

I N D E X.

ADMIRALTY. See *Prize*; *Practice*, 15.

ANSWER IN CHANCERY.

A decree reversed as made on evidence not competent, and in the face of answers responsive to the bill. *Moore v. Huntington*, 417.

APPEAL. See *Practice*, 7, 15, 19, 20; *Supersedeas*.

1. When a proceeding below is, in its essential nature, a foreclosure of a mortgage in chancery, an appeal is the only proper mode of bringing it to the Supreme Court. *Marin v. Lalley*, 14.
2. In prize cases, wherever it appears that notice of appeal or of intention to appeal to the Supreme Court was filed with the clerk of the District Court within thirty days next after the final decree therein, an appeal will be allowed to the Supreme Court whenever the purposes of justice require it. *The Nuestra Señora de Regla*, 29.
3. Where the Circuit Court of the United States proceeds to exercise jurisdiction under the twenty-third section of the act of 31st May, 1870, entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," an appeal will lie to the Supreme Court from its final decree. *Ex parte Warmouth*, 64.
4. That court has no power to issue the writ of prohibition in such a cause until such appeal is taken. *Ib.*
5. Where the claim on a fund in the Registry of the Admiralty of several mortgages secured in a body by one mortgage, exceeds \$2000, an appeal to the Supreme Court will lie by the mortgagees in a body, though the claim of no one of them exceed the said sum. *Rodd v. Heartt*, 354.

APPEARANCE.

When a defendant has filed a plea to the merits, and afterwards, by leave of the court, withdraws his plea, that does not withdraw his appearance, and he is still in court so as to be bound personally by a judgment rendered against him in the action. *Eldred v. Bank*, 545.

ARMY OFFICER.

1. One who shows that he received a commission from the proper source, and who serves and is recognized as such officer by his superiors until his regiment is mustered out, and who presented himself at the proper time and place to be mustered in, and was refused, makes out a *prima*

ARMY OFFICER (*continued*).

facie case for full pay under the joint resolution of Congress of July 26th, 1866, "for the relief of certain officers of the army." *United States v. Henry*, 405.

2. It does not rebut this *prima facie* case to prove that the officer who refused to muster him in, *alleged* that he was not entitled to such muster because the *company* to which he was assigned as lieutenant was below the minimum in numbers. *Ib.*

ASSIGNMENT OF ERRORS.

Must be made as the rules of court require, or the judgment will be affirmed. *Ryan v. Koch*, 9.

AUTHORITIES, JUDICIAL. See *Precedent, Value of*.BANKRUPT ACT. See *Fraudulent Conveyance*.

1. Under the thirty-fifth and thirty-ninth sections of the, more than passive non-resistance in an insolvent debtor, is necessary to invalidate a judgment and levy on his property when the debt is due and he has no defence. *Wilson v. City Bank*, 489.
2. In such case there is no legal obligation on the debtor to file a petition in bankruptcy to prevent the judgment and levy, and a failure to do so is not sufficient evidence of an intent to give a preference to the judgment creditor, or to defeat the operation of the Bankrupt law. *Ib.*
3. Though the judgment creditor in such a case may know the insolvent condition of the debtor, his judgment and levy upon his property are not, therefore, void, and are no violation of the act. *Ib.*
4. A lien thus obtained by him will not be displaced by subsequent proceedings in bankruptcy, though commenced within four months after levy of the execution or rendition of the judgment. *Ib.*
5. Very slight circumstances, however (the value of which must be judged of in each case as it arises), which tend to show the existence of an affirmative desire on the part of the bankrupt to give a preference, or to defeat the operation of the act, may, by giving color to the whole transaction, render the lien void. *Ib.*
6. The twentieth section of the Bankrupt Act was not intended to enlarge the doctrine of set-off beyond what the principles of legal or equitable set-off previously authorized. *Sawyer v. Hoag*, 610.
7. Where personal property has been sold by one insolvent and immediately afterwards decreed a bankrupt, without any change of possession, and is thus void under the rule in *Twyne's Case* by the laws of the State where the transfer is made, the assignee in bankruptcy may pursue it, and, as auxiliary to its recovery, ask that the sale by the bankrupt be annulled. *Allen v. Massey*, 352.

BILL IN EQUITY. See *Laches; Parties*.

BILL OF LADING.

Under one to deliver nuts in bags and boxes "in good order and condition, dangers of the seas, fire, and collisions excepted," a ship held liable for damage done to nuts marked "in the cabin state-room," and stowed in the hold on a voyage from San Francisco to New York,

BILL OF LADING (*continued*).

it being shown on the trial, by parol evidence (held, rightly received), to be the almost invariable practice to carry them in the cabin or in the cabin state-rooms in order to guard against injury, extremely liable to happen to them when stowed in the hold. *The Star of Hope*, 651.

BREACH OF CONDITION.

1. Grantor can alone take advantage of. *Holden v. Joy*, 211.
2. What amounts to a condonation of. *Ib.*

"CERTIFICATE OF DEPOSIT." See *Internal Revenue*, 5.

"CHECK." See *Internal Revenue*, 1, 5.

CHEROKEES. See *Breach of Condition*; *Indian Tribes*.

The treaty of the United States with them, of the 29th December, 1835, and the supplemental article thereto of April 27th, 1868, considered at length, and the treaty declared to have made a valid sale to them of the "Cherokee Neutral Lands;" and the sale to one Joy pursuant to the supplemental article declared to have passed a good title to Joy. *Holden v. Joy*, 211.

CIVIL RIGHTS. See *Railroad Travel*.COLLECTOR. See *Smuggling*; *Trespass*.COMMON CARRIER. See *Railroad Travel*.

1. Cannot stipulate for exemption from responsibility for the negligence of himself or his servants. *Railroad Company v. Lockwood*, 357.
2. The rule applies to the case of a drover travelling on a stock train to look after his cattle, and having a free pass for that purpose. *Ib.*

CONFIDENTIAL RELATION. See *Laches*, 2.CONSTITUTIONAL LAW. See *Judicial Comity*, 2.

1. A municipal corporation is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenues. *United States v. Railroad Company*, 322.
2. The clause of the Federal Constitution which requires full faith and credit to be given in each State to the records and judicial proceedings of every other State, applies to the records and proceedings of courts only so far as they have jurisdiction. Wherever they want jurisdiction the records are not entitled to credit. *Board of Public Works v. Columbia College*, 521.
3. No greater effect can be given to any judgment of a court of one State in another State than is given to it in the State where rendered. *Ib.*
4. "Police Law," passed by a State, distinguished from a "Regulation of Commerce," and sustained on the distinction between the two. *Railroad Company v. Fuller*, 560.

CONSTRUCTION, RULES OF.

I. AS APPLIED TO STATUTES. See *Indictment*.

1. If the provisions of a special charter or a special authority derived from the legislature, can reasonably well consist with general legislation

CONSTRUCTION, RULES OF (*continued*).

whose words are not absolutely harmonious with it, the two are to be deemed to stand together; one as the general law of the land, the other as the law of the particular case. *State v. Stoll*, 425; and see *Ex parte Atocha*, 439.

2. Where a State had publicly promised that the notes of a bank in which it was the sole stockholder, and for whose bills it was liable, should be taken in payment of taxes and all other debts due to the State, and so impressed the credit of the State upon the notes. *Held*, that when the State afterwards intended to terminate this obligation (as it could do upon reasonable notice as to after-issued bills), it was bound to do it openly, and in language not to be misunderstood. As a doubtful or obscure declaration would not be a proper one for the purpose, so it was not to be imputed. *State v. Stoll*, 425.

