIMS.

18. The allowance of an appeal to this court by the Court of Claims, does not absolutely and of itself remove the cause from the jurisdiction of the latter court, so that no order revoking such allowance can be made. *Ex parte Roberts*, 384.

PRE-EMPTION LAWS.

Of the United States. Their nature and effect stated. *The Yosemite Valley Case*, 77.

PRESUMPTION. See *California*.PRINCIPAL AND AGENT. See *Ministerial Officer*.

1. Liability of a person for negligence of another in the service of such person, and in the course of his employment. The matter considered. *Railroad Company v. Hanning*, 649.
2. A statute enacting that a railroad company shall not be liable "for any injury done to person or property caused by the act or omission of persons contracting with it," is a mere declaration of its common law rights, and confers no exemption on it, from the ordinary liabilities of such a company. *Ib.*

PUBLIC ENEMY. See *Trading with Public Enemy*.

PUBLIC LANDS. See *Evidence*, 1-3.

One does not, by mere settlement upon lands of the United States, with a declared intention to obtain a title to the same under the pre-emption laws, acquire such a vested interest in the premises as to deprive Congress of the power to divest it by a grant to another party. The effect of the pre-emption laws stated. *The Yosemite Valley Case*, 77.

PUBLIC MONEY. See *Collectors and Receivers of Public Money*.**PUBLIC POLICY.** See *Trading with Public Enemy*.

Bonds issued by authority of the convention of Arkansas, which attempted to carry that State out of the Union, for the purpose of supporting the war levied by the insurrectionary bodies then controlling that State against the Federal government, do not constitute a valid consideration for a promissory note. *Hanauer v. Woodruff*, 439.

"PURCHASING AGENTS." See *Rebellion*, *The*, 1.**RAILROAD.** See *Consolidation of Railroads*.**REBELLION, THE.** See *Confiscation Act*; *Contract*, 4, 5; *Interest*, 3; *Nominal Damages*; *Public Policy*; *Statutes of Limitations*; *Trading with Public Enemy*.

1. Under the statutory provisions, treasury regulations, and executive orders concerning the purchase of the products of insurrectionary States, private citizens were prohibited from trading at all in the insurrectionary districts, and purchasing agents acting on behalf of the United States, had no authority to negotiate with any one in relation to the purchase of such products, unless at the time of the negotiation the party either owned or controlled them. *Maddox v. United States*, 58.
2. The forcible seizure, during the late rebellion, by the rebel authorities of public money of the United States, in the hands of loyal government agents, against their will and without their fault or negligence, was a sufficient discharge from their obligations, under their bonds, to keep such money safely and pay it over when required, to the United States. *United States v. Thomas*, 337.

RECEIVERS AND COLLECTORS OF PUBLIC MONEY.

Though under bond to keep it safely and pay it when received, not bound to render their moneys at all events. Excused, if prevented by the act of God, or the public enemy, without any neglect or fault on their part. Their liability stated. *United States v. Thomas*, 337.

RECORD OF DEED. See *Virginia*, 1.**RE-ENTRY.**

At the common law, where a right is claimed for the non-payment of rent, there must be proof of a demand of the precise sum due, at a convenient time before sunset on the day when the rent is due, upon the land, at the most notorious place of it, though there be no person on the land to pay. *Prout v. Roby*, 472.

REGISTRY OF VESSELS. See *Mortgage of Vessels*.

"REGULATION OF COMMERCE." See *Constitutional Law*, 2, 3.

RELEASE.

Not under seal, not a technical bar even in a suit at law; and even when sealed cannot be set up in equity to defeat those who were not parties to it, and had separate interests. *Oelrichs v. Spain*, 211.

RENT. See *District of Columbia*; *Re-entry*.

REPEAL OF CHARTER. See *Constitutional Law*, 8.

REPUTATION. See *Evidence*, 9.

RESCISSION OF CONTRACT. See *Equity*, 2.

RES INTER ALIOS ACTA. See *Res Judicata*.

RES JUDICATA. See *Practice*, 10.

