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ABANDONMENT OF CONTRACT. See *Contract*, 4.

ACCORD AND SATISFACTION. See *Equity*, 4.

ACTION. See *Assumpsit; Equity; Quantum Valebat; Release of Action.*

ADJUSTERS OF AVERAGE. See *Bottomry Bond.*

ADMIRALTY. See *Collision; Practice*, 6, 7; *Proceeding in rem.*

1. Where claims on the proceeds in the registry of a vessel sold are not maritime liens, the District Court cannot distribute those proceeds in payment of the claims if the owners of the vessel oppose such distribution. *The Lottawanna*, 201.
2. A creditor by judgment in a State court, of the owners of the vessel, even though he have a decree *in personam* also in the admiralty against them, cannot seize, or attach, on execution, proceeds of the vessel in the registry of the admiralty. *Ib.*
3. Advances made in a foreign port to equip a vessel, and to procure for her a cargo to a port of destination, are *primâ facie* presumed to be made on the credit of the vessel. They are a lien on the vessel and constitute an insurable interest. *Insurance Company* v. *Baring*, 159.

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AGENT. See *Evidence*, 1; *Insurance*, 4, 5.

The Supreme Court will not, except in a case of clear mistake, reverse a consentaneous decree of the District and Circuit Courts on question of fact. *The S. B. Wheeler*, 385.

APPEAL. See *Practice*, 1, 6, 7.

When in a proceeding *in rem* an appeal is taken to the Circuit Court from a decree of the District Court, the *res* or its proceeds follows the cause into the former court. *The Lottawanna*, 201.

APPEARANCE.

The effect of a general appearance by an attorney, and of his withdrawal of appearance afterwards; these matters considered and effect given to a general appearance for a defendant, and afterwards withdrawn "without prejudice to the plaintiff." *Creighton* v. *Kerr*, 8.

ARMY CONTRACT. See *Subsistence Stores.*

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ASSIGNMENT OF ERRORS.

A judgment affirmed for want of such an assignment of errors as is required by the twenty-first rule; there being in the record no plain error not assigned, and such as the court thought fit to be noticed by it without a proper assignment. *Treat* v. *Jemison*, 652.

ASSUMPSIT. See *Quantum Valebat.*

Where one, fraudulently exhibiting to another a sealed instrument reciting that the person exhibiting it has a claim for a sum of money on a third party (he having no claim whatsoever), fraudulently induced that other to buy it from him, and such other buying it, paid him in money for it, and took an assignment under seal on the back of the instrument, the person thus defrauded may recover his money in assumpsit, on a declaration containing besides the common counts special counts setting out the instrument as inducement, and averring the utter falsity of its recitations, and the fraud of the whole transaction. *Burton* v. *Driggs*, 125.

ATTORNEY AT LAW.

Effect of a general appearance by him in a case for the defendant, and his subsequent withdrawal "without prejudice to the plaintiff." *Creighton* v. *Kerr*, 8.

ATTORNEY IN FACT. See *Insurance*, 4, 5.

AVERAGE, ADJUSTERS OF. See *Bottomry Bond.*

BANK. See *National Bank.*

Where the charter makes stockholders liable "respectively for its debts" in proportion to their stock therein, they cannot, in a case where there are numerous debts, be proceeded against at law. Relief must be sought for in equity. *Pollard* v. *Bailey*, 520.

BANKRUPT ACT.

1. A landlord's claim for rent is, in Pennsylvania, and under its law, paid out of a bankrupt's goods liable to distress on demised premises, before making a dividend of their proceeds among creditors generally. *Longstreth* v. *Pennock*, 575.
2. After an assignee in bankruptcy, aided by a creditor, has twice contested before the District Court or its referee the claim of a person who has been allowed to prove his claim, and, after all the evidence which could then or afterwards be produced, it has been twice decided that the claim was a valid one, no bill lies in the Circuit Court against either the assignee or the person who has been allowed to prove his claim, to have the order allowing it reversed. Such a bill may be demurred to for want of equity. *Bank* v. *Cooper*, 171.
3. The lien of a valid mortgage is not divested by the mere fact of the holder of it subsequently taking a transfer of the equity of redemption made to him with a view of giving to him a preference, and in violation of the Bankrupt Act The transfer of the equity of redemption is itself void. *Avery* v. *Hackley*, 407.
4. A debt due to the United States, though it be by one who owes it as a

BANKRUPT ACT (*continued*).

surety only, is not barred by the debtor's discharge with certificate, under the Bankrupt Act of 1867. *United States* v. *Herron*, 251.

5. To authorize the assignee of a bankrupt to recover the money or property under the thirty-ninth section of the Bankrupt Act, it is necessary not only that he should establish the act of the bankrupt, of which he complains, but also that it was done with a view to give a preference over other creditors, and that the other party to the transaction had reasonable cause to believe that such person was insolvent. *Wilson* v. *City Bank* (17 Wallace, 473), affirmed. *Mays* v. *Fritton*, 414.

6. Where the consideration of a question is *prima facie* within the jurisdiction and control of a State court—such as determining to whom the surplus of a fund raised by the foreclosure of a mortgage belongs—if the person who gave the mortgage becomes bankrupt and his assignee goes into the State court, submits to its jurisdiction, and nowhere asserts, in any way, the rights of the Federal courts in the matter—he cannot, after taking his chance for a decision in his favor, and getting one against him, raise in this court the point of want of jurisdiction in the State court. *Ib.*

7. Where, on a feigned issue between a bankrupt's assignee and a creditor preferred, directed to a jury to settle the questions whether a party insolvent have made a payment to the preferred creditor with a view to give him a preference over other creditors, and whether the party receiving payment had reasonable cause to believe that the person paying him was insolvent, both of the facts abovementioned have been found against the assignee, and this court has not the evidence before it, it must assume that the verdict of the jury is right. *Ib.*

BOND ON APPEAL. See *Pleading*, 1.

BOTTOMRY BOND.

1. Where adjusters of average, under directions from a mortgagee of a vessel in possession, and with the consent of her owners, undertake to adjust the business of the vessel and, proceeding in their office, collect the freights, general average, and insurance, and pay a bottomry bond, having it assigned to themselves, and make the necessary disbursements of the vessel, it will not be inferred that they meant to extinguish as against themselves the bottomry lien. *Belle of the Sea*, 421.

2. Nor will a representation in the nature of a mere opinion by them as to what will be the result of the whole adjustment, prevent them from enforcing their bottomry lien, if the freight, insurances, &c., do not discharge it, against a purchaser of the vessel who has relied on the representation. *Ib.*

CHARGE.

If there be no evidence to support facts, assumed in a prayer for a charge, to have been supported by a greater or less weight of evidence, it is the duty of the court to reject the prayer. It would be error to leave a question to a jury in respect to which there was no evidence. *Insurance Company* v. *Baring*, 159.

CITY ATTORNEY. See *Contract*, 4.

COLLISION. See *Practice*, 6, 7.

Whether the absence of a lookout at the bow of a sailing vessel, though at night, was or was not a contributing fault to a collision, is a question of fact, and where on a libel for a collision both the District and the Circuit Courts have held that the lookout was not necessary, the general rule of admiralty practice prevails, and this court will not reverse unless there has been *clear* error. *The S. B. Wheeler*, 385.

