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ABATEMENT OF ACTION.

A suit against a National bank is abated by a decree of a District Court of the United States dissolving the corporation and forfeiting its rights and franchises, rendered upon an information against the bank filed by the Comptroller of the Currency. *National Bank* v. *Colby*, 609.

ACTION.

An action will not lie on claims which by and in themselves are valid and capable of sustaining an action if they are inseparably blended and confused with others which are void. *Trist* v. *Child*, 441.

ADMIRALTY. See *Admiralty Law of the United States; Appeal; Collision; Practice*, 12, 13; *Reversal*, 1.

By the rule of, both parties being in fault, the damages are to be divided. *Atlee* v. *Packet Company*, 389.

ADMIRALTY LAW OF THE UNITED STATES. See *Constitutional Law*, 6, 7.

1. Its special character declared; not necessarily identical, throughout, with the general maritime law. Its true sources set forth. The question as to the true limits of maritime law and admiralty jurisdiction a judicial question. The sources for decision stated. *The Lottawanna*, 558.
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3. Liens granted by the laws of a State in favor of material-men for furnishing necessaries to a vessel in her home port in the said State are valid, though the contract to furnish the same is a maritime contract, and can only be enforced by proceedings *in rem* in the District Courts of the United States. *Ib.*
4. Any person having a specific lien on, or a vested right in, a surplus fund in the registry of the admiralty court, may apply by petition for the protection of his interest under the forty-third admiralty rule. *Ib.*

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Material-men furnishing repairs and supplies to a vessel in her home port, do not acquire thereby any lien upon the vessel by the maritime law of the United States. *The Lottawanna*, 559.

AUTHENTICATED
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ADVERSE POSSESSION.

To make title by virtue of, the full and completed term of time requisite, must be positively, as distinguished from conjecturally, shown. *Grosholtz* v. *Newman*, 481.

ALLEGATA ET PROBATA. See *Pleading*, 2.

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On a bill to establish a deed of trust to a third party, and now in the defendant's possession, which deed the bill alleges that the defendant executed and *delivered*, a denial by the defendant, in an answer responsive to the bill, that he did deliver it, comes to nothing if he admit in the same answer certain facts, which of themselves may, under the circumstances of the case, constitute a delivery. *Adams* v. *Adams*, 185.

APPEAL. See *Bankrupt Act*, 14; *Construction, Rules of*, 2; *Court of Claims; Supersedeas Bond.*

In cases of clear error of both the Circuit and the District Court, in an admiralty case involving issues of fact alone, this court will reverse, though except in such cases it will not do so where both courts have agreed on their view of the facts. *The Lady Pike*, 1.

ASSIGNMENT OF ERROR. See *Practice*, 1, 2.

ASSISTANCE, WRIT OF.

Its nature and office declared; and the cases stated when a party is and when he is not entitled to its aid. *Terrell* v. *Allison*, 289.

ASSUMPSIT.

A special case in which it was declared allowable, as against a person who had taken the cut timber on land and appropriated it to his own use. *Jennisons* v. *Leonard*, 303.

ATTORNEY AT LAW. See *Confidential Relation; Pleading*, 4.

1. Cannot be charged with negligence when he accepts as a correct exposition of the law a decision of the Supreme Court of his State upon the question of the liability of stockholders of corporations of the State, in advance of any decision thereon by this court. *Marsh* v. *Whitmore*, 178.
2. Who appears for a party has, presumptively, the right to do so. *Hill* v. *Mendenhall*, 453.

BANKERS AND BROKERS. See "*Capital;*" *Government Bonds and Notes*, 3, 4.

BANKRUPT ACT. See *Evidence*, 7.

1. The clause of the, limiting the commencement of actions by and against the assignee in bankruptcy to two years after the right of action accrues, applies to all judicial contests between the assignee and any person whose interest is adverse to his. *Bailey, Assignee* v. *Glover et al.*, 342.
2. But where the action is intended to obtain redress against a fraud concealed by the party, or which from its nature remains secret, the bar does not commence to run until the fraud is discovered. *Ib.*

BANKRUPT ACT (*continued*).

3. And this doctrine is equally applicable on principle and authority to suits at law as well as in equity. *Bailey*, *Assignee* v. *Glover et al.*, 342.

4. When a person, borrowing money of another, pledges with that other "bills receivable" as collateral security for the loan (many of them overdue), the pledgee may properly hand them back to the debtor pledging them, for the purpose of being collected, or to be replaced by others. All money so collected is money collected by the debtor in a fiduciary capacity for the pledgee. And if a portion of the collaterals be subsequently replaced by others, the debtor's estate being left unimpaired, and the transaction be conducted without any purpose to delay or defraud the pledgor's creditors, or to give a preference to any one, the fact that proceedings in bankruptcy were instituted in a month afterwards and the pledgor was declared a bankrupt, will not avoid the transaction. *Clark*, *Assignee*, v. *Iselin*, 360; *Watson* v. *Taylor*, 378.

5. The giving, by a debtor, for a consideration of equal value passing at the time, of a warrant of attorney to confess judgment, is not an act of bankruptcy, though judgment be not entered, but on the contrary such warrant be kept in the creditor's own custody, and with its existence unknown to others. The creditor may enter judgment of record when he pleases (even upon insolvency apparent), and issue execution and sell. *Ib.*

6. However, the fact that a debtor signed and delivered to his creditor, a judgment note payable one day after date, giving to him a right to enter the same of record and to issue execution thereon without delay for a debt not then due, affords a strong ground to presume that the debtor intended to give the creditor a preference, and that the creditor intended to obtain it; and it is unimportant whether the preference was voluntary or given at the urgent solicitation of the creditor. *Clarion Bank* v. *Jones*, *Assignee*, 325.

7. The giving of a warrant to confess a judgment may be a preference forbidden by the thirty-fifth section of the Bankrupt Act, though not mentioned in that section in the specific way in which it is in the thirty-ninth section. *Ib.*

8. A creditor having by execution obtained a valid lien on his debtor's stock of goods, of an amount in value greater than the amount of the execution, may, up to the proceedings in bankruptcy, without violating any provision of the Bankrupt Act, receive from the debtor bills receivable and accounts due him, and a small sum of cash, to the amount of the execution; the execution being thereupon released, and the judgment declared satisfied. *Clark*, *Assignee*, v. *Iselin*, 360.

9 Where, in the case of a person decreed a bankrupt, a question of insolvency at the particular date (when the debtor gave a security alleged to be a preference) is raised, the court may properly charge (much other evidence having been given on the issue), "that if the jury find that the quantity and value of the assets of the debtor had not materially diminished from the day when the security was given till the day when he filed his petition in bankruptcy, and the day when he

BANKRUPT ACT (*continued*).

was adjudged a bankrupt on his own petition, they may find that he was insolvent on the said first-mentioned day, when he gave the security." *Clarion Bank* v. *Jones*, 325.

10. When the issue to be decided is whether a judgment against an insolvent was obtained with a view to give a preference, the *intention* of the bankrupt is the turning-point of the case, and all the circumstances which go to show such intent should be considered. *Little, Assignee*, v. *Alexander*, 500.

11. In a suit by the assignee to recover the proceeds of the bankrupt's property, sold under a judgment given in fraud of the Bankrupt Act, the measure of damages is the actual value of the property seized and sold; not necessarily the sum which it brought on the sale. The sheriff may be asked his opinion as to such actual value. *Clarion Bank* v. *Jones*, 325.

12. Where one creditor has been induced by fraudulent representations of another creditor, who wishes to get into his own hands all the property of their common debtor, to release his debt, and the second creditor does so get the property, and thus obtains a preference, the creditor who has been thus, as above said, induced to release his debt, may disregard his own release, and petition that his debtor be decreed a bankrupt. *Michaels et al.* v. *Post*, *Assignee*, 398.

13. If, on a petition and other proceedings regular in form, a decree in bankruptcy is made in such a case, and an assignee in bankruptcy is appointed in a way regular on its face, the decree in bankruptcy, though it be a decree *pro confesso*, cannot, in a suit by the assignee to recover from the preferred creditor the property transferred, be attacked on the ground that the party petitioning had released his debt, was no creditor, that his petition was accordingly fraudulent, and that the decree based on it was void. *Ib.*

14. Under the eighth section of the Bankrupt Act, which enacts that "no appeal shall be allowed in any case from the District to the Circuit Court unless it is claimed and notice given thereof, . . . to the assignee . . . or to the defeated [*sic*] party in equity, *within ten days after the entry of the decree or decision appealed from*," the omission to give the notice within the ten days specified is fatal to the appeal. *Wood* v. *Bailey*, *Assignee*, 640.

15. The word "defeated" in the above quotation, should be construed as meaning the "opposite," "adverse," or "successful" party. *Ib.*

16. Under the fourteenth section of the Bankrupt Act, an attachment which under State laws is a valid lien, laid *more* than four months previously to the proceedings in bankruptcy begun, is not dissolved by the transfer to the assignee in bankruptcy. And if such assignee do not intervene, but allow the property to be sold under judgment in the proceedings in attachment, the purchaser in a case free from fraud will hold against him; that is to say, the assignee cannot attack collaterally such purchaser's title. *Doe* v. *Childress*, 648.

BILL OF EXCEPTIONS. See *Practice*, 3, 4, 5, 6, 8.

BLANKS IN DEED.

Effect of signing a bond or other deed, with these left unfilled. *Butler* v. *United States*, 273.

BOND. See "*Capacity Tax;*" *Internal Revenue*, 3; *Replevin Bond.*

A person who signs, as surety, a printed form of government bond, already signed by another as principal, but the spaces in which for names, dates, amounts, &c., remain blank, and who then gives it to the person who has signed as principal, in order that he may fill the blanks with a sum agreed on between the two parties as the sum to be put there, and with the names of two sureties who shall each be worth another sum agreed on, and then have those two persons sign it, makes such person signing as principal his agent to fill up the blanks and procure the sureties; and if such person fraudulently fill up the blanks with a larger sum than that agreed on and have the names of worthless sureties inserted, and such sureties to sign the bond, and the bond thus filled up and signed be delivered by the principal to the government, who accepts it in the belief that it has been properly executed, the party so wronged cannot, on suit on the bond, again set up the private understandings which he had with the principal. *Butler* v. *United States*, 273.

"BONUS."

Distinguished from a tax. *Railroad Company* v. *Maryland*, 456.

BREACH OF CONDITION. See *Condition Subsequent.*

1. No one can take advantage of the non-performance of a condition subsequent annexed to the grant of an estate in fee by the government, but the government itself; and if *it* do not see fit to assert its right to enforce a forfeiture on that ground, the title remains unimpaired in the grantee. *Schulenberg* v. *Harriman*, 45.
2. The manner in which the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate depends upon the character of the grant. If it be a private grant, that right must be asserted by entry, or its equivalent. If the grant be a public one, the right must be asserted by judicial proceedings authorized by law, or there must be some legislative assertion of ownership of the property for breach of the condition, such as an act directing the possession and appropriation of the property, or that it be offered for sale or settlement. *Ib.*

CALIFORNIA. See *Service of Writ.*

A confirmation of a claim to land in California under a grant from the former Mexican government, obtained under the act of Congress of March 3d, 1851, is limited by the extent of the claim made; and the decree of confirmation cannot be used to maintain the title to other land embraced within the boundaries of the grant. *Brown* v. *Brackett*, 387.

"CAPACITY TAX." See *Internal Revenue*, 1.

On debt upon a distiller's bond to charge him with non-payment of a capacity tax assessed for an entire month, the distiller may properly

"CAPACITY TAX." (*continued*).
show, that without any fault of his own, and that by the omission of the government itself, he was prevented from working his distillery for the first four days for which he was taxed, and that his distillery was inactive from an accident, and in charge of a government officer, as prescribed by law, for four other days. A capacity tax assessed during such eight days is erroneously assessed. *Clinkenbeard et al.* v. *United States*, 65.

"CAPITAL."
Its meaning within section 110 of the Internal Revenue Act of July 13th, 1866. *Bailey*, *Collector*, v. *Clark et al.*, 284.

"CATTLE."
A bank at Decatur, Illinois, accredited B. with a bank at St. Louis, Missouri, saying that "his drafts against shipments of *cattle* to the extent of $10,000 are hereby guaranteed." *Held*, that *hogs* were included within the term cattle, and that B.'s drafts against shipments of hogs not having been paid, the Bank of Decatur was responsible on its letter of credit. *Decatur Bank* v. *St. Louis Bank*, 294.

CERTIORARI. See *Practice*, 9.

CITIZENSHIP. See *Voting*, *Right of*.
The nature of explained. The right of suffrage was not necessarily one of the privileges or immunities of it before the adoption of the fourteenth amendment, and that amendment does not add to these privileges and immunities. *Minor* v. *Happersett*, 162.

COLLISION. See *Pilots on Rivers; Reversal*, 1; *Riparian Rights*.
1. The master of a steamer which undertakes to tow boats in a river where piers of bridges impede the navigation, is bound to know the width of his steamers and their tows, and whether, when lashed together, he can run them safely between piers through which he attempts to pass. He is bound also, if it is necessary for his safe navigation in the places where he chooses to be, to know how the currents set about the piers in different heights of the water, and to know whether, at high water, his steamers and their tows will safely pass over an obstruction which, in low water, they could not pass over. *The Lady Pike*, 1.
2. Owners of steamers undertaking to tow vessels are responsible for accidents, the result of want of proper knowledge, on the part of their captains, of the difficulties of navigation in the river in which the steamers ply, and they should be held to a full measure of responsibility. *Ib.; The Mohler*, 230.
3. Where, in a high or uncertain state of the wind, a vessel is approaching a part of the river in which there are obstructions to the navigation—as, *ex gr.*, the piers of a bridge crossing it—between which piers she cannot, if the wind is high or squally, pass without danger of being driven on one of them, it is her duty to lie by till the wind has gone down, and she can pass in safety. *The Mohler*, 230.

"COMMERCE BETWEEN THE SEVERAL STATES." See *Constitutional Law*, 4.

COMMON CARRIER.

An agreement by an express company (a common carrier in the habit of carrying small packages) that the company shall not be held liable for any loss of or damage to a package whatever, delivered to it, unless claim should be made therefor within ninety days from its delivery to the company, is an agreement which such company can rightfully make, the time required for transit between the place where the package is delivered to the company and that to which it is consigned not being long; in the present case a single day. *Express Company* v. *Caldwell*, 264.

CONCLUSIVENESS OF JUDGMENT. See *Res Judicata.*

CONCURRENT ACTS.

A special sort of contract as to cutting timber in certain quantities per month and paying certain sums, at fixed times per month, construed; and the obligation to pay and the right to cut held to be concurrent, and the payment at the time stipulated to be of the essence of the contract. *Jennisons* v. *Leonard*, 303.

CONDITION SUBSEQUENT. See *Breach of Condition; Grant in præsenti.*

A provision in a statute making a present grant of lands, for the purpose of building a road, that all lands remaining unsold after ten years shall revert to the government, if the road be not then completed, is a condition subsequent. *Schulenberg* v. *Harriman*, 45.

CONFESSION OF JUDGMENT. See *Bankrupt Act*, 5–8.

CONFIDENTIAL RELATION. See *Patent*, 6.

1. An attorney who sells bonds of a client at public sale, and buys them in himself, at their full value at the time (the client being aware of the purchase and acquiescing in it for twelve years), cannot be called to account as a trustee *malâ fide* at the end of so long a time. *Marsh* v. *Whitmore*, 178.
2. The officers and managers of a railroad or other stock company stand to its stockholders and bondholders in a very legitimate sense in the capacity of trustees of their property, and are bound to act in their interests. *Jackson* v. *Ludeling*, 616.

CONFLICT OF JURISDICTION. See *Judicial Comity.*

A maritime lien does not arise on a contract to furnish materials for the purpose of *building* a ship; and in respect to such contracts it is competent for the States to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement, if not inconsistent with the exclusive jurisdiction of the admiralty courts. *Edwards* v. *Elliott*, 532.

CONFUSION OF GOODS. See *Minnesota.*

CONGRESS. See *Public Policy.*

CONSTITUTIONAL LAW. See *Admiralty Law of the United States*; *Public Law.*

1. A provision in a State constitution which confines the right of voting to "*male* citizens of the United States," is no violation of the Federal Constitution. In such a State women have no right to vote. *Minor* v. *Happersett*, 163.
2. In a proceeding by which a State condemns property for public use, as, *ex. gr.*, by which she authorizes a city to open or widen streets through private property, there is nothing in the nature of a contract between the owner and the State, or the corporation, which the State, in virtue of her right of eminent domain, authorizes to take the property. *Garrison* v. *The City of New York*, 196.
3. Hence if error or illegal action appear in the proceedings of commissioners authorized to widen streets, and in so doing to take and value property, a State may properly vacate an order of court confirming their estimate and assessments respecting the property taken, and refer the matter to new commissioners, even though the law existing when the first assessment was made contemplated that it should be final. *Ib.*
4. Where the constitution of a State makes each stockholder in a corporation "individually liable for its debts, over and above the stock owned by him," and the corporation incurs debts, and is then authorized to obtain subscriptions for new stock, but does not now obtain them, and the constitution of the State is afterwards amended and declares that "in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him," and the corporation then, for the first time, issues the new stock, the amended constitution does not impair the obligation of the contract between the corporation and its debtor made under the first constitution; and the holders of such new stock are not personally liable under the first constitution. *Ochiltree* v. *The Railroad Company*, 249.
5. A stipulation in the charter of a railroad company, that the company shall pay to the State a bonus, or a portion of its earnings, is a contract by the company to pay the State a portion of its earnings; but is not repugnant to the Constitution of the United States; it being different, in principle, from the imposition of a tax on the movement or transportation of goods or persons from one State to another. *Railroad Company* v. *Maryland*, 456.
6. The question as to the true limits of maritime law and admiralty jurisdiction is exclusively a judicial question, and no State law or act of Congress can make it broader or narrower than the judicial power may determine those limits to be. But what the law is within those limits, assuming the general maritime law to be the basis of the system, depends on what has been received as law in the maritime usages of this country, and on such legislation as may have been competent to affect it. *The Lottawanna*, 558.
7. *Semble*, that Congress, under the power to regulate commerce, has authority to establish a lien on vessels of the United States in favor of material-men, uniform throughout the whole country. But in par-

CONSTITUTIONAL LAW (*continued*).

ticular cases, in which Congress has not exercised the power of regulating commerce, with which it is invested by the Constitution, and where the subject does not in its nature require the exclusive exercise of that power, the States, until Congress acts, may continue to legislate. *The Lottawanna*, 558.