A judgment of an Orphans' Court of Maryland passing directly on the legitimacy of a son who was applying for administration to his father's estate, held to be inadmissible to show the illegitimacy of his sisters by the same connection, though the judgment was entered only after an issue directed to ascertain whether the father was ever lawfully married to the admitted mother of the children, either before or subsequently to the birth of the son, and after a verdict in the negative. *Kearney v. Denn*, 51.

REVENUE LAWS. See *Practice*, 6.

A vessel condemned for violation of, in a clear *prima facie* case, not rebutted. *The John Griffin*, 29.

RIGHT OF WAY. See *Trespasser*, 1.

RISKS.

Marine distinguished from war. *Reybold v. United States*, 202.

RULES OF COURT.

A compliance with, in the preparation of briefs, and the assignment of errors, enforced under penalty of the party's losing his case. *Portland Company v. United States*, 1; *Deutsch v. Wiggins*, 539.

SEPARATE ESTATE. See *Feme Covert*.

SET-OFF. See *Practice*, 16.

SHIPS. See *Mortgage of Vessels*.

SMUGGLING.

A vessel condemned for, on a clear *prima facie* case against her, not rebutted. *The John Griffin*, 29.

STATUTE OF FRAUDS. See *Evidence*, 10.

STATUTES OF LIMITATIONS. See *California*.

1. Of the several States did not run during the late civil war against the right of action of parties upon contracts made previous to, and maturing after, the commencement of the war. *Brown v. Hiatts*, 177.
2. Where a suit was brought in Louisiana, for a debt due January 1st, 1858, the writ being served February 29th, 1868, held that in view of the decision in *The Protector* (12 Wallace, 700), the plea of what is known in Louisiana as "prescription of five years" could not be sustained. *Adger v. Alston*, 555.

STATUTES OF THE UNITED STATES.

The following, among others referred to, commented on and explained:

September 24th, 1789. See *Deposition*; *Jurisdiction*; *Mandamus*.

March 2d, 1799. See *Smuggling*.

March 6th, 1820. See *Missouri*.

March 3d, 1823. See *Missouri*.

August 19th, 1841. See *Bankrupt Act*, 2.

February 25th, 1862. See *Constitutional Law*, 1.

July 17th, 1862. See *Confiscation Act*.

June 30th, 1864. See *Trespasser*, 2; *Yosemite Valley*.

July 13th, 1866. See *Internal Revenue*, 2.

February 22d, 1867. See *District of Columbia*.

March 2d, 1867. See *Bankrupt Law*, 1; *Constitutional Law*, 6; *Internal Revenue*, 1, 3.

January 11th, 1868. See *Transportation of Spirits*.

July 20th, 1868. See *Distiller*.

June 1st, 1872. See *Amendment*.

STREET RAILWAY COMPANIES. See *Negligence*.

The respective obligations of these, on the one hand, and of persons (including children) crossing the tracks on which the rail-cars run on the other, stated. *Railroad Company v. Gladmon*, 401.

SUICIDE. See *Life Insurance*, 1.

"SUPERVISORY JURISDICTION."

Over decrees of the District Court in bankruptcy. What constitutes such jurisdiction under the 2d section of the Bankrupt Act? *Mead v. Thompson*, 635.

SURETY. See *Equity*, 6."TACIT LIEN." See *District of Columbia*.TAX. See *Consolidation of Railroads*; *Constitutional Law*, 2-4, 9; *Equity*, 1.

Distinguished from a wharfage charge. *Marshall v. Vicksburg*, 147.

TAX, ILLEGALLY PAID.

May always be recovered back, if the collector understands from the payer that the tax is regarded as illegal and that suit will be instituted to recover it; and in the event of recovery, the taxpayer is entitled to interest from the time of the exaction. *Erskine v. Van Arsdale*, 75.

TENDER, LEGAL. See *Constitutional Law*, 1.THIMBLE-SKEINS. See *Internal Revenue*, 2, 3.

TRADING WITH PUBLIC ENEMY.

Every kind of commercial dealing or intercourse between two countries at war, directly or indirectly, or through the intervention of third persons or partnerships, or by contracts in any form looking to or involving such transmission, is void. *Montgomery v. United States*, 395.

TRANSPORTATION OF SPIRITS.

