INDEX.

ACCORD AND SATISFACTION. See *Action.*

ACTION. See *Bankrupt Act*, 3; *Court of Claims*, 1; *Rebellion*, 1, 2.

A voluntary acceptance, by a claimant on the United States, of a sum found due upon settlement by the treasury officers, on a reference to them, by act of Congress, to "settle" the accounts between the claimant and the government, *provided that certain sums claimed by him did not exceed a certain amount named*, is not, in the absence of words to show that the acceptance was meant as an acceptance in full of all claim, such an acceptance as will prevent the claimant's recovering any further balance due, and which the proviso in italics prevented the treasury officers from allowing. *Piatt's Administrator* v. *United States*, 496.

ADMIRALTY. See *Submission to Award.*

ADMISSION. See *Evidence*, 1, 3–5; *Jurisdiction*, 3.

Every admission upon which a party relies, is to be taken as an entirety of the fact which makes for his side, with the qualifications which limit, modify, or destroy its effect. *Insurance Company* v. *Newton*, 32.

AGENT. See *Implied Contract; Rebellion*, 3.

ANSWER IN CHANCERY. See *Bill of Review*, 2, 3; *Trustee's Sale.*

ARKANSAS. See *Indorser.*

The late civil war was flagrant in, from April, 1861, till April, 1866, and the statutes of limitation did not run during that term as against citizens of other States of the Southern Confederacy. *Ross* v. *Jones*, 576.

ASSESSMENT. See *Internal Revenue*, 3, 4.

ATTACHMENT.

1. An attachment to procure satisfaction of a judgment, laid on property appraised as of a value less than the amount of the judgment, is no satisfaction of it. *Maxwell* v. *Stewart*, 77.
2. Nor is the mere seizure of property, though it be of sufficient value to satisfy the judgment, to be taken as satisfaction on a suit on the judgment, unless the defendant show affirmatively that it was in fact applied to and satisfied the judgment. *Ib.*

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ATTORNEY-AT-LAW, HIS POWER TO BIND CLIENT.

Where a party files a bill to set aside a decree made in a chancery proceeding against him, he is bound by the answer filed in that proceeding by his solicitor, though he did not himself read it, unless he can show mistake or fraud in filing it. *Putnam* v. *Day*, 60.

AWARD. See *Submission to Award.*

BANKRUPT ