

# I N D E X.

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

## "ABSENCE."

Under a code which enacts (as does the Code of Iowa), that in case of the "absence" of the county judge the county clerk shall supply his place, the said judge is not, when, owing to his absence from the State the county clerk is acting as county judge in the county—holding a term of the county court there, issuing county warrants, and doing other business, in the county, in discharge of his duties as acting county judge—so wholly superseded in his office as that he may not, when beyond the limits of the county, do certain ministerial acts, as *ex. gr.*, execute and issue bonds, whose purpose is to advance the concerns of the county; and for that purpose buy, at the place where he is, a new county seal; the code having authorized the county judge to procure one. *Lynde v. The County*, 6.

ACT OF THE LAW. See *Bail*.

## ACTION.

1. Where an incorporated company undertook to work in the streets of a city, agreeing that it would "protect all persons against damages by reason of excavations made by them in doing it, and to be responsible for all damages which may occur by reason of the neglect of their employes on the premises;" held, on the company's having let the work out to a subcontractor, through the negligence of whose servants injury accrued to a person passing over the street, that an action lay against the company for damages. *Water Company v. Ware*, 566.
2. What suits an administrator *de bonis non* can and cannot bring against the former administrator. *Beall v. New Mexico*, 535.
3. Regularly, a decree of a probate court against the administrator for an amount due, and an order for leave to prosecute his bond, are prerequisites to the maintenance of a suit thereon. *Ib.*

## ADMINISTRATOR DE BONIS NON.

1. Cannot sue the former administrator or his representatives for a *devastavit*, or for delinquencies in office; nor can he maintain an action on the former administrator's bond for such cause. The former administrator, or his representatives, are liable directly to creditors and next of kin. The administrator *de bonis non* has to do only with the goods

ADMINISTRATOR DE BONIS NON (*continued*).

of the intestate unadministered. If any such remain in the hands of the discharged administrator or his representatives, in specie, he may sue for them either directly or on the bond. *Beall v. New Mexico*, 535.

2. Regularly, a decree of the probate court against the administrator for an amount due, and an order for leave to prosecute his bond, are prerequisites to the maintenance of a suit thereon. *Ib.*

ADMINISTRATOR'S SALE. See *Illinois*.

1. A purchaser at judicial sale by an administrator, does not depend upon a return by the administrator making the sale, of what he has done. If the preliminary proceedings are correct, and he has the order of sale and the deed, this is sufficient for him. *McNitt v. Turner*, 353.
2. What amounts to a sufficient description by an administrator in his petition, and in the order of court, of the lands of a decedent which he is about to sell. *Ib.*

ADMIRALTY. See *Collision*; *Practice*, 7, 8; *Public Law*, 1.

A statute of a State giving to the next of kin of a person crossing upon one of its public highways with reasonable care, and killed by a common carrier by means of steamboats, an action on the case for damages for the injury caused by the death of such person, does not interfere with the admiralty jurisdiction of the District Courts of the United States, as conferred by the Constitution and the Judiciary Act of September 24th, 1789; and this is so, even though no such remedy enforceable through the admiralty existed when the said act was passed, or has existed since. *Steamboat Company v. Chase*, 522.

AGREEMENT OF RECORD. See *Evidence*, 2.

## ALIENS.

1. The duties of aliens domiciled in the United States stated, and certain ones who made munitions of war knowing that they were to be used for the rebellion, held to have given aid and comfort thereto. *Hanauer v. Doane* (12 Wallace, 342) affirmed. *Carlisle v. United States*, 147.
2. Such aliens were, however, included in the President's proclamation of December 25th, 1868, granting unconditionally and without reservation pardon to every person who participated in the rebellion or adhered to the enemies of the United States; with restoration of all rights, privileges, &c. *Ib.*
3. This pardon and amnesty relieved aliens prosecuting claims in the Court of Claims from the necessity of establishing their loyalty. *Ib.*
4. British subjects may, under the act of July 27th, 1868, prosecute claims in the Court of Claims. *Ib.*

AMENDMENTS TO THE CONSTITUTION. See *Constitutional Law*, 2-5.AMNESTY AND PARDON. See *Aliens*, 2, 3.ATTAINDER, BILL OF. See *Constitutional Law*, 8.



**ATTORNEY AT LAW.** See *Constitutional Law*, 5.

1. The power of a State to prescribe the qualifications for admission to the bar of its own courts is unaffected by the 14th amendment of the Constitution, and this court cannot inquire into the reasonableness or propriety of the rules it may prescribe. *Bradwell v. The State*, 130.
2. Its refusal, therefore, to admit a woman to practice is not a subject for review here. *Ib.*

**AVOIDANCE OF BOND.** See *Bond*.**"AWAITING DELIVERY."**

Meaning of the terms as respects goods in a railway station. *Railroad Company v. Manufacturing Company*, 318.

**BAIL.** See *Fugitive from Justice*.

1. The "act of the law" which will discharge bail from an obligation to surrender their prisoner must be one which renders the performance impossible, and must be a law operative in the State where the obligation was assumed, and obligatory in its effect upon her authorities. *Taylor v. Taintor*, 367.
2. The fact that there has been placed in the hands of the bail, by some one, not the person arrested nor any one in his behalf, nor, so far as the bail knew, with his knowledge, a sum of money equivalent to that for which the bail and himself were bound, has no effect, in a suit against the bail, on the rights of the parties. *Ib.*

**BANK DEPOSIT.** See *Deposit*.**BANKRUPT ACT.** See *Jurisdiction*, 6; *Landlord and Tenant*.

1. A creditor has reasonable cause to believe his debtor "insolvent" in the sense of the, when such a state of facts is brought to his notice respecting the affairs and pecuniary condition of his debtor, as would lead a prudent business man to the conclusion that he, the debtor, is unable to meet his obligations as they mature in the ordinary course of business. *Buchanan v. Smith*, 277.
2. A debtor "suffers" or "procures" his property to be seized on execution, when, knowing himself to be insolvent, an admitted creditor who has brought suit against him—and who he knows will, unless he applies for the benefit of the, secure a preference over all other creditors—proceeds in the effort to get a judgment until one has been actually got by the perseverance of him the creditor and the default of him the debtor. *Ib.*
3. Such effort by the creditor to get a judgment, and such omission by the debtor to "invoke the protecting shield of the," in favor of all his creditors, is a fraud on the, and invalidates any judgments obtained. *Ib.*
4. The fact that the debtor, just before the judgments were recovered, may have made a general assignment which he meant for the benefit of all his creditors equally, does not change the case. Such assignment is a nullity. *Ib.*
5. The transfer by a debtor who is insolvent, of his property, or a considerable portion of it, to one creditor as a security for a pre-existing

BANKRUPT ACT (*continued*).

