INDEX.

ACTION. See *Timber on the Public Lands*, 2.

ADMIRALTY. See *Collision; Jurisdiction*, 5, 6; *Practice*, 14, 15.

1. Where a libel in, alleged that a loss by the collision was substantially a total loss, and the answer in effect admitted this—the vessel having sunk in deep water, and it being clear that she could not have been repaired without a large expenditure—*held*, that the fact that she was finally raised and put in good condition, was no defence to a claim for a total loss;—especially as it did not appear at whose instance or at what cost this was done; nor by what right those in possession of her held her; and it not being either alleged or proved that she had been tendered to her original owners. *The Falcon*, 75.
2. But this decree for a total loss declared to bar any claim to the vessel by her former owners, and that their title should be remitted to the owners of the other vessel. *Ib.*

APPEAL. See *Bankrupt Act; Practice*, 14–16.

Does not lie to this court from an order of a District Court disbarring an attorney. *Ex parte Robinson*, 513.

ATTORNEY AT LAW. See *Appeal.*

1. The power to disbar an attorney can only be exercised where there has been such conduct on the part of the party complained of as shows him to be unfit to be a member of the profession; and before judgment disbarring him can be rendered he should have notice of the grounds of complaint against him and ample opportunity of explanation and defence. *Ex parte Robinson*, 505.
2. Mandamus is the appropriate remedy to restore an attorney disbarred, where the court below has exceeded its jurisdiction in the matter. *Ib.*
3. The effect of the act of Congress of March 2d, 1831, entitled "An act declaratory of the law concerning contempts of court," and of the seventeenth section of the Judiciary Act, stated in relation to the general matter above passed on. *Ib.*

ATTORNEY IN FACT.

A power of attorney to sell and convey real property, given by a husband and wife, in general terms, without any provision against a sale of the interest of either separately, or other circumstance restraining the authority of the attorney in that respect, authorizes a conveyance by the attorney, of the interest of the husband, by a deed executed in his name alone. *Holladay* v. *Daily*, 606.

BANKRUPT ACT.

When, after opposition by a creditor to the discharge of a petitioner in bankruptcy, the District Court discharges him, and the opposing creditor files in the Circuit Court a petition setting forth the application for the benefit of the Bankrupt Act, the opposition, and discharge, and praying the Circuit Court for a reversal of the orders of discharge of the District Court—such petition must be regarded as being a petition for review under the first clause of the second section of the Bankrupt Act, which gives the Circuit Courts a general superintendence and jurisdiction of all cases and questions arising under the act; and on an affirmance by the Circuit Court of the decree of discharge by the District Court, no appeal lies to this court, though the debt of the opposing creditor discharged be more than $2000. *Coit* v. *Robinson*, 274.

BILL OF EXCEPTIONS. See *Practice*, 6.

CAUSE PROXIMATE AND REMOTE. See *Life Insurance.*

CERTIORARI. See *Practice*, 1–3.

CHANCERY. See *Equity.*

COLLISION. See *Admiralty.*

1. A steamer condemned for a collision with a sailing vessel, several witnesses on the sailing vessel swearing positively to courses and distances and times immediately prior to the collision, and these showing that the steamer was in fault; while, though there was strong evidence on the steamer's side to show that these courses, distances, and times could not have been truly stated by these witnesses, this evidence was inferential chiefly; consisting of conclusions or arguments drawn from other facts sworn to, as *ex gr.*, the lights which the steamer saw and the lights which she did not see on the sailing vessel; and the effect of giving credence to this inferential or argumentative testimony being to convict as of necessity the witnesses for the sailing vessel of perjury. *The Wenona*, 41.
2. A steamer running at the rate of from eight to ten knots an hour, on a bright moonlight night, in an open bay, with nothing to mislead her, condemned for the loss of a schooner sailing with a six-knot breeze, whose only fault was alleged to be a false manœuvre in the moment of impending collision. *The Falcon*, 75.
3. A steamer and a sailing vessel held jointly liable for injury by collision occurring in a very dense fog and in the neighborhood of a large port, in the track of vessels bound in and out; the steamer being here condemned for sailing in such a time and place at the rate of seven knots an hour, and the sailing vessel, though moving very slowly (about a mile an hour), for ringing a bell instead of using a fog-horn, as by statute she was bound to if "under way" in a fog. *The Pennsylvania*, 125.
4. Where a statute, in order to prevent collisions at sea, prescribes what vessels there shall do, a vessel which has committed a breach of the statute, the same being followed by a collision, must show not only

COLLISION (*continued*).
that probably her fault did not contribute to the disaster, but that it certainly did not; that it *could* not have done so. *The Pennsylvania*, 125.

COMMERCE AMONG THE SEVERAL STATES.
The act of Congress of June 15th, 1866, authorizing every railroad company in the United States, whose road was operated by steam, to carry upon its road, &c., all passengers, freight, and property, on their way from one State to another, and to connect with roads of other States so far as to form continuous lines for transportation to their place of destination; and the act of July 25th, 1866, authorizing the construction of certain bridges over the Mississippi River, were designed to remove trammels upon transportation between different States, interposed by State enactments or by then existing laws of Congress. *Railroad Company* v. *Richmond et al.*, 584.

COMMISSIONER OF INTERNAL REVENUE. See *Construction, Rules of*, 2.

CONDITION. See *Construction, Rules of*, 3, 4; *Release.*

CONFEDERATE NOTES. See *Evidence*, 10, 11.
When payment may, in contracts made during the civil war in the late insurrectionary States, be made in such notes, and when payment in lawful money is obligatory. This matter considered. *Confederate Note Case*, 548.

CONFLICT OF JURISDICTION. See *Constitutional Law*, 4; *Judicial Comity.*

CONSTITUTIONAL LAW. See *Illinois; Michigan; New York.*
1. An act of legislature, which has the effect to appropriate the assets of a bank whose stock is owned wholly by a State, to pay the debts of the State, to the prejudice of billholders and other creditors of the bank, is void, as repugnant to that clause of the Constitution which prohibits a State to pass any law impairing the obligation of contracts. *Barings* v. *Dabney*, 1.
2. An act of the legislature of a State authorizing the people of a town to decide whether they will "donate" its bonds to a railroad company, and collect taxes for the amount (the act being enabling merely and not mandatory), is not opposed to the Constitution of the United States. *Town of Queensbury* v. *Culver*, 83.
3. Where in a university of learning, belonging to the State, and which the State was in the habit of governing through curators appointed by itself, a person was appointed by the curators a professor and librarian, for six years from the date of his appointment, "*subject to law.*"—*Held* that the legislature could vacate his office, appoint new curators, and without fault on the part of the professor assigned, order a new election of a professor to the same professorship, and of a librarian, before the expiration of the six years. *Head* v. *The University*, 526.
4. A State cannot, in order to defray the expenses of her quarantine regula-

CONSTITUTIONAL LAW (*continued*).

tions, impose a tonnage tax on vessels owned in foreign ports, and entering her harbors in pursuit of commerce. *Peete* v. *Morgan*, 581.