8. The provision of the seventh amendment to the Constitution, which secures to every party the right to trial by jury where the amount in controversy exceeds $20, does not apply to trials in State courts. *Edwards* v. *Elliott*, 533.

CONSTRUCTION, RULES OF.

AS APPLIED TO STATUTES.

1. An intent to exempt property from taxation not easily to be inferred. *Erie Railway Company* v. *Pennsylvania*, 492.
2. A right of appeal, though not given in terms in a special act, authorizing the submission of a suit to a particular tribunal (such, *ex. gr.*, as the Court of Claims), may be inferred from the general character of the act and its particular indications. *Vigo's Case*, 648.

CONTRACT. See *Common Carrier; Public Policy; Set-Off.*

1. A provision in a charter granted by a State to a railroad company (accepted and acted on by the company for many years), that the company will pay to the State one-fifth of the whole amount received for the transportation of passengers, is a contract to pay, and not a receipt of money belonging to the State. If unconstitutional, the objection can be set up as a defence to an action brought by the State to recover the money; and if the alleged unconstitutionality is set up as a defence, the State court is bound to pass upon it; and having decided against the exemption thus claimed, this court is authorized to review the decision. *Railroad Company* v. *Maryland*, 456.
2. On a contract by a landowner to allow a lumberman to cut so much timber per month, the lumberman to pay so much money (about the value of the lumber to be cut) per month, the payment at the times agreed on is to be considered, generally speaking, as of the essence of the contract. *Jennisons* v. *Leonard*, 303.

CONTRACTOR.

1. A contract for the construction of a drawbridge upon which the cars of a railroad company can cross, implies that the bridge shall be serviceable for that purpose and capable of being used with like facility as similar bridges properly constructed. If a defect in the condition of a pier upon which the bridge is to rest will prevent this result from being attained, it is the duty of the contractor to insist upon an alteration of the pier, or to make it himself, before proceeding with the construction of the bridge. *Railroad Company* v. *Smith*, 256.
2. Where a pier of a bridge was built under the supervision of an agent of the contractors for the bridge, and in accordance with his directions, he is held to have knowledge of any defect in the pier, and his knowledge in this particular is the knowledge of the contractors. *Ib*

CORPORATION, EFFECT OF DISSOLUTION OF. See *National Banks*, 2.

COTTON.

The charge of four cents per pound, laid by the Treasury Regulations of March 31st and September 11th, 1863, in case of a purchase of cotton in the States then in insurrection, was authorized by Congress, and was a valid charge, under the war powers of the government. *Hamilton* v. *Dillon*, 74.

COURT OF CLAIMS. See *Construction, Rules of*, 2.

When a claim on the government, not capable of being otherwise prosecuted, is referred by special act of Congress to the Court of Claims acting judicially in its determination, a right of appeal to this court, in the absence of provision to the contrary, is given by the act of June 25th, 1868 (section 8707 Revised Statutes). *Vigo's Case: Ex parte United States*, 648.

COURTS OF PROBATE. See *Equity*, 1–6.

CUSTOM. See *Government Bonds and Notes*, 3.

DAMAGES. See *Bankrupt Act*, 11; *Patents*, 6–8.

1. In admiralty, where both parties are in fault, damages are to be divided. *Atlee* v. *Packet Company*, 390.
2. On a suit for the price agreed on for building a bridge, the defence being that the work was defectively done, and that the full sum agreed on was not due, owing to such defective work, and the delays and expenses to which the party for whom it was done was thereby put, with a claim of set-off from the plaintiff's demand of the damages thus sustained, it is proper to ask a witness *whether* the structure and arrangements of the bridge caused any injury or damage, hindrance or delay, to the company in the running of its railroad; and *whether* any hindrance or delay was caused by the imperfect construction of the bridge to any vessel in the navigation of the river; and *whether* the structure or working of the bridge rendered it liable to be injured or destroyed by vessels navigating the river; and *what number* of hands were required to work the drawbridge, and what number would be necessary if it had been properly constructed. Such interrogatories are pertinent and proper in themselves. The objection that they relate to speculative damages does not apply to the first and last, in which the damages sustained would be the subject of actual estimation, and the facts sought to be learned would furnish elements to the jury for a just estimate of the damages to be recouped from the demand of the contractor. *Railroad Company* v. *Smith*, 256.

DECREE.

A provisional one distinguished from one absolute. *Ex parte Sawyer*, 235

DEED. See *Bond; Husband and Wife; Pleading*, 2.

Retention, without its having been shown to trustee, by husband, of a deed by him and his wife settling property to her use, does not destroy the operation of the deed, even though the trustee named in it have never heard of the deed, and though on hearing of it he refuse to accept the trust. *Adams* v. *Adams*, 186.

DEMURRER. See *Reversal*, 6.

To a bill in equity does not admit the correctness of averments as to the meaning of an instrument set forth in or annexed to the bill. *Dillon* v. *Barnard et al.*, 430.

DEPOSITION. See *Practice*, 8, 10, 11.

DISCLAIMER. See *Patent*, 2.

DISTILLER'S BOND. See *Bond; Capacity Tax; Internal Revenue*, 8.

DIVESTITURE OF ESTATE. See *Trust and Trustee*, 1–3.

"DOING BUSINESS." See *Internal Revenue*, 4.

DOMESTIC SHIP. See *Admiralty Law of the United States.*

DOMICILE.

A resident of a loyal State, who, after the 17th of July, 1861, and just after the late civil war had become flagrant, went, under a military pass of a Federal officer, into the rebel States, and in November and December, 1864, bought a large quantity of cotton there (724 bales), and never returned to the loyal States until just after that and when the war was not far from its close—when he did return to his old domicile—having, during the time that he was in the rebel States transacted business, collected debts, and purchased the cotton, *held*, on a question whether he had been trading with the enemy, not to have lost his original domicile, and accordingly to have been so trading. *Mitchell* v. *United States*, 350.

ENEMY'S TERRITORY. See *Rebellion, The*, 6, 7.

EQUITABLE LIEN.

1. A mere personal agreement by one setting up a claim on the government, with another person to pay to such person a percentage of whatever sum Congress, through the instrumentality of such person, may appropriate in payment of the claim, does not constitute any lien on the fund to be appropriated; there being no order on the government to pay the percentage out of the fund so appropriated, nor any assignment to the party of such percentage. *Trist* v. *Child*, 441.
2. If such agreement amounted to such an order or assignment as in the case of a debt due by an ordinary person would constitute an equitable lien on the fund, the act of February 26th, 1853, would in the case of a claim on the government prevent its doing so. *Ib.*
3. To create, for future services of a contractor, a lien upon particular funds of his employer, there must be not only the express promise of the employer to apply them in payment of such services, upon which the contractor relies, but there must be some act of appropriation on the part of the employer relinquishing control of the funds, and conferring upon the contractor the right to have them thus applied when the services are rendered. *Dillon* v. *Barnard et al.*, 430.

EQUITY. See *Answer in Chancery; Demurrer; Husband and Wife; Patents*, 5, 6; *Pleading*, 2; *Writ of Assistance.*

1. Courts of, have not jurisdiction to avoid a will or to set aside the pro-

EQUITY (*continued*).

bate thereof on the ground of fraud, mistake, or forgery; this being within the exclusive jurisdiction of the courts of probate. *Case of Broderick's Will*, 503.

2. Nor will they give relief by charging the executor of a will or a legatee with a trust in favor of a third person, alleged to be defrauded by the forged or fraudulent will, where the court of probate could afford relief by refusing probate of the will in whole or in part. *Ib.*
3. The same rule applies to devises of real estate, of which the courts of law have exclusive jurisdiction, except in those States in which they are subjected to probate jurisdiction. *Ib.*
4. Although it may be true that where the courts of probate have not jurisdiction, or where the period for its further exercise has expired and no laches are attributable to the injured party, courts of equity will, without disturbing the operation of the will, interpose to give relief to parties injured by a fraudulent or forged will against those who are in possession of the decedent's estate or its proceeds, *malâ fide*, or without consideration, yet such relief will not be granted to parties who are in laches, as where from ignorance of the testator's death they made no effort to obtain relief until eight or nine years after the probate of his will. *Ib.*
5. Ignorance of a fraud committed does not apply in such a case, especially when it is alleged that the circumstances of the fraud were publicly and generally known at the domicile of the testator shortly after his death. *Ib.*
6. Whilst alterations in the jurisdiction of the State courts cannot affect the equitable jurisdiction of the Circuit Courts of the United States, so long as the equitable rights themselves remain, yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the courts of the State. *Ib.*
7. Any person having a specific lien or vested right in a surplus fund in the registry of the court of admiralty may apply by petition for the protection of his interest under the forty-third admiralty rule. *The Lottawanna*, 558.

ESTOPPEL.