- debt, without making any provision for an equal distribution of its proceeds to all his creditors, operates as a preference, and must be taken as *primâ facie* evidence that a preference was intended, unless the transferee can show that the debtor was at the time ignorant of his insolvency, and that his affairs were such that he could reasonably expect to pay all his debts. *Wager et al. v. Hall*, 584.
6. Such a transfer, if made within four months before the filing by the party of a petition in bankruptcy, is void. *Ib.*
  7. A sale by a retail country merchant then insolvent, of his entire stock, suddenly, is a sale "not made in the usual and ordinary course" of his business; and, therefore, *primâ facie* evidence of fraud, within the 35th section of the bankrupt law. *Walbrun v. Babbitt*, 577.
  8. This presumption of fraud can be overcome only by proof on the part of the buyer that he pursued in good faith all reasonable means to find out the pecuniary condition of the vendor. *Ib.*
  9. One purchasing in such a case from a vendee who he knows has used no such means, but on the contrary has bought under other suspicious circumstances, takes with full knowledge of the infirmity of the title. And as against either or both purchasers the assignee in bankruptcy may set the sale aside if made within six months before a decree in bankruptcy, even though a fair money consideration have been paid by each. *Ib.*
  10. The District Courts sitting in bankruptcy, have no jurisdiction to proceed by rule to take goods seized, before any act of bankruptcy by the lessees, for rent due by them in Louisiana, under "a writ of provisional seizure"—and then in the hands of the sheriff, and held by him as a pledge for the payment of rent due—out of his hands, and to deliver them to the assignee in bankruptcy to be disposed of under the orders of the bankrupt court; neither the sheriff nor the lessor having been parties to the proceedings in bankruptcy; nor served with process to make them such. *Marshall v. Knox*, 551.
  11. Where, under the 41st section of the Bankrupt Act of 1867, a trial by jury is had in the District Court in a case of application for involuntary bankruptcy, and exceptions are taken in the ordinary and proper way, to the rulings of the court on the subject of evidence and to its charge to the jury, a writ of error lies from the Circuit Court when the debt or damages claimed amount to more than \$500; and if that court dismiss or decline to hear the matter, a mandamus will lie to compel it to proceed to final judgment. *Insurance Company v. Comstock*, 258.
  12. Where the goods of a tenant seized by a landlord for rent, before any act of bankruptcy, have been taken out of his hands and given to the assignee in bankruptcy, by an order of the District Court acting summarily and without jurisdiction, and sold by such assignee, the Circuit Court, having got possession of the case by bill filed by the lessor, to be regarded as one in an original proceeding, will proceed and decide the whole controversy. *Marshall v. Knox*, 551.
  13. And where the seizure for rent has been made under a statute like that



**BANKRUPT ACT** (*continued*).

prevailing in Louisiana, and where the landlord's lien is a perfected one, in the nature of a pledge or execution, it will give the lessor the full value of the goods sold clear of all expenses, whether the assignee obtained that value or not (limited, of course, by the amount of rent which he is entitled to have paid to him), and also to all the taxable costs to which he has been put by the litigation. Damages may be more appropriately claimed at law. *Marshall v. Knox*, 551.

**BONA FIDE HOLDER.** See *Bond*; *Municipal Bonds*, 3, 6; *Presumptions*, 5.

**BONA FIDES.** See *Principal and Agent*.

**BOND.** See *Municipal Bonds*.

A bond regular on its face cannot be avoided even by sureties (the obligee not having had knowledge thereof) by the fact that they signed it on a condition that other persons were to execute it who did not execute it. *Dair v. United States*, 1.

**BONUS.** See *Municipal Bonds*, 7.

A *bonus* is not a gift or gratuity, but a sum paid for services upon a consideration in addition to or in excess of that which would ordinarily be given. *Kenicott v. The Supervisors*, 453.

**CAPTURED AND ABANDONED PROPERTY ACT.**

A claim under, for a vessel taken and sold by the Treasury Department, held to have been rightly dismissed, the property which was the subject of it having been used in waging or carrying on war against the United States; and this so held although the government, in ignorance of the fact just stated, had hired the vessel in a regular way, and used her for a whole year as if she were belonging to a loyal citizen who had never misused her; after which under some general order it disregarded the owner's claims, and turned her over for sale by the Treasury Department. *Slawson v. United States*, 310.

**CERTIFIED COPIES.** See *Texas Titles*, 6.

**CHARGE OF COURT.** See *Error*, 1-6, 8.

**CHARTER.** See *Constitutional Law*, 6.

An amendment to a charter treated as part of the charter, in a subsequent statute giving certain privileges "granted by the charter." *Humphrey v. Pegues*, 244.

**CHATTEL SALE.** See *Statute of Frauds*.

**CITIZENS OF THE STATES AND OF THE UNITED STATES.** See *Constitutional Law*, 2-5.

**COLLISION.**

1. A steamer condemned for not changing her course when meeting a sailing vessel. *The Commerce*, 33.
2. A steamer condemned also for an accident while taking a tow around a dangerous point with a too long hawser. *The Cayuga*, 177.
3. Though a sailing vessel having the wind is *prima facie* bound to adopt

COLLISION (*continued*).

such a course as will prevent collision with other sailing vessels not having it, it is still the duty of these last in an emergency to make their courses so as not to render it difficult for the vessel having the wind to do her duty by rendering it doubtful what movement she should make. *The Mary Eveline*, 348.

## COLORADO TERRITORY.

The acts of Congress of May 23d, 1844, and May 28th, 1864, for the relief of the city of Denver, and the act of Colorado Territory of March 11th, 1864, explained and applied. *Cofield v. McClelland*, 331.

COMMERCE BETWEEN THE STATES. See *Constitutional Law*, 1.

## "COMMERCIAL BROKERS."

Who act *wholly* as buyers, not liable under the Internal Revenue Act of July 13th, 1866, to the tax of one-twentieth of one per cent. on the amount of "sales" made by commercial brokers. *The Collector v. Doswell & Co.*, 156.

COMMISSIONER OF INTERNAL REVENUE. See *Internal Revenue*.

COMMON CARRIER. See *Admiralty*.

1. When goods are delivered to a common carrier to be transported over his railroad to his depot in a place named, and there to be delivered to a second line of conveyance for transportation further on, the common-law liability of common carriers remains on the first carrier until he has delivered the goods for transportation to the next one. His obligation, while the goods are in his depot, does not become that of a warehouseman. *Railroad Company v. Manufacturing Company*, 318.
2. Although a common carrier may limit his common-law liability by special contract assented to by the consignor of the goods, an unsigned general notice printed on the back of a receipt does not amount to such a contract, though the receipt with such notice on it may have been taken by the consignor without dissent. *Ib.*
3. The court expresses itself against any further relaxation of the common-law liability of common carriers. *Ib.*
4. The expression "awaiting delivery" defined. *Ib.*

## CONDITION.

How far a grant by a State loyal at the time, on condition that certain things shall be done, is absolved from the condition by the State going into rebellion, and by the rebellion rendering the performance by the grantee of the condition impracticable. *Davis v. Gray*, 203.

CONFEDERATE NOTES. See *Deposit*; *Nudum Pactum*; *Public Policy*.

CONFIDENTIAL RELATIONS. See *Principal and Agent*.

## CONFISCATION ACT.

Of August 6th, 1861; the proper mode of proceeding under it set forth, and some very irregular action under it, declared of no effect. *United States, Lyon et al. v. Huckabee*, 414.



CONFLICT OF JURISDICTION. See *Admiralty*.

## I. BETWEEN THE FEDERAL COURTS AND STATE OFFICERS.

1. A Circuit Court, in a proper case in equity, may enjoin a State officer from executing a State law in conflict with the Constitution or a statute of the United States. *Davis v. Gray*, 203.

## II. BETWEEN COURTS OF DIFFERENT STATES.

2. Where a ship, then at sea, registered in one State (Massachusetts), her owner's place of residence, was on his becoming insolvent passed under statutory law, by an act of the insolvent court of that State, to his assignee in insolvency, and on arriving from sea entered the port of another State (New York), where she was immediately attached by one of the owners' creditors in that State, *held* that the ship while at sea was to be considered as a portion of the territory of Massachusetts, and that the assignee in insolvency under its laws had the prior right. *Crapo v. Kelly*, 610.