5. The power vested in Congress to regulate commerce among the several States was not given to be exercised so as to interfere with private contracts, not designed at the time they were made, to create impediments to such intercourse. *Railroad Company* v. *Richmond*, 585.

CONSTRUCTION, RULES OF.

I. As applied to Contracts.

They are, when having nothing local or particular in them, to be construed by the settled rules of law. *Insurance Company* v. *Seaver*, 532.

II. As applied to Statutes.

1. A construction of a proviso to an act which makes the proviso plainly repugnant to the body of the act, is inadmissible. *The Dollar Savings Bank* v. *United States*, 227.
2. The construction given to the Internal Revenue Act by Commissioners of Internal Revenue, even though published, is not a construction of so much dignity that a re-enactment of the statute subsequent to the construction having been made and published, is to be regarded as a legislative adoption of that construction. *Ib.*
3. When statute authorizes an inferior public officer to make a sale "with the approval" of his superior, that approval is an indispensable condition to the validity of the sale and must appear in writing, and without its so appearing he cannot make a title which a purchaser is bound to accept. *United States* v. *Jonas*, 598.
4. Where a contract of insurance is by its terms made void upon the breach of certain conditions set forth in it,—such as that it shall not extend to death arising from breach of the law by the assured, or by his wilfully exposing himself to unnecessary danger or peril, and the assured is killed during a horse-race made illegal by statute, and in which he had been participating,—the meaning of the conditions must be settled by the rules of law. It is of no pertinence to consider "how ordinary people in the part of the country where the insured reside, in view of the state of things then existing,—the frequency of such races, and the way in which such matches are usually regulated,—would naturally understand such language, whether as precluding such driving or not." *Insurance Company* v. *Seaver*, 532.

CONTEMPT OF COURT. See *Attorney at Law.*

CONTINGENT REMAINDERS. See *Vested Remainder.*

CONTRACT. See *Constitutional Law*, 1, 3, 5.

1. When the government—under a contract with a person to carry a large amount of military supplies (not binding itself, however, to furnish any specified amount of them), has a right, upon giving to him notice of the amount to be carried, to call upon such person to carry the full amount—gives notice to him to carry the full amount, but sends to him to be carried only a part of such amount, the contractor

CONTRACT (*continued*).
is entitled to be reimbursed all expenses to which he is put in getting ready to carry the full amount; but is not entitled to compensation as if he had actually carried it. *Bulkley* v. *United States*, 37.

2. Conditions in a contract of insurance, the same being of no peculiar or local kind, are not to be interpreted by reference to the way in which a jury might assume that ordinary people in the part of the country where the insured resides would, in view of the state of things there existing, understand them; nor interpreted otherwise than by the settled rules of law. *Insurance Company* v. *Seaver*, 532.

3. A promise made in one of the Southern States to pay a sum of money specified (and acknowledged to be due) "as soon as the crop can be sold or the money raised from any other source," is a promise to pay the money specified upon the occurrence of either of the events named in the paper, OR after the lapse of a reasonable amount of time within which to procure, in one mode or in the other, the means necessary to meet the liability. *Nunez* v. *Dautel*, 560.

4. Contracts valid when made, continue valid, and capable of enforcement, so long as peace lasts between the governments of the contracting parties, notwithstanding a change in the conditions of business which originally led to their creation. *Railroad Company* v. *Richmond*, 584.

CORPORATION. See *Municipal Bonds; Municipal Corporations; Municipal Subscriptions.*

Although a bank, on the expiration of its charter, or the trustees who liquidate its affairs, may be deprived by statute, of power to take or hold real estate, this does not prevent either's making an arrangement through the medium of a trustee, by which, without ever having a legal title, control, or ownership of such estate, they yet secure a debt for which they had a lien on such estate, and have the estate sold so as to pay the debt. *Zantzingers* v. *Gunton*, 32.

COUPONS. See *Municipal Bonds*, 1, 2.

COURT AND JURY. See *Jurisdiction*, 4; *Practice*, 9, 17.

On a promise to pay a certain sum of money after the lapse of a reasonable time, the question of what was a reasonable time (there being no evidence in the case but the written promise itself), is a question for the court. *Nunez* v. *Dautel*, 560.

CREDITOR, ASSIGNMENT FOR BENEFIT OF. See *Debtor and Creditor; Trust.*

DEBTOR AND CREDITOR. See *Corporation.*

Though the stock of a bank be altogether owned by a State, if the bank is insolvent its assets cannot be appropriated by legislative act or otherwise to pay the debts of the State, as distinguished from the debts of the bank Those assets are a trust fund first applicable to the payment of the debts of the bank. *Barings* v. *Dabney*, 1.

DEED. See *Solicitor of the Treasury.*

DELINQUENT REVENUE OFFICER. See *Evidence*, 2–4.

DISTILLER'S BOND.

1. One taken in pursuance of the act of July 20th, 1868, imposing taxes on distilled spirits is not void, even as against sureties to the bond, because the ground on which the distillery was, was incumbered, and because it being so the bond was approved without the consent of the incumbrancers to postpone their liens; the bond not having been delivered as an escrow simply. *Osborne* v. *United States*, 577.
2. This is not altered by the fact that if the consent of the incumbrancers had been got to postpone their liens, the ground on which the distillery stood was of sufficient value to discharge the taxes due by the distiller and so relieve the sureties from their personal obligations. *Ib.*

DISTRICT OF COLUMBIA. See *Practice*, 7.

EQUITY. See *Parties; Pleading; Public Lands*, 3.

1. Equity does not possess power to order the levy of a tax to pay municipal debts, simply because, in point of fact, the creditor cannot get payment by the usual processes of law, these being theoretically perfect; though, practically, from special circumstances, unavailing so far as sought to be used. *Rees* v. *City of Watertown*, 107; *Heine* v. *Levee Commissioners*, 655.
2. Will not relieve against representations (which prove untrue) of facts yet to come into existence; representations based upon general knowledge, information, and judgment, as distinguished from representations, which from knowledge, peculiarly his own, a party may certainly know whether they will be true or false. *Sawyer* v. *Prickett and Wife*, 147.
3. Will not relieve a party against his own representations of the class last abovementioned, where another person has acted upon them, to the inconvenience or injury of the party who made them and is now seeking relief. *Kitchen* v. *Rayburn*, 254.

ESTOPPEL.