II. AS APPLIED TO CONTRACTS. See *Interpretation of Contract*.CONTRACT. See *Offer*.

1. What one party to a contract understands or believes is not to govern its construction unless such understanding or belief was induced by the conduct or declarations of the other party. *Bank v. Kennedy*, 19; and see *Bailey v. Railroad Company*, 97.
2. Where the validity of a contract made by an agent of the government is disputed by the government, and a commission, appointed by the government to pass on its validity reports, after inviting parties interested to appear before it, that the contract be confirmed to a partial extent and on conditions, or otherwise be held null, and the other party acts after this upon the conditions prescribed—*Held*, that his action is voluntary and that the original contract is modified. *Mason v. United States*, 67.
3. So where a claim is disputed by the government, and the claimant accepts a certain sum in settlement thereof and gives a receipt in full therefor, a subsequent action in the Court of Claims for any residue asserted to be due is barred. *Sweeny v. United States*, 75.
4. May be implied to restore proceeds (and the fraud of the act waived), where one has unlawfully taken and sold bonds belonging to another; the amount due being capable of ascertainment by computation, and being the principal and interest of the bonds taken and sold. *Allen v. United States*, 207.
5. Where, after a contract to do certain work within a time fixed has been completely entered into, the party for whom the work is to be done requests certain alterations in the work, to effect which necessarily requires a considerably longer time, the request to make such alterations implies such a reasonable extension of the time as is requisite to make them, and if the work be done within that reasonable time and the person ordering it was aware of the progress of the work and gave no notice that he would refuse to accept it unless done in the time originally limited, he is bound to take it when done. The doctrine applied to a government contract. *Manufacturing Company v. United States*, 592.

CONTRIBUTORY NEGLIGENCE. See *Infant*.

COUNSEL FEES.

Before a commissioner on the settlement of damages on an award of restitution, disallowed as excessive and unwarranted. *The Nuestra Señora de Regla*, 29.

COURT AND JURY.

1. The rule of law that the interpretation of written instruments is a question of law for the court, is applied with full force to agreements to be deduced from the correspondence of the parties, and the fact that the language of the letters containing the offer or acceptance is doubtful, does not relieve the court of this duty, or make the question one of fact for the jury. *Goddard v. Foster*, 123.
2. It is not error for a court, leaving to the jury the credibility of the testimony and their belief of certain material facts, to instruct the jury that they must, if they so believe, find for one party, though this may be all that is in contest. *Stitt v. Huidekopers*, 384.
3. Whether the facts be disputed or undisputed, if different minds may honestly draw different conclusions from them, the case is properly left to the jury. *Railroad Company v. Stout*, 657; and see *Packet Company v. McCue*, 508.
4. Whether a party is affected with "sickness or disease" within the meaning of the questions put to him prior to the issue of a life insurance policy, is a question, when medical testimony is one way and that of acquaintances another, for the jury. *Life Insurance v. Francisco*, 672.
5. So are the answers, written out in the presence of the insurer's agent under the obligation, in the policy, of the representatives of the assured, to furnish "due proof of the just claim of the assured;" if the assurer have received and kept them without objection to their sufficiency. *Ib.*

COURT OF CLAIMS: See *Set-off*, 2.

1. Claims under treaty stipulations are excluded from the general jurisdiction of the Court of Claims conferred by the acts of Congress of February 24th, 1855, and March 3d, 1863; and when jurisdiction over such claims is conferred by special act, the authority of that court to hear and determine them, and of this court to review its action, is limited and controlled by the provisions of that act. *Ex parte Atocha*, 439.
2. Accordingly a decision of the Court of Claims, made under the act of February 14th, 1865, "for the relief of Alexander J. Atocha," not giving an appeal, held final. *Ib.*
3. Since the passage of the act of March 3d, 1863, amending the act establishing the Court of Claims, objection cannot be made that a set-off set up by the United States is unliquidated; the fifth section of that act covering this class of demands. *Allen v. United States*, 207.

CRIMINAL LAW. See *Embezzling Public Money*; *Indictment*.

CROSS-EXAMINATION. See *Witness*, 2.

CUSTOMS. See *Smuggling*; *Navigation Laws*.

DEPOSITION.

1. A notice, without date, to take depositions at a time specified, "in the city of Guilford, State of Maine," insufficient to let in depositions taken in "the town of Guilford;" it not appearing that the town and city were the same and the defect not being cured by attendance of the opposite party. *Knobe v. Williamson*, 586.
2. Where a notice to take depositions at a place specified, informed the opposite party that they would be taken on a day named, and that the taking would be adjourned "from day to day until completed," and, a portion of the witnesses, having been examined (at whose examination the opposite party with his counsel attended), the taking of the examination of the others was adjourned until the next day, when it was again adjourned until the next succeeding day, and so on, from day to day till a particular day, when the taking of the testimony was completed in the absence of both the opposite party and his counsel. *Held*, that the notice was sufficient *Ib.*

DES MOINES RIVER GRANTS.

1. The history given of the legislation of the land grants for the improvement of the Des Moines River, and of the grants for railroad purposes, which have been supposed to conflict, and the decision in *Wolcott v. The Des Moines Company* (5 Wallace, 681), and *Reily v. Wells* (MS.), namely, "that the title to those lands never passed to the railroad company by the grant under which it claimed," solemnly reaffirmed in three distinct cases. *Williams v. Baker*, 144; *Cedar Rapids Railroad Co. v. Des Moines Navigation Co.*, *Ib.*; *Homestead Company v. Valley Railroad*, 153.
2. Nor did any railroad company, for whose benefit the act of Congress of May 15th, 1856 (11 Stat. at Large, 9), was made, or their grantees, as respected any lands granted by the said act of May 15th, 1856, or by the act of the legislature of Iowa, passed July 14th, 1856, become *cestui que trusts* or entitled otherwise to any portion of what are called the Indemnity Lands, which were granted by the act of Congress of July 12th, 1862. *Homestead Company v. Valley Railroad*, 153.

"DRAFT." See *Internal Revenue*, 5.

EMBEZZLING PUBLIC MONEY. See *Indictment*.

1. No exception or proviso of any kind is contained in the act of Congress of August 6th, 1846 (9 Stat. at Large, 63), making a paymaster in the army who embezzles public money guilty of felony. *United States v. Cook*, 168.
2. Therefore, a statute of limitations cannot be taken advantage of by demurrer. *Ib.*
3. The thirty-second section of the act of April 30th, 1790 (sometimes called the Crimes Act), enacts the only limitation applicable to the offence of a paymaster of the army indicted for such embezzlement. *Ib.*

EQUITABLE LIEN. See *Vendor's Lien*.

EQUITY. See *Laches; Parties; Partnership.*

1. Capital stock or shares of a corporation—especially the unpaid subscriptions to such stock or shares—constitute a trust fund for the benefit of the general creditors of the corporation, and this trust cannot be defeated by a simulated payment of the stock subscription, nor by any device short of an actual payment in good faith. *Sawyer v. Hoag, Assignee*, 610.
2. Equity will not exercise its jurisdiction to reach the property of a debtor applicable to the payment of his debts, unless the debt be clear and undisputed, and there exist some special circumstances requiring the interposition of the court to obtain possession of, and apply the property. *Board of Public Works v. Columbia College*, 521.
3. A decree in, reversed, as made on evidence not competent and in the face of answers responsive to the bill. *Moore v. Huntington*, 417.
4. Where a cross-bill and answers are filed in a case, and the decree undertakes to dispose of the whole case, it should dispose of the issues raised in them. *Ib.*

ERROR. See *Court and Jury; Practice*, 11-14.