CONFISCATION ACTS, THE.

1. Of July 17th, 1862, was not repealed by the President's proclamations of amnesty in 1868. The act interpreted. What sort of information under it is to be held sufficient, after final judgment of condemnation. The essential character of an "information" not changed into a proceeding on admiralty side of the court, by being entitled a "libel" of information, and the warrant and citation being called "a monition." What constitutes service under the act; and when the property condemned will be presumed to have belonged to a rebel. *The Confiscation Cases*, 92.
2. Holders of liens against real estate sold under the act should not be permitted to intervene in any proceedings for the confiscation. Their liens will not, in any event, be divested. *Claims of Marcuard et al.*, 114.
3. When, under the act, an information has been filed in the District Court and a decree of condemnation and sale of the land seized been made, and the money has been paid into the court, and on error to the Circuit Court, that court, reversing the decree, has dismissed the information but confirmed the sale, and ordered the proceeds to be paid to the owner of the land—if on error by the United States to this court, this court reverse the decree of the Circuit Court, and affirm the decree of the District Court, that reversal will leave nothing on which a writ of error by the owner can act. The judgment having been reversed, the confirmation of the sale and order to pay the proceeds fall. The only judgment can be reversal again. *Conrad's Lots*, 115.
4. An informer does not acquire a right to a moiety under the Confiscation Act of August 6th, 1861, in regard to land informed against, *after* a complete title to the property has been acquired by conquest. *Titus* v. *United States*, 475.
5. By what facts the government not estopped from denying an informer's claim to a moiety in such a case. *Ib.*
6. Case of an informer stands on a different footing, and is to be judged of by different principles of estoppel, from that of a purchaser of the land, who has paid his money to the United States in consequence of their offer to sell under the act. *Ib.*

CONQUEST, RIGHTS OF. See *Public Law*.

CONSTITUTIONAL LAW. See *Estoppel; Internal Revenue*, 3; *Navigable Waters of the United States; Removal of Causes*, 3; *Taxation*, 3; *Tonnage Tax*.

1. A statute which authorizes towns to contract debts or other obligations payable in money, implies the duty to levy taxes to pay them, unless

CONSTITUTIONAL LAW (*continued*).
some other fund or source of payment is provided. *Loan Association* v. *Topeka*, 655.

2. If there is no power in the legislature which passed such a statute to authorize the levy of taxes in aid of the purpose for which the obligation is to be contracted, the statute is void, and so are the bonds or other forms of contract based on the statute. *Ib.*
3. There is no such thing in the theory of our government, State and National, as unlimited power in any of their branches. The executive, the legislative, and the judicial departments are all of limited and defined powers. *Ib.*
4. There are limitations of such powers which arise out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. *Ib.*
5. Among these is the limitation of the right of taxation, that it can only be used in aid of a public object, an object which is within the purpose for which governments are established. *Ib.*
6. It cannot, therefore, be exercised in aid of enterprises strictly private, for the benefit of individuals, though in a remote or collateral way the local public may be benefited thereby. *Ib.*
7. Though the line which distinguishes the public use for which taxes may be assessed from the private use for which they may not, is not always easy to be discerned, yet it is the duty of the courts, where the case falls clearly within the latter class, to interpose when properly called on for the protection of the rights of the citizen, and aid to prevent his private property from being unlawfully appropriated to the use of others. *Ib.*
8. A statute which authorizes a town to issue its bonds in aid of the manufacturing enterprises of individuals is void, because the taxes necessary to pay the bonds would, if collected, be a transfer of the property of individuals to aid in the projects of gain and profit of others, and not for the public use, in the proper sense of that term. *Ib.*
9. A statute which is but a mode of continuing or reviving a tax which might be supposed to have expired, and which in that sense imposes a tax retrospectively, but which does not in any way give a judicial construction to a former statute, is not unconstitutional. It is not an assumption of judicial power, nor does it invade private rights over which Congress has no power. *Stockdale* v. *The Insurance Companies*, 323.

CONSTRUCTION, RULES OF. See *Constitutional Law*, 1, 9.

AS APPLIED TO STATUTES.

No general words in a statute divest the government of its rights or remedies. *United States* v. *Herron*, 251.

CONTEMPTS.

This court has no power to reverse, on appeal, the imposition of a fine decreed by the Circuit Court for contempt of it. *New Orleans* v. *The Steamship Company*, 387.

CONTRACT. See *Bankrupt Act*, 4; *Damages*, 1, 2, 4; *Delivery; Equity*, 2, 4; *Insurance; Municipal Bonds; Principal and Surety; Public Law; Subsistence Stores; Taxation.*

1 When and how far they may be reformed by previous written articles. *Equitable Insurance Company* v. *Hearne*, 494.

2. Questions about those in restraint of trade must be judged according to the circumstances on which they arise, and in subservience to the general rule that there must be no injury to the public by its being deprived of the restricted party's industry, and that the party himself must not be precluded from pursuing his occupation and thus prevented from supporting himself and his family. *Oregon Steam Navigation Company* v. *Winsor*, 64.

3. When the ordinances of a city, which has a "city attorney" as one of its officers, require that such *attorney* prosecute all suits to which the city may be a party, or in which it may be interested, persons who enter into a contract with the city to do work for it, as *ex. gr.*, pave its streets, with a provision in the contract that the accounts for the paving if not paid by the property-holders within ten days after the payment becomes due, "shall be placed in the hands of the *city attorney* for collection, under the city charter," cannot, even though those accounts are numerous and the collection of them onerous and expensive employ, without a plain authority from the city legislature, other attorneys, and charge to the city what they pay to the additional attorneys for *their* professional services. *City of Memphis* v. *Brown*, 289.

4. Where a city expressly contracts to pay a paver for paving a street, a subsequent modification of the details of the contract which is subsequently declared by the courts to be illegal, is no abandonment or waiver of the original agreement of the city to pay for the paving. *Ib.*

COUPONS.

1. Statutes of limitation commence to run against actions upon coupons for interest annexed to bonds, when they have been detached from the bonds and transferred to parties other than the holders of the bonds, from the maturity of the coupons respectively. *Clark* v. *Iowa City*, 583.

2. Such coupons, if in form negotiable, are negotiable and pass by delivery when severed from the bonds to which they were annexed. They then cease to be incidents of the bonds, and become independent claims; and do not lose their validity, if for any cause the bonds are cancelled or paid before maturity. *Ib.*

COURT AND JURY. See *Charge; Montana.*

CUSTOM. See *Insurance*, 2.

DAMAGES. See *Evidence*, 1; *Release of Action; Stock Contract; Wisconsin.*

1. Where a person agreed to serve in superintending a hotel for another, at a compensation specified, either party being at liberty to terminate the contract on thirty days' notice to the other, and the person agree-

DAMAGES (*continued*).

ing to superintend was ejected by the other on less than thirty days' notice, *held*, in a suit for damages by the party thus ejected—the general issue being pleaded and notice of special matter given—that the defendant might prove that the party ejected was unfit to perform his duty by reason of the use of opiates, and by reason of unsound mental condition. *Lyon* v. *Pollard*, 403.