1. A principal in a power of attorney to collect money from the government, and give release, and do other things necessary, &c., may be estopped from a further assertion of his claims by his own action in regard to a suit brought, and a compromise made of it under the power, though the power itself be in a form which the statute declares shall make it "null and void." *Stowe* v. *United States*, 13.
2. An act of Congress allowing and reinstating an entry and location by A. on the public lands which was wholly void, "so that title to said lands may enure to the benefit of A.'s grantee, *as far as he may have conveyed the same*," *held* to vest, through the process of estoppel, a remote grantee who took by a *mere quit-claim* from a nearer grantee who had an ordinary sort of deed with warranty and full covenants. *McCarthy* v. *Mann*, 20.

EVIDENCE. See *Collision*, 4; *Omnia rite esse acta, &c.; Personal Identity; Statutes.*

1. Strong inferential testimony disregarded, where the effect of giving

EVIDENCE (*continued*).

credit to it would be to show that other witnesses who swore positively to facts which the tendency of such testimony was to disprove, must have committed perjury. *The Wenona*, 41.

2. Under the act of March 3d, 1797, enacting that in suits against delinquent revenue officers, "a transcript *from* the books and proceedings of the treasury shall be evidence," an extract may be given in evidence if not garbled or mutilated, and if it gives both sides of the account as it stands upon the books of the treasury. *United States* v. *Gaussen*, 198.
3. Such a transcript, however, will be but *primâ facie* evidence. *Ib.*
4. A transcript of the accounts rendered by a collector himself (when not partial or fragmentary), is evidence against the surety on his official bond. *Ib.*
5. Where, on a question of novelty in a patented process, a witness has stated that soon after the patent was granted he was using a particular process which he had been using for twenty years before (a process which the defendant affirmed to be the same as the one patented), it is allowable to ask him whether the patentee had not forbid him to use what he was then using (the purpose of the question being to show that the patentee had forbid him); and that the witness then disclaimed using the patented process, and said that he had "a way of his own" which he was using. *Klein* v. *Russell*, 433.
6. Also to ask a witness of the opposite side, who was referred to and said that he had seen and copied a paper in reference to the expenses of the suit, subscribed by various persons, what were the contents of the paper; the purpose of the question being to show that the defendants' witnesses were in a combination to defeat the plaintiff and to share the expense of the opposition. It was not necessary prior to the question to call on any one to produce the original paper. *Ib.*
7. Reports of adjudged cases, no evidence in other cases of facts stated in the report. *Mackay* v. *Easton*, 619.
8. Courts will not take judicial notice of the various orders issued by a military commander in the exercise of the military authority conferred upon him. *Burke* v. *Miltenberger*, 519.
9. The bare title of a cause at the head of one or two orders of court—these being the only parts of a record in a concurrent proceeding sent here—in which orders the defendant is stated to be G. M. "*et al.*," is not sufficient to show that a partner of G. M., to wit, one J. B.—not anywhere named in any portion of the record sent, was a defendant and party to the proceeding. *Williams et al.* v. *Bankhead*, 563.
10. Parol evidence is admissible (proper ground being first laid), where suit is brought on a contract which was made in the late rebellious States . . . to enforce a contract payable in "dollars," and made during the war, to prove that the term "dollars" as used in the contract meant, in fact, Confederate notes. *The Confederate Note Case*, 548.
11. On a question arising on such a contract as to whether lawful money or Confederate notes were intended as the sort of money in which payment was to be made, the understanding of the parties may (under

EVIDENCE (*continued*).
statute which authorizes either party to show what the true understanding was in regard to this matter), be shown from the nature of the transaction, and the attendant circumstances, as satisfactorily as from the language used. *The Confederate Note Case*, 548.

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS. See *Municipal Bonds*, 2.

"FINAL DECREE."
An order of the Circuit Court on an appeal in admiralty from a decree of the District Court, simply affirming that decree, is not a "final decree" from which an appeal lies to this court *The Lucille*, 73.

"FINAL TRIAL." See *Removal of Causes.*
What sort of trial is "final" and what not within the language of the act of March 2d, 1867, authorizing a removal from a State court to a Federal court, of a cause "at any time before the final hearing or trial of the suit." *Insurance Company* v. *Dunn*, 214; *Stevenson* v. *Williams*, 572.

"FLORIDA, LOUISIANA, AND MISSOURI." See *Private Land Claims.*

GOVERNMENT CONTRACTOR. See *Contract*, 1.

HUSBAND AND WIFE. See *Attorney in Fact.*

ILLINOIS.
The act of the legislature of, passed June 13th, 1867, providing for the taxation of the owners of shares of the capital stock of a National bank in that State, at the place, within the State, where the bank was located, without regard to their places of residence, was valid under the constitution of the State established in 1848. *Tappan, Collector*, v. *Merchants' National Bank*, 491.

INDIANS.
1. Timber standing on lands occupied by the Indians cannot be cut by them for the purposes of sale alone; though when it is in their possession having been cut for the purpose of *improving* the land, there is no restriction on the sale of it. *United States* v. *Cook*, 591.
2. The presumption is against the authority of Indians to cut and sell timber on the public lands. Every purchaser from them is charged with notice of this presumption. *Ib.*

INSURANCE. See *Life Insurance.*
1. It is not necessary in a case of marine insurance, to make a total loss, that there should be an absolute extinction or destruction of the thing insured, so that nothing of it can be delivered at the point of destination. *Insurance Company* v. *Fogarty*, 640.
2. A destruction in specie, so that while some of its component elements or parts may remain, while the thing which was insured, in the character or description by which it was insured is destroyed, is a total loss. *Ib.*

INTERNAL REVENUE. See *Construction, Rules of*, 2; *Distiller's Bond; Stamp; "Transportation Bond."*

1. The ninth section of the Internal Revenue Act of July 13th, 1866, subjects to the tax of five per cent. laid on the undistributed sum or sums made and added during the year to their surplus or contingent funds, by banks and savings institutions generally, such sum or sums, when made and added to such funds even by savings banks without stockholders or capital stock, and which do the business of receiving deposits to be lent or invested for the sole benefit of their depositors. *The Dollar Savings Bank* v. *United States*, 227.
2. The United States are not prohibited from adopting the action of *debt* or any other common-law remedy for collecting what is due to them. This is true on general principles, and under the abovementioned act of July 13th, 1866, it is expressly enacted that "taxes may be sued for and recovered in the name of the United States in any proper form of action." *Ib.*
3. The requirement by statute on all banks to pay a tax of a certain sum, per cent., on all undistributed earnings made or added during the year to their contingent funds, is a charge of a certain sum upon the banks, and without assessment makes the banks a debtor for the sum prescribed. *Ib.*

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

1. In a contract made for the transportation of military supplies and stores in the Western country, and in the presence of actual war, between the military department of the government and a private party, the terms "posts, depots, and stations" are to be taken in their military sense and not in the sense of railway posts, depots, and stations. *Caldwell's Case*, 264.
2. When such a contract speaks of military posts or depots ON the west bank of a river, posts, one of which is 92 miles west of the river, and another 132 miles, and a third 191 miles, cannot be considered as within the designation. *Ib.*
3. Conditions in a policy of insurance having nothing local in their character, are not to be interpreted by reference to the way in which a jury might assume that "ordinary people in the part of the country where the insured resides, in view of a state of things there existing at the time," would naturally understand them; nor interpreted otherwise than by the settled rules of law. *Insurance Company* v. *Seaver*, 532.