ESTOPPEL. See *Recitals.*

This subject largely investigated, and the nature and effect, extent and limits of estoppels, both legal and equitable, defined. *Branson v. Worth*, 32.

EVIDENCE. See *Deposition; Estoppel; Judgment; Necessaries in a Foreign Port*, 1; *North Carolina*, 1; *Practice*, 1, 3; *Res Judicata*, 2.

1. Conversations occurring during the negotiation of a loan, or other transaction, as well as the instruments given or received, being part of the *res gesta*, are original evidence and competent to show the nature of the transaction, and the parties for whose benefit it was made, where that fact is material. *Bank v. Kennedy*, 19.
2. Where the cashier of a bank effects a loan, and it becomes material to ascertain whether it was made for his own account or for the use of the bank, evidence of the negotiation and circumstances may be given for that purpose, whatever may be the form of the securities given or received, when the latter are introduced only collaterally in the cause. *Ib.*
3. When papers or documents are introduced collaterally in the trial of a cause, the purpose and object for which they were made, and the reason why they were made in a particular form, may be explained by parol evidence. *Ib.*
4. The purpose or quality of an act may be stated by a witness who was present and cognizant of the whole transaction, as whether the delivery of money by one man to another was by way of payment or otherwise. *Ib.*
5. Parol, how far received to explain a bill of lading. *The Star of Hope*, 651.
6. Parol, inadmissible to show how all the parties in interest understood a long and rather intricate transaction, from its commencement to its

EVIDENCE (*continued*).

- consummation; the same being all in writing. *Bailey v. Railroad Company*, 96; and see *Bank v. Kennedy*, 19.
7. Evidence of fraud, not required to be more direct and positive than that of facts and circumstances tending to the conclusion that it has been practiced. *Rea v. Missouri*, 532.
 8. A memorandum found upon the record of a patent and put there by some unknown person eight years after the patent had issued is inadmissible to contradict the record. *Branson v. Worth*, 32.
 9. Evidence of a vendor of land, being positive, is sufficient to rebut a presumption, arising from taking a note with surety for the payment of the purchase-money of the land, that the vendor's lien had been displaced. *Cordova v. Hood*, 1.
 10. A decree in equity reversed as made on evidence not competent and in the face of answers responsive to the bill. *Moore v. Huntington*, 417.
 11. On a question by a creditor of A. of a fraudulent assertion by B., of ownership of goods levied on as A.'s, any statements made by B. in the absence of C., which are afterwards assented to by the latter or were part of the *res gesta*, are evidence. *Rea v. Missouri*, 532.
 12. Ordinarily, a witness who testifies to an affirmative is entitled to credit in preference to one who testifies to a negative. *Stitt v. Huidekopers*, 384.
 13. When one party gives notice to another to produce on trial a written instrument, and the party who so receives the notice produces and offers to verify it by his oath, the other party cannot refuse to use that paper and introduce a *copy* in the first instance, on the allegation that the first is not genuine, although he might show wherein it was erroneous or defective after it was once introduced. *Ib.*
 14. Although a written agreement between persons not parties to the suit may, as a general rule, be contradicted or explained by oral testimony, this does not apply to an attempt to make good by parol evidence a contract which the law requires to be made in writing to make it valid. *Ib.*
 15. In an action of ejectment, a letter of the plaintiff's grantor, written to the ancestor of the defendant, is not competent evidence to show that the ancestor entered into possession under the license of the plaintiff's grantor, without some evidence that such letter was received or acted on about the time of such entry by the ancestor. *Smiths v. Shoemaker*, 630.
 16. The mere fact that the date found on the letter corresponds with the time of such entry, is not of itself sufficient to show that the letter was written at that time. *Ib.*
 17. Where the purpose is to impeach a witness, the proper question is what is the general "reputation" for truth of the witness? rather than what is his general "character" for truth? *Knobe v. Williamson*, 587.
 18. The extent to which a cross-examination is carried not reviewable on error. *Rea v. Missouri*, 532.

FINAL DECREE. See *Supersedeas*.

The order of seizure and sale called "executory process," made in Louis-

FINAL DECREE (*continued*).

iana when the mortgage "imports a confession of judgment," is in substance a decree of foreclosure and sale, and therefore a "final decree;" especially when made after objections have been made and heard. *Marin v. Lalley*, 14.

FORECLOSURE. See *Appeal*, 1; *Final Decree*.

FOREIGN VESSEL. See *Navigation Laws*.

FRAUD.

1. Evidence of it not required to be more direct and positive than facts and circumstances tending to the inference of it. *Rea v. Missouri*, 532.
2. Where a creditor of B. levied on certain goods as B.'s for which C. interposed a claim of ownership, held that an intimate personal and business relation between B. and C. having been shown, it was error to instruct the jury that it was immaterial as to the ownership of the goods how C. acquired his means, or whether his exhibit of them was correct or not. *Ib.*

FRAUD ON REVENUE.

A device to avoid the revenue acts, and whose operation does avoid them, is subject to no legal censure if the device be carried out by means of legal forms. *United States v. Isham*, 496.

FRAUDULENT CONVEYANCE. See *Fraud*.

Under the statute of frauds of Missouri, a sale of household furniture in a house occupied jointly by vendor and vendee, both using the furniture alike, and there being no other change of possession than that the vendor, after going around with the vendee and looking at the furniture and agreeing on the price, turned it over to the vendee and executed a bill of sale before a notary, both parties then, after the sale, occupying the house and using the furniture exactly as before, is void as against the vendor's creditors. *Allen v. Massey*, 352.

GOVERNMENT CONTRACTOR. See *Contract*, 2, 3, 5.

IMPEACHING WITNESS. See *Witness*, 1.

IMPLIED CONTRACT.

Where a person has unlawfully procured and sold securities belonging to another, the principal and interest of which is capable of being ascertained by computation, the owner from whom they have been taken, may waive the fraud in the conversion of the bonds, and claim as on an implied contract. *Allen v. United States*, 207.

INCOME TAX. See *Internal Revenue*, 3, 4.

INDIAN TRIBES. See *Cherokees*; *Breach of Condition*.

Capable of taking as owners in fee simple by purchase from the United States; and a sale to them is properly made by treaty. *Holden v. Joy*, 211.

INDICTMENT.

Where a statute defining an offence contains an exception, in the enacting clause of the statute, which is so incorporated with the language defin-

INDICTMENT (*continued*).

ing the offence, that the ingredients of the offence cannot be accurately and clearly described if the exception is omitted, an indictment founded upon the statute must allege enough to show that the accused is not within the exception. But if the language of the section defining the offence is so entirely separable from the exception, that the ingredients constituting the offence may be accurately and clearly defined without any reference to the exception, the indictment may omit any such reference. The matter contained in the exception is matter of defence, and to be shown by the accused. *United States v. Cook*, 168.

INDORSER. See *Negotiable Paper*.

INFANT.

Need not himself have been free from fault to entitle him to recover damages resulting from the fault of another. *Railroad Company v. Stout*, 657.

INSOLVENT CORPORATION. See *Equity*, 1.

INTEREST.

Where allowed, not under contract, but by way of damages, the rate must be according to the *lex fori*. *Goddard v. Foster*, 124.

INTERNAL REVENUE. See *Trespass*.