The act of Congress of the 11th of January, 1868, which enacted that *from and after its passage* no distilled spirits should be withdrawn or removed from any warehouse for the purpose of transportation, &c., and

TRANSPORTATION OF SPIRITS (*continued*).

repealed all acts and parts of acts *inconsistent* with its provisions, had no reference to distilled spirits which had been withdrawn from a bonded warehouse for transportation *before* its enactment, and was accordingly not operative to prevent a recovery on a bond given before its passage, on a transportation of spirits made when the bond was given. *United States v. Bennett*, 660.

TRESPASS DE BONIS ASPORTATIS.

1. In an action of, where the issue involves the question as to where the ownership of the property was, evidence tending directly to show that an alleged sale, which the plaintiff relied on as the basis of his action, was a fraudulent sale, is pertinent to the issue; and its rejection, error. *Deitsch v. Wiggins*, 539.
2. What constitutes a sufficient plea in. *Ib.*

TRESPASSER.

1. Until notice has been given of the changed character of the place, one passing over a wharf or platform over which the public has been accustomed to pass, cannot be made such for so passing; although the wharf or platform is now no longer used for the purpose of passage. *Railroad Company v. Hanning*, 650.
2. Ministerial officer cannot be made one in any case where it is his duty to act. *Haffin v. Mason*, 671.

TRUSTEES. See *Trustees ex Maleficio*.

1. When a person conveys in fee to persons whom he names a lot and church edifice upon it for the use of a Baptist church—an unincorporated religious body—specified, the trustees are not removable at the will of the *cestui que trusts* and without cause shown. *Bouldin v. Alexander*, 131.
2. Of church property are not necessarily, in the Baptist Church, communicants in the same. *Ib.*

TRUSTEES EX MALEFICIO.

1. A person lending money to a trustee on a pledge of trust stocks, and selling the stocks for repayment of the loan, will be compelled to account for them, if he have either actual or constructive notice that the trustee was abusing his trust, and applying the money lent to his own purposes. *Duncan v. Jaudon*, 165.
2. The lender will be held to have had this notice when the certificates of the stocks pledged show on their face that the stock is held in trust, and when, apparently, the loan was for a private purpose of the trustee, and this fact would have been revealed by an inquiry. *Ib.*
3. The duty of inquiry is imposed on a lender lending on stocks, where the certificate of them reveals a trust. *Ib.*
4. These principles are not affected by the fact that the stocks pledged may be such as the trustee under the instrument creating his trust had no right to invest in; as *ex. gr.*, stock of a canal company, when he was bound to invest in State or Federal loans. *Ib.*
5. Notice to the cashier of a bank, or of bankers, that the stock pledged is trust stock, is notice to them. *Ib.*

USAGE.

Evidence of, to control the meaning of written contracts not plainly ambiguous or technical, not favored. *Partridge v. The Insurance Company*, 573.

VERDICT, EFFECT OF. See *Practice*, 10.

VESSELS. See *Mortgage of Vessels*.

VESTED RIGHTS. See *Constitutional Law*, 4-6, 8.

VIRGINIA.

1. Requisites for record of a deed under statute of December 8th, 1792. *Shutte v. Thompson*, 152.
2. Titles under its statutes, to land in West Virginia, inoperative; the statutes having been repealed by the latter State before the titles were made. *Ib.*

WAGERING POLICY. See *Life Insurance*.

WAIVER.

1. May be made by the party for whose protection they are given, of the requirements of the act of September 2d, 1789, authorizing the taking of depositions *de bene esse* in certain cases. What amounts to such a waiver. *Shutte v. Thompson*, 151.
2. May be made of right to take a writ of error, by amending and answering over. *Marshall v. Vicksburg*, 146.

WAR, ACT OF. See *Contract*, 4.

WAR RISKS.

What, as distinguished from marine. *Reybold v. United States*, 202.

WATER-POWER.

A grant of a right to draw from a canal so much water as will pass through an aperture of given size and given position in the side of the canal is substantially a grant of a right to take a certain quantity of water in bulk or weight. *Canal Company v. Hill*, 94.

WEST VIRGINIA. See *Virginia*.

WHARFAGE.