JUDICIAL COMITY.

1. Whether the legislature of a State has authority under the constitution of a State to pass a particular statute, what is the true interpretation of any statute passed by it for a purpose specified, and what acts will be justified under the statute, are matters which lie exclusively within the determination of the highest court of the State, and its judgment is final. *Aicardi* v. *The State*, 635.
2. But the decisions of even such a court upon the construction and statutes of its own State, will not be followed by this court when they are

JUDICIAL COMITY (*continued*).

disapproved of by it, and when the matter in question is the obligation to pay bonds issued in negotiable form by a township of that State, and now in the hands of a citizen of another State or a foreigner, *bonâ fide*, and for value. *Township of Pine Grove* v. *Talcott*, 666.

JUDICIAL NOTICE.

Not taken of the various orders issued by a military commander in the exercise of his military authority. *Burke* v. *Miltenberger*, 519.

JURISDICTION. See *Bankrupt Act; Waiver.*

1. A return to a summons by the sheriff that he has served the defendant personally therewith is sufficient, without stating that the service was made in his county. This will be presumed. *Knowles* v. *The Gaslight and Coke Company*, 58.
2. But, in an action on a judgment rendered in another State, the defendant, notwithstanding that the record shows a return of the sheriff that he was personally served with process, may show that he was not served, and that the court never acquired jurisdiction of his person. *Ib.*
3. Where a citizen of one State as indorsee of inland bills, drawn or accepted by a citizen of another—the plaintiff claiming through the indorsement of the payee, or of the payee and subsequent indorsers—sues the drawer or acceptor, in the Circuit Court, the citizenship of such payee, or of such payee and subsequent indorsers, must be alleged to be different from that of the defendant. *Morgan's Executor* v. *Gay*, 81.
4. It is not competent for a Circuit Court to determine, without the intervention of a jury, an issue of fact in the absence of the counsel of the party and without any written agreement to waive a trial by jury. *Ib.*
5. If the interest allowed by the Circuit Court on an appeal in admiralty, added to the original amount claimed, exceed $2000, exclusive of costs, an appeal will lie to this court. *The Rio Grande*, 178.
6. Under the act of March 3d, 1825, § 22, by which an assault on a person upon the high seas with a dangerous weapon is made an offence against the United States, and the trial of the offence is to be "in the district where the offender is apprehended, OR into which he may first be brought," a person is triable in the Southern District of New York who, on a vessel owned by citizens of the United States, has committed on the high seas the offence specified; has been then put in irons for safe-keeping; has, on the arrival of the vessel at anchorage at the lower quarantine in the Eastern District of New York, been delivered to officers of the State of New York, in order that he may be forthcoming, &c.; and has been by them carried into the Southern District and there delivered to the marshal of the United States for that district, to whom a warrant to apprehend and bring him to justice was first issued. *United States* v. *Arwo*, 486.
7. This court has no jurisdiction to review a decree of the Supreme Court of a State annulling a judgment of a court of the same State, on the

JURISDICTION (*continued*).
ground that the notes on which the judgment was rendered were given for a loan of Confederate money, and that the transactions which resulted in the acquisition of the notes were had between enemies during the late civil war, in violation of the proclamation of the President forbidding commercial intercourse with the enemy. The judgment presents no Federal question. *Stevenson* v. *Williams*, 572.

"LEGAL REPRESENTATIVES."
The meaning of the term in a patent upon an old Louisiana (French and Spanish) claim explained and applied. *Carpenter* v. *Rannels*, 138.

LIEN.
Taxes are not a, unless made so by statute. *Heine* v. *The Levee Commissioners*, 655.

LIFE ESTATE. See *Vested Remainder.*

LIFE INSURANCE.
1. A death occurring in driving a match at a horse-race forbidden by law, is a death caused by "breach of the law on the part of the assured, or by his wilfully exposing himself to any unnecessary danger or peril," within the condition of a policy of life insurance, restricting the policy against a death of that sort. *Insurance Company* v. *Seaver*, 531.
2. The fact that the person was not killed while in the very act of driving but was killed only after the race had been broken up by a collision, and in an endeavor to catch his horse, after he himself had been thrown out of his sulky, and been for a few seconds clear of it, and on his feet safe, does not make the driving in the illegal match less the cause of his death in point of law. The endeavor to catch the horse was not sufficiently disconnected with the illegal act of driving the match to make it do this. *Ib.*

LOUISIANA. See *Provincial Court of Louisiana.*

MANDAMUS,
And not appeal is the appropriate remedy to restore an attorney disbarred where the court below has exceeded its jurisdiction. *Ex parte Robinson*, 505, 513.

MICHIGAN.
There is nothing in the constitution of the State of, adopted in 1859, which made void an act of its legislature passed March 22d, 1869, "to enable any township, city, or village to pledge its aid by loan or donation to any railroad company now chartered or organized under and by virtue of the laws of Michigan in the construction of its road." *Township of Pine Grove* v. *Talcott*, 666.

MILITARY SUPPLIES.
Act of June 2d, 1862, requiring contracts for to be in writing, explained, and action of limited. *Salomon* v. *United States*, 17.

MORTGAGE OF FUTURE CROPS.
Although an instrument which purports to mortgage a crop the seed of which has not yet been sown, cannot at the time operate as a mortgage

MORTGAGE OF FUTURE CROPS (*continued*).

of the crop, yet when the seed of the crop intended to be mortgaged has been sown and the crop grows, a lien attaches. *Butt* v. *Ellett*, 544.