1. The words "memorandum, check," in that part of the schedule of instruments required by the statute of June 30th, 1864 (13 Stat. at Large, p. 298, § 158), to be stamped, which in the printed statute-books are printed with a comma between them, should read, "memorandum-check," with a hyphen instead of a comma. *United States v. Isham*, 496.
2. In settling whether an instrument should be stamped or not, regard is to be had to its form, rather than to its operation. Though the form adopted may be a device to avoid the revenue acts, and though it may avoid them, yet if the device be carried out by means of legal forms it is subject to no legal censure. *Ib.*
3. Under the 116th, 119th, and 122d sections of the Internal Revenue Act of June 30th, 1864, as subsequently amended, the interest due or dividends declared by any railroad or canal company, &c., which accrued prior to the 1st of January, 1870, were taxable under the act, though payable on or after the date named. *Barnes v. The Railroads*, 294.
4. This tax is a tax on the creditor and not upon the corporation. *United States v. Railroad Company*, 322.
5. Under the 110th section of the internal revenue act of 1864, as amended by the act of July 13th, 1866, taxing deposits in banks, an entry made in the depositor's pass-book of a deposit or payment, is "a certificate of deposit," or "check," or "draft" within the meaning of the section. *Oulton v. Savings Institution*, 109.
6. Under the proviso to that section, savings banks are not exempt from taxation if they have a capital stock, or if they do any other business than receiving deposits to be lent or invested for the sole benefit of the person making such deposits. *Ib.*

INTERNAL REVENUE (*continued*).

7. The fact that, by an agreement between the savings bank and the depositor, money deposited with the bank shall be reimbursed only out of the first disposable funds that shall come into the hands of the bank after demand, being a regulation adopted but for an emergency, and not such as essentially impairs the just claim of a depositor, does not change the case. *Oulton v. Savings Institution*, 109.
8. Under the 20th section of the act of July 20th, 1868, entitled "An act imposing taxes on distilled spirits," &c., in the absence of a distiller's having appealed to the Commissioner of Internal Revenue (as under the 10th section of the act he may do), for the correction of any error made by the assessor in fixing the "true producing capacity" of his distillery, it is lawful for the government to assess and collect, as for a deficiency, the taxes upon the difference between the said "producing capacity" as estimated by the assessor and the amount of spirits actually produced by such distillery, even though the distiller have in good faith reported and paid taxes upon his whole production, and though such production have exceeded 80 per centum of the producing capacity aforesaid. *The Collector v. Beggs*, 182.

INTERPRETATION OF CONTRACT.

Not to be governed by what either party to the contract understood or believed, unless such understanding or belief was induced by the conduct or declarations of the other party. *Bank v. Kennedy*, 19; and see *Bailey v. Railroad Company*, 96.

INTERPRETATION OF LANGUAGE. See *Construction, Rules of*.JUDGMENT. See *Appearance; Res Judicata*.

On a note or contract operates as a merger of it; and when the judgment is binding personally it can be introduced in evidence, and relied on as a bar to a second suit on the note. *Eldred v. Bank*, 545.

JUDICIAL AUTHORITY. See *Precedent, Value of*.JUDICIAL COMITY. See *Rebellion*, 2.

1. In the construction of the statutes of a State, and especially those affecting titles to real property, where no Federal question arises, this court follows the adjudications of the highest court of the State, whatever may be the opinion of this court of its soundness. *Walker v. The State Harbor Commissioners*, 648; and see *Allen v. Massey*, 351.
2. A personal judgment, rendered in one State against several parties jointly, upon service of process on some of them, or their voluntary appearance, and upon publication against the others, is not evidence outside of the State where rendered of any personal liability to the plaintiff of the parties proceeded against by publication. *Board of Public Works v. Columbia College*, 521.

JURISDICTION. See *Appeal; Constitutional Law*, 2, 3.

I. OF THE SUPREME COURT OF THE UNITED STATES.

(a) It HAS jurisdiction—

1. Under the 25th section of the Judiciary Act, as well as under that of

JURISDICTION (*continued*).

the 5th of February amendatory of it, if it has, beyond all question, decided every question at issue between the parties which it is necessary to decide in order to dispose of the case on its merits, and the State court has not carried out its mandate but in effect evaded it, on a second writ of error to "proceed to a final judgment and award execution." *Tyler v. Maguire*, 254.

2. Under the same sections, to review the judgment of a State court when the writ is issued to the highest court of the State in which a decision of the case could be had, even if that court be an inferior court of the State. *Miller v. Joseph*, 655.

II. OF THE CIRCUIT COURTS.

(b) They HAVE jurisdiction—

3. When objection is taken on the ground of citizenship, provided the parties to whose citizenship the objection is taken be not indispensable parties. *Horn v. Lockhart*, 570.

JURY. See *Court and Jury*.

LACHES.

1. Where a bill is filed by a third party to set aside, as fraudulent, completed judicial proceedings, regular on their face—the bill being filed five years after the judicial proceedings which it is sought to set aside have been completed—the cause of so considerable a delay should be specifically set out. And if ignorance of the fraud is relied on to excuse the delay it should be shown specifically when knowledge of the fraud was first obtained. *Harwood v. Railroad Company*, 78.
2. A bill by *cestui que trusts* was dismissed, where all the grounds of action had occurred between twenty and thirty years, and the alleged breach of trust had taken place thirty-seven years before the bill was filed, and the trustee was dead. This, although the *cestui que trusts* were women and the trustee a lawyer, who had married their half-sister. *Hume v. Beale's Executrix*, 336.

LANDLORD AND TENANT.

Where a lessee, after letting to another, reserving a rent, has assigned all his "right, title, and interest" in the lease, and "authorized the assignee to sue for, collect, and recover the lease, and the rights to the rent reserved under the same," declaring "it to be distinctly understood" that it is the object and purpose to put the assignee in his "place and stead, so far as concerns his rights under the lease"—the lessee, on a claim against him by the sub-tenant, cannot set up a claim for arrears of rent due to him at the time when he assigned the lease. The transfer has carried them to the assignee. *United States v. Hickey*, 9.

LEASE. See *Landlord and Tenant*.

LEGAL TENDER. See *Practic*, 17; *South Carolina*.

"**LICENSE TO TRADE.**" See *Trading with Public Enemy*, 2.

LIEN. See *Vendor's Lien*.

LIFE INSURANCE. See *Court and Jury*, 4, 5.

MANDAMUS.

Against an officer of the government, in the absence of statutory provision to the contrary, abates on his death or retirement from office. His successor in office cannot be brought in by way of amendment of the proceeding or on an order for the substitution of parties. *United States v. Boulwell*, 604.

MARINE RISKS.

Distinguished from war risks. *Goodwin v. United States*, 515.

MASTER AND SERVANT.

The rule that the master is not liable to one of his servants for injuries resulting from the carelessness of another, when both are engaged in a common service, although the injured person was under the control and direction of the servant who caused the injury,—whether a true rule or not,—has no application when one of the persons employed and injured is a boy of tender years employed as a helper under the superintendence of a full-grown man of mature years, and required by the master to obey his orders. *Railroad Company v. Fort*, 553.

MEMORANDUM-CHECK. See *Internal Revenue*, 1, 2.

MERGER.

A judgment on a note or contract merges the note or contract, and no other suit can be maintained on the same instrument. *Eldred v. Bank*, 545.

MUNICIPAL CORPORATION

Is not subject to taxation by Congress on its municipal revenues. *United States v. Railroad Company*, 322.

MUTUAL DEBTS AND CREDITS. See *Set-off*, 1.

NATIONAL BANKS.