2. Though where, under a contract of hiring services, a party is bound to give a certain number of days' notice to terminate it, it is not terminated until the full term of days has elapsed, yet where an action has been brought for damages for a dismissal without the proper notice, a notice of termination may be given, though the full number of days has not expired when an actual dismissal took place; this to show that the plaintiff had a right now to serve but a portion of the thirty days. *Ib.*

3. In an action on the case by a husband and wife, with the regular common-law declaration, for injuries done to the wife's person, and a plea of the general issue, after direct proof has been given of the marriage, the defendants cannot prove either by way of disproving the fact of marriage alleged in the declaration or in mitigation of damages, that the plaintiffs had not lived together and cohabited as husband and wife since a time named (many years before); that it was commonly reputed that they had not lived together, and that there was a common reputation that the alleged husband was living and cohabiting with another woman. *Packet Company* v. *Clough*, 528.

4. Where a city contracts with persons to do work for it, agreeing to pay them in bonds, having some years to run, and with interest warrants or coupons attached, "*principal and interest guaranteed and provided for by a sinking fund set aside for that purpose*," and the contractor takes the bonds, but the city does not provide any sinking fund for the payment of either principal or interest, the contractor to do the work cannot, in a suit against the city to recover what it owes him, adduce evidence of bankers and stockdealers to show what damage, in their judgment, he has suffered by the city's violation of its contract in providing the sinking fund; the witnesses making the value of the sinking fund depend upon the conditions—1st, that it should be actually collected; 2d, that it should be placed in the hands of trustees; and 3d, that the trustees should be persons of integrity—conditions which made no part of the city's contract in the matter. The damages founded on such evidence are speculative. *City of Memphis* v. *Brown*, 290.

DELIVERY.

Where, at the time the preliminary contract for an insurance is made, it is stipulated that the policy when filled up shall be held by the agent, in his safe, for the assured, no actual manual transfer of the policy to the assured, after its execution, is essential to perfect his title. *Insurance Company* v. *Colt*, 560.

DEMURRER. See *Pleading*, 3.

DEPOSITION. See *Evidence*, 5–8.

DEVIATION.

Where there has been a deviation in a voyage insured, no decree will be made for a return of any part of the premium. The deviation annuls the contract as to subsequent parts of the voyage and causes a forfeiture of the premium. *Hearne* v. *Marine Insurance Company*, 488.

DISTILLED SPIRITS. See *Internal Revenue*, 1.

EQUITY. See *Bankrupt Act*, 2; *Evidence*, 2; *Master in Chancery; Pleading*, 3; *Rebellion*, 1; *Riparian Rights*, 3; *Specific Performance.*

1. Allegations of general ignorance of things a knowledge of which is easily ascertainable, is insufficient to set into action the remedies of equity. *McQuiddy* v. *Ware*, 14.

2. When a preliminary contract for insurance is valid it may be enforced in a court of equity against the company; and being enforced by the procurement of a policy, an action can be maintained upon the instrument; or the court in enforcing the execution of the contract may enter a decree for the amount of the insurance. *Insurance Company* v. *Colt*, 560.

3. Where by the charter of a bank, stockholders are "bound respectively for all the debts of the bank *in proportion* to their stock holden therein," one creditor cannot sue a stockholder at law (there being numerous other creditors) to recover the full amount of his debt, without regard to those other creditors or to the ability of the other stockholders to respond to their obligations under the charter. He should proceed in equity. *Pollard* v. *Bailey*, 520.

4. Where a city agreed to issue a certain amount of bonds to a contractor who was embarrassed in carrying on his contract with it, the embarrassment being produced in part through the city's own non-payment to the contractor of what it owed him, the contractor agreeing on his part in the new agreement, to release the city from certain obligations under which by the original contract it was bound: *Held*, that the city, not having carried out its new agreement *completely*, could not, in an equitable proceeding, avail itself of the release; that what was done was not an accord and satisfaction, but an executory agreement for a release, upon the performance of certain conditions, which, not having been performed, left the release without obligatory force. *City of Memphis* v. *Brown*, 289.

ERROR. See *Charge; Final Judgment; Jurisdiction; Practice*, 1-4.

ESTOPPEL. See *Bottomry Bond*, 2; *Partnership*, 1; *Rebellion, The*, 3.

A municipal corporation is not estopped to deny the constitutionality of an act, authorizing it to tax its citizens to pay the interest on a certain sort of bonds, by the fact that it has already once taxed them to pay one instalment of it. *Loan Association* v. *Topeka*, 655.

EVIDENCE. See *Damages; Insurance*, 2; *Practice*, 2, 4; *Rebellion*, 4; *Stock Contract; Taxes*, 2-4; *Wisconsin.*

1. The conversation of a captain of a steamer with a party injured in getting on his boat, made two days and a half after the accident occurred, is not evidence to charge the owners of the boat with fault, and this

EVIDENCE (*continued*).

though made while the boat was still on its voyage and before the voyage upon which the injured party had entered was completed. *Packet Company* v. *Clough*, 528.

2. Answers in chancery not responsive to a bill, and not sustained by other proof, are of no avail as evidence. *Roach* v. *Summers*, 165.

3. When a policy of insurance, the property of the assured, is in possession of the insurer, who, after a loss has occurred, will not give it up, the assured may sue on the policy, and on failure of the insurer to produce it on the trial, may prove its contents. *Insurance Company* v. *Colt*, 560.

4. When it is necessary to prove the results of an examination of many books of a bank to show a particular fact, as *ex. gr.*, that A. B. never at any time lent money to a bank, and the examination cannot be conveniently made in court, the results may be proved by persons who made the examination, the books being out of the State and beyond the jurisdiction of the court. *Burton* v. *Driggs*, 125.

5. Where an original deposition, regularly taken, sealed up, transmitted, opened, and filed in the case, was lost, and a copy, taken under the direction of the clerk of the court and sworn to as a true copy, was offered in evidence in its place, an objection to the copy "on the ground that it *was not the original*" is too indefinite to let in argument that the witness was alive, and that the lost deposition could only be supplied by another one by the same witness, and that secondary evidence was inadmissible to prove the contents of the first deposition. *Ib.*

6. If the objection had been made in a form as specific as by the argument abovementioned it was sought to be made, it would be insufficient, it appearing that the witness lived in another State, and more than a hundred miles from the place of trial. *Ib.*

7. The court has not gone to the length of the English adjudications, that there are no degrees in secondary evidence. Hence, where the records of a court were all burnt during the rebellion, what appeared to be a copy of an officially certified copy was held properly received; the certified copy, if any existed, not being in the party's custody or plain control, and there being no positive evidence that it existed, though there was evidence tending to show that it did. *Cornett* v. *Williams*, 226.

8. Under the act of July 2d, 1864, witnesses may, other things allowing, testify (without any order of court) by deposition. And if not satisfied with a deposition which they have given, have a right, without order of court, to give a second one. *Ib.*

EXECUTORY AGREEMENT FOR RELEASE.

Distinguished from accord and satisfaction. *City of Memphis* v. *Brown*, 289.

EX POST FACTO LAW. See *Constitutional Law*, 9.

EX TURPI CAUSA, ETC. See *Rebellion, The*, 1.

FINAL JUDGMENT.