MUNICIPAL BONDS. See *Equity*, 1; *Judicial Comity*, 1; *Municipal Corporations; Municipal Subscriptions.*

1. Where a town, issuing bonds to which coupons are attached, acknowledges, in the body of the bond, that the town is indebted to the bearer or his assigns in such a sum of money, payable at a future day named, "with interest thereon at the rate of seven per cent., on presentation and delivery of the coupons for the same thereto attached," it may be sued on the coupons alone, though they may have been issued by commissioners specially made agents of the town by the legislature, and by it charged with the matter of issuing the securities, and so have not been made by the ordinary town authorities. *Town of Queensbury* v. *Culver*, 83.
2. This liability of the town is not taken away by the fact that the legislature has directed a special mode in which the money to pay the principal and interest of the bonds is to be raised; the directions being given to the town and county agents, and not to the holders of the bonds or coupons. *Ib.*
3. An act empowered commissioners to dispose of certain town bonds (whose issue for the benefit of a railroad company named, the act authorized), "to such persons or corporation and upon such terms as the commissioners should deem most advantageous for the town, but not for less than par;" and to "donate the *money* which should be so raised to the railroad company." The act, however, required that they should not "pay over any money *or bonds*" except upon certain conditions specified. The commissioners did not sell the bonds, but handed them over to the railroad company in discharge of the authorized donation. On suit against the town by a *bonâ fide* holder of the bonds, *held*, that there was no violation of the act by the commissioners in what they had done. *Ib.*
4. Questions relating to bonds issued in a negotiable form, under an act of a State legislature involve questions relating to commercial securities; and whether under the constitution of the State such securities are valid or void belongs to the domain of general jurisprudence. This court will, accordingly, not follow the decisions of the courts of the State where the bonds are issued, as to their validity and constitutionality under the laws and constitution of the State, if the judges here disapprove of those decisions. *Township of Pine Grove* v. *Talcott*, 666.
5. There can be no jurisdiction in equity to enforce the payment of municipal bonds until the remedy at law has been exhausted. *Heine* v. *The Levee Commissioners*, 655.
6. Where the law has provided that a tax shall be levied to pay such bonds, a mandamus after judgment to compel the levy of the tax, in the nature of an execution or process to enforce the judgment, is the only remedy. *Ib.*
7. The fact that this remedy has been shown to be unavailing does not

MUNICIPAL BONDS (*continued*).
confer upon a court of equity the power to levy and collect taxes to pay the debt. *Heine* v. *The Levee Commissioners*, 655.

MUNICIPAL CORPORATIONS. See *Municipal Bonds; Municipal Subscriptions.*
Their rights, powers, and obligations, especially in the issue of securities in form negotiable, fully discussed in an opinion, adverse to wide powers in this way, by four judges of the court; one short, however, of a majority of the court, and the judgment reversed, but not on any ground common to a majority of the court. *The Mayor* v. *Ray*, 468.

MUNICIPAL SUBSCRIPTIONS. See *Municipal Bonds; Municipal Corporations; Release.*
To works of public improvement—what constitutes. Need not be by act of chirographical subscription. A municipality may be estopped by matter *in pais* from denying a subscription. *Nugent* v. *The Supervisors*, 241.

NATIONAL BANKS. See *Illinois.*
1. Shares of stock in the National banks are personal property, and though they are a species of personal property which, in one sense, is intangible and incorporeal, the law which created them could separate them from the person of their owner for the purpose of taxation, and give them a *situs* of their own. *Tappan, Collector*, v. *Merchants' National Bank*, 490.
2. The forty-first section of the National Banking Act of June 3d, 1864—which in effect provided that all shares in such banks, held by any person or body corporate, may be included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed under State authority, at the place where the bank is located, and not elsewhere—did this. *Ib.*
3. This provision of the National Banking Act became a law of the property, and every State within which a National bank was afterwards located acquired jurisdiction, for the purposes of taxation, of all the shareholders of the bank, both resident and non-resident, and of all its shares, and power to legislate accordingly. *Ib.*

NEW MADRID. See *Personal Identity.*
1. In the State of Missouri. The act of February 17th, 1815, for the relief of its inhabitants who suffered by earthquakes, contemplated that the title of the owners of the land injured should pass to the United States, at the same time that the right to the title to the land located in lieu thereof passed to the claimant, and that this exchange of titles should take place when the claimant obtained his patent certificate, or the right to such certificate, which he could not acquire until the plat of the survey was returned to the recorder of land titles. *Mackay* v. *Easton*, 619.
2. The act of April 26th, 1822, "to perfect certain locations and sales of public lands in Missouri," refers in its first section to actual locations made by the deputy surveyor at the request of the claimant, and not

NEW MADRID (*continued*).

to the perfected locations which appropriate the land on the return of the plat of the survey to the recorder of land titles. *Mackay* v. *Easton*, 619.

NEW YORK.

An act simply *enabling* the people of a town, in the State of, to decide whether they will "donate" bonds of the town to a railroad company and collect taxes for the amount of them is not opposed to the constitution of the State of. *Town of Queensbury* v. *Culver*, 83.

NORTH CAROLINA. See *Evidence*, 10, 11.

OMNIA ESSE RITE ACTA PRESUMUNTUR.

Where an act of Congress authorizes the Solicitor of the Treasury to make a sale of land "with the approval of the Secretary of the Treasury," the approval of the secretary is not a fact to be presumed because the deed of the solicitor is the deed of an official person, nor even because it recites that the sale was made in pursuance of an act which authorizes him with such approval and in no other way to make it. There must be written evidence of the approval or the purchaser need not take the solicitor's deed. *United States* v. *Jonas*, 598.

"ON."

Meaning of the word when occurring in a contract about towns. "ON the banks of a river." *Caldwell's Case*, 264.

PARTIES. See *Evidence*, 9.

1. In proceedings in equity, sureties (who on default of a person proceeded against may have to pay his debt), persons proceeded against as liable because of collusion with others their collusion with whom would make *them* liable also, and generally all persons who by decrees against the persons proceeded against may become liable upon ulterior proceedings, in which the proceeding in hand, if a decree were made against the defendants, would be evidence against *them*, are indispensable parties. The general doctrine applied to a case somewhat complicated. *Robertson* v. *Carson*, 94.
2. Where a proceeding in equity concerns the disposal of a specific fund, a person claiming the fund, and liable by a decree to have it wholly swept from him, is an indispensable party. *Williams* v. *Bankhead*, 563.
3. The general rules in equity relative to parties and the qualifications to the rules stated. *Ib.*

PARTNERSHIP. See *Evidence*, 9.

PATENT. See *Evidence*, 5, 6; *Practice*, 8, 9.

I. GENERAL PRINCIPLES RELATING TO.

1. A "claim" of a patentee may be limited by his specification; even though the claim contain no reference to the specification. The reference may be implied. *Mitchell* v. *Tilghman*, 287.
2. A reissued patent is *primâ facie* presumed to be for the same invention as the original patent. *Klein* v. *Russell*, 433.

PATENT (*continued*).