## III. BETWEEN FEDERAL AND STATE COURTS.

3. A State statute giving to a person's next of kin a right to sue the owners of a steamboat for the injury done them by killing their relation on the public highways of the State (the same being navigable waters of the United States), does not conflict with the admiralty jurisdiction as conferred on the Federal courts by the Constitution and the Judiciary Act. *Steamboat Company v. Chase*, 522.

## "CONNECTION" OF RAILWAYS.

What will answer the meaning of the expression. This considered in a special case. *Kenicott v. The Supervisors*, 452.

CONSIDERATION. See *Nudum Pactum*; *Public Policy*.CONSTITUTIONAL LAW. See *Admiralty*; *Bail*; *Monopoly*; *Parties*, 1, 2; *Privileges and Immunities*; *Texas*.

1. A license tax by a city of one State of a business carried on within the city, of an express company chartered by another State, which business so licensed included the making of contracts within the first-named State for transportation beyond its limits, is not a tax on interstate commerce, and is constitutional. *Osborne v. Mobile*, 479.
2. The thirteenth amendment to the Constitution, and the first clause of the fourteenth amendment, explained and construed, and *held* not to forbid the grant by a State legislature of an exclusive right of a power to have and maintain slaughter-houses within a considerable district, including a large Southern city, for a limited time, the same being under proper regulations and obligations prescribed, the grant being one of a character, as the court considered, necessary and proper to effect a purpose which had in view the public good. *The Slaughter-house Cases*, 36; see also *Bradwell v. The State*, 130.
3. The histories, purposes, extent, and limits of the said thirteenth and fourteenth amendments stated. *Ib.*
4. The privileges and immunities of citizens of the States and of citizens of the United States, distinguished under the first and second clauses of the fourteenth amendment; and respectively defined by this court. *Ib.*

CONSTITUTIONAL LAW (*continued*).

5. A refusal by the courts of a State to admit a woman to practice violates no provision of the Federal Constitution, nor the fourteenth amendment to it. *Bradwell v. The State*, 130.
6. An exemption from taxation granted by one legislative act to a railroad company, as an inducement to it to build its road, cannot by a subsequent one be taken away. *Humphrey v. Pegues*, 244.
7. The laws which exist at the time of the making of a contract, and in the place where it is made and to be performed, enter into and make part of it. This embraces those laws alike which affect its validity, construction, discharge, and enforcement. The remedy or means of enforcing a contract is a part of that "obligation" of a contract which the Constitution protects against being impaired by any law passed by a State. And so, if a contract when made was valid under the constitution and laws of a State, as they had been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the legislature or the judiciary will be regarded by this court as establishing its invalidity. *Walker v. Whitehead*, 314; *Olcott v. The Supervisors*, 678.
8. The statute of February 15th, 1865, of West Virginia (Acts of 1865, p. 20), by which persons having at that time a right to have cases in attachment reheard under particular circumstances, were deprived for past misconduct, and without judicial trial of such right, was unconstitutional and void. *Pierce v. Carskadon*, 234.
9. The clause of the Constitution (article 4, section 2) relating to the delivery of persons charged in one State with crime, and fleeing from justice and found in another, passed upon in connection with the subject of their bail. *Taylor v. Twintor*, 366.

## CONSTRUCTION, RULES OF.

## I. AS APPLIED TO CONTRACTS.

## II. AS APPLIED TO STATUTES.

An act of legislature authorizing a municipal corporation to lend its credit to a railroad company specified, and to "any other railroad company duly incorporated and organized for the purpose of constructing railroads," leading in a direction named, "and which in the opinion of common council are entitled to such aid from the city;" authorizes the lending of the city credit to a railroad company *thereafter* duly incorporated and organized, as well as the lending of such credit to those in existence when the act was passed. *James v. Milwaukee*, 159.

CONTRACT. See *Constitutional Law*, 6, 7; *Duress*; *Nudum Pactum*; *Public Policy*.

CONTRACTOR AND SUBCONTRACTOR. See *Employer and Subcontractor*.

## "CONVEYANCE."

Walking is not either a public or private, within the meaning of an accident policy providing against accidents, when travelling by public or private conveyance." *Ripley v. Insurance Company*, 336.



COUNTY CLERK. See "*Absence.*"

COUNTY JUDGE. See "*Absence.*"

COURT OF CLAIMS. See *Aliens*, 3, 4; *Captured and Abandoned Property Act*.

Its power under the second section of the act of June 25th, 1868, to order a new trial, after appeal to the Supreme Court. *Ex parte: In the matter of the United States*, 699.

DEBTOR AND CREDITOR. See *Married Woman*.

DECEDENT'S ESTATE. See *Action*, 2, 3; *Administrator de Bonis Non*; *Description of Lands*.

DEMAND AND NOTICE. See *Evidence*, 4.

DEPOSIT.

The rule that where money has been deposited with a bank, the bank where the deposit is made becomes the owner of the money and consequently a debtor for the amount, and under obligation to pay on demand, not the identical money received, but a sum equal in legal value, does not apply where the thing deposited is not money, but a commodity, such as "Confederate notes," and it was agreed that the collections should be made in like notes. *Planters' Bank v. Union Bank*, 483.

DESCRIPTION OF LANDS.

What amounts to a sufficient, in an administrator's petition for sale of his decedent's, and in the order of court directing the sale. *Turner v. McNitt*, 352.

DISTILLER. See *Internal Revenue*.

DONATION. See *Municipal Bonds*, 7.

DURESS.

Where the agents of the rebel Confederacy came to persons owning iron-works, and informed them that they must either contract to furnish iron at a uniform price, or lease or sell the works to the Confederacy or that they would be impressed, and the owners, then much in debt, after consultation—the works being already in charge of a guard from the Confederacy, which possessed despotic power over skilful laborers—considering that to "contract" would cause a failure of their scheme, and to lease would be ruinous, resolved to sell: held, that such a sale was not made under duress. *United States, Lyon et al. v. Huckabee*, 414.

EMPLOYER AND SUBCONTRACTOR.

How far an employer (in this case a corporation) is liable in damages for personal injuries caused to others by the acts of subcontractors employed by it, and done during the time of their employment. *Water Company v. Ware*, 566.

ENROLMENT OF VESSELS.

A temporary enrolment, from year to year, in the port of one State, does

ENROLMENT OF VESSELS (*continued*).

not so affect the permanent registry of a vessel in the port of another State in which the vessel belongs and has her home, as to subject her to taxation in ports away from the latter State. *Morgan v. Parham*, 472.

EQUITY. See *Laches*; *Negotiable Paper*, 2; *Parties*, 3; *Rebellion*, 1, 2; *Receivers in Chancery*.

1. Affirmative relief will not be granted in equity upon the ground of fraud unless it be made a distinct allegation in the bill. *Voorhees v. Bonesteel and Wife*, 16.
2. Nor will a trust alleged in a bill to exist, be considered as proved when every material allegation of the bill in that behalf is distinctly denied in the answer; and the proofs, instead of being sufficient to overcome the answer, afford satisfactory grounds for holding that there was no trust in the case. *Ib.*
3. An "agreement of record" though not made part of the record by the pleadings, received as evidence; the suit being one in equity and not at law. *Burke v. Smith*, 390.
4. In a bill to foreclose a mortgage given to secure negotiable railroad bonds, the bonds having been transferred to a *bonâ fide* holder for value, no further defences are allowed as against the mortgage than would be allowed were the action brought in a court of law on the bonds. *Carpenter v. Longan*, 271; *Kenicott v. The Supervisors*, 452.

ERROR. See *Practice*, 1-4, 6-10.