A writ of error from this court will not lie to remove the judgment of an inferior appellate court, where the judgment of that court remands a case to another below it for new trial and hearing, and where it is evident that the parties have not exhausted the power of these inferior courts. Such judgment is not a final judgment. *Parcels* v. *Johnson*, 653.

FOREIGN CORPORATION. See *Judicial Comity; Pleading*, 2; *Removal of Causes*, 3.

FOREIGN VESSELS. See *Admiralty*, 3.

FORMS OF ACTIONS.

The abolition by statute of the distinction between those at law and those in equity does not change the essential principles of the two systems. *Basey et al.* v. *Gallagher*, 670.

FOX RIVER. See "*Navigable Waters of the United States.*"

FRAUD. See *Assumpsit; Voluntary Settlement*, 2.

GENERAL FINDING.

No error can be assigned on one. *Tioga Railroad* v. *Blossburg and Corning Railroad*, 138.

HUSBAND AND WIFE. See *Damages*, 2; *Voluntary Settlement*, 1; *Wisconsin*.

IMPLIED REPEAL OF STATUTE.

May be made by a new act amendatory of an old one, and covering most of the ground which it did. *Murdock* v. *City of Memphis*, 590.

INSURANCE. See *Delivery; Deviation.*

1. Where a party proposed to insurers to insure his vessel on a "voyage from Liverpool *to Cuba* and to Europe *via* Falmouth," at a rate named, and the company offered to insure at a somewhat higher rate, saying, "It is worth something, you know, to cover the risk *at the port of loading* in Cuba," *held* that it was implied that "the port of loading" might be different from the port of discharge, and where the assured accepted this offer, and told the insurer to insure "at and from Liverpool *to Cuba* and to Europe *via* a market port," &c., *held* further, that a policy which insured "to port *of discharge* in Cuba, and to Europe *via* a market port," &c., did not conform to the contract, and was to be reformed so as to do so. *Equitable Insurance Company* v. *Hearne*, 494.
2. Where, by the terms of a policy, a vessel is insured "to *a port in Cuba*, and at and thence to port of advice and discharge in Europe," and the vessel is lost in going from the port of discharge in Cuba to another port in the same island for reloading, held on a suit on the policy for a loss that evidence by the assured was inadmissible to show a usage that vessels going to Cuba might visit at two ports, one for discharge and another for loading. *Hearne* v. *Marine Insurance Company*, 488.
3. When the charter of an insurance company in the same clause which

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JUDGMENT (*continued*).

lutely the payment of money. But, if so satisfied, it may so adjudge. An absolute judgment for the money is equivalent to a special finding that a delivery cannot be made. *Boley* v. *Griswold*, 486.

JUDICIAL COMITY.

The highest courts of New York, construing the statutes of limitations of that State, having decided that a foreign corporation cannot avail itself of them, and this, notwithstanding such corporation was the lessee of a railroad in New York, and had property within the State, and a managing agent residing and keeping an office of the company, this court will follow them, whatever it may think of their soundness on general principles. *Tioga Railroad* v. *Blossburg and Corning Railroad*, 137.

JUDICIAL POWER. See *Constitutional Law*, 1-7.

Its supremacy over legislation fundamentally unjust asserted. *Loan Association* v. *Topeka*, 655.

JUDICIAL SALE. See "*Omnia rite acta*," &c.

JUDICIARY ACT OF 1789. See *Jurisdiction*, 2, 3; *Record*.

Its twenty-fifth section technically repealed by the second section of the act of February 5th, 1867 (§ 709 Revised Statutes of the United States). *Murdock* v. *City of Memphis*, 590.

JURISDICTION. See *Contempts*; "*Final Judgment*;" "*Omnia rite acta*;" *Probate Courts*.

1. Where the consideration of a question is *primâ facie* within the jurisdiction and control of a State court, but in its general nature may also be one for a Federal court, if a person summoned into the State court goes there, submits to its jurisdiction, and nowhere asserts, in any way, the rights of the Federal courts in the matter—he cannot, after taking his chance for a decision in his favor, and getting one against him, raise in the Supreme Court the point of want of jurisdiction in the State court *Mays* v. *Fritton*, 414.

I. OF THE SUPREME COURT OF THE UNITED STATES.

(*a*) It HAS jurisdiction—

2. Under the second section of the act of 5th of February, 1867 (§ 709 of the Revised Statutes of the United States), to review the decree of a State court passing upon the effect produced by the act of the Executive on a given contract, in inaugurating the late civil war. *Matthews* v. *McStea*, 646.

3. Under the same second section of the said act, which section technically repeals the twenty-fifth section of the Judiciary Act (§ 709 Revised Statutes of the United States), the following propositions govern the court in its examination and in its judgments and decrees in cases brought from the highest State courts: It is essential to the jurisdiction of this court over the judgment or decree of a State court, that it shall appear that one of the questions mentioned in the statute must have been raised and presented to the State court; that it must

JURISDICTION (*continued*).

have been decided by the State court against the right claimed or asserted by the plaintiff in error, under the Constitution, treaties, laws, or authority of the United States, or that such a decision was necessary to the judgment or decree rendered in the case. These things appearing, this court has jurisdiction, and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the State court. If it finds that it was rightly decided, the judgment must be affirmed. If it was erroneously decided, then the court must further inquire whether there is any other matter or issue adjudged by the State court sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the Federal question. If this be found to be the case, the judgment must be affirmed without examination into the soundness of the decision of such other matter or issue. But if it be found that the issue raised by the question of Federal law must control the whole case, or that there has been no decision by the State court of any other matter which is sufficient of itself to maintain the judgment, then this court will reverse that judgment, and will either render such judgment here as the State court should have rendered, or will remand the case to that court for further proceedings, as the circumstances of the case may require. *Murdock* v. *City of Memphis*, 590.

LANDLORD AND TENANT. See *Bankrupt Act*, 1.

LAW AND EQUITY.

The essential distinction between law and equity is not changed by a statute which enacts that the pleadings and modes of procedure in common-law actions and those in equity suits, are abolished. Effect of such statute. *Basey et al.* v. *Gallagher*, 670.

LEGISLATIVE POWER. See *Constitutional Law.*

Its limits defined. *Loan Association* v. *Topeka*, 655.

LOOKOUTS.

Whether absence of, is a contributing cause to a collision, is a question of fact, not of law; and the ordinary rule prevails about reversal where the District and Circuit Courts have agreed about the fact. *The S. B. Wheeler*, 385.

MASTER IN CHANCERY.

Reference to, before a case is ready for a decree, and without the court's settling the rights of the parties, sustained in a case where there was a confused mass of things; the reference being to hear and report to the court the proofs and his conclusions upon various matters deemed pertinent by the court, and specified by it, including as a final one, the statement of an account between the parties, embracing therein all the matters in the cause of the bill and cross-bill, and showing in the result the aggregate of debt of the debtor party to the other: and the parties not having excepted to such order, but appearing under it before the master and taking, both of them, testimony upon the subjects of reference, for as long a term as they desire, and then

MASTER IN CHANCERY (*continued*).
announcing that they did not desire to take further evidence, and submitting the matters of reference for the determination of the master. *City of Memphis* v. *Brown*, 289.