3. The claim and specification of the former may be read by the light of the latter. *Klein* v. *Russell*, 433.
4. When a patent is on trial and the question in issue involves the matter of novelty, utility, and *modus operandi*, it is proper enough to ask what the effect of the patented invention has been. *Ib.*
5. In construing a patent courts should proceed in a liberal spirit, so as to sustain the patent and the construction claimed by the patentee, if it can be done consistently with the language which he has employed; and this applies to a reissue as much as to an original patent. *Ib.*
6. A patent is not void because known to others than the inventor more than two years *before he applied for his patent*. *Ib.*
7. Specifications are to be taken in the sense in which the common knowledge of persons skilled in the art would understand them. *Ib.*
8. A claim for a compound is not void because the specification does not prescribe exact and unvarying proportions in the ingredients of a compound; some of the ingredients being, *ex. gr.*, coloring matter, which the specification says may "be omitted or modified as desired." *Ib.*
9. Where one claim of a patent was for treatment by a compound composed of a liquid and other ingredients mentioned, a request for an instruction that the addition to the liquid of the ingredients is not patentable if such addition does not change the properties of the liquid, or its effect or usefulness, when applied to the *purposes mentioned in the patent*, is rightly modified by charging as requested with the addition of the words "*or to other like purposes.*" *Ib.*
10. The rule of damages in actions at law for infringement of the rights of patentees is the customary price at which the patentee has licensed the use of his invention, where a sufficient number of licenses or sales have been made to establish a market value. *Packet Company* v. *Sickles*, 611.
11. The reason for this rule is especially strong when the use of the patented invention has been with the consent of the patentee, express or implied, without any rate of compensation fixed by the parties. *Ib.*

II. The Validity of Particular.

12. R. A. Tilghman's patent for obtaining fat-acids and glycerin valid, if limited to certain high degrees of heat. *Mitchell* v. *Tilghman*, 287.
13. Russell's reissue for the employment of fat liquor in the treatment of leather, and the treating of bark-tanned lamb or sheep skin, &c., valid. *Klein* v. *Russell*, 433.

PERSONAL IDENTITY.

A deed executed in 1816, by "James Smith," describing himself as "blacksmith, of Cape Girardeau," Missouri, and conveying land which had been previously granted by the government to "J. Smith, of New Madrid," in the same State—the deed of "James Smith, blacksmith, of Cape Girardeau," after describing the land and referring to the grant of the government as having been made to *him*, the grantor—may, *primâ facie*, on a suit arising fifty years afterwards be presumed,

PERSONAL IDENTITY (*continued*).

even as against a deed purporting to have been executed in 1819 by "J. Smith," describing himself as "*lately* of New Madrid," and executed only by a mark, to have been executed by the same and the veritable "J. Smith, of New Madrid;" New Madrid having been greatly injured in 1811 and 1812 by earthquakes, and persons having left it for different places in Missouri, in which Cape Girardeau was. *Mackay* v. *Easton*, 619.

PLEADING.

A party cannot set up in his replication a claim not in any way made in his bill, and the granting of which he asks in his replication only in the event that the case made in his bill fails. *Warren* v. *Van Brunt*, 646.

"POSTS, DEPOTS, AND STORES." See *Interpretation of Language*, 2.

POWER OF ATTORNEY. See *Attorney in fact; Estoppel*, 1.

PRACTICE. See *Equity*, 1; *Final Trial; Judicial Comity; Jurisdiction; Municipal Bonds*, 4–7; *Parties; Removal of Causes.*

I. IN THE SUPREME COURT.

(*a*) *In cases generally.*

1. When the only defect in a transcript sent to this court is that the clerk has not appended to it his certificate that it contains the full record (there being no allegation of contumacy), a *certiorari* is not the proper remedy for relief to the plaintiff in error. He should ask leave to withdraw the transcript to enable him to apply to the clerk of the court below to append thereto the necessary certificate. *Hodges* v. *Vaughan*, 12.
2. Deficiencies in a transcript of a record certified to be complete, may be supplied by means of a *certiorari*. A motion to dismiss denied. *The Rio Grande*, 178.
3. The certificate of the clerk of a court below sending up a transcript that it is full and complete is *primâ facie* evidence of that fact. *Ib.*
4. Where a jury is waived and the issues of fact submitted to the Circuit Court, under the act of March 3d, 1865, nothing is open to review by the losing party under a writ of error except the rulings of the Circuit Court in the progress of the trial. The phrase, "rulings of the court in the progress of the trial," does not include the general finding of the Circuit Court nor the conclusions of the Circuit Court embodied in such general finding. A mere report of the evidence is not such a special finding or authorized statement of the case as will allow this court to pass upon the judgment given. *Cooper, Executor*, v. *Omohundro*, 65; *Crews* v. *Brewer*, 70.
5. A party alleging that the stamp on a deed was too small (he being by the law of the State where the deed was made obliged to put on the stamps), because the consideration of the deed was paid in gold dollars of the United States, and the stamp was the same as if the consideration had been paid in treasury notes, then inferior in value to gold, but a legal tender, and who brought such a question here, delay-

PRACTICE (*continued*).

ing the judgment below for two years and a half, was punished under the Twenty-third Rule, by a judgment of ten per cent. damages in addition to interests and costs. *Hall* v. *Jordan*, 271.

6. When the refusal of a court below to permit a plea to be filed is based on the allegation that it is not filed within the time prescribed by the rules of practice adopted in that court, it is necessary that the party excepting to the refusal shall incorporate the rule in his bill of exceptions, or this court will presume that the court below construed correctly its own rules. *Packet Company* v. *Sickles*, 611.

7. A writ of error lies (by virtue of early decisions of this court on an act of 1801, still governing the matter) from this court to the Supreme Court of the District of Columbia on a judgment confirming an assessment for damages by the use of the street in front of the property of defendants in error, although the proceedings before the jury and the marshal, and in the Supreme Court, are governed by a statute of Maryland, which, by the construction of the courts of that State, does not allow an appeal or writ of error. *Railroad Company* v. *Church*, 62.

8. Where a defendant requests a direction to the jury on certain specified grounds, to bring in a verdict for him, and the request is refused, he cannot assign the refusal for error, and allege a wholly different ground why the direction should have been given. *Klein* v. *Russell*, 433.

9. A direction to find for one party or the other can only be given where there is no conflict of evidence. *Ib.*

10. Under the eleventh section of the act of June 1st, 1872, "to further the administration of justice" it is not necessary to make it a supersedeas that the writ of error be served as was required by the twenty-third section of the Judiciary Act, or the supersedeas *bond* be filed, within ten days (Sundays excepted) after the rendering of the judgment complained of. The supersedeas bond may be executed within sixty days after the rendition of the judgment, and the writ may be served at any time before or simultaneous with the filing of the bond. *Telegraph Company* v. *Eyser*, 419.