1. A. brought suit on a policy on vessel and freight, for a total loss. The jury found the whole amount insured *with interest* and \$5000 besides for damages, and judgment was entered accordingly. *Held*, that the party could not recover damages beyond legal interest, and that there was error on the face of the record. *Insurance Company v. Piaggio*, 378.
2. Under the "Act to further the administration of justice" of June 1st, 1872 (17 Stat. at Large, 197), a *venire de novo* is not required for such error, and the court can reverse the judgment and modify it by disallowing the \$5000, and remanding the case with directions to enter judgment for the residue found by the jury with interest;—the case being one where all the facts were apparent in the record. *Ib.*
3. It is not error to charge that a party assured had no right to abandon, when the insurers have accepted the abandonment. *Ib.*
4. Nor to refuse to charge that an abandonment made through error, and so accepted, is void if not warranted by the policy, when no evidence had been given of error by either side. *Ib.*
5. A judgment will not be reversed for want of a charge requested when the record contains no sufficient information that the charge requested was material to the issues. *Ib.*
6. Nor because the court charges in a way which, though right in the abstract, may not be so in application, when the record does not show that sufficient evidence had not been given to warrant the jury in passing on the question. *Ib.*
7. Where on an information in which the party proceeded against was entitled to a trial by jury, his answer has been stricken out, the judg-



ERROR (*continued*).

ment will be reversed, and the cause remanded with directions to permit the claimants to answer, and to award a *venire*. *Garnharts v. United States*, 162.

8. When, on the undisputed parts of a case a verdict is clearly right, an appellate court will not reverse, because on some disputed points the charge may have been technically inaccurate. *Walbrun v. Babbitt*, 577.

EVIDENCE. See *Equity*, 3; *Municipal Bonds*, 6; *Presumptions*, 1, 2, 5; *Res Judicata*; *Texas Titles*, 4, 6.

1. Notices required by statute presumed to have been given by a probate judge, he having made a conveyance of land which could have been properly made only after such notices given. *Cofield v. McClelland*, 331.
2. An "agreement of record" not made part of the record by the pleadings, may be received as evidence in a suit in equity, though it might not be in a suit at law. *Burke v. Smith*, 390.
3. Where improper evidence has been suffered by the court to get before the jury, it is afterwards properly withdrawn from them. *Specht v. Howard*, 564.
4. On a suit by the indorsee of a negotiable note which has no place of payment specified in it, against the indorser who relied on a confessedly defective demand on the maker, of payment; that is to say, on a fruitless effort at demand, in the place where the note was dated, but in which place the maker did not live, parol evidence that at the time when the note was drawn, it was agreed between the maker and the indorsee that it should be made payable in the place where the effort to demand payment had been made, and that this place of payment had been omitted by the mistake of the draughtsman—being evidence to vary or qualify the absolute terms of the written contract—would be improperly let in to the jury and, if let in, would be properly withdrawn. *Ib.*

EX POST FACTO LAW. See *Constitutional Law*, 8.

EXCLUSIVE RIGHT. See *Monopoly*.

EXECUTION. See *Practice*, 6.

## FEMALE ATTORNEY AT LAW.

The refusal of a State court to admit a woman to practice law is not a breach of the Federal Constitution nor the subject of review here. *Bradwell v. The State*, 130.

## FOURTEENTH AMENDMENT, THE.

History, purpose, extent, and effect of stated. *Slaughter-house Cases*, 36.

FRAUD. See *Equity*, 1; *Parties*, 3.

## FUGITIVE FROM JUSTICE.

That clause (article iv, § 2) of the Constitution, relating to the delivery of persons charged in one State with crime, fleeing to another and found there, passed upon in connection with the subject of their bail. *Taylor v. Taintor*, 366.

- GIFT INTER VIVOS. See *Statute of Frauds*.
- HIGH SEAS. See *Conflict of Jurisdiction*, 2.
- HUSBAND AND WIFE. See *Married Woman*.
- ILLEGAL CONSIDERATION. See *Nudum Pactum*; *Public Policy*.
- ILLINOIS. See *Presumptions*, 2, 3; "Seized of."  
 A purchaser at a judicial sale is a "purchaser" within the recording acts of, enacting that unrecorded deeds shall take effect as to "subsequent purchasers" without notice, after the time for filing the same for record, and not before. *McNitt v. Turner*, 353.
- IMPLICATION. See *Municipal Bonds*, 1-3
- INDIAN TREATIES. See *Wyandotte Float*.
- "INSOLVENT."  
 Meaning of the term in the Bankrupt Law. *Buchanan v. Smith*, 277.
- INSURANCE. See *Error*, 1-4; *Life Insurance*.
- INTEREST. See *Error*, 1.
- INTERNAL REVENUE. See *Presumptions*, 4.  
 1. The court, in the absence of a clear, common conviction on the part of its members, as to meaning of a clause in a statute relating to the, adopted what was shown to have been the unvarying practical construction given to it by the commissioner of. *Peabody v. Stark*, 240.  
 2. Held accordingly, that under the 80 per cent. clause in the 20th section of the act of July 20th, 1868, the distiller is not liable until a survey in which the tax is assessed has been delivered to him as provided in the 10th section. *Ib*.
- INTERPRETATION OF LANGUAGE. See *Construction, Rules of*.
- "INVOLUNTARY SERVITUDE." See *Constitutional Law*, 2-5; *Monopoly*.  
 Meaning of the words as used in the 13th amendment to the Constitution, defined. *Slaughter-house Cases*, 36.
- IOWA. See "Absence;" *Municipal Bonds*, 6.
- JUDICIAL COMITY. See *Conflict of Jurisdiction*, 1, 3; *Internal Revenue*.  
 1. When, in a case of collision between a steamer and a sailing vessel, the District and Circuit Court both condemning the steamer, agree in their estimate of the value of the sailing vessel, this court will not set aside their estimate without satisfactory evidence that they were mistaken. *The Commerce*, 33.  
 2. How far the Federal courts will follow, as of obligation, the decisions of the State courts. *Olcott v. The Supervisors*, 678.
- JUDICIAL PRESUMPTIONS. See *Judicial Comity*; *Presumptions*.
- JUDICIAL SALE. See *Administrator's Sale*.



JURISDICTION. See *Admiralty*.

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

(a) It HAS jurisdiction—

1. Under the 25th section of the Judiciary Act, where, on a suit in one State, between a sheriff of that State and an assignee in insolvency appointed by the court of another State, to determine whether the sheriff acting for an attaching creditor or the assignee has the prior right to certain personal property attached, the highest court of the State where the suit was brought decides that the right was with the sheriff. *Crapo v. Kelly*, 610.

(b) It has NOT jurisdiction—

2. Of an appeal on a libel *in personam* for a collision by the owners of a schooner against the owners of a sloop that had been sunk in the collision; where the decree was for but \$1292.84, and, therefore, "not exceeding the sum or value of \$2000." And this although prior to the libel *in personam*, the owners of the sloop had filed in another district a libel *in rem* against the schooner, laying their damages at \$4781.84, and that in the District and Circuit Courts below, both cases might have been heard as one; the cases never having, however, been brought into the same district or circuit, nor in any manner consolidated. *Merrill v. Petty*, 338.
3. Nor under the 25th section of the Judiciary Act, of a case where neither the record nor the opinion of the Supreme Court, which was in the record, shows any question before that court, except one relating to the interruption of a "prescription" (statute of limitations) set up as a defence, and the opinion shows that this question was decided exclusively upon the principles of the jurisprudence of the State. *Marqueze v. Bloom*, 351.
4. Nor under that section, nor under the second section of the act of February 5th, 1867, amendatory of it, of a case dismissed by a State court for want of jurisdiction in such court. *Smith v. Adsit*, 185.