MEMPHIS.
Under the laws of Tennessee and its own charter, the city of Memphis, in the State just named, had full power to make contracts for paving the city, and to bind itself to pay for the work either in cash or in the bonds of the city, or in both. *City of Memphis* v. *Brown*, 289.

MEXICAN AND SPANISH LAWS. See *Texas*.

MINERAL LANDS ON THE PACIFIC COAST. See *Riparian Rights*.

MISSOURI. See *Taxation*.

MONTANA. See *Judgment; Riparian Rights*.
Although by the organic act of the Territory of Montana, common-law and chancery jurisdiction is exercised by the same court, and by legislation of the Territory regulating proceedings in civil cases, the distinctions between the pleadings and modes of procedure in common-law actions and those in equity suits are abolished, the essential distinction between law and equity is not changed. Effect of such organic act in the premises, including the effect of the provision in the statute, declaring "that an issue of fact shall be tried by a jury, unless a jury trial is waived." *Basey et al.* v. *Gallagher*, 670.

MOTION TO DISMISS. See *Practice*, 5.

MUNICIPAL BONDS. See *Constitutional Law*, 1–8; *Estoppel*.
1. Issued for any purpose not a public one void. What purposes are private. *Loan Association* v. *Topeka*, 655.
2. Where a municipality, under a contract made in pursuance of its ordinances, issues its bonds and contracts with the person to whom it issues them, that they shall be "guaranteed and provided for by a sinking fund set aside for the purpose," and the contractor to whom they are issued sells the bonds, he waives a claim for damages for nonfulfilment of the contract, and it becomes available only to the holder of the bonds. *City of Memphis* v. *Brown*, 290.

MUNICIPAL CONTRACTS. See *Constitutional Law*, 1–8; *Estoppel*.
The case of a large one by a paver with a city corporation, embarrassed in its circumstances and issuing bonds by way of advance, to be sold and replaced, with various modifications and irregularities, fully passed upon; the case involving a view of municipal powers, of damages, of principles, proceedings and practice in equity, and of the construction of contracts generally, as also of this particular one. *City of Memphis* v. *Brown*, 289.

MUTUAL COVENANTS. See *Partnership*, 1.

NATIONAL BANK.
The debtors of a National bank, when sued by a person whom the comptroller, professing to act in pursuance of the fiftieth section of the Na-

NATIONAL BANK (*continued*).

tional Currency Act, has appointed to be its receiver, cannot inquire into the lawfulness of such receiver's appointment. *Cadle* v. *Baker*, 650.

"NAVIGABLE WATERS OF THE UNITED STATES."

What constitute. The test dependent upon the fact whether a river in its natural state is such as that it affords a channel for useful commerce. The doctrines applied to the Fox River, in Wisconsin. *The Montello*, 430.

NEGOTIABLE PAPER.

1. A note payable to bearer, though overdue and dishonored, passes by delivery the legal title to the holder, subject to such equities as may be asserted by reason of its dishonor; and any one disputing the title of the holder of such paper takes the burden of establishing, by sufficient evidence, the facts necessary to defeat it. *National Bank of Washington* v. *Texas*, 72.
2. The doctrine applied to certain of the bonds known as the "Texas Indemnity Bonds." *Ib.*

NORTH MISSOURI RAILROAD. See *Taxation*, 4, 5.

NOTICE. See *Damages*, 2.

Where by the terms of a contract a party is bound to give a certain number of days' notice of an intention to terminate it, and having given the notice afterwards waives it, he may in fact renew the notice, though the form of his communication purport to insist on the notice which he has waived; and at the expiration of the required time the second document will operate as a notice. *Lyon* v. *Pollard*, 403.

"OMNIA RITE ACTA."

Where a county court having jurisdiction to authorize a sale of a decedent's estate for his debts does authorize it, and the sale is made, the question of its propriety is not, in the absence of fraud, open to examination in an appellate court otherwise than in a proceeding had directly for that purpose. *Cornett* v. *Williams*, 226.

PACIFIC RAILROAD. See *Taxation*, 2, 3.

PACIFIC STATES AND TERRITORIES. See *Riparian Rights.*

PARTIES TO ACTIONS. See *Removal of Causes.*

PARTNERSHIP.

1. Where an instrument prepared by one partner for signature by his copartner, with whom he has fallen out and quarrelled, contains mutual releases and assignments—each being the consideration of the other—it should, in order to be binding, be signed by both parties. The fact that the partner who did not prepare it has taken without objection from the other an unsigned counterpart after this other partner had signed the first counterpart, and left it in the hands of a third person to be delivered only when the unsigned counterpart was signed and delivered, does not give effect to the release. *Ambler* v. *Whipple*, 546.

PARTNERSHIP (*continued*).

2. Though bad character, drunkenness, and dishonesty on the part of one partner may be good grounds for dissolving a partnership, on the application of the other—this other not having known at the time of forming the partnership, these characteristics of his copartner—yet when *before* the partnership was formed they were known by the partner not guilty of them to have existed, they do not authorize such partner himself to treat the partnership as ended, and to take to himself all the benefits of the joint labor and joint property. *Ambler* v. *Whipple*, 546.

PATENTS.

I. GENERAL PRINCIPLES RELATING TO.

1. Though an idea of a person who afterwards obtains a patent for a device to give his idea effect, may be a good idea, yet if the device is not new his patent is void, even though it be useful. *Rubber-Tip Pencil Company* v. *Howard*, 498.
2. The bringing together several old devices without producing a new and useful result, the joint product of the elements of the combination, and something more than an aggregate of old results, is not "invention" within the meaning of the Patent Act. It cannot prevent others from using the same devices, either singly or in other combinations, or, even if a new and useful result is obtained, can prevent others from using some of the devices, omitting others, in combination. *Hailes* v. *Van Wormer*, 354.

II. THE VALIDITY OR CONSTRUCTION OF PARTICULAR.

3. That to J. B. Blair, for a new manufacture, being rubber heads for lead-pencils, void. *Rubber-Tip Pencil Company* v. *Howard*, 498.
4. The reissued patent to Sylvanus Walker, December 31st, 1867, construed to be for a U-shaped yoke or frame for supporting a wringing-machine, and for the combination of such a yoke with a clamping device, when employed to hold a clothes-wringer to the side of a wash-tub, and the U form of the frame is essential to it. *Washing-Machine Company* v. *Tool Company*, 342.

PENNSYLVANIA. See *Bankrupt Act*, 1.

PLEADING.

1. In an action on the bond given on appeal from the District Court to the Supreme Court of the Territory of Montana, the plea was that the defendant had prosecuted a writ of error from the judgment of the Territorial court to the Supreme Court of the United States, and had executed his bond which operated as a supersedeas of that judgment, and that no remittitur or mandate had issued from the latter court, and that the judgment of the Supreme Court of the Territory still remained in the court so stayed by the supersedeas bond and the order thereon. This plea is insufficient in that it does not aver that at the commencement of this action the appeal was then pending in this court or had ever been perfected. Nor is the case altered by the Practice Act of Montana, which enacts, that "in the

PLEADING (*continued*).
construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed with a view to substantial justice." *Gillette* v. *Bullard*, 571.
2. Where in foreign attachment in one State, against the debtor of a corporation incorporated by another State and asserted to have been dissolved by a judgment of the courts of that State, with a transfer of its effects to a receiver, judgment has been given, after opposition by the corporation and the receiver, in favor of the creditor and the garnishee or "trustee" (the debtor), and he "charged on his answer," he cannot, on a *scire facias* to have execution, successfully plead that the corporation had been dissolved by a court of New York, to whose proceedings full faith and credit was due under the Constitution. *Habich* v. *Folger*, 1.
3. A demurrer in equity presumed on appeal abandoned when the record shows no disposition, and the parties have proceeded to a hearing. *Basey et al.* v. *Gallagher*, 670.