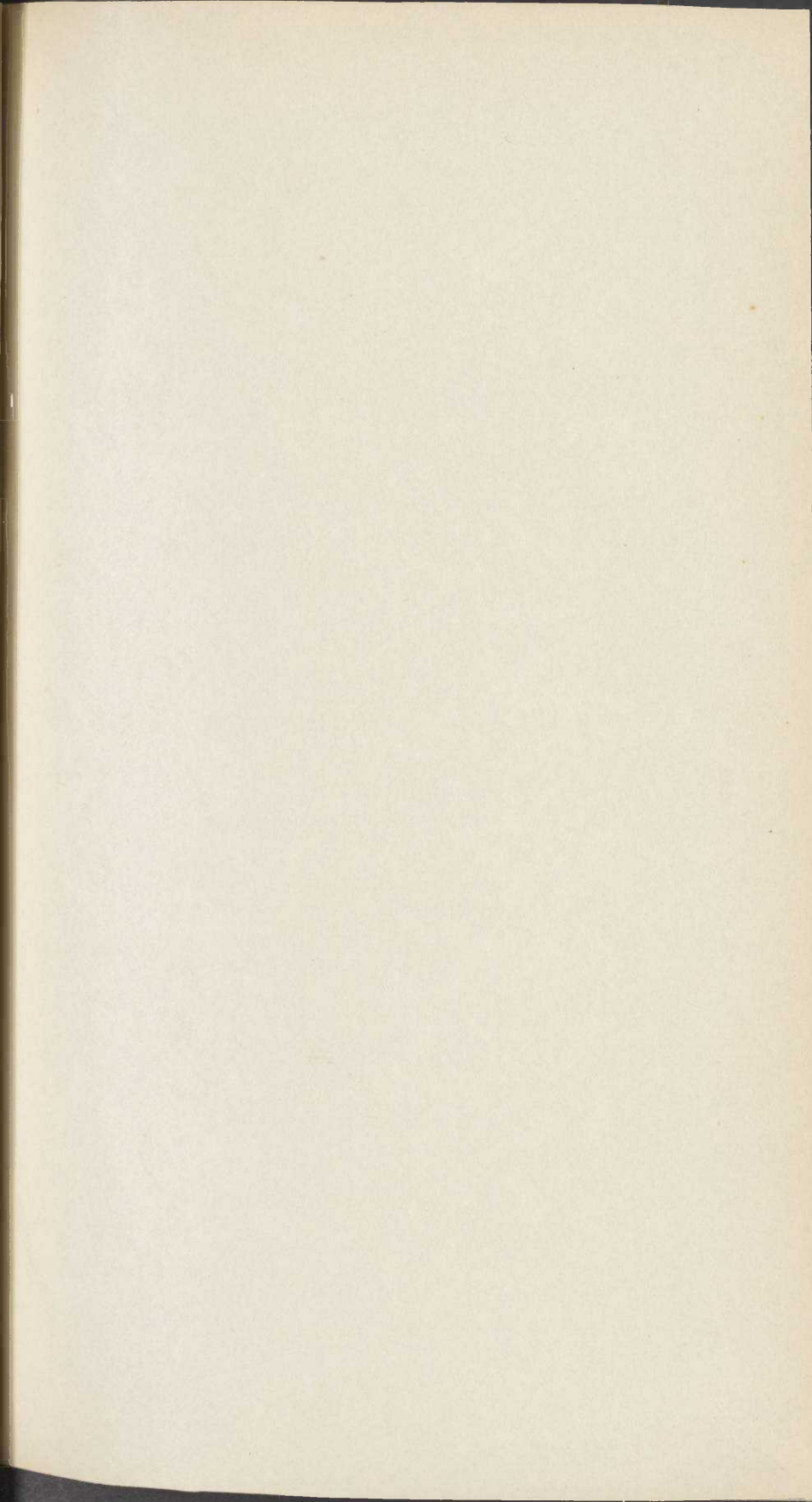
Right to collect, under a special contract, construed. *Marshall v. Vicksburg*, 146.