II. OF THE CIRCUIT COURTS OF THE UNITED STATES. See *Bankrupt Act*, 11, 12.

5. Where a proceeding in a State court is merely incidental and auxiliary to an original action there—a graft upon it, and not an independent and separate litigation—it cannot be removed into the Federal courts under the act of 2d of March, 1867, authorizing under certain conditions the transfer of "suits" originating in the State courts. *Bank v. Turnbull & Co.*, 190.
6. The Circuit Court may under the second section of the Bankrupt Act entertain on bill as an original proceeding, a case involving a question of adverse interest in goods seized by the sheriff before any act of bankruptcy by the tenant, for rent due and held by him, the sheriff, as a pledge for the payment thereof, and claimed, on the other hand, by the assignee in bankruptcy of the tenant. *Marshall v. Knox*, 551.

III. OF THE DISTRICT COURTS OF THE UNITED STATES. See *Admiralty*; *Bankrupt Act*, 10.

## KANSAS PACIFIC RAILWAY.

The proviso in the 21st section of the act of July 4th, 1864, amendatory of the act of July 1st, 1862, to aid the said railway in the construction of its road, requiring the prepayment of the cost of surveying, selecting, and conveying the lands, requires the prepayment as to lands granted by the original act, as well as to those granted by the amendatory one. *Railway Company v. Prescott*, 603.

## LACHES.

A court of equity will, apparently, not be moved to set aside a fraudulent transaction at the suit of one who has been quiescent during a term longer than that fixed by the statute of limitations, after he had knowledge of the fraud, or after he was put on inquiry with the means of knowledge accessible to him. *Burke v. Smith*, 401.

LANDLORD AND TENANT. See *Bankrupt Act*, 10, 12, 13.

Under the Civil Code of Louisiana, a lessor has a right to seize, for rent in arrears, goods on the premises, and until he is paid his rent, retain them as against an assignee in bankruptcy subsequently occurring. *Marshall v. Knox*, 551.

LANGUAGE, INTERPRETATION OF. See *Construction, Rules of*.

## "LEAVING LANDS."

The expression satisfies a statutory requirement, that when an administrator desired to sell his intestate's lands, he should set forth in his petition that the intestate had died "seized of" such and such lands. *Turner v. McNitt*, 352.

## LEGISLATIVE ACT.

Though of a general sort repealable by another, though special. *Railroad Company v. County of Otoe*, 667.

## LIFE INSURANCE.

Walking, for a certain distance at the end of a journey, *held*, not to be travelling by either public or *private conveyance*, within the meaning of an accident policy of insurance on life while "travelling by public or private conveyance." *Ripley v. Insurance Company*, 336.

LOUISIANA. See *Bankrupt Act*, 10, 12, 13; *Landlord and Tenant*."MAJORITY OF THE LEGAL VOTERS." See *Presumptions*, 5.

When a statute requires a thing contemplated to be done by a township, to be approved by the votes of the "majority of the legal voters of the township" before it shall be done, the requisition is answered by a majority of the legal voters voting at an election duly notified, though all these voters be but a minority of the legal voters of the township. *St. Joseph Township v. Rogers*, 644.

MANDAMUS. See *Bankrupt Act*, 11; *Court of Claims*.

One issued to the Court of Claims, in a special case on a divided court there. *Ex parte: In the matter of the United States*, 699.

## MARRIED WOMAN.

Under the laws of New York, may manage her separate property, through



**MARRIED WOMAN** (*continued*).

the agency of her husband, without subjecting it to the claims of his creditors; and when he has no interest in the business, the application of a portion of the income to his support will not impair her title to the property. *Voorhees v. Bonesteel and Wife*, 16.

**MASTER AND SERVANT.**

How far a master or principal, as *ex. gr.*, a water corporation, is liable in damages for personal injuries caused to others by the acts of persons employed by it, and done during the time of their employment. *Water Company v. Ware*, 566.

**MEMPHIS, EL PASO, AND PACIFIC RAILROAD COMPANY, THE.**

Had not on the 20th of January, 1871, lost its franchise or its right of and to the land grant and land reservation of the company given in its charter. *Davis v. Gray*, 203.

**MICHIGAN CENTRAL RAILROAD COMPANY.**

The section in the charter of, providing that the company shall not be responsible for goods on deposit in any of their depots "awaiting delivery," does not include goods in such depots awaiting transportation; but refers to such goods alone as have reached their final destination. *Railroad Company v. Manufacturing Company*, 318.

**MONOPOLY.** See *Constitutional Law*, 2-5.

What does and what does not constitute. The whole matter largely considered, and an exclusive grant by the State to a corporation created by it, to have and maintain slaughter-houses within a considerable district, including a large Southern city, for a limited time, and under limitations as to price, and under obligations to provide ample conveniences for all persons, and with permission to all owners of stock to land, and of all butchers to kill their animals at those slaughter-houses, held not to be one, nor to be forbidden by the thirteenth amendment to the Constitution nor the first section of the fourteenth, but to be a police regulation within the powers of the State; as well since the adoption of the said thirteenth and fourteenth amendments of the Constitution as before. *The Slaughter-house Cases*, 36.

**MORTGAGE.**

When held as security for the payment of negotiable paper, is not open, as against *bonâ fide* holders of the paper for value, to defences to which the notes in their hands would not equally be open. *Carpenter v. Longan*, 271; *Kenicott v. The Supervisors*, 452.

**MOUNT VERNON RAILROAD.**

In Illinois, certain clauses of its charter construed in a somewhat complicated case. *Kenicott v. The Supervisors*, 452.

**MUNICIPAL BONDS.** See *Construction, Rules of*.

1. The question whether a county shall borrow money for a particular purpose, and which question a statute required should be submitted to the voters of the county before the bonds of the county were issued, may be submitted by implication, as well as directly. *Lynde v. The County*, 6.

MUNICIPAL BONDS (*continued*).

2. What amounts to such submission by implication. *Lynde v. The County*, 6.
3. A submission implied in favor of *bonâ fide* holders of the instrument. *Ib.*
4. A power to issue county bonds carries with it a power to make them payable out of the State where the county is, and to sell them also out of the State. *Ib.*
5. As also to cancel bonds previously given to a contractor with the county, but not yet put by him on the market, and to issue new ones in a different form. *Ib.*
6. Where a particular officer, as *ex. gr.*, the county judge (as is the county judge in Iowa), is designated by statute to decide whether the voters have given the required sanction to the borrowing of money and issuing of bonds, his execution and issue of bonds setting forth on their face that "all of said bonds are issued in accordance with a vote of the people of said county," and that "the people have voted the levying of sufficient taxes," &c., is conclusive evidence against the county of the popular sanction so far as respects holders *bonâ fide* and for value. *Ib.*; and see *St. Joseph Township v. Rogers*, 644.
7. Unless restrained by a constitutional prohibition, the legislature of a State may authorize a county to aid, by issuing its bonds and giving them as a donation, the construction of a road outside the county, and even outside the State, if the purpose of the road be to give to the county a connection with some other region which is desirable. *Railroad Company v. County of Otoe*, 667.

## NEBRASKA.

There is no prohibition in the constitution of, restraining the ordinary power of State legislatures to confer upon counties a right to aid railroad companies by issuing bonds of the county. *Railroad Company v. County of Otoe*, 667.

NEGOTIABLE PAPER. See *Evidence*, 4.