PRACTICE. See *Assignment of Error; Confiscation Act; Contempts; Final Judgment; Judgment; Jurisdiction*, 3; *Master in Chancery; Pleading*, 1, 3; *Proceeding in rem;* "*Record;*" *Removal of Causes*, 1, 2.

I. IN THE SUPREME COURT.

(*a*) *In cases generally.*

1. All the parties against whom a joint judgment or decree is rendered must join in the writ of error or appeal, or it will be dismissed, except sufficient cause for the non-joinder be shown. This "established doctrine" again adjudged. *Simpson* v. *Greeley*, 152.
2. The court will not examine evidence to ascertain whether a jury was justified in its findings on issues of fact. *Express Company* v. *Ware*, 543; *Mays* v. *Fritton*, 414.
3. No error can be assigned on a general finding. *Tioga Railroad* v. *Blossburg and Corning Railroad*, 138.
4. A party who complains of the rejection of evidence must make it appear by his bill of exceptions that if the evidence had been admitted it might have led the jury to a different result, and that accordingly he has been injured by the rejection. He must therefore have properly before this court the evidence rejected, or some statement of what it tended to prove. *Packet Company* v. *Clough*, 528.
5. Where, on error to the Supreme Court of a State, the record shows a decision of the State court on a Federal question properly presented, and of which this court could take jurisdiction, and shows also the decision of a local question, the writ of error will not be dismissed on motion in advance of the hearing. The points stated, upon which on writs of error to the highest State court parties are entitled to be heard. *The Railroad Company* v. *Maryland*, 643.

(*b*) *In Admiralty.*

6. The doctrine, over and over again adjudged by this court, that when in admiralty cases involving questions of fact alone, the District and

PRACTICE (*continued*).

Circuit Courts have both found in one way, every presumption is in favor of the decrees, and that there will be no reversal here unless for manifest error, again declared. *The S. B. Wheeler*, 385.

7. Where an appeal in a proceeding *in rem* is taken to the Circuit Court, from a decree of the District Court, the *res* or its proceeds follows the cause. *The Lottawanna*, 201.

PREFERENCE. See *Bankrupt Act*, 1-3, 5.

PRESUMPTIONS.

Made in favor of the regularity of the proceedings of a court having jurisdiction in a particular matter, and professing to exercise it. *Cornett* v. *Williams*, 226.

PRINCIPAL AND SURETY.

A surety is not discharged by a contract between his principal and their common obligee, which does not place him in a different position from that which he occupied before the contract was made. *Roach* v. *Summers*, 165.

"PROBATE COURTS."

Their nature and the extent of their jurisdiction, as commonly constituted, defined. *Ferris* v. *Higley*, 375.

PROCEEDING IN REM.

Where an appeal is taken to the Circuit Court from the decree of the District Court in a proceeding *in rem*, the property or its proceeds follows the cause into the former court. *The Lottawanna*, 201.

PUBLIC LAW.

1. A lease made July 8th, 1865, during the military occupation of New Orleans, in the late rebellion, by the army of the United States, by the mayor of New Orleans, pursuant to a resolution of the boards of finance and of street landings (the mayor and both boards being appointed by the general commanding the department), by which a lease of certain water-front property in the said city, *for ten years*—which lease called for large outlays by the lessee, and was deemed by this court otherwise a fair one—sustained for its whole term, although in less than one year afterwards; the government of the city was handed back to the regular city authorities. *New Orleans* v. *Steamship Company*, 387.

2. The fact, that—seven months after the lease was made—a "general order" from the military department of Louisiana, forbidding the several bureaus of the municipal government of the city, created by military authority, from disposing of any of the city property for a term extending beyond a period when the regular civil government of the city might be re-established, held not to have altered the case. *Ib.*

QUANTUM VALEBAT.

Where a person, on a given contract, covenants to pay a sum whose amount is to be contingent on certain events and is to be ascertained by arbitrators, such person, if he prevent any arbitration, may be

QUANTUM VALEBAT (*continued*).

sued at law on a *quantum valebat*, and the sum due may be ascertained by a jury under instructions from the court. If the jury, under such instructions, find that only so much is due, the plaintiff can recover nothing more. *Humaston* v. *Telegraph Company*, 20.

REBELLION, THE See *Public Law*.

1. A purchaser of cotton from the Confederate States, who knew that the money he paid for it went to sustain the rebellion, cannot in the Court of Claims recover the proceeds, when it has been captured and sold, under the Captured and Abandoned Property Act. *Sprott* v. *United States*, 459.
2. The government of the Confederacy had no existence except as organized treason. Its purpose while it lasted was to overthrow the lawful government, and its statutes, its decrees, its authority can give no validity to any act done in its service or in aid of its purpose. *Ib.*
3. A man who has neglected his private affairs and gone away from his home and State, for the purpose of devoting his time to the cause of rebellion against the government, cannot come into equity to complain that his creditors have obtained payment of admitted debts through judicial process obtained upon constructive notice, and on a supposition wrongly made by them that he had no home in the State, or none that they knew of. *McQuiddy* v. *Ware*, 14.
4. What evidence so far tends to prove, on the part of a person who, during the rebellion, removed his slaves from loyal parts of the country to parts in rebellion, a purpose to sell them in these last, and justified a charge on an assumption of possibility, that the jury might find the purpose to have existed. *Cornett* v. *Williams*, 226.

RECEIVER OF NATIONAL BANK. See *National Bank*.

"RECORD."

Under the second section of the act of February 5th, 1867, supplying the place of the twenty-fifth section of the Judiciary Act, giving to this court a right of review of the decisions of the highest State courts, this court may look to the properly certified opinion of the State court to ascertain whether a question has been decided in the State court which will give jurisdiction here. *Murdock* v. *City of Memphis*, 590.

REFORMATION OF CONTRACTS. See *Insurance*, 1.

RELEASE OF ACTION.

When a woman has been injured in getting aboard a steamer, by the alleged carelessness of the servants of the boat, the fact that she is unwilling to pay fare for her passage, and that the captain makes no demand of fare from her, is no release of her right of action against the owners of the boat for the injuries done to her, unless she at the time understands it to be so and consents that it shall be so. *Packet Company* v. *Clough*, 528.

REMOVAL OF CAUSES.