11. But this does not prevent an execution from being issued after the lapse of ten days, as contemplated by the twenty-third section of the Judiciary Act of 1789. *Board of Commissioners* v. *Gorman*, 661.

12. The supersedeas under the act of 1872, by filing the bond within sixty days, stays *further proceedings*, but does not interfere with what *has already been done*. *Ib.*

13. In calculating the lapse of time, the date of the *entry* of judgment governs, and not the date when the judgment was read to and signed by the judges. *Ib.*

(*b*) *In Admiralty.*

14. An order of the Circuit Court on an appeal in admiralty from a decree of the District Court, simply affirming that decree, is not a final decree from which an appeal lies to this court. *The Lucille*, 73.

15. Where the interest given by a Circuit Court on an appeal in admi-

PRACTICE (*continued*).

ralty to it, added to the amount originally claimed, exceeds $2000 exclusive of costs, an appeal will lie. *The Rio Grande*, 178.

II. In Circuit Courts.

16. An appeal in admiralty from the District to the Circuit Court in effect vacates the decree of the District Court, and a new trial in all respects, and a new decree, are to be had in the Circuit Court. The latter must execute its own decree, and the District Court has nothing more to do with the case. An order of the Circuit Court merely affirming the decree of the District Court is not such a decree as the Circuit Court should give; nor a decree from which an appeal lies. *The Lucille*, 73.

17. A court is not bound to comply with requests for charges on points not raised by the evidence; nor when it has charged generally on the subject in its general charge, to repeat itself by answering requests for the same instructions. *Klein* v. *Russell*, 433.

PRESUMPTION. See *Omnia esse rite acta presumuntur.*

PRIVATE ENTRY. See *Public Lands*, 1.

PRIVATE LAND CLAIMS.

Under the act of June 22d, 1860, "for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri," &c. (a temporary act, which, having expired, was *temporarily* revived by an act of March 2d, 1867), a person who files his petition in time, claiming land to which he afterwards discovers that he has no title, cannot, by a supplemental petition acknowledging his mistake and showing who the right owner is, make his petition enure to the benefit of such right owner, who has let pass the time for asserting his title under the act. *United States* v. *Innerarity*, 595.

PROMISSORY NOTE.

1. A paper dated in one of the Southern States and promising to pay with interest a sum of money specified and acknowledged to be due, "as soon as the crop can be sold or the money raised from any other source," is not either in form or effect a promissory note. *Nunez* v. *Dautel*, 560.

2. What sort of contract it is. This matter stated. *Ib.*

PROVISIONAL COURT OF LOUISIANA, THE,

Established by President Lincoln on the 20th of October, 1862, did not cease to exist until July 28th, 1866. *Burke* v. *Miltenberger*, 519.

PROXIMATE AND REMOTE CAUSE.

The distinction between the two taken and explained in a case of life insurance, where a condition of the policy was that it should not extend to a case where the insured committed a breach of the law or wilfully exposed himself to unnecessary danger, and where he was killed driving a match at a horse-race made illegal by statute; his death occurring not in the very act of driving in the match, but immediately after a race had been broken up by a collision, and he was trying to

PROXIMATE AND REMOTE CAUSE (*continued*).
stop his horse, having once and for a few seconds been clear of his horse and sulky, and out of all danger. *Insurance Company* v. *Seaver*, 531.

PUBLIC LANDS. See *Indians; "Legal Representatives;" New Madrid; Solicitor of the Treasury; Timber on the Public Lands.*

1. The principle established by the act of Congress of April 24th, 1820, that private entries are not permitted until after the lands have been exposed to public auction at the price for which they are afterwards sold, *held* to be of a fundamental nature and applicable to a case where if it were not so, a departure from it might possibly have been allowed. *Eldred* v. *Sexton*, 189.
2. What constitutes superior right as between parties originally joint settlers on the same tract of land, who built, out of joint means, a house for some time jointly occupied by them, and where one removed leaving the other in possession, not as his tenant but as part owner; and afterwards repossessed himself of the house. The whole matter considered in a case, having several special circumstances. *Warren* v. *Van Brunt*, 646.
3. An entry of the public land by one person in trust for another being forbidden by statute, equity will not, on a bill to enforce such a trust, decree that any entry in trust was made. *Ib.*
4. In cases where there is no fraud, imposition, or mistake, this court respects to a large degree the decision of the Register and Receiver, affirmed by the Secretary of the Interior, on questions between persons claiming as pre-emptors. *Ib.*

QUARANTINE LAWS. See *Constitutional Law*, 4.

QUIT-CLAIM, DEED OF. See *Estoppel*, 2.

"REASONABLE TIME." See *Court and Jury.*
Where a promise has been given to pay, "within a reasonable time," a sum of money acknowledged to be due, the payment must be regarded as having become obligatory much before the lapse of five years. *Nunez* v. *Dautel*, 560.

REBELLION, THE. See *Evidence*, 10, 11.
When in contracts made in the Southern States during the late rebellion, a right exists to pay in Confederate notes, and when on the contrary, payment must be made in lawful money. This matter considered. *The Confederate Note Case*, 548.

REGISTER AND RECEIVER OF THE LAND OFFICE. See *Public Lands*, 4.

RELEASE.
Although a subscriber for stock in a company is released from his subscription by a subsequent alteration of the organization or purposes of the company, this is only when such alteration is a fundamental one, and when, in addition, it is not provided for or contemplated by either the charter itself or the general laws of the State. *Nugent* v. *The Supervisors*, 241.

REMAINDER.
When vested. *Cooper* v. *Cropley*, 167.

REMOTE AND PROXIMATE CAUSE. See *Proximate and Remote Cause.*

REMOVAL OF CAUSES. See *Waiver.*
1. The word "final" in the language—"at any time before the final hearing *or trial* of the suit"—of the act of March 2d, 1867, must be taken to apply to the word "trial" as well as to the word "hearing." What sort of trial is final and what not. *Insurance Company* v. *Dunn*, 214.
2. The act only authorizes a removal where an application is made before final judgment in the court of original jurisdiction where the suit is brought. *Stevenson* v. *Williams*, 572.

RENT AND REVERSION. See *Sheriff's Sale.*

REPORTS OF JUDICIAL DECISIONS.
May be referred to as expositions of law upon the facts set forth in cases which they undertake to report; but they are not, even when made by an official reporter (as the late Mr. Howard in this court), evidence of those facts in other cases. *Mackay* v. *Easton*, 619.

REVENUE OFFICERS, DELINQUENT. See *Evidence*, 2-4.