1. A receiver of one, appointed by the comptroller of the currency under the fiftieth section of the National Banking Act, may sue for demands due the bank in his own name as receiver, or in the name of the bank. *Bank v. Kennedy*, 19.
2. In order to sue for an ordinary debt due the bank, he is not obliged to get an order of the comptroller of the currency. It is a part of his official duty to collect the assets. *Ib.*

NAVIGATION LAWS.

A vessel built in the British Province of Canada, but owned wholly by citizens of the United States, if engaged in transporting the products of Canada into ports of the United States, may be forfeited under the act of March 1st, 1817 (3 Stat. at Large, 351). *The Merritt*, 582.

NECESSARIES IN A FOREIGN PORT.

1. Where advances are made to a captain in a foreign port, upon his request, to pay for necessary repairs or supplies to enable his vessel to prosecute her voyage, or to pay harbor dues, or for pilotage, towage, and like services rendered to the vessel, the presumption of law, in

NECESSARIES IN A FOREIGN PORT (*continued*).

the absence of fraud or collusion, is that they are made upon the credit of the vessel as well as upon that of her owners, and the presumption can be repelled only by proof that the master was in possession of funds applicable to the expenses, or of a credit of his own or of the owners of his vessel upon which funds could be raised by the exercise of reasonable diligence, and that the possession of such funds or credit was known to the party making the advances, or could readily have been ascertained by proper inquiry. *The Emily Souder*, 667.

2. Liens for such advances have priority over existing mortgages to creditors at home. *Ib.*

NEGLIGENCE. See *Infant; Railroad Travel*, 1.

1. The distinction between "gross" and ordinary, as applied to common carriers, unnecessary. *Railroad Company v. Lockwood*, 357.
2. Railroad companies not exempt from responsibility to strangers for injuries arising from their negligence or from tortious acts. *Railroad Company v. Stout*, 657.

NEGOTIABLE PAPER.

1. When an indorser of a note has the maker's funds in his hands only as arising from the profits of a business in conducting which he was a partner of the maker, and is simply authorized to apply the funds so in his hands to the payment of notes at their maturity, and thus may have parted with them a certain time after the maturity,—it is error to take away from the jury the question whether the note was legally presented to the maker for payment, and whether notice of dishonor was legally given to the indorser. *Ray v. Smith*, 412.
2. What request the holder may properly in such case make of the court. *Ib.*

NORTH CAROLINA.

1. Under the statutes of, no copy of a registered copy of a deed can be read in evidence in place of the original, even if it be proved that the original is lost. *Olcott v. Bynum*, 44.
2. There not being in that State any statutory provision relating to express trusts, "manifested and proved," similar to the provision in the seventh section of the Statute of Frauds, such trusts in that State stand as at common law. *Ib.*

NOTICE. See *Deposition; Rebellion*, 3.

1. Where inquiry is a duty the party bound to make inquiry is affected with all the knowledge which he would have got had he inquired. *Cordova v. Hood*, 1.
2. Through newspapers not necessary to give effect to a proclamation of the President. It takes effect when signed and sealed with the seal of the United States, officially attested. *Lapeyre v. United States*, 191.

NOTICE OF NON-PAYMENT. See *Negotiable Paper*.NOTICE TO PRODUCE PAPERS. See *Evidence*, 13.NUTS. See *Bill of Lading*.

OFFER.

1. An offer to sell at a fixed price, whether accompanied with an agency to sell to others or not, may be revoked at any time prior to the acceptance of the offer, unless there is an express agreement on good consideration to accept within a limited time, or when other acts are done which the person making the offer consents to be bound by. *Stitt v. Huidekopers*, 384.
2. An offer to take \$40,000 in cash is not accepted so as to bind the party by a contract which leaves the buyer at liberty to withdraw by forfeiting a deposit of \$10,000, or pay the remainder within sixty days. *Ib.*

OFFICER OF THE ARMY. See *Army Officer*.

OPINIONS OF THE COURT. See *Precedent, Value of*.

1. Where a question brought to this court is wholly one of the weight of evidence, involving no controverted proposition of law, the court will content itself with announcing fully its conclusions upon the evidence. *Harrell v. Beale*, 590.
2. May be assisted, in regard to an ancient transaction, by a judgment of another court, upon its sitting at the scene of the transaction, though such judgment be not capable of being pleaded as *res judicata*. *Hume v. Beale's Executrix*, 336.

PAROL EVIDENCE. See *Evidence*, 1, 5, 6.

PARTIES. See *Practice*, 18.

1. Where a bill is filed by a third party to set aside, as fraudulent, completed judicial proceedings, regular on their face, the plaintiff in those proceedings should be brought in as a party. *Harwood v. Railroad Company*, 78.
2. Where a person sues in chancery as administrator of a deceased partner, to have an account of partnership concerns, alleging in his bill that he is the sole heir of the deceased partner, the fact that he is not so does not make the bill abate for want of necessary parties. *Moore v. Huntington*, 417.

PARTNERSHIP.

1. On a bill by the representatives of a deceased partner against surviving partners for an account, these last should not be charged with the sum which the partnership assets at the exact date of the deceased partner's death were worth, but only with such sum as by the use of reasonable care and diligence they could get for them in closing the partnership business. *Moore v. Huntington*, 417.
2. Nor be charged with the value of real estate of the partnership the title to which is left by the decree charging them in the heirs of the deceased partner. *Ib.*

PATENT.

I. GENERAL PRINCIPLES RELATING TO.

1. Where a patentee has assigned his right to manufacture, sell, and use within a limited district an instrument, machine, or other manufac-

PATENT (*continued*).

- tured product, a purchaser of such instrument or machine, when rightfully bought within the prescribed limits, acquires by such purchase the right to use it anywhere, without reference to other assignments of territorial rights by the same patentee. *Adams v. Burke*, 453.
2. The right to the use of such machines or instruments stands on a different ground from the right to make and sell them, and inheres in the nature of a contract of purchase, which carries no implied limitation of the right of use within a given locality. *Ib.*
 3. In a suit by a patentee, for damages against an infringer, the plaintiff can recover only for actual damages shown by evidence. Accordingly an instruction to award to the plaintiff "such sum as the jury should find to be required to remunerate him for the loss sustained by the wrongful act of the defendants, and to reimburse him for all such expenditures as have been necessarily incurred by him in order to establish his right," is erroneous as too broad and vague. *Philp v. Nock*, 460.
 4. Where a claim in a patent uses general terms of reference to the specification, such as "substantially in the manner and for the purpose herein set forth," although the patentee will not be held to the precise combination of all the parts described, yet his claim will be limited, by reference to the history of the art, to what was really first invented by him. *Carlton v. Bokee*, 463.
 5. General claims inserted in a reissued patent will be carefully scrutinized, and will not be permitted to extend the rights of the patentee beyond what is shown by the history of the art to have been really his invention. If made to embrace more the claim will be void. *Ib.*
 6. One void claim, if made by inadvertence and in good faith, will not vitiate the entire patent. *Ib.*

PERSONAL PROPERTY, SALE OF. See *Fraudulent Conveyance*.

PERSONS OF COLOR. See *Railroad Travel*, 2.

PLEADING. See *Indictment*.

"POLICE LAW."

Passed by a State, distinguished from a "regulation of commerce," and sustained on the distinction between them, characteristic of a "police law." *Railroad Company v. Fuller*, 560.

PRACTICE. See *Appeal*; *Appearance*; *Court and Jury*; *Final Decree*; *Jurisdiction*; *Mandamus*; *Parties*; *Supersedeas*; *Trespass*, 2; *Witness*.