1. Where assignees of a patented invention, grant to A., and afterwards, not regarding that grant, grant, though without warranty, to B., if A. reconvey to them, B. has the right by estoppel against his grantors *Littlefield* v. *Perry*, 205.
2. Where a person having a patent for a certain invention and also an application for a patent for an improvement on it pending, grants the patent and any improvements thereon, and the application is rejected and he then again applies for a patent for an improvement (this last improvement varying in some respects from that for which the application was rejected), he will not—upon the court's being of opinion that the last improvement is, notwithstanding its variations, *in substance*, the same as that which he applied for in his rejected application—be allowed to deny that *that* application was for an improve-

ESTOPPEL (*continued*).

ment. He is estopped, by his grant describing it as an improvement, from doing so. *Littlefield* v. *Perry*, 205.

3. Where one having a title to two lots purchased from the State, but for which he has as yet no patent, makes a deed of them, in form absolute, to another, and then subsequently twice mortgages them, with a third lot, which he owns, to that other, the grantee of that other is not estopped by his grantor's acceptance of the mortgages of the three lots, to assert ownership, under the deed in form absolute, of the two. *Grosholtz* v. *Newman*, 481.

EVIDENCE. See *Answer in Chancery; Practice*, 8, 10, 11; *Trust*, 2, 3.

1. In a suit upon a judgment of a sister State, objections to the form and sufficiency of the evidence offered to prove the record on which the action is brought cannot be sustained, in the face of a certificate from the proper officer that the record is "a true and faithful copy of the record of the proceedings had in the said court in the said cause;" the cause, namely, on which the suit was brought. *Maxwell* v. *Stewart*, 71.
2. The answer to a question put by an insurance company to an applicant for insurance, on a matter going to affect the risk, as written down by the agent of the company, when he takes the application for insurance, and which is signed by the applicant, may be proved by the evidence of persons who were present, not to have been the answer given by the applicant. *Insurance Company* v. *Mahone*, 152.
3. The opinion of a medical witness that a person was not worthy of insurance, in June of one year, is not competent evidence in a suit on a policy issued on the 30th of August of the same year; there being no issue made in the pleadings as to the health of the assured prior to the date of the policy. *Ib.*
4. Under a stipulation that "all original papers filed in the case" (a suit against a life insurance company, on a policy of life insurance), and "which were competent evidence for either side," may be read in evidence, the written opinions of the medical examiner of the company, and of its agent appointed to examine risks, both made at the time of the application for insurance and appended to the proposals for insurance, and both certifying that the risk was a first-class risk, are competent evidence on an issue of fraudulent representation to the company, to show that the company was not deceived. *Ib.*
5. Evidence that the general agent of an insurance company, sent by it to examine into the circumstances connected with the death of a person insured, after so examining, expressed the opinion that it would "be best for the company to accept the situation and pay the amount of the policy," is not competent on a suit by the holders of the policy against the company. *Ib.*
6. Under the act of Congress (Revised Statutes, § 858) enacting that "in courts of the United States no witness shall be excluded in any civil action because he is a party to or interested in the issue to be tried, *Provided*," &c., the parties to a suit (except those named in a proviso to the enactment) are on a footing of equality with other wit-

EVIDENCE (*continued*).

nesses, all are admissible to testify for themselves, and all are compellable to testify for others. *Texas* v. *Chiles*, 488.

7. When a debtor has once given a warrant of attorney to confess a judgment, he knowing, beyond peradventure, that the holder of it could enter judgment, obtain a lien, and get a preference, the fact that entry of judgment on the warrant was a surprise to him, and wholly unexpected by him, is not evidence against an assignee seeking to recover from the person to whom he gave the warrant the proceeds of a sale made on a judgment obtained on the warrant. *Clarion Bank* v. *Jones*, 325.

8. Where a debtor, knowing that his creditor is insolvent, accepts a draft drawn on him by such creditor, the draft being drawn and accepted with the purpose of giving a preference, the transaction is a fraud on the Bankrupt Act, and the assignee in bankruptcy can recover from the acceptor the amount of the draft. *Fox* v. *Gardner*, *Assignee*, 475.

9. On a suit against a county on its bonds issued to a railroad company, a transcript from the books of the county commissioners in which appeared a letter from the president of the road, dated at a certain time, and speaking of the road as being "now *located*," is no evidence of itself that the road was at the time not completed. *Chambers County* v. *Clews*, 317.

EXCEPTION. See *Practice*, 3, 4, 5, 6, 8.

GENERAL ISSUE. See *Pleading*, 5, 6.

GOVERNMENT BONDS AND NOTES.

1. The bonds and treasury notes of the United States payable to bearer at a definite future time are negotiable commercial paper, and their transferability is subject to the commercial law of other paper of that character. *Vermilye & Co.* v. *Adams Express Company*, 138.
2. Where such paper is overdue a purchaser takes subject to the rights of antecedent holders to the same extent as in other paper bought after its maturity. *Ib.*
3. No usage or custom among bankers and brokers dealing in such paper can be proved in contravention of this rule of law. *Ib.*
4. It is their duty when served with notice of the loss of such paper by the rightful owner after maturity to make memoranda or lists, where the notice identifies the paper, to enable them to recall the service of notice. *Ib.*

GRANT IN PRÆSENTI. See *Breach of Condition; Condition Subsequent; Husband and Wife*, 2.

Where a statute contains words of present grant, they must be taken in their natural sense to import an immediate transfer of title, although subsequent proceedings may be required to give precision to that title and attach it to specific tracts. *Schulenberg* v. *Harriman*, 44.

HOGS. See "*Cattle.*"

HOMESTEAD. See *Texas.*

HUSBAND AND WIFE.

1. When husband and wife join in making a deed of property belonging to him, to a third party, in trust for the wife, the fact that such party was not in the least cognizant of what was done, and never heard of nor saw the deed until long afterwards, when he at once refused to accept the trust or in any way to act in it, does not affect the transaction as between the husband and wife. *Adams* v. *Adams,* 186.
2. A deed by husband and wife conveying by formal words, *in præsenti,* a portion of his real property in trust to a third party, for the wife's separate use, signed, sealed, and acknowledged by both parties, all in form and put on record in the appropriate office by the husband, and afterwards spoken of by him to her and to other persons as a provision which he had made for her and her children against accident, here sustained as such trust in her favor, in the face of his answer that he never "delivered" the deed, and that he never meant that it should be absolute except in certain contingencies which did not arise. *Ib.*

ILLINOIS.

1. Under the statutes of Illinois the designation of parties, as partners, in the opening of the declaration, is not a simple *designatio personarum,* and surplusage; but amounts to an averment that they contracted as partners. *Cooper & Co.* v. *Coates & Co.*, 105.
2. A bill of lading for goods sent to a purchaser, and not objected to by him, amounts to a liquidation of an account within the statute of, giving interest on "liquidating accounts between the parties and ascertaining the balance," there being no other transaction between the parties. *Ib.*
3. And a draft drawn for the price of goods sold and delivered is equivalent to a demand of payment, and, there being no proof of credit, and the bill having been received without objection, equally brings the case within the statute of, which gives interest on money due and "withheld by unreasonable and vexatious delay." *Ib.*

IN ODIUM SPOLIATORIS. See *Minnesota.*

INSOLVENCY. See *Bankrupt Act*, 9.

INSURANCE. See *Evidence*, 2–5.

INTEREST. See *Illinois*, 2, 3; *Patents*, 8; *Usury.*

INTERNAL REVENUE. See *Capacity Tax; Rebellion, The*, 1–5.

1. Although the act of Congress of July 13th, 1866, declares that no suit shall be maintained for the recovery of any tax erroneously or illegally assessed, until an appeal first be made to the Commissioner of Internal Revenue and a decision had, yet this does not prevent the defendant in a suit brought by the government from setting up as a defence the erroneous assessment or illegality of the tax. *Clinkenbeard* v. *United States*, 65.
2. The term "capital," employed by a banker in the business of banking, in the one hundred and tenth section of the Revenue Act of July 13th, 1866, does not include moneys borrowed by him from time to

INTERNAL REVENUE (*continued*).

time temporarily in the ordinary course of his business. It applies only to the property or moneys of the banker set apart from other uses and permanently invested in the business. *Bailey, Collector*, v. *Clarke et al.*, 284.

3. The provision in the sixth section of the act of July 20th, 1868, as to notice of the *place* where the distiller is to carry on business is matter of substance; and if he carry on his business at a place—*i. e.*, in a street—not specified in his bond, and not at the place which is, his sureties cannot be held liable for tax on spirits distilled in the latter place. *United States* v. *Boecker et al.*, 652.

4. A railroad 455 miles long, 42 miles of which were in a State other than that by which it was incorporated, held to be "doing business" within the State where the 42 miles were, within the meaning of an act taxing all railroad companies "doing business within the State and upon whose road freight may be transported." *Erie Railway Company* v. *Pennsylvania*, 492.

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

IOWA.

A construction given to the act of Congress passed on the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State" (11 Stat. at Large, 9), and to the act of the legislature of Iowa, passed on the 14th of July, 1856, accepting the grant thus made, and providing for the execution of the trust, and the effect of the acts declared in relation with transactions done or omitted to be done in connection with them. *Railroad Land Company* v. *Courtright*, 311.