1. The assignment of before maturity, raises the presumption of a want of notice of any defence to it; and this presumption stands till it is overcome by sufficient proof. *Carpenter v. Langan*, 271.
2. When a mortgage given at the same time with the execution of, and to secure payment of, is subsequently, but before the maturity of the paper, transferred *bonâ fide* for value, with it, the holder of the paper when obliged to resort to the mortgagee is unaffected by any equities arising between the mortgagor and mortgagee subsequently to the transfer, and of which he, the assignee, had no notice at the time it was made. He takes the mortgage as he did the paper. *Ib.*; and see *Kenicott v. The Supervisors*, 452.
3. Where the United States issued its negotiable bonds (bonds payable to bearer) to a State which on receiving them passed (before the rebellion) a law that none of the bonds should be available in the hands of the holder, and then went into rebellion and repealed the law, *held*, notwithstanding what was said in *Texas v. White and Chiles* (7 Wallace, 700), and *Texas v. Hardenberg* (10 Id. 68), that bonds undorsed issued in aid of the rebellion could not be recovered on—



NEGOTIABLE PAPER (*continued*).

- i. That no presumption arose from the absence of such indorsement on the bonds that they had been issued without authority, and for an unlawful purpose, and that the presumption that they had been issued with authority and for a lawful purpose was in favor of the holders of the bonds, especially after payment by the United States.
- ii. That it was primarily the duty of the government (as the United States were the obligors in the bonds, and the rebellion was waged against *them*), to ascertain and decide whether bonds presented to and paid by it had or had not been issued and used in aid of the rebellion; and that after a decision in the affirmative the presumption was that the parties who held the bonds were entitled to payment as against the reconstructed State of Texas.
- iii. That whether an alienation of the bonds by the usurping government divested the title of the State, depended on other circumstances than the quality of the government; that if the object and purpose of it were just in themselves and laudable, the alienation was valid; but if, on the contrary, the object and purpose were to break up the Union and overthrow the constitutional government of the Union, the alienation was invalid. *Huntington v. Texas*, 402.

## NEW ALBANY, CITY OF.

The matter of its relations to the New Albany and Sandusky Railroad Company arising out of its subscription, and the subscription of other persons, conditioned on its subscribing \$50,000 or upwards to the road; and how far under the facts of the case the original subscribers and the city were liable, past a certain extent, to creditors of the railroad company on such subscription. The matter considered on a bill in equity, and decided against the complainants. *Burke v. Smith*, 390.

NEW MEXICO. See *Territorial Legislation*.

## NEW YORK.

Under the laws of, how far a married woman may manage her separate property through the agency of her husband, without subjecting it to the claims of creditors. *Voorhees v. Bonesteel and Wife*, 16.

NOTICE. See *Common Carrier*, 2, 3; *Evidence*, 4; *Negotiable Paper*, 1, 2; *Presumptions*, 1, 2.

## NUDUM PACTUM.

A promise to pay in "Confederate notes" in consideration of the receipt of such notes and of drafts payable by them, is neither a *nudum pactum* nor an illegal contract. *Planters' Bank v. Union Bank*, 483.

OBLIGATION OF CONTRACT. See *Constitutional Law*, 7.

OMNIA RITE ACTA. See *Presumptions*.

PAINS AND PENALTIES. See *Constitutional Law*, 8.

PARDON AND AMNESTY. See *Aliens*, 1-3.

PAROL EVIDENCE. See *Evidence*, 4.

PARTIES. See *Bankrupt Act*, 10.

1. Where a State is concerned, it should be made a party if it can be so

PARTIES (*continued*).

- made. If it cannot be, the case may proceed to a decree against its officers. *Davis v. Gray*, 203.
2. Making an officer of the State a party does not make the State a party, though a law of the State may prompt the officer's action, and stand behind him as the real party in interest. To make a State a party the bill must be shaped with that view. *Ib.*
  3. Where a minority of stockholders and bondholders of a railroad company seek to set aside as fraudulent, a sale made through the co-operation of the residue of the stockholders and bondholders with the trustees of a mortgage on the road, and an amicable foreclosure, a bill by the minority to set the sale aside as collusive, must make not only the purchaser a party but also the consenting stockholders and bondholders. *Ribon v. Railroad Company*, 446.

## PATENTS.

## I. GENERAL PRINCIPLES RELATING THERETO.

## II. THE VALIDITY OF PARTICULAR.

## III. ASSIGNMENTS OF, ETC.

- A patentee of certain machines, whose original patent had still between six and seven years to run, conveyed to another person the "right to make and use and to license to others the right to make and use four of the machines" in two States "during the remainder of the original term of the letters-patent, *provided*, that the said grantee shall not in any way or form dispose of, sell, or grant any license to use the said machines *beyond* the said term." The patent having, towards the expiration of the original term, been extended for seven years, *held*, that an injunction by a grantee of the extended term would lay to restrain the use of the four machines, they being in use after the term of the original patent had expired. *Mitchell v. Hawley*, 544.

PERSONAL PROPERTY, SALE OF. See *Statute of Frauds*.

PLEADING. See *Equity*, 1.

POLICE REGULATION. See *Monopoly*.

PRACTICE. See *Bankrupt Act*, 11, 13; *Equity*, 1; *Error*; *Judicial Comity*; *Parties*; *Presumptions*, 1-4; *Receivers in Chancery*, 2; *Res Judicata*; *Texas Titles*, 6.

## I. IN THE SUPREME COURT.

(a) *In cases generally.*

1. This court cannot review a judgment given in the Circuit Court where, under the act of March 3d, 1865, that court has meant to act in the place of the jury, unless such court makes a special finding; that is to say, unless it states the ultimate facts of the case—*i. e.*, the facts which it finds that the evidence has proved—in some way having the form of a special verdict. *Dickinson v. The Planters' Bank*, 250.
2. When on the undisputed parts of a case a verdict is clearly right, so that if a new venire were awarded the same verdict would have to be given, a court will not reverse because on some disputed points a charge may have been technically inaccurate. *Walbrun v. Babbitt*, 577.



PRACTICE (*continued*).

3. A principal suit having been decided in one way, a proceeding by way of intervention, and involving the same question, of necessity follows it. *Tweed's Case*, 505.
4. Where a subordinate court, which had no jurisdiction in the case, has given judgment for the plaintiff or defendant, or improperly decreed affirmative relief to a claimant, an appellate court must reverse. It is not enough to dismiss the suit. *United States, Lyon et al. v. Huckabee*, 414.
5. Where after judgment for a certain sum a *remittitur* is entered as to part, the *remittitur* does not bind the party making it, if the judgment be vacated and set aside. *Planters' Bank v. Union Bank*, 483.
6. Where after judgment for a certain sum, execution is allowed, during a motion for a new trial, to issue for a part of the sum, which part is admitted to be due, this, though anomalous, is not a ground for reversal, where no objection appears to have been made, and where it may fairly be presumed that the defendant assented to what was done; and where, a new trial being afterwards granted, it was limited to a trial as to the excess of the claim above the amount for which the execution was issued. *Ib.*  
(*b*) *In Admiralty*.
7. When, in a case of collision between a steamer and a sailing vessel, the District and Circuit Court, both condemning the steamer, agree in their estimate of the value of the sailing vessel, this court will not set aside their estimate without satisfactory evidence that they were mistaken. *The Commerce*, 33.
8. A decree will be affirmed in this court where, from the imperfect way in which the record is sent up, the court cannot discover satisfactory evidence of error. *The Cayuga*, 177.

## II. IN CIRCUIT AND DISTRICT COURTS.

9. Where a State is concerned, it should be made a party, if it can be so made. If it cannot be, the case may proceed to a decree against its officers. *Davis v. Gray*, 203.
10. Where improper evidence has been suffered by the court to get before the jury, it is properly afterwards withdrawn from them. *Specht v. Howard*, 564.