I. IN THE SUPREME COURT.

(a) *In cases generally*—

1. In passing upon the questions presented in a bill of exceptions the Supreme Court will not look beyond the bill itself. Evidence or statements of fact not contained in it, nor made a part thereof, though appended thereto, will not be regarded. *Bank v. Kennedy*, 19; *Reed v. Gardner*, 409.
2. A judgment will be affirmed when the plaintiff in error files no assignment of errors or brief, as required by the rules of court. *Ryan v. Koch*, 19.

PRACTICE (*continued*).

3. Though a party may have taken exception before a trial to the refusal of a court then to suppress a deposition, yet if he allow the deposition to be read on the trial without opposition, he cannot avail himself, in this court, of his previous exception. *Ray v. Smith*, 412.
4. When a proceeding below is in its essential nature a foreclosure of a mortgage in chancery (which the order of seizure and sale called "executory process" made in Louisiana, when the mortgage "imports a confession of judgment" is decided here to be), an appeal is the only proper mode of bringing it to the Supreme Court. *Marin v. Lalley*, 14.
5. In the absence of statutory provision to the contrary, a mandamus against an officer of the government abates on his death or retirement from office. His successor in office cannot be brought in by way of amendment of the proceeding or on an order for the substitution of parties. *United States v. Boutwell*, 604.
6. When a case is one wholly of the weight of evidence, the Supreme Court does not consider itself bound to do more than announce, without assigning reasons, its judgment on it. *Harrell v. Beale*, 590.
7. When a court below, on a claim embracing several items, rejects some but allows others, against which allowance the defendant alone appeals, the Supreme Court will not give consideration to the items rejected and against whose rejection the plaintiff has not appealed, except so far as may be necessary for a proper understanding of the item allowed. *United States v. Hickey*, 9.
8. Extent to which a witness may be examined, not reviewable on error. *Rea v. Missouri*, 532.
9. When in an action of ejectment, a letter of the plaintiff's grantor written to the ancestor of the defendant is offered by the plaintiff, to show that the ancestor entered into possession under the license of the plaintiff's grantor—no evidence having been given that the letter was received or acted on about the time of such entry by the ancestor—a general objection below that such letter is a declaration of the grantor of his own rights is sufficient. *Smith v. Shoemaker*, 630.
10. If, in the appellate court, the party introducing such a letter relies on any special circumstances as an exception to the rule (as that it was part of the *res gestæ*), that circumstance must appear in the bill of exceptions or by the record in some other manner. The admission will be held to be erroneous unless this appears. *Ib.*
11. When it is argued in such court that an error in the court below worked no injury to the party complaining, the fact that it worked no injury must be made to appear beyond question. If it is only to be seen by a mere preponderance of evidence, and the error is substantiated, the judgment must be reversed. *Ib.*
12. Special circumstances of an alleged misleading of the court and opposite counsel by a statement of counsel, considered as a reason for refusing to reverse a judgment manifestly erroneous, and found to be insufficient. *Eldred v. Bank*, 545.
13. A writ of error from the Supreme Court of the United States to review

PRACTICE (*continued*).

the judgment of a State court must be issued to whatever court is the highest court of the State in which a decision of the case could be had, even if that court be an inferior court of the State. *Miller v. Joseph*, 655.

14. A writ of error will not lie to review the action of a court in enforcing its reasonable rules. *Life Insurance Company v. Francisco*, 672.

(b) *In admiralty*—

15. In prize cases, wherever it appears that notice of appeal or of intention to appeal to the Supreme Court was filed with the clerk of the District Court within thirty days next after the final decree therein, an appeal will be allowed whenever the purposes of justice require it. *The Nuestra Señora de Regla*, 30.

II. IN CIRCUIT AND DISTRICT COURTS.

16. Where a cross-bill and answers are filed in a case and the decree undertakes to dispose of the whole case, it should dispose of the issues raised in them. *Moore v. Huntington*, 417.
17. Where advances for necessaries to a vessel in a foreign port are made in gold, and drafts for the amount on the owners show that the payment to the parties making the advances is to be also in gold, the court may decree the amount in like currency. *The Emily Souder*, 667.
18. When objection is taken to the jurisdiction of the Circuit Court of the United States by reason of the citizenship of some of the parties to a suit, the question is whether to a decree authorized by the case presented they are indispensable parties. If their interests are severable from those of other parties, and a decree without prejudice to their rights can be made, the jurisdiction of the court should be retained and the suit dismissed as to them. *Horn v. Lockhart*, 570.

III. IN THE DISTRICT COURTS OF THE UNITED STATES.

19. A district judge, sitting as the Circuit Court, may allow an appeal from his own decree. *Rodd v. Heartt*, 354.

IV. IN THE COURT OF CLAIMS.

20. Decisions under special acts not giving appeal, held final. *Ex parte Atocha*, 439.

V. IN THE HIGHEST COURT OF A STATE.

21. It is not error in an appellate State court giving judgment against an appellant to include in the judgment sureties in the appeal and writ of error bond. By signing the bond they become voluntary parties to the bond and subject themselves to the decree. *Moore v. Huntington*, 417.

PRECEDENT, VALUE OF.

A particular decision held not weakened as an authoritative exposition of the law by an alleged collusion of the parties to the suit; it being shown by the record that all the questions in the case were fully argued by other parties who intervened, and that the court maturely and deliberately considered the question which they were now asked to reconsider. The court declares that it does not look with approval upon a labored effort to prove by testimony that its judgment was ob-

PRECEDENT, VALUE OF (*continued*).

tained by collusion, when the judgment is cited in another case only to establish principles of law, and not by way of evidence or estoppel. *Williams v. Baker*, 144.

PREFERRED AND COMMON STOCK.

A series of agreements, &c., in regard to such sorts of stock interpreted in a case, special in character, of an embarrassed corporation, seeking to extricate itself from its difficulties. *Bailey v. Railroad Company*, 96.

PRESUMPTION. See *Necessaries in a Foreign Port*, 1.

PRINCIPAL AND AGENT. See *Railroad Travel*, 1.

PRIZE.

A Spanish-owned vessel on her way from New York to Havana put in distress, by leave of the admiral commanding the squadron, into Port Royal, S. C., then in rebellion, and blockaded by a government fleet, and was there seized as prize of war and used by the government. . . . She was afterwards condemned as prize, but ordered to be restored. She never was restored. Damages for her seizure, detention, and value being awarded. *Held*, that clearly she was not lawful prize of war or subject of capture; and that her owners were entitled to fair indemnity, though it might be well doubted whether the case was not more properly a subject for diplomatic adjustment than for determination by the courts. *Nuestra Señora de Regla*, 29.

PROCLAMATION OF THE PRESIDENT.

Takes effect when signed by the President and sealed with the seal of the United States officially attested. Publication in newspapers not necessary. *Lapeyre v. United States*, 191.

PRODUCTION OF PAPERS ON NOTICE. See *Evidence*, 13.

PROHIBITION. See *Appeal*, 4.

PUBLIC LAW.

What constitutes trading with an enemy and when done through an agent. *United States v. Lapene*, 601.

QUESTIONS OF LAW AND FACT. See *Court and Jury*.

RAILROAD TRAVEL.

1. A railroad corporation managed on the joint account of a receiver of part of it and the lessees of the remaining part, *held* liable for injuries committed, by a servant of the parties working it, upon the person of a passenger whom such servant improperly expelled from a car, into which the passenger had entered; the railroad corporation having allowed tickets to be issued in its own name, in the same form as it had done before the road was leased, and the passenger, for aught that appeared, not knowing that the railroad corporation was not itself managing the road. *Railroad Company v. Brown*, 445.