JUDICIAL COMITY. See *Bankrupt Act*, 16; *Res Judicata.*

Where a statute of a State places the whole estate, real and personal, of a decedent within the custody of the Probate Court of the county, so that the assets may be fairly distributed among creditors, without distinction as to whether resident or non-resident, a non-resident creditor cannot, because he has obtained a judgment in the Federal court, issue execution and take precedence of other creditors who have no right to sue in the Federal courts; and if he do issue execution and sell lands, the sale is void. *Yonley* v. *Lavender*, 276.

JURISDICTION. See *Admiralty Law of the United States*, 3; *Practice*, 1–9.

1. In a suit brought in a Circuit Court on a judgment in the courts of a sister State, the objection cannot be made *there*, and collaterally, against the jurisdiction of the court rendering the judgment, that the record shows that the cause was tried without the intervention of a jury, and did not show that a jury had been waived as provided by statute. *Maxwell* v. *Stewart*, 72.

I. OF THE SUPREME COURT OF THE UNITED STATES.

(*a*) It HAS jurisdiction, under section 709 of the Revised Statutes, JURISDICTION (*continued*).

2. When, in a case in a State court, a right or immunity is set up under and by virtue of a *judgment* of a court of the United States, and the decision is against such right or immunity. *Dupasseur* v. *Rochereau*, 130.

3. Where the charter of a railroad company (accepted and acted on for many years) contained a stipulation, that the company at the end of every six months should pay to the State one-fifth of the whole amount received for the transportation of passengers, and where on a suit by the State to have the fifth, the company claimed an exemption from the obligation to pay, setting up that this was a contract to pay, and unconstitutional, and the State court decided against the exemption set up. *Railroad Company* v. *Maryland*, 456.

4. Where the record showed that the case was one of the assertion of a lien under a State statute for building a vessel at a town on what the court might perhaps judicially notice was an estuary of the sea, and where the entry of judgment showed also that the court had adjudged "that the contract for building the vessel in question was not a *maritime* contract, and that the remedy given by the *lien* law of the State did not conflict with the Constitution or laws of the United States," the court held that the latter statement, in view of the whole record, was sufficient to give this court jurisdiction. *Edwards* v. *Elliott*, 532.

(*b*) It has NOT jurisdiction under section 709 of the Revised Statutes,

5. In a case where an assignment of error in the highest court of a State to the decision of an inferior State court, is that the latter had decided a particular State statute "valid and constitutional," and where the judgment entry by the latter court is that the statute was not "in any respect repugnant to the Constitution of the United States." This is not specific enough; there being nothing else anywhere in the record to show to which provision of the Constitution of the United States the statute was alleged to be repugnant. *Ib.*

II. OF CIRCUIT COURTS OF THE UNITED STATES. See *Patents*, 4.

LACHES. See *Confidential Relation*, 1; *Equity*, 4, 5.

LAST WILL AND TESTAMENT. See *Equity*.

LEGISLATIVE CONFIRMATION OF CLAIMS TO LAND. See *Patents for Land*, 2.

Their effect in different circumstances stated in connection with the acceptance by the United States of the Northwest Territory, from Virginia, and the acts of Congress concerning French and Canadian titles. *Langdeau* v. *Hanes*, 521.

LEX LOCI CONTRACTUS.

1. The acceptance of a draft dated in one State and drawn by a resident of such State on the resident of another, and by the latter accepted without funds and purely for the accommodation of the former, and then returned to him to be negotiated in the State where he resides, and the proceeds to be used in his business there—he to provide for its

LEX LOCI CONTRACTUS (*continued*).

payment—is, after it has been negotiated and in the hands of a *bonâ fide* holder for value and without notice of equities, to be regarded as a contract made in the State where the draft is dated and drawn, even though by the terms of the acceptance the draft is payable in the State where the acceptors reside. *Tilden* v. *Blair*, 241.

2. It is accordingly to be governed by the law of the former State; and if by the law of that State the holder of it, who had purchased it in a course of business without notice of equities, is entitled to recover the sum he paid for it, though he bought it usuriously, he may recover such sum, though by the law of the State where the draft was accepted and made payable, and where usury made a contract wholly void, he could not. *Ib.*

LIEN. See *Admiralty Law of the United States*, 2; *Equitable Lien*; *Equity*, 7.

LIFE INSURANCE. See *Evidence*, 2–5.

LIQUIDATION OF ACCOUNTS. See *Illinois*, 2.

LOUISIANA. See *Pleading*, 1.

1. By the law of, as held by her courts, it is indispensably necessary, in order to make a valid sale of land under a foreclosure of a mortgage, that in all parishes, except Jefferson and Orleans, there should be some taking possession of it by the sheriff more than a taking possession constructively. *Watson* v. *Bondurant*, 123.
2. Under the arrangement, known in Louisiana as the "pact *de non aliendo*," the mortgagee can proceed to enforce his mortgage directly against the mortgagor, without reference to the vendee of the latter. But the vendee has sufficient interest in the matter to sue to annul the sale, if the forms of law have not been complied with by the mortgagee of his vendor in making the sale. *Ib.*
3. A judgment of homologation under the statute of March 10th, 1834, authorizing purchasers at a sheriff's sale to apply for a monition against all persons interested who can set up any right, title, &c., is conclusive of nothing but that there have been no fatal irregularities of form. *Jackson* v. *Ludeling*, 616.

MANAGERS AND OFFICERS.

Of companies whose capital is contributed in shares stand in a certain sense in the capacity of trustees for the shareholders and creditors of the company. They have no right to do for their own benefit that which injures the interests of these. *Jackson* v. *Ludeling*, 616.

MANDAMUS.

Will not lie from this court to the Circuit Court to compel it to enforce a provisional decree made by it, when by a performance of the condition on the non-performance of which alone the decree was to become absolute, it has not become absolute. The Circuit Court in such case does not lose its power over the decree. *Ex parte Sawyer*, 235.

MARITIME LAW. See *Admiralty Law of the United States*.

MARITIME LIEN. See *Admiralty Law of the United States; Conflict of Jurisdiction.*

1. None exists, by the admiralty law of the United States, in favor of material-men furnishing repairs and supplies to a vessel in her home port. *The Lottawanna*, 559.
2. Nor does one arise on a contract to furnish materials for the purpose of *building* a ship. *Edwards* v. *Elliott*, 532.

MARRIED WOMEN. See *Husband and Wife.*

MARYLAND. See *Replevin Bond.*

MINNESOTA.

Where logs cut from the lands of the State without license have been intermingled with logs cut from other lands, so as not to be distinguishable, the State is entitled, under the law of Minnesota, to replevy an equal amount from the whole mass. *Schulenberg* v. *Harriman*, 45.

MONEY ILLEGALLY EXACTED. See *Internal Revenue*, 1.

MORTGAGE. See *Pleading*, 2.

MUNICIPAL BONDS. See *Pleading*, 5, 6.

NASHVILLE. See *Rebellion, The*, 6.

NATIONAL BANKS.

1. The property of a National bank organized under the act of Congress of June 3d, 1864, attached at the suit of an individual creditor, after the bank has become insolvent, cannot be subjected to sale for the payment of his demand, against the claim for the property by a receiver of the bank subsequently appointed. *National Bank* v. *Colby*, 609.
2. A suit against a National bank to enforce the collection of a demand is abated by a decree of a District Court of the United States dissolving the corporation and forfeiting its rights and franchises, rendered upon an information against the bank filed by the Comptroller of the Currency. *Ib.*

NEBRASKA.

Under the general policy of the government, and the act of July 22d, 1854, to establish the office of Surveyor-General of New Mexico, Kansas, and Nebraska, salines in Nebraska are, as a general thing, and where visible at the time and not hidden under ground, reserved from private entry. *Morton* v. *Nebraska*, 660.

NEGOTIABLE INSTRUMENTS. See *Government Bonds and Notes; Lex Loci Contractus.*

1. The bonds and treasury notes of the United States payable to the bearer at a definite future time are such; and subject to the law of commercial paper. *Vermilye & Co.* v. *Adams Express Co.*, 138.
2. Coupon bonds by which a railway company acknowledges itself to owe the bearer $1000, and promises to pay the amount to such bearer at a future date named, with semi-annual interest, on the surrender of the

NEGOTIABLE INSTRUMENTS (*continued*).

coupons annexed as they severally became due, are negotiable paper and this their negotiable character is not destroyed by the fact that immediately following this acknowledgment of debt and promise of payment, there may be in each of the instruments a further agreement of the company to make what was termed "the scrip preferred stock," attached to the bond (a printed certificate or memorandum attached to the bond by a pin), full-paid stock at any time within ten days after any dividend should have been declared on such preferred stock, upon surrender of the bond and the unmatured interest warrants. *Hotchkiss* v. *National Banks*, 354.

3. The absence of the certificates, such as just mentioned, originally attached to the bonds, is not of itself a circumstance sufficient to put a person disposed to purchase the bonds upon inquiry as to the title of the holder. *Ib.*

4. A purchaser of a negotiable paper though a broker, is not a lender of money on it, and if he purchase honestly and without notice of equities —there being nothing on the face of the draft to awaken suspicion— he can recover the full amount of the paper. *Tilden* v. *Blair*, 241.