## III. OF THE DISTRICT COURTS OF THE UNITED STATES.

11. Have not jurisdiction in bankruptcy to proceed *summarily*, in cases where an adverse interest in goods is claimed, and to take it out of the hands of a party without notice to parties in interest. *Marshall v. Knox*, 551.

PRE-EMPTION AND SETTLEMENT. See *Wyandotte Float*.PRESUMPTIONS. See *Judicial Comity*; *Municipal Bonds*, 6; *Negotiable Paper*, 1.

1. Notices required by statute will be presumed to have been given by a probate judge, he having made a conveyance of land which could have been properly made only after such notices given. *Cofield v. McClelland*, 331.

PRESUMPTIONS (*continued*).

2. Where a statute enacted that "in all cases where an intestate shall have been a non-resident, &c., but having property in the State, administration should be granted to the *public administrator* of the proper county, and to no one else:" *Held*, that where a person to whom letters of administration on the estate of a non-resident applied, under the statute, to have a sale of his property, and the court, having jurisdiction of the subject, ordered the sale, it is not to be presumed that he was not the *public administrator*. *McNitt v. Turner*, 352.
3. Where jurisdiction has attached, whatever errors may occur subsequently in its exercise, the proceeding being *coram judice*, cannot be impeached collaterally except for fraud. *Ib.*
4. Where, on an information for breach of the internal revenue laws, the record shows that an answer of a claimant was stricken out by the court, in a case in which he was entitled to a trial by jury, and judgment rendered against him as upon default, this court will not presume that the order was passed for good cause, unless enough is shown in the record to warrant such a conclusion. *Garnhart's v. United States*, 162.
5. Where a statute makes it the duty of the supervisor of a township, "if it shall appear that a majority of all the legal voters of such township have voted" for a particular measure, to do a particular act, as *ex. gr.* issue the bonds of the county, it becomes his duty to decide whether an election was held, and whether such a majority voted in favor of the measure; and when he passes upon the question by issuing the bonds, the fact of the election and whether the majority voted in favor of the issue cannot be questioned as against an innocent holder of the bonds. *St. Joseph Township v. Rogers*, 665.

## PRINCIPAL AND AGENT.

A person having entered, January 23d, 1866, into a contract with the government to purchase, as its agent, "cotton which formerly belonged to the so-called 'Confederate States' now in the possession of individuals in the Red River country (concealed)," was not precluded by the fact of such agency and during it from buying other cotton in that region not formerly belonging to those so-called States; he having discovered, when he went to the region, that there was no cotton upon which his contract operated, and his contract not obliging him by its terms to devote his whole time to the business of the agency, nor from buying cotton if of a kind not such as was described in his agreement. *Tweed's Case*, 505.

## "PRIVILEGES AND IMMUNITIES."

1. Of citizens of the States and of the United States respectively, distinguished and defined, in view of the fourteenth amendment. *Slaughter-house Cases*, 36.
2. The right to practice law in a State court is not a privilege or immunity of a citizen of the United States, within the meaning of the fourteenth amendment. *Bradwell v. The State*, 130.



PUBLIC LANDS. See *Kansas Pacific Railway*; *Wyandotte Float*.

The principle that lands sold by the United States may be taxed before the government has parted with the legal title by issuing a patent, is to be understood as applicable only to cases where the *right* to the patent is complete, and the equitable title fully vested without anything more to be paid or any act done going to the foundation of the right. *Railway Company v. Prescott*, 603.

## PUBLIC LAW.

1. On a question of conflict of jurisdiction between the courts of two States, a ship on the high seas is to be considered as part of the territory of the State where she is registered, and where her owners reside. *Crapo v. Kelly*, 610.
2. A military commander commanding the department in which the city of New Orleans was situate, had not the right, on the 17th of August, 1863, after the occupation of the city by General Butler, and after his proclamation of May 1st, 1862, announcing that "all the rights of property of whatever kind will be held inviolate, subject only to the laws of the United States," to seize private property as booty of war, or, in face of the acts of Congress of 6th of August, 1861, and July 7th, 1862, make any order as commander confiscating it. *Union Bank v. Planters' Bank*, 483.

PUBLIC POLICY. See *Nudum Pactum*.

Where an illegal contract has been executed by the parties themselves, and the illegal object has been accomplished, the money or thing which was the price of it, as *ex. gr.*, "Confederate bonds," may be a legal consideration between the parties for a promise express or implied, and the court will not unravel the transaction to discover its origin. *Planters' Bank v. Union Bank*, 483.

PURCHASER. See *Illinois*.

## RAILWAYS.

Are public highways, and though undertaken by private corporations may, in certain cases (if the legislature authorize it), properly be aided by counties with money raised by taxation, and given as a donation to assist the building of the road. *Olcott v. The Supervisors*, 678; *St. Joseph Township v. Rogers*, 662.

REBELLION, THE. See *Aliens*, 1-3; *Deposit*; *Duress*; *Negotiable Paper*, 3; *Nudum Pactum*; *Public Law*; *Public Policy*.

1. Where one of the Southern States made to a railroad company a large grant of lands, defeasible if certain things were not done within a certain time by the company, the fact that the so-called secession of the State and her plunging into the war, and prosecuting it, rendered it impossible for the company to fulfil the conditions, in law abrogated them. *Davis v. Gray*, 203.
2. However, though the conditions were thus abrogated in law, the court acting on an equitable view held the company to a performance of them, as near as might be. *Ib.*
3. The points adjudged in *Texas v. White and Chiles* (7 Wallace, 700), and

REBELLION, THE (*continued*).

*Texas v. Hardenberg* (10 Id. 68), stated and limited, and the declaration made that—withstanding what may have been said in those cases about the act of the Texas legislature, passed January 11th, 1862, when the State was in rebellion, repealing a former act passed before the rebellion, which declared that certain *negotiable* bonds (bonds payable to bearer) of the United States, and given by the United States to the State of Texas, should not be available in the hands of any holder until indorsed by the Governor of Texas—the repealing act was valid as to bonds issued and used for a lawful purpose, and that the title of the State to such bonds, without indorsement, passed to the holder unaffected by any claim of the State. *Huntington v. Texas*, 402.

4. Where land was sold to the "Confederate States" during the rebellion, and was captured by the United States, it became, on the extinction of the Confederacy, and without further proceeding, the property of the United States, and could be properly sold by them. Such sale rendered any proceeding, under the Confiscation Acts, against the persons who owned the land prior to sale to the "Confederate States," wholly improper. *United States, Lyon, et al. v. Huckabee*, 414.

## RECEIVERS IN CHANCERY.

1. The effect of their reports when affirmed by the court considered, and the doctrine declared, that though they may have acted improperly and have deceived the court, yet when the rights of innocent third parties have intervened, an injured party cannot vacate what has been done, but must seek his remedy against the receiver personally, or on his official bond. *Koontz v. Northern Bank*, 196.
2. Their office and duties stated, and a liberal interpretation given to them in aid of modern chancery jurisdiction. *Davis v. Gray*, 203.

RECORDING ACTS. See *Illinois*.

REGULATION OF COMMERCE. See *Constitutional Law*, 1; *Monopoly*.

REMITTITUR. See *Practice*, 5.

## RES JUDICATA.

Where in ejectment a special verdict has been found and judgment entered on it in the court below for the plaintiff, which judgment, in an appellate court, is set aside with directions to enter judgment for the defendant, the special verdict cannot, on the plaintiff's bringing a second ejectment upon a subsequently acquired title, be used to establish a fact found in it, as *ex. gr.* the heirship of one of the parties under whom the plaintiff claimed. *Smith v. McCool*, 560.