RULES OF COURT. See *Practice*, 6.
It will be presumed in this court that other courts are familiar with the construction of their own rules and of the practice under them. *Packet Company* v. *Sickles*, 611.

SECRETARY OF THE TREASURY.
Must approve, in writing, all sales of land conveyed for debt, &c., to the government, made by the Solicitor of the Treasury, under the acts of May 29th, 1830, and March 3d, 1863. Unless there be written evidence of this approval the purchaser is not bound to accept the solicitor's deed. *United States* v. *Jonas*, 598.

SERVICE OF WRIT. See *Jurisdiction*, 1, 2

SETTLEMENT. See *Public Lands.*

SHERIFF'S SALE. See *Mortgage of Future Crops.*
When property which the owner has leased is sold at such a sale, on execution against the owner, the sheriff's deed conveys the reversion and the rent follows as an incident. *Butt* v. *Ellett*, 544.

SOLICITOR OF THE TREASURY.
Cannot, under the act of March 3d, 1863, make a valid title to lands acquired by the United States for debt, and which the act of May 29th, 1830, authorizes him to sell, unless he can give to the purchaser written evidence that the sale is made "with the approval of the Secretary of the Treasury." This approval will not be presumed. A purchaser is not bound to accept a deed unless there be written evidence of it. *United States* v. *Jonas*, 598.

STAMP.

Where the consideration in a deed is expressed to be so many dollars, the stamp required is the same whether in point of fact the sum named be paid in gold or in notes of the United States, made by law a legal tender. *Hall* v. *Jordan*, 271.

STATUTES.

Where a statute, meant to regulate a subject (such as collisions at sea), prescribes what vessels liable to interfere with each other shall there do, and what they shall not do, courts will look unfavorably at evidence introduced by either to show that although he committed a plain breach of the statute, that breach did not in any way cause a disaster which it was the purpose of the statute by its enactments to prevent. *The Pennsylvania*, 125.

STATUTES OF THE UNITED STATES.

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

1789.	September 24.	See *Attorney at Law*, 3; *Final Decree; Jurisdiction*, 3, 4, 5, 7; *Practice*, 10–16.
1797.	March 3.	See *Evidence*, 2–4.
1801.	February 27.	See *Practice*, 7.
1805.	March 2.	See "*Legal Representatives.*"
1815.	February 17.	See "*Legal Representatives;*" *New Madrid.*
1820.	April 24.	See *Public Lands.*
1822.	April 26.	See *New Madrid.*
1825.	March 3.	See *Jurisdiction*, 6.
1830.	May 29.	See *Solicitor of the Treasury.*
1831.	March 2.	See *Attorney at Law*, 3.
1836.	July 4.	See *Patent.*
1860.	June 22.	See *Private Land Claims.*
1862.	June 2.	See *Military Supplies.*
1863.	March 3.	See *Solicitor of the Treasury.*
1864.	April 29.	See *Collision*, 3, 4.
1864.	June 30.	See *Stamp.*
1865.	March 3.	See *Practice*, 4.
1866.	June 15.	See *Commerce among the several States.*
1866.	July 13.	See *Internal Revenue.*
1866.	July 25.	See *Commerce among the several States.*
1866.	July 27.	See "*Final Trial.*"
1867.	March 2.	See *Bankrupt Act;* "*Final Trial;*" *Private Land Claims.*
1868.	July 20.	See *Distiller's Bond.*
1872.	June 1.	See *Practice*, 10–13.

STOCK, SUBSCRIPTION TO. See *Municipal Corporations; Practice*, 10–13; *Release; Supersedeas.*

SURETIES. See *Distiller's Bond.*

TAXATION. See *Equity*, 1; *Internal Revenue; National Banks.*

1. The power to levy and collect taxes is a legislative function, and does not belong to a court of equity. It can only be enforced by a court

TAXATION (*continued*).
of law through the officers authorized by the legislature to levy the tax, if a writ of mandamus is appropriate to that purpose. *Heine* v. *The Levee Commissioners*, 655.
2. Taxes are not liens unless declared so by the legislature under whose authority they are assessed. *Ib.*

TIMBER ON THE PUBLIC LANDS.
1. Such timber cannot be cut by the Indians for purposes of sale, but when in their possession incidentally to their improvement of the land, they may sell it. The presumption is against their right to cut timber, and a purchaser of it, to maintain a title, must overcome the presumption by evidence. *United States* v. *Cook*, 591.
2. The United States may maintain an action for unlawfully cutting and carrying away timber from the public lands. *Ib.*

TOTAL LOSS. See *Admiralty; Insurance.*

TRANSCRIPT FROM TREASURY BOOKS. See *Evidence*, 2–4.

"TRANSPORTATION BOND."
1. Sureties on a bond for the transportation of tobacco from one district to another, in the condition of which the number of boxes and pounds of tobacco are given, and the kind of tobacco described, are responsible for the delivery at the proper place of the *tobacco*, and not of the boxes in which it was supposed to be, but never was. *Ryan et al.* v. *United States*, 514.
2. The fraud of the principal in filling the boxes with other substances than tobacco before they left his warehouse, does not release the sureties from this obligation. *Ib.*
3. Nor does the carelessness of the inspecting officer, though it made the fraud of the principal in the bond *easier* of accomplishment, release the sureties on his transportation bond. *Ib.*

TREASURY SALES. See *Solicitor of the Treasury.*

TRUST. See *Corporation; Debtor and Creditor; Mortgage of Future Crops; Public Lands.*
An act of legislature requiring the managers of an insolvent bank belonging to the State to hold its assets appropriated to the payment of certain specified debts, creates a trust in favor of the creditors holding said debts, and, if assented to by them, amounts to a contract with them to carry out said trust. *Barings* v. *Dabney*, 1.

USURY.
Usury, as a defence, must be specially pleaded or set up in the answer to entitle it to consideration. *The Confederate Note Case*, 548.

VESTED REMAINDERS.
The rules defining them, and distinguishing them from contingent remainders, stated and explained; and under a last will and testament of a person having children, some married, one not, and making various remainders devises among his children and a grandchild. *Cooper* v. *Cropley*, 167.

WAIVER.

Where, after a suit has been properly removed from a State court into the Circuit Court of the United States, under the act of March 2d, 1867, which allows such removal, in certain cases specified by it, "at any time before the final hearing or trial of the suit," the State court still goes on to adjudicate the case, against the resistance of the party who got the removal, the fact that such a party has contested the suit in such State court, does not, after a judgment against him, on his bringing the proceedings here for reversal and direction to proceed no further, constitute a waiver on his part, of the question of the jurisdiction of the State court to have tried the case. *Insurance Company* v. *Dunn*, 214.

WRIT OF ERROR. See *Practice*, 7, 8.