NEW YORK. See *Constitutional Law*, 2, 3.

NON EST FACTUM. See *Bond.*

NORTHWEST TERRITORY. See *Legislative Confirmation of Claims to Land; Patents for Land.*

The duty of the United States under the cession made by Virginia of this region, and the acceptance of it by the United States, and by the principles of public law, was to give to the ancient French and Canadian inhabitants who had declared themselves citizens of Virginia, such further assurance as would enable them to enjoy undisturbed possession and to assert their rights judicially to their property, as completely as if their titles were derived from the United States, and the United States did confirm or provide for the confirmation of these existing rights by resolutions and acts of Congress, in 1788, 1804, and 1807. *Langdeau* v. *Hanes*, 521.

NOTICE. See *Bankrupt Act*, 14; *Contractor*, 2; *Government Bonds and Notes; Negotiable Instruments*, 3, 4.

NUL TIEL RECORD. See *Pleading*, 3, 4.

OFFICERS AND MANAGERS.

Of companies whose capital is contributed in shares, stand in some sense in the capacity of trustees for the shareholders and creditors of the company. They have no right to do for their own benefit that which injures the interests of these. *Ludeling* v. *Jackson*, 616.

"PACT DE NON ALIENANDO." See *Louisiana*, 3.

PATENTS. See *Estoppel*, 1–2.

I. General Principles relating to.

1. It is the invention of what is new, and not the arrival at comparative superiority or greater excellence in that which was already known,

PATENTS (*continued*).

which the law protects as exclusive property and which it secures by patent. *Smith* v. *Nichols*, 112.

2. Under the seventh and ninth sections of the Patent Act of 1837, the patentee could file a disclaimer as well after as before the commencement of a suit. It would, however, in case of its being filed after, be the duty of the court to see that the defendant was not injuriously taken by surprise, and to impose such terms as right and justice might require. The question of unreasonable delay would be open for the consideration of the court, and the complainant could recover no costs. *Ib.*

3. That which is called in a grant of patent rights "a reservation"—the grant being recorded and accompanied by "a supplementary agreement not recorded"—regarded in a special case, as the grant back of a mere license from the assignee to the patentee, and the grantee of the patent right, or one claiming under him, allowed as assignee under the patent acts to sue in the Federal courts to prevent an infringement on his rights. *Littlefield* v. *Perry*, 205.

4. Where the construction of a patent is involved, a question "under" the Patent "law" is involved, and the Federal courts have jurisdiction. *Ib.*

5. *Semble.* Where the patentee himself is infringing the rights of his own licensee, and the licensee (not being able to sue the patentee in the usual way in which a licensee sues an infringer, *i. e.*, in the patentee's name) is remediless so far as the Federal courts are concerned, unless he can sue in his own name—he may so sue in equity, which regards substance and not form. The cases of strangers and the patentee himself distinguished in the category of infringement. *Ib.*

6. Where a patentee is himself the infringer of rights under the patent which he has assigned, equity looks upon him as a trustee violating his trust. It will accordingly charge him for all profits improperly made, as well for profits on original patents, the subject of original bill, as for profits made on reissues obtained *pendente lite*, and the subject of a supplemental bill. *Ib.*

7. Where the suit is for infringing patents for certain *improvements* in coal-stoves—coal-stoves generally and various improvements on them being long known—and the decretal order directs an account of all the profits which the defendants have received from the manufacture, use, or sale "of *stoves, &c., embracing the improvements described in* and covered by the said letters-patent and the reissues thereof, or any of them," the order is too broad. The true rule is stated in *Mowry* v. *Whitney* (14 Wallace, 620). *Ib.*

8. As a general thing, interest on profits is not allowable. Profits actually realized are usually the measure of unliquidated damages. Circumstances, however, justify the addition of interest. *Ib.*

II. The Validity or Construction of Particular.

9. That to Nichols (Reissue No. 3014, June 20th, 1868, Division B, for improvements in woven fabrics) void, as not having invention. *Ib.*

PATENTS FOR LAND. See *Estoppel*, 3.

1. Which has been previously reserved for sale, are void. ***Morton* v. *Nebraska***, 660.
2. In the legislation of Congress, they have different operations. These stated; also the effects, in different circumstances, of a legislative confirmation to a claim for land. *Langdeau* v. *Hanes*, 521.

PERILS OF NAVIGATION. See *Collision*, 2, 3.

PIER. See *Riparian Rights*.

PILOTS ON RIVERS.

An acquaintance, kept constantly fresh, familiar, and accurate, with the towns, banks, trees, &c., and the relation of the channel to them, and of the snags, sand-bars, sunken barges, and other dangers of the river as they may arise, is essential to the character of a pilot on the navigable rivers of the interior; this class of pilots being selected, examined, and licensed for their knowledge of the topography of the streams on which they are employed, and not like ocean pilots, chiefly for their knowledge of navigation and of charts, and for their capacity to understand and follow the compass, take reckonings, make observations, &c. *Atlee* v. *Packet Company*, 390.

PLEADING. See *Demurrer; Illinois*, 1; *Patents*, 2.

1. Where a return in a record, purporting to be a sheriff's return to a *fieri facias*, alleges that under a proceeding to foreclose a mortgage the sheriff seized the mortgaged premises, but does not purport to be signed by the sheriff, the return is traversable, and if the law requires an actual seizure (as it does in Louisiana), it may be shown that none was made. *Watson* v. *Bondurant*, 123.
2. Where a complainant in equity wishes to rely on the fact that a deed, in form absolute, was in reality a mortgage, which has been paid, he must allege the fact in his bill. *Grosholtz* v. *Newman*, 481.
3. Where suit is brought on a record which shows that service was not made on the defendant, but which shows also that an appearance was entered for him by an attorney of the court, it is not allowable, under a plea of *nul tiel record* only, to prove that the attorney had no authority to appear. *Hill* v. *Mendenhall*, 453.
4. Presumptively, an attorney of a court of record, who appears for a party, has authority to appear for him; and though the party for whom he has appeared, when sued on a record in which judgment has been entered against him on such attorney's appearance, may prove that the attorney had no authority to appear, yet he can do this only on a special plea, or on such plea as under systems which do not follow the common-law system of pleading, is the equivalent of such plea. *Ib.*
5. Where a declaration in assumpsit upon bonds of a county issued to a railroad company, alleges that the bonds were issued by the county in pursuance of an act of legislature named, and that they were purchased by the plaintiffs for value and before any of them fell due, a plea of the general issue puts in issue the question of authority to issue, *bona fides* and notice. *Chambers County* v. *Clews*, 317.

PLEADING (*continued*).

6. Where, as in Alabama, a statute enacts that the execution of a written instrument cannot be questioned unless the defendant by a sworn plea deny it, a county sued in *assumpsit* with a plea of general issue, on instruments alleged to be its bonds issued to a railroad, cannot object that there was no evidence that the seal on the bonds was the proper seal. *Chambers County* v. *Clews*, 317.

PRACTICE. See *Removal of Causes; Reports; Reversal; Service of Writ; Supersedeas Bond.*

IN THE SUPREME COURT.

(*a*) In cases generally.

1. Where there is no assignment of error, the defendant in error may either move to dismiss the writ, or he may open the record and pray for an affirmance. *Maxwell* v. *Stewart*, 71.
2. Though this court may be satisfied that a plain error has been committed in a judgment below against a defendant in error, and that he ought to have more than the court below adjudged to him, yet if he himself have assigned no error, the error of the court below cannot be corrected here on the writ of the opposite side. *Tilden* v. *Blair*, 241.
3. The doctrine established and the rules laid down in *Flanders* v. *Tweed* (9 Wallace, 430), in *Norris* v. *Jackson* (Ib. 125), and in other cases decided since, as to the proper mode of bringing here for review questions arising in cases where a jury is waived and a cause submitted to the court, under the provisions of the act of March 5th, 1865, reiterated and adhered to. *Insurance Company* v. *Sea*, 158.
4. When in a trial under that act there is nothing in the record to show specifically what was excepted to, but where all is general—as, for example, when at the end of the bill of exceptions and immediately preceding the signature of the judge, are the words "exceptions allowed," and nothing to indicate the application of the exceptions—so that the exception, if it amounts to anything, covers the whole record —this court will not regard the exception. *Ib.*
5. So in a trial under that act, when there have been no exceptions to rulings in the course of the trial and the court has found the facts specially and given judgment on them, the only question which this court can pass upon, is the sufficiency of the facts found to support the judgment. *Jennisons* v. *Leonard*, 302.
6. Unless the bill of exceptions show what revenue stamp was on the bonds, this court will not, on an objection which assumes that one of a certain value was on them, decide whether a sufficient one was or was not there. *Chambers County* v. *Clews*, 317.
7. Where a case is brought here from the highest court of the State under the assumption that it is within section 709 of the Revised Statutes, if the record shows upon its face that a Federal question was not necessarily involved, and does not show that one was raised, this court will not go outside of it—to the opinion or elsewhere—to ascertain whether one was in fact decided. *Moore* v. *Mississippi*, 636.
8. To render an exception available in this court it must affirmatively appear that the ruling excepted to affected or might have affected the

PRACTICE (*continued*).

decision of the case. If the exception is to the refusal of an interrogatory, not objectionable in form, put to a witness on the taking of his deposition, the record must show that the answer related to a material matter involved; or, if no answer was given, the record must show the offer of the party to prove by the witness particular facts, to which the interrogatory related, and that such facts were material. *Railroad Company* v. *Smith*, 256.