2. An act of Congress passed in 1863, which gave certain privileges which it asked to a railroad corporation, enacted also that "no person shall be excluded from the cars on account of color." *Held*, that this

RAILROAD TRAVEL (*continued*).

meant that persons of color should travel in the same cars that white ones did, and along with them in such cars. *Railroad Company v. Brown*, 445.

REAL ESTATE. See *Des Moines River Grants*; *Indian Tribes*; *Landlord and Tenant*; *Resulting Trust*; *Estoppel*; *Rule in Shelley's Case*; *Rebellion, The*, 3; *Taxes*; *Trustee's Sale*; *Use and Occupation*; *Vendor's Lien*.

REBELLION, THE. See *Trading with Public Enemy*.

1. To a suit by legatees to compel an executor to account for moneys received by him from sales of property belonging to the estate of his testator, and to pay to them their distributive shares, it is no answer for the executor to show that he invested such funds in the bonds of the Confederate government by authority of a law of the State in which he was executor, and that such investment was approved by the decree of the probate court having settlement of the estate. *Horn v. Lockhart*, 571.
2. The acts of the several States in their individual capacities, and of their different departments of government, executive, judicial, and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the National authority, or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding. *Ib.*
3. Judicial proceedings during the war of the rebellion, within lines of the Federal army, by a private person on a mortgage, ending in a judgment and sale of mortgaged premises, against one who had been expelled by the military authority of the United States into the so-called Confederacy, and who had no power or right to return to his home during the rebellion, held null, and a judgment which refused to vacate them reversed. *Dean v. Nelson* (10 Wallace, 172) affirmed. *Lasere v. Rochereau*, 437.

RECEIVER OF NATIONAL BANK. See *National Banks*.

RECITALS. See *Estoppel*.

In a private act of legislature bind none but those who apply for the act. *Branson v. Worth*, 32.

REGISTRY LAWS. See *Navigation Laws*.

"REGULATION OF COMMERCE."

One, distinguished from a "police law;" and the latter, passed by a State, sustained as not being the former. *Railroad Company v. Fuller*, 560.

RENT. See *Landlord and Tenant*.

RES GESTÆ. See *Evidence*, 1, 11.

RES JUDICATA. See *Judgment*.

1. Although a former suit about the same subject-matter as a later one may not operate strictly as *res judicata*, yet it may well be referred to when it was heard on the scene of the transaction complained of, and when it relates to a transaction forty years old, as an element by

RES JUDICATA (*continued*).

which a conclusion at a later day in accordance with its result may be assisted. *Hume v. Beale's Executrix*, 336.

2. A personal judgment, rendered in one State against several parties jointly, upon service of process on some of them, or their voluntary appearance, and upon publication against the others, is not evidence outside of the State where rendered of any personal liability to the plaintiff of the parties proceeded against by publication. *Board of Public Works v. Columbia College*, 521.

RESULTING TRUST.

A resulting trust of land does not arise in favor of one of two joint purchasers, unless his part is some definite portion of the whole, and what money he pays is paid for some aliquot part of the property, as a fourth, third, or a moiety. Nor can it arise in any case for more than the money actually paid; nor be created by advances or funds furnished after the time when the purchase is made. *Olcott v. Bynum*, 44.

RULE IN SHELLEY'S CASE.

Held not to apply to a case where a testator gave his estate, both real and personal, to his son, R. T., "during his natural life, and after his death to his issue, by him lawfully begotten of his body, to such issue, their heirs and assigns forever;" with devises over, in case R. T. should die without lawful issue. *Daniel v. Whartenby*, 639.

RULE OF COURT. See *Practice*, 14.

One that "in causes tried by a jury, any special charge or instruction asked for by either party, must be presented to the court in writing, directly after the close of the evidence, and before any argument is made to the jury, or it will not be considered," is a reasonable rule; and the enforcement or disregard of it is matter of discretion with the court making it. *Life Insurance Company v. Francisco*, 673.

SALE. See *Fraudulent Conveyance*; *Trustee's Sale*.SAME CAUSE OF ACTION. See *Res Judicata*.

Judgment on a note or contract operates as a merger of it, and when the judgment is binding personally, it can be introduced in evidence and relied on as a bar to a second suit on the note. *Eldred v. Bank*, 545.

SERVICE OF WRIT. See *Judicial Comity*, 2; *Rebellion*, 3.

1. Under a statute requiring that a writ shall be served by delivering a copy to the defendant, or by leaving the same with some white person of the family, "at the dwelling-house of such defendant;" a leaving of the declaration with such a white person of the family when he is at a distance of one hundred and twenty-five feet from the house and in a corner of the yard of the house, is not good. *Kibbe v. Benson*, 624.
2. The charter of a railroad company, authorized service of process "on any director." On a suit brought, the marshal made return of service, July 6th, 1868, on J. S., "reputed to be one of the directors." The record showed that on the 5th of May, 1866, J. S. was, in fact,

SERVICE OF WRIT (*continued*).

one of the directors. *Held*, sufficient service, in the absence of proof, that J. S. was not one of the directors at the time of service; and under some special circumstances. *Railroad Company v. Brown*, 445.

SET-OFF.

1. A stockholder indebted to an insolvent corporation for unpaid shares cannot set off against this trust fund for creditors a debt due him by the corporation. The fund arising from such unpaid shares must be equally divided among all the creditors. *Sawyer v. Hoag*, 610.
2. A claim by the United States for the proceeds of bonds unlawfully procured from it by a person insolvent, and sold, consisting of the principal and interest of the bonds, and being thus capable of ascertainment, is sufficiently liquidated, though it have never been judicially determined, to be the subject of set-off. *Allen v. United States*, 207.

SHIPS. See *Bill of Lading*; *Necessaries in a Foreign Port*.

SMUGGLING.

Under the fifteenth section of the act of July 18th, 1866, providing for the sale of property used in smuggling goods into the United States, the expense of keeping which would reduce the proceeds of its sale, the collector may publicly advertise it for sale at once, on seizure, and proper certificate by appraisers of its value and character, and, after not less than one week's notice, sell it. *Conway v. Stannard*, 398.

SOUTH CAROLINA.

Different sections of the statutes of the State of, relating to its banks construed, and the bills of the Bank of the State, though issued after December 20th, 1860, and not paid in specie, held to have been a legal tender for the payment of taxes due the State in 1870. *State v. Stoll*, 425.

STAMPS. See *Internal Revenue*, 2.

STATUTE OF FRAUDS. See *North Carolina*, 2.

STATUTES OF LIMITATION.

In construing them, they must, so far as they affect rights of action in existence when the statutes are passed, be held, in the absence of contrary provision, to begin when the cause of action is first subjected to their operation. *Sohn v. Waterson*, 596.

STATUTES OF THE UNITED STATES.

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

- | | | |
|-------|-----------------|--------------------------------------|
| 1789. | September 24th. | See <i>Jurisdiction</i> . |
| 1790. | April 30th. | See <i>Embezzling Public Money</i> . |
| 1792. | December 31st. | See <i>Navigation Laws</i> . |
| 1797. | March 3d. | See <i>Set-off</i> . |
| 1804. | March 26th. | See <i>Embezzling Public Money</i> . |
| 1807. | February 24th. | See <i>Trespass</i> . |
| 1817. | March 1st. | See <i>Navigation Laws</i> . |
| 1836. | July 4th. | See <i>Patent</i> . |
| 1846. | August 6th. | See <i>Embezzling Public Money</i> . |

STATUTES OF THE UNITED STATES (*continued*).