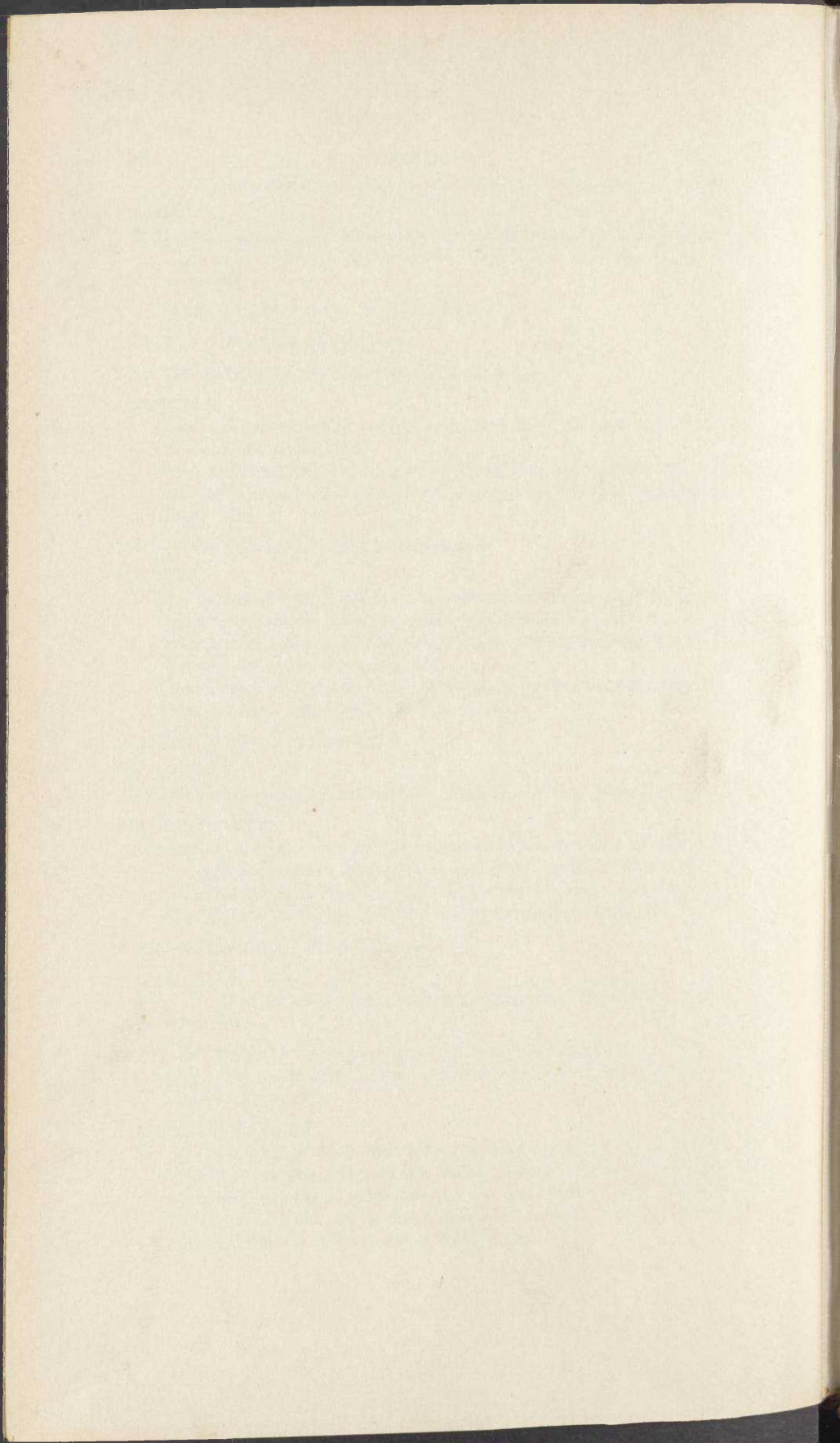
WRIT OF ERROR. See *Amendment; Appeal; Jurisdiction*.

Frivolous ones punished by affirmance, with 10 per cent. damages. *Pennywit v. Eaton*, 382.

YOSEMITE VALLEY.

The act of Congress of June 30th, 1864, granting this valley and the Mariposa Big Tree Grove to the State of California passed the title of those premises to the State, subject to the trust specified therein, that they should be held for public use, resort, and recreation, and be inalienable for all time. *The Yosemite Valley Case*, 77.





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