9. Where a record brought regularly to this court, on a writ of error and bond which operated as a supersedeas, shows a judgment quite intelligible and possible, and where a return to a certiorari, issued without prejudice, long after the transcript was filed here and not long before the case was heard, showed that that judgment had been set aside by the court that gave it as improvidently entered, and that one with alterations of a very material character had been substituted for it, this court held, "under the circumstances," that the first judgment was the one which it was called on to re-examine. *Edwards* v. *Elliott*, 532.

IN CIRCUIT AND DISTRICT COURTS.

10. Where objections to the reading of a deposition made while a trial is in progress do not go to the testimony of the witness, but relate to defects which might have been obviated by retaking the deposition, the objections will not be sustained; no notice having been given beforehand to opposing counsel that they would be made. *Doane* v. *Glenn*, 33.

11. Such objections, if meant to be insisted on at the trial, should be made and noted when the deposition is a taking or be presented afterwards by a motion to suppress it. Otherwise they will be considered as waived. *Ib.*

12. A decree of the Circuit Court, affirming, on appeal, a decree of the District Court, which had charged a respondent in admiralty with the payment of a sum of money specified, and decreeing that the appellee in the Circuit Court should recover it; and decreeing further, that unless an appeal should be taken from the said decree of the Circuit Court to the Supreme Court within the time limited by law, a summary judgment should be entered therefor against the stipulators on their stipulations given on appeal from the District Court, is, as to the stipulators, a provisional decree only, and one which on appeal to the Supreme Court becomes inoperative. *Ex parte Sawyer*, 235.

13. Accordingly, though such an appeal be taken from the decree of the Circuit Court, and the decree of that court be affirmed, and the cause remanded with instructions to the effect "that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had," &c., the Circuit Court does not lose its power over its previous order as to summary judgment against the stipulators. *Ib.*

PREFERENCE. See *Bankrupt Act.*

PRESUMPTION. See *Trust and Trustee*, 2, 3.

PROBATE, COURTS OF. See *Equity*, 1–6; *Judicial Comity.*

PROFESSIONAL RESPONSIBILITY.

Counsel who, in advance of any decision by this court on the matter, advise in accordance with a decision of the Supreme Court of their State upon the question of the liability of stockholders of corporations of the State, are not chargeable with negligence, even though this court afterwards decide differently from what did the State court. *Marsh* v. *Whitmore*, 178.

PROFITS. See *Patents*, 6–8.

PROVISIONAL DECREE. See *Mandamus; Practice*, 11–12.

1. Distinguished from a decree absolute. *Ex parte Sawyer*, 235.
2. On compliance with the condition which defeats it, it becomes so far inoperative that power rests with the court which made it to act further in the premises, if no final decree has been made. *Ib.*

PUBLIC LANDS. See *Patents for Land; Salines.*

PUBLIC LAW. See *Domicile; Northwest Territory; Rebellion, The.*

The government of the United States clearly has power to permit limited commercial intercourse with an enemy in time of war, and to impose such conditions thereon as it sees fit. *It seems* that the President alone, who is constitutionally invested with the entire charge of hostile operations, may exercise this power; but whether so or not, there is no doubt that, with the concurrent authority of the Congress, he may exercise it according to his discretion. *Hamilton* v. *Dillin*, 73.

PUBLIC POLICY. See *Common Carriers.*

A contract to take charge of a claim before Congress, and prosecute it as an agent and attorney for the claimant (the same amounting to a contract to procure by "lobby services"—that is to say, by personal solicitation by the agent, and others supposed to have personal influence in any way with members of Congress—the passage of a bill providing for the payment of the claim), is void, as against public policy. *Trist* v. *Child*, 441.

RAILROAD BRIDGE. See *Contractor.*

REBELLION, THE. See *Domicile; Public Law.*

1. The act of Congress of July 13th, 1861 (12 Stat. at Large, 257), prohibiting commercial intercourse with the insurrectionary States, but providing that the President might, in his discretion, license and permit it in such articles, for such time, and by such persons, as he might think most conducive to the public interest, to be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury, fully authorized the rules and regulations adopted March 31st and September 11th, 1863, whereby, amongst other things, permission was given to purchase cotton in the insurrectionary States and export the same to other States, upon condition of paying (besides other fees) a fee or bonus of four cents per pound. *Hamilton* v. *Dillon*, 74.
2. The act of July 2d, 1864 (13 Stat. at Large, 375), respecting commer-

REBELLION, THE (*continued*).

cial intercourse with the insurrectionary States recognized and confirmed these regulations. *Hamilton* v. *Dillon*, 74.

3. The charge of four cents per pound required by these regulations, was not a tax, nor was it imposed in the exercise of the taxing power, but in the exercise of the war power of the government. *Ib.*
4. Payments made under this act were voluntary payments, and could not be recovered back. *Ib.*
5. The internal revenue acts of 1862 (12 Stat. at Large, 465) and 1864 (13 Id. 15), in imposing specific duties by way of excise on cotton, were not inconsistent with or repugnant to the charge in question. *Ib.*
6. Nashville, though within the National military lines in 1863 and 1864, was nevertheless hostile territory within the prohibition of commercial intercourse, being within the terms of the President's proclamation on that subject; which proclamation in that regard was not inconsistent with the act of July 13th, 1861, properly construed. *Ib.*
7. The civil war affected the status of the entire territory of the States declared to be in insurrection, except as modified by declaratory acts of Congress or proclamations of the President. *Ib.*

RECEIVER. See *National Bank.*

RECOUPMENT. See *Set-off.*

REMOVAL OF CAUSES.

1. A suit in a State court against several defendants, in which the plaintiff and certain of the defendants are citizens of the same State, and the remaining defendants citizens of other States, cannot be removed to the Circuit Court under the act of March 2d, 1867. *Vannevar* v. *Bryant*, 41.
2. Nor if the plaintiff was a citizen of one State and the defendants all citizens of one other State, could such removal be made where one trial has been had and a motion for a new trial is yet pending and undisposed of. *Ib.*
3. To authorize a removal under the abovementioned act, the action must, at the time of the application for removal, be actually pending for trial. *Ib.*

REPLEVIN. See *Minnesota; Replevin Bond.*

Where, in an action of replevin, the declaration alleges property and right of possession in the plaintiffs, and the answer traverses directly these allegations, under the issue thus formed any evidence is admissible on the part of the defendant which goes to show that the plaintiffs have neither property nor right of possession. Evidence of title in a stranger is admissible. *Schulenberg* v. *Harriman*, 45.

REPLEVIN BOND.

1. Under the statute of Maryland, passed in 1785 (chapter 80, § 14), where, in a replevin suit, the party from whom the goods were taken is reinstated in his possession by executing a bond, and a bond is given for the restoration of the specified goods, and these goods are delivered to the sheriff on the writ *de retorno habendo*, issued on a

REPLEVIN BOND (*continued*).

judgment recovered; this is a satisfaction of the obligation, though the goods were not in like good order as when the bond was executed. *Douglass* v. *Douglass*, *Administrator*, 98.

2. If the obligor has injured them, or culpably suffered them to become injured while they were in his possession, a recovery cannot be had against him on the bond, if the marshal have once taken possession. The marshal's possession is that of the obligee in the bond. Any redress for such injury must be had by a separate proceeding. *Ib.*

REPORTS.

Of adjudged cases in State courts not received to show a state of things different from that presented by the record sent here. ***Edwards*** v. *Elliott*, 532.

RES JUDICATA.

1. When no defence has been made to the liability of a city for its bonds in a State court having general common-law jurisdiction in the place where the city was sued on them, no question can be raised here, on error to a judgment obtained in a Circuit Court of the United States, on the record of the judgment of such State court. *City of Sacramento* v. *Fowle*, 120.

2. When in a State court a right or immunity is set up under and by virtue of a judgment of a court of the United States, and the decision is against the right or immunity set up, so that a case is presented for review by the Supreme Court of the United States under section 709 of the Revised Statutes, the question whether due validity and effect have or have not been accorded to the judgment of the Federal court will depend on the circumstances of the case. If jurisdiction of the case was acquired only by reason of the citizenship of the parties, and the State law alone was administered, then only such validity and effect can be claimed for the judgment as would be due to a judgment of the State courts under like circumstances. *Dupasseur* v. *Rochereau*, 130.

3. Where in a proceeding in a Federal court to foreclose a mortgage, a party in interest is not served nor by any way brought in, and judgment is given notwithstanding, a State court does not fail to give full effect to the judgment of the Federal court, when on a proceeding in the former by the party not served nor brought in, it does not treat the judgment of the Federal court as having concluded *him*. *Ib.*

REVERSAL. See *Practice*, 1–9; *Res Judicata*.

1. Though on appeals in admiralty, involving issues of fact alone, this court will not, except in a clear case, reverse where both the District and the Circuit Court have agreed in their conclusions, yet in a clear case it will reverse even in such circumstances. *The Lady Pike*, 1.