1846. August 8th.	See <i>Des Moines River Grants</i> .
1855. February 24th.	See <i>Court of Claims</i> .
1856. May 15th.	See <i>Des Moines River Grants</i> .
1861. July 13th.	See <i>Trading with the Public Enemy</i> .
1862. July 12th.	See <i>Des Moines River Grants</i> .
1863. March 3d.	See <i>Court of Claims; Army Officer</i> .
1864. June 3d.	See <i>National Banks</i> .
1864. June 30th.	See <i>Internal Revenue, 7</i> .
1864. July 2d.	See <i>Trading with the Public Enemy</i> .
1866. June 15th.	See " <i>Regulation of Commerce</i> ."
1866. July 18th.	See <i>Smuggling</i> .
1866. July 26th.	See <i>Army Officer</i> .
1867. February 5th.	See <i>Jurisdiction</i> .
1867. March 2d.	See <i>Bankrupt Act; Internal Revenue</i> .
1868. July 20th.	See <i>Internal Revenue, 8</i> .
1870. May 31st.	See <i>Appeal, 3</i> .
1870. July 8th.	See <i>Patent</i> .

STOCKHOLDERS IN INSOLVENT CORPORATIONS. See *Equity, 1; Set-off, 1*.

SUPERSEDEAS.

1. Where the Circuit Court "decrees" that a fund in court belongs to certain persons named, and that their claims be paid, and (the fund not being large enough to pay all the persons in full) orders a distribution by a commissioner, in accordance with the principles laid down by the court, and on a table of distribution being reported by the commissioner, recites that the commissioner had submitted a distribution based upon the decree theretofore made by the court, and then "orders and decrees" that the fund be distributed according to it, the "decree" may be considered as of either date as respects the matter of a supersedeas. *Rodd v. Heartt, 354*.
2. As respects the question whether the appeal was in time to operate as a supersedeas, the case is regulated by the act of June 1st, 1872, which allows sixty days, and not by the Judiciary Act of 1789. *Ib*.

SURETIES IN APPEAL. See *Practice, 21*.

TAXES. See *Internal Revenue, 3-8; South Carolina*.

1. A party who has no title to lands cannot acquire one by mere payment of taxes on them. *Homestead Company v. Valley Railroad, 153*.
2. A party by paying taxes which another party ought to pay, but does not pay, cannot make such second party his debtor by having stepped in and paid the taxes for him, without being requested so to do. *Ib*.

TENDER, LEGAL. See *Practice, 17; South Carolina*.

TEXAS. See *Vendor's Lien, 5*.

TITLE TO LANDS. See *Rebellion, 3*.

Cannot be acquired by the mere payment of taxes. *Homestead Company v. Valley Railroad, 153*.

TRADING WITH PUBLIC ENEMY.

1. What constitutes. May be through an agent. *United States v. Lapene*, 601.
2. A sale made without "a license to trade," by a loyal citizen of the United States, on the 6th of March, 1865, when Savannah was occupied by the Federal troops, to a loyal citizen of New York, of cotton which had been returned by the owner, registered, and taken into possession by the United States, and sent for sale to New York under the Captured and Abandoned Property Act, held void, although the bill of sale of the cotton authorized the attorney of the vendors to receive the proceeds of sale and pay them to the vendees, and was thus argued to have been not a sale of the cotton at Savannah, Georgia, but a sale of claim in Washington, D. C. *Cutner v. United States*, 517.
3. Held further, the full consideration-money of the purchase having been paid, that the vendor could not sustain a suit in the Court of Claims for the proceeds of the cotton, for the use of the vendee. *Ib.*

TRANSFER OF LEASE, EFFECT OF. See *Landlord and Tenant*.

TRAVEL ON RAILROAD. See *Railroad Travel*.

TRESPASS.

1. Will not lie against a collector of internal revenue for improperly seizing and carrying away goods as forfeited, where, on information afterwards filed, the marshal has returned that he has seized and attached them, and where after a trial absolving them a certificate of probable cause has been granted under the eighty-ninth section of the act of February 24th, 1807, and where the owner of the goods has never made any claim of the collector for them except by bringing the action of trespass. *Averill v. Smith*, 82.
2. The claimant of the goods after a trial where probable cause has been certified, ought to move the court for the necessary orders to cause the property to be returned to the rightful owners, if the court have itself omitted to make such an order. It is not the duty of either the marshal or collector to do so. *Ib.*

TRUST. See *North Carolina*, 2; *Resulting Trust*; *Trustee's Sale*.

TRUSTEE'S SALE.

1. A deed of trust with power of sale (a deed, therefore, in the nature of a mortgage), provided that money should be paid in three equal instalments, and that in default of payment of any one "that may grow due thereon," all the mortgaged premises might be sold and a deed of the premises made to the purchaser, and that it should be lawful for the trustee "out of the money arising from such sale to retain the principal and interest which shall then be due" . . . rendering the overplus to the mortgagor. Held (*the property being incapable of advantageous sale in parts*), that when one instalment fell due, the trustee had a right to sell, and though there was a surplus above what was necessary to pay the instalment due, yet that the trustee might reserve the whole and apply it to the residue of the mortgage debt. *Olcott v. Bynum*, 44.

TRUSTEE'S SALE (*continued*).

2. A sale of a large and valuable property under a deed of trust in the nature of a mortgage, held under the proofs to have been properly made in a body, and for cash alone, and on the premises themselves, though they were in a remote part of Virginia. *Olcott v. Bynum*, 44.

TRUTH AND VERACITY, REPUTATION FOR. See *Witness*, 1.

USE AND OCCUPATION.

One who enters into possession of land in virtue of an agreement that he is to be a purchaser of it, cannot be held liable for, if the purchase be concluded. *Carpenter v. United States*, 489.

VENDOR'S LIEN.

1. Exists as against a purchaser, having notice of the deed, in those States where such a lien prevails (as in Texas), when the deed shows on its face that the consideration is yet to be paid. *Cordova v. Hood*, 1.
2. Taking a note from the vendee with surety, though presumptively an abandonment of the lien, not so absolutely. The presumption may be rebutted. *Ib.*
3. The vendor's testimony, if positive, sufficient to do this. *Ib.*
4. Part payment of such a note—the note being for the payment of all and every part of the purchase-money so long as it remains unpaid—and taking a new note payable at the same time and in the same way as the original note, and the destruction of this last, does not displace the lien. *Ib.*
5. By the laws of Texas, an assignment of a note given for the purchase-money of real estate carries a vendor's lien. *Ib.*

VESSEL OF THE UNITED STATES. See *Navigation Laws*.

VOID PROCEEDINGS. See *Rebellion*, 3; *Service of Writ*, 1.

WAIVER OF EXCEPTION. See *Practice*, 1, 3.

WAIVER OF FRAUD. See *Implied Contract*.

WAIVER OF NOTICE OF NON-PAYMENT. See *Negotiable Paper*.

WAR RISKS.

Distinguished from marine risks. *Goodwin v. United States*, 515.

WITHDRAWAL OF APPEARANCE. See *Appearance*.

WITNESS.

1. Where the purpose of testimony is to impeach a witness for want of veracity, it is more proper to ask the person on the stand what is the general "reputation" for truth of the witness sought to be impeached, than to ask what is his general "character," &c. *Knobe v. Williamson*, 587.
2. Cross-examination (including that of party who puts himself on the stand) matter within the discretion of the court below, and not, therefore, reviewable on error. *Rea v. Missouri*, 532.

WRIT. See *Service of Writ*.

WRIT OF ERROR. See *Appeal*, 1; *Jurisdiction*, 1, 2; *Practice*, 13, 14.