1. In determining a question whether a Circuit Court had erred in denying a motion to remand a case removed to it from the State court, and giving judgment as if the case had been rightly removed to it, this court cannot pay any attention to a certificate of the clerk of such Circuit Court, certifying that on the hearing of the motion in the Circuit Court certain things "appeared," "were proved," or "were admitted," such facts not appearing by bill of exception nor by any case stated. *Knapp* v. *Railroad Company*, 117.
2. The act of Congress of March 2d, 1867, allowing either of the parties to a suit—they being of a certain class described—to remove it from a State court into the Circuit Court of the United States, does not change the previously existing and settled rules which determine who are to be regarded as the plaintiff and defendant. *Ib.*
3. A State statute which allows companies organized in other States to do business in the State passing the statute, only on condition that the company shall first appoint an attorney in this State on whom process of law can be served, containing "*an agreement that such company will not remove the suit for trial into the Federal courts, and file in the office of the secretary of state a written instrument, duly signed and sealed, certifying such appointment, which shall continue until another attorney be substituted,*" is repugnant to the Constitution of the United States and the laws in pursuance thereof, and is illegal and void. And the agreement of the insurance company, filed in pursuance of the act, is equally void. *Insurance Company* v. *Morse*, 445.

RENT. See *Bankrupt Law*, 1.

REPEAL OF STATUTE. See *Implied Repeal of Statute.*

RES JUDICATA. See "*Omnia rite acta.*"

Where, in a judicial proceeding, the matter passed upon is the right under the language of a certain contract to take receipts on a railroad, the judgment concludes the question of the meaning of the contract on a suit for subsequent tolls received under the same contract. *Tioga Railroad* v. *Blossburg and Corning Railroad*, 137.

RESTRAINT OF TRADE. See *Contract*, 2.

General principles governing the construction of. *Oregon Steam Navigation Company* v. *Winsor*, 64.

RETROSPECTIVE LEGISLATION. See *Constitutional Law*, 9.

REVISED STATUTES OF THE UNITED STATES.

The following section referred to, commented on, or explained:

Section 709. See *Jurisdiction*, 2, 3; "*Record.*"

RIPARIAN RIGHTS.

1. On the mineral lands of the public domain in the Pacific States and Territories (including Montana), the doctrines of the common law, declaratory of the rights of riparian proprietors respecting the use of running waters, are applicable only in a limited extent to the necessities of miners, and inadequate to their protection. There, prior ap-

RIPARIAN RIGHTS (*continued*).

propriation gives the better right to such waters to the extent, in quantity and quality, necessary for the uses to which the water is applied. *Atchison* v *Peterson*, 507; and see *Basey et al.* v. *Gallagher*, 670.

2. What diminution of quantity, or deterioration in quality, will constitute an invasion of the rights of the first appropriator will depend upon the special circumstances of each case; and in controversies between him and parties subsequently claiming the water, the question for determination is whether his use and enjoyment of the water to the extent of the original appropriation have been impaired by the acts of the other parties. *Ib.*

3. Whether, upon a petition or bill asserting that the prior rights of the first appropriator have been invaded, a court of equity will interfere to restrain the acts of the party complained of, will depend upon the considerations which ordinarily govern a court of equity in the exercise of its preventive process of injunction. *Ib.*

4. The act of Congress of July 26th, 1866, which provides "that whenever by priority of possession rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same," construed. *Ib.*

RUNNING WATER. See *Riparian Rights.*

SECONDARY EVIDENCE. See *Evidence*, 7.

SEQUESTRATION ACT OF TEXAS. See *Texas*, 1.

SLAVES. See *Rebellion, The*, 4.

SOVEREIGNTY.

The rights and remedies of, are not divested by general words in a statute. *United States* v. *Herron*, 251.

SPANISH AND MEXICAN LAW. See *Texas*, 3, 4.

SPECIFIC PERFORMANCE.

An agreement by a paver with a city, pecuniarily embarrassed, for paving it, that if the city, then unable to pay him in money, would lend to him its bonds having a long time to run, to be sold by him for what they would bring, he will replace them to the city with other bonds before the date of maturity—which bonds, so lent, are sold much below par, and the money received by him,—*held*, under special circumstances, to be fulfilled by his charging himself in account with the value of the bonds at the time of accounting; though the city had no money then to buy them in the market. *City of Memphis* v. *Brown*, 289.

SPECULATIVE DAMAGES. See *Damages*, 4.

STATUTES. See *Construction, Rules of.*

Impliedly repealed by new act, which "amends" an old one, covering the greatest part of its subject. *Murdock* v. *City of Memphis*, 590.

STATUTES OF LIMITATION. See *Coupons; Judicial Comity.*

Where a statute of limitation enacts that a defendant's absence from the State will prevent its running, but that "in the case of a foreign corporation, if it has a managing agent in the State, service of the writ may be made on *him*," in a suit brought against a foreign corporation more than five years after the cause of action had accrued, the time during which the plaintiff was disabled from suing by reason of defendant having no managing agent in the State, is not to be counted as part of the five years' limitation period. *Express Company* v. *Ware*, 543.

STATUTES OF THE UNITED STATES. See *Revised Statutes of the United States.*

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

1789. September 24. See *Judiciary Act of* 1789; *Jurisdiction.*
1850. September 9. See *Utah.*
1861. March 2. See *Subsistence Stores.*
1861. August 6. See *Confiscation Acts.*
1862. July 6. See *Evidence.*
1862. July 17. See *Confiscation Acts.*
1863. March 12. See *Rebellion*, 1, 2.
1864. June 3. See *National Banks.*
1864. June 30. See *Internal Revenue.*
1864. July 2. See *Evidence*, 8.
1864. July 4. See *Subsistence Stores.*
1866. July 26. See *Riparian Rights*, 4.
1867. February 5. See *Judiciary Act; Jurisdiction*, 2, 3.
1867. March 2. See *Bankrupt Act; Internal Revenue*, 2, 3; *Removal of Causes.*
1868. July 20. See *Internal Revenue*, 1.
1870. July 12. See *Twenty per cent. cases.*
1870. July 14. See *Internal Revenue*, 2, 3.
1871. March 3. See *Texas.*

STOCK CONTRACT.

Where a person in consideration of property (not money) to be assigned by another, agrees to give a certain number of shares of stock, having on the day of the contract a fixed market value, and, refusing to give the stock, is sued at law for a breach of the contract, evidence of the value of the stock at any other time than at the date of the contract is rightly excluded; its value at that date being agreed on and admitted. *Humaston* v. *Telegraph Company*, 21.

STOCKHOLDERS.

Of a bank whose charter binds them "respectively for all the debts of the bank in proportion to their stock therein" cannot be sued at law, there being numerous other creditors. The remedy is in equity. *Pollard* v. *Bailey*, 520.

SUBSISTENCE STORES.

When, without any express contract founded on advertisement or on

SUBSISTENCE STORES (*continued*).

military exigency, subsistence stores have been received into custody by army officers in frontier parts of the country, and subsequently, the use of them becoming necessary or convenient, have been in part used, in part destroyed through carelessness of the army subalterns, and in part become useless from natural causes, the government is properly charged with the value of all except of the part which had spoiled through natural causes; but chargeable only at the value of the stores when they were received by it. *United States* v. *Gill*, 517.

SURETY. See *Principal and Surety*.