2. In a suit for goods sold, when a witness proves by testimony not competent that they have been delivered, the reception of his testimony is not ground for reversal where competent *primâ facie* evidence, wholly uncontradicted, has also been given of the delivery. *Cooper & Co.* v. *Coates & Co.*, 105.

REVERSAL (*continued*).

3. When in a State court a right or immunity is set up under and by virtue of a judgment of a court of the United States, and the decision is against the right or immunity set up, so that a case for review exists here under section 709 of the Revised Statutes, in such a case, the Supreme Court will examine and inquire whether or not due validity and effect have been accorded to the judgment of the Federal court, and if they have not, and the right or immunity claimed has been thereby lost, it will reverse the judgment of the State court. *Dupasseur* v. *Rochereau*, 130.
4. When a court in a case where a jury is waived, under the act of March 5th, 1865 (Revised Statutes, § 649), and the case is submitted to it without the intervention of a jury, finds *as a fact* that a conveyance was made to certain persons as trustees, and then finds *as a conclusion of law*, that the legal title remained in those trustees, that finding does not bind this court as a finding of fact; and if it was the duty of the trustee to have reconveyed to the grantor (as stated *infra*, title *Trust and Trustee*, 2), this court will reverse the judgment founded on that conclusion. *French* v. *Edwards*, 147.
5. Though there may be plain error in a charge, yet if the record present to this court the whole case, and it be plain from such whole case that if the court had charged rightly the result of the trial would have been the same as it was, this court will not reverse. *Decatur Bank* v. *St. Louis Bank*, 294.
6. Though a court erroneously overrule a demurrer to a special plea specially demurred to, yet if on another plea the whole merits of the case are put in issue, the error in overruling the demurrer is not ground for reversal. *Chambers County* v. *Clews*, 317.

REVISED STATUTES OF THE UNITED STATES.

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

Section 709. See *Jurisdiction*, 2–5; *Practice*, 7.
" 858. See *Evidence*, 6.
" 8707. See *Court of Claims*.

RIPARIAN RIGHTS.

A pier erected in the navigable water of the Mississippi River for the sole use of the riparian owner, as part of a boom for saw-logs, without license or authority of any kind, except such as may arise from his ownership of the adjacent shore, is an unlawful structure, and the owner is liable for the sinking of a barge run against it in the night. *Atlee* v. *Packet Company*, 390.

RIVER PILOTS. See *Pilots on Rivers*.

SALINES.

Are reserved from private entry by the general policy and statutory enactments of the government, and the policy applies in Nebraska as elsewhere. *Morton* v. *Nebraska*, 660.

SERVICE OF WRIT.

Under a statute (such, *ex. gr.*, as the Process Act of California), enacting

SERVICE OF WRIT (*continued*).

that in a suit against a corporation the summons may be served on "the president or other head of the corporation," service is properly made on the president of a board of trustees, by whom it is declared in the city charter that the city shall be "governed," and which president of the board of trustees, the charter further declares, shall be "general executive officer of the city government, head of the police, and general executive head of the city." *City of Sacramento* v. *Fowle*, 119.

SET-OFF. See *Internal Revenue*, 1.

When a price fixed by contract and agreed to be paid for a perfect structure is demanded for imperfect and defective work, the law will allow a party in a suit upon the contract to deduct the difference between that price and the value of the inferior work, and also the amount of any direct damages flowing from existing defects, not exceeding the demand of the plaintiffs. The deduction is allowed to prevent circuity of action. *Railroad Company* v. *Smith et al.*, 255.

SHERIFF'S RETURN. See *Pleading*, 1; *Service of Writ.*

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

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

1789. September 24th. See *Jurisdiction; Supersedeas Bond.*
1851. March 3d. See *California.*
1853. February 26th. See *Equitable Lien.*
1856. May 15th. See *Iowa.*
1856. June 3d. See *Grant in Præsenti.*
1861. July 13th. See *Rebellion, The*, 1.
1864. May 5th. See *Grant in Præsenti.*
1864. July 2d. See *Rebellion, The.*
1865. March 5th. See *Practice*, 3, 4; *Reversal*, 4.
1866. July 13th. See *Internal Revenue*, 1, 2.
1867. March 2d. See *Removal of Causes.*
1868. June 25th. See *Court of Claims.*
1868. July 20th. See *Internal Revenue*, 3.

SUMMONS. See *Service of Writ.*

SUPERSEDEAS BOND.

1. The amount of a supersedeas bond as well as the sufficiency of the security are matters to be determined by the judge below, under the provisions of the twenty-ninth rule. *Jerome* v. *McCarter*, 17.
2. The discretion thus exercised by him will not be interfered with by this court. *Ib.*
3. If, however, after the security has been accepted, the circumstances of the case, or of the parties, or of the sureties upon the bond, have changed, so that security which at the time it was taken was "good and sufficient" does not continue to be so, this court, on proper application, may so adjudge and order as justice may require. *Ib.*

SURETIES. See *Internal Revenue*, 3.

TAX, AS DISTINGUISHED FROM A BONUS OR WAR LEVY. See *Constitutional Law*, 5; *Rebellion, The*, 3.

TAXATION. See *Internal Revenue*.

It being settled law that the language by which a State surrenders its right of taxation, must be clear and unmistakable, a grant by one State to a corporation of another State to exercise a part of its franchise within the limits of the State making the grant, and laying a tax upon it at the time of the grant, does not, of itself, preclude a right of further taxation by the same State. *Erie Railway Company* v. *Pennsylvania*, 492.

TENNESSEE. See *Trust and Trustee.*

TEXAS.

A mere intention to make a lot adjoining one on which a man and wife have their dwelling—the two lots being separated only by a small alley—a part of a homestead, and the subsequent actual building of a kitchen on such adjoining lot, will not make that lot part of the homestead, within the laws of Texas, if before the building of the kitchen, the husband, then owner of the lot, have sold and conveyed it to another person. *Grosholtz* v. *Newman*, 481.

TIMBER.

Whilst timber is standing it constitutes a part of the realty; being severed from the soil its character is changed; it becomes personalty, but its title is not affected; it continues as previously the property of the owner of the land, and can be pursued wherever it is carried. All the remedies are open to the owner which the law affords in other cases of the wrongful removal or conversion of personal property. *Schulenberg* v. *Harriman*, 45.

TIME.

When of the essence of a contract. *Jennisons* v. *Leonard*, 303.

TRADING WITH THE ENEMY. See *Domicile; Rebellion, The.*

TREASURY NOTES. See *Government Bonds and Notes*

TRIAL BY JURY. See *Constitutional Law*, 8.

TRUST AND TRUSTEE. See *Confidential Relation; Husband and Wife; Patents*, 6.

1. Though statute may enact that a trustee to whom property is assigned in trust for any person, "before entering upon the discharge of his duty, shall give bond" for the faithful discharge of his duties, his omission to give such bond does not divest the trustee of a legal estate once regularly conveyed to him. *Gardner* v. *Brown*, 36.

2. Where the owner of land in fee makes a conveyance to a person in trust to convey to others upon certain conditions, and the conditions never arise, so that the trust cannot possibly be executed, a presumption arises in cases where an actual conveyance would not involve a breach of duty in the trustee or a wrong to some third person, that

TRUST AND TRUSTEE (*continued*).

the trustee reconveyed to the owner; this being in ordinary cases his duty. *French* v. *Edwards*, 147.

3. It is not necessary that the presumption should rest upon a basis of proof or a conviction that the conveyance had been in fact executed *Ib.*

4. The fact that a person named as trustee in a deed from husband and wife, to him for the wife's benefit, may have not been in the least cognizant of the trust when it was made, and may, when informed of its having been made, refuse to accept it, does not in the least affect the wife's rights under it as against the husband Equity will still enforce it. *Adams* v. *Adams*, 186.

USAGE.

Bankers or brokers dealing in the negotiable bonds and notes of the United States, cannot prove a custom or usage among themselves, and in contravention of the general rule of law, that where such paper is overdue, purchasers of it take subject to the rights of antecedent holders to the same extent as in other paper bought after its maturity. *Vermilye & Co.* v. *Adams Express Co.*, 138.

USURY.

A purchaser of negotiable paper through a broker, is not a lender of money on it; and if he purchase honestly and without notice of equities, he can recover the full amount of the paper. *Tilden* v. *Blair*, 241.

" VESTED RIGHTS."

Where an act of Congress speaks of "vested rights"—protecting them—it means rights lawfully vested. *Morton* v. *Nebraska*, 660.

VOTING, RIGHT OF.

In a State whose constitution confines the right of voting to "*male* citizens of the United States," women have no right, under the Constitution of the United States or otherwise, to vote. *Minor* v. *Happersett*, 163.

WAIVER OF OBJECTION TO DEPOSITION. See *Practice*, 11.

WAR POWERS. See *Rebellion, The.*

WILL, LAST. See *Equity.*

WRIT OF ASSISTANCE.

Its nature and office declared, and the case stated when a party is and when he is not entitled to its aid. *Terrell* v. *Allison*, 289.

WRIT OF ERROR. See *Jurisdiction*; *Practice*, 1, 2, 9; *Supersedeas Bond.*