REVERSAL. See *Error*; *Presumptions*, 1-4.

SALE. See *Duress*; *Statute of Frauds*.

## "SEIZED OF."

Under a statute authorizing the sale of the real estate of a decedent, and directing the executor to make out a petition "stating therein what real estate the said testator or intestate may have died seized of,"



"SEIZED OF" (*continued*).

a statement of the real estate which he died "leaving" is sufficient.  
*McNitt v. Turner*, 352.

SERVITUDE, INVOLUNTARY. See *Constitutional Law*, 2-5; *Monopoly*.

Meaning of the term as used in the 13th amendment defined. *Slaughterhouse Cases*, 36.

SHIPS.

1. One on the high seas is to be considered, on a question of conflict of jurisdiction between courts of two States, as part of the territory of the State in which she is registered and where her owner resides. *Crapo v. Kelly*, 610.
2. Are subject, for the purposes of taxation, to the laws of the port where the vessel is regularly registered and belongs. The temporary enrolment of a vessel as a coaster in the port of another State does not give a right to such other State to tax her. *Morgan v. Parham*, 471.

STATE.

1. How far to be made a party, when practicable, in proceedings in which she is concerned. *Davis v. Gray*, 203.
2. Making her officers parties does not make her so. *Ib.*

STATUTES. See *Construction, Rules of*.

STATUTE OF FRAUDS.

1. Under a statute enacting (as does article 4 of chapter xlv of the Revised Code of Mississippi),

"That no contract for the sale of any personal property, &c., shall be allowed to be good and valid except the buyer shall receive part of the personal property or shall actually pay or secure the purchase-money, or part thereof, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged by such contract or his agent thereunto lawfully authorized,"

a parol agreement for the sale of cotton in payment of a mortgage debt, cannot be sustained, where, though the price of the cotton per pound was fixed, the number of pounds was not definitely ascertained, nor any payment was indorsed on the mortgage, nor any receipt given, nor any memorandum in writing made, nor any present consideration paid, nor any change of possession effected, nor any delivery, either actual or symbolic, made. *Mahan v. United States*, 143.

2. Such a transaction would, from want of delivery, not be good as a gift *inter vivos*. *Ib.*

STATUTES OF THE UNITED STATES.

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

- |                       |   |
|-----------------------|---|
| 1789. September 24th. | See <i>Admiralty; Jurisdiction</i> , 1-4. |
| 1792. December 31st.  | See <i>Taxation of Ships</i> .            |
| 1793. February 12th.  | See <i>Bail</i> .                         |
| 1793. February 18th.  | See <i>Taxation of Ships</i> .            |
| 1836. July 4th.       | See <i>Patent</i> .                       |
| 1844. May 23d.        | See <i>Colorado Territory</i> .           |

STATUTES OF THE UNITED STATES (*continued*).

|       |               |   |
|-------|---------------|---|
| 1861. | August 6th.   | See <i>Confiscation Act</i> .                             |
| 1862. | July 1st.     | See <i>Kansas Pacific Railway</i> .                       |
| 1863. | March 12th.   | See <i>Captured and Abandoned Property Act</i> .          |
| 1864. | May 28th.     | See <i>Colorado Territory</i> .                           |
| 1864. | July 2d.      | See <i>Principal and Agent</i> .                          |
| 1864. | July 4th.     | See <i>Kansas Pacific Railway</i> .                       |
| 1865. | March 3d.     | See <i>Practice</i> , 1.                                  |
| 1866. | July 13th.    | See " <i>Commercial Brokers</i> ."                        |
| 1867. | February 5th. | See <i>Jurisdiction</i> , 4.                              |
| 1867. | March 2d.     | See <i>Bankrupt Act</i> , 10; <i>Jurisdiction</i> , 5, 6. |
| 1868. | June 25th.    | See <i>Court of Claims</i> .                              |
| 1868. | July 20th.    | See <i>Internal Revenue</i> .                             |
| 1868. | July 27th.    | See <i>Aliens</i> , 2.                                    |
| 1872. | June 1st.     | See <i>Error</i> , 1, 2.                                  |

SUBCONTRACTOR. See *Action*.

SURETIES. See *Bond*.

TAXATION. See *Constitutional Law*, 6; *Public Lands*; *Railways*.

## TAXATION OF SHIPS.

The State in which is the home port of a vessel, that is to say, the port where she is regularly registered and nearest to which her owner, husband, or acting and managing owner usually resides, is the State which has dominion over her for the purposes of taxation. *Morgan v. Parham*, 471.

## TERRITORIAL LEGISLATURE.

1. A Territorial legislature, having by its organic act power over all rightful subjects of legislation, is competent to pass a statute authorizing judgment against the sureties of an appeal bond, as well as against the appellants, in case of affirmance. *Beall v. New Mexico*, 535.

## TEXAS.\*

The articles 5 and 7 of the constitution of, made in 1869, which, on an assumption that the Memphis, El Paso, and Pacific Railroad Company had lost its franchise or its right of and to the land grant and land reservation of the company given in its charter, disposed of the lands away from it, violated the obligation of a contract and were void. *Davis v. Gray*, 204.

2. The case of *Texas v. White and Chiles* explained and limited. *Huntington v. Texas*, 402.

## TEXAS TITLES.

1. In Texas titles, before the adoption of the common law, a title of possession issued to an attorney in fact of the original grantee for the latter's use, vested the title in such grantee, and not in the attorney. *Hanrick v. Bart n*, 166.
2. The original grant by the government was regarded as the foundation of the title; and the extension of that title upon specific lands, if made for the benefit of the original grantee, vested title in him. *Ib*.



TEXAS TITLES (*continued*).

3. The papers of the original title, from the government grant to the title of possession (called the *espediente*), properly belong to the archives of the General Land Office, and include a power of attorney from the grantee to obtain the possessory title. *Hanrick v. Barton*, 166.
4. Certified copies of such papers from the General Land Office are admissible in evidence, and are then evidence for all purposes for which the originals could be adduced. *Ib.*
5. Under the Mexican-Spanish law formerly prevailing in Texas, a power of attorney to sell and convey land was properly executed, by the attorney in his own name, specifying that he executed the deed as attorney for his principal. *Ib.*
6. In order to render a certified copy of a deed admissible in evidence in Texas, it must be filed with the papers in the cause at least three days before the commencement of the trial; but the affidavit of loss of the original deed need not be filed until the trial. *Ib.*

THIRTEENTH AMENDMENT, THE. See *Constitutional Law*, 2, 3; *Monopoly*.

TOW AND TUG. See *Collision*, 2.

## TRIAL BY JURY.

Presumptions as to the regularity of proceedings not indulged to deprive a person of. *Garnharts v. United States*, 162.

TRUST. See *Equity*, 2.

TUG AND TOW. See *Collision*, 2.

"USUAL COURSE OF BUSINESS." See *Bankruptcy*, 7-9.

VERDICT. See *Error*; *Res Judicata*.

## WEST VIRGINIA.

Its statute of February 15th, 1865 (Acts of West Virginia, 1865, p. 20), by which persons previously having a right to have cases in attachment reheard under particular circumstances, were deprived, for past misconduct and without judicial trial, of such then existing right, was unconstitutional and void. *Pierce v. Carskadon*, 234.

## WYANDOTTE FLOAT.

An Indian of the Wyandotte tribe could not, prior to July 9th, 1858, locate a "float" held by him under the treaties made with his tribe October 5th, 1842, and March 1st, 1855. *Walker v. Henshaw*, 436.





