TAXATION. See *Constitutional Law*, 1-8; *Estoppel; Internal Revenue.*

1. A contract by a State to give up its power to tax any property within it, can be made only by words which show clearly and unequivocally an intention to make such a contract. *North Missouri Railroad Company* v. *Maguire*, 46.
2. An act of the Missouri legislature, by which it was declared that "the Pacific Railroad shall be exempt from taxation until the same shall be completed, opened, and in operation, and shall declare a dividend, when the road-bed and other property of such completed road shall be subject to taxation:

   "*Provided*, That if said company shall fail, for the period of two years after said roads respectively shall be completed and put in operation, to declare a dividend, that then said company shall no longer be exempt from the payment of said tax," created a contract that, subject to the proviso, the railroad should not be taxed. *Pacific Railroad Company* v. *Maguire*, 36.
3. An ordinance adopted as part of the State constitution, levying a tax on the gross receipts of the company, within two years after it was completed and put in operation, in order to pay debts of the State, contracted in order to help to build the road (and which the railroad company was, as between itself and the State, primarily bound to pay) impaired the obligation of the contract, and was void. *Ib.*
4. The act of the legislature of Missouri of February 16th, 1865, to provide for the completion of the North Missouri Railroad, does not clearly show an intention of the State to give up its power to tax the property of the corporation owning that railroad. *North Missouri Railroad Company* v. *Maguire*, 46.
5. The ordinance of the 8th of April, 1865, adopted by the people of Missouri, as part of the constitution of the State established on that day, was, as respected the North Missouri Railroad Company, a true exercise of the taxing power of the State, and not a mere change of the order of disbursing the receipts of the earnings of the company as prescribed by the act of the legislature above named. *Ib.*

"TESTIMONIO." See *Texas*, 3.

TEXAS.

1. When, under what is known in Texas as its "Sequestration Act," a person has brought suit to recover land, and the marshal, in pursuance of the writ of sequestration, takes possession of the land, it is in

TEXAS (*continued*).

the custody of the law. But when replevied (as the said act allows it to be), it passes from the possession of the law into the possession of the party replevying. *Cornett* v. *Williams*, 226.

2. An affidavit filed under the act of the legislature of Texas, approved May 13th, 1846,—requiring an affidavit of such character when the fraudulent character of an instrument of writing, properly recorded, and filed among the papers of the cause, is meant to be set up,—is properly rejected when not filed within the time prescribed by the act. *McPhaul* v. *Lapsley*, 264.

3. A testimonio executed, in 1832, by the proper Mexican authorities, of a power of attorney for the conveyance of lands, is within the recording acts of Texas. Under Spanish law, and the adjudications of the Supreme Court of Texas, it is considered as a second original, and of equal validity with the first, and is admissible in evidence though not recorded. *Ib.*

4. Evidence of a person who was not the keeper of the archives, nor in any way officially connected with the office to which they belonged, and which was offered to prove that such a testimonio was not a copy of the protocol (this not being produced), though the witness had in his hand photographs of certain pages of the protocol which did conform in other respects than that of signature and date with the testimonio, and when it was not offered to follow the evidence up in any way, *held*, under circumstances, properly rejected. *Ib.*

TEXAS INDEMNITY BONDS.

Certain of these bonds held free from the objection that they had been issued by the State of Texas in aid of the rebellion or other unlawful purpose, though overdue when they passed from the treasury of the State, and though unindorsed by the governor. The cases of *Texas* v. *White and Chiles* (7 Wallace, 718), *Same* v. *Hardenberg* (10 Id. 68), and *Same* v. *Huntington* (16 Id. 402), considered, and their true result ascertained and applied to the present case. *National Bank of Washington* v. *Texas*, 72.

TONNAGE TAX. See *Wharves*.

Any duty, or tax, or burden imposed under the authority of the States, which is in its essence a contribution claimed for the privilege of arriving and departing from a port of the United States, and which is assessed on a vessel according to its carrying capacity, is a tonnage tax within the meaning of the Federal Constitution, and therefore void. *Cannon* v. *New Orleans*, 577.

TRADE, CONTRACTS IN RESTRAINT OF. See *Contract*, 2.

"TWENTY PER CENT. LAW."

The liberal view taken in the *Twenty per Cent. Cases* (13 Wallace, 576) of the *joint resolution* of 28th February, 1867, declared to be the true view and applied to other cases essentially like those; but not applied to the case of a person hired at Washington to do service out of Washington, nor to a contractor who contracted to deliver finished work,

"TWENTY PER CENT. LAW" (*continued*).
and who employed another to do it for him. *Twenty per Cent. Cases*, 179.
2. An act passed on the 12th of July, 1870, repealing "all acts and *joint resolutions*, or parts thereof, and all resolutions of either house of Congress granting extra pay," the act "to take effect on the 1st day of July, 1870," did not affect the rights given by the joint resolution abovementioned. *Ib.*

UNITED STATES, THE.
No general words in a statute divest it of its rights or remedies. *United States* v. *Herron*, 251.

USAGE. See *Insurance*, 2.

UTAH.
The act of the Territorial legislature conferring on the Probate Courts a general jurisdiction in civil and criminal cases, and both in chancery and at common law, is inconsistent with the organic act, and void. The jurisdiction of the Supreme and District Courts, and of the legislative power of the Territory, defined. *Ferris* v. *Higley*, 375.

VOLUNTARY SETTLEMENT.
1. A deed by which a husband, on articles of separation between him and his wife, binds himself to pay, in trust for her, a certain amount of money (capital), and interest on it till paid, becomes a voluntary settlement if, before payment is made, the parties are reconciled, make null all the covenants of the articles of separation, and cohabit again, with an agreement that the settlement shall stand as agreed on, except that the husband shall not pay interest while he and his wife live together. *Kehr* v. *Smith*, 31.
2. A voluntary settlement of $7000 cannot be sustained against creditors where the person owes $9306, and has, of all sorts of property, the same being not cash, not more than $16,132. *Ib.*

WAIVER OF CONTRACT. See *Contract*, 4.

WAIVER OF JURY. See *Montana*.

WAIVER OF LIEN.
Of a bottomry bond paid by adjusters of average, adjusting the business of a vessel, not presumed to be extinguished as against themselves. *Belle of the Sea*, 421.

WAIVER OF PLEA. See *Pleading*, 3.

WHARVES. See *Tonnage Tax*.
For the use of wharves, piers, and similar structures, whether owned by individuals or by a city or other corporation, a reasonable compensation may be charged to the vessel, to be regulated in the interest of the public by a State legislature or city council. But in the exercise of this right care must be taken that it is not made to cover a violation of the Federal Constitution, which prohibits the States to lay any duty of tonnage. *Cannon* v. *New Orleans*, 577.

WISCONSIN.

Under the act of Congress of July 6th, 1862, and statutes of Wisconsin, passed in 1863 and 1868, a married woman may in the Circuit Court for Wisconsin, in an action on the case by her husband and herself for injuries done to her person, be examined as a witness for the plaintiffs. *Packet Company* v. *Clough*, 528.

WITHDRAWAL OF APPEARANCE.

A withdrawal, "without prejudice to the plaintiff," of a general appearance entered by an attorney, for the defendant, means that the position of the plaintiff is not to be unfavorably affected by the act of withdrawal; that all his rights are to remain as they then stood. *Creighton* v. *Kerr*, 8.

WITNESS. See *Wisconsin.*

WRIT OF ERROR. See *Practice.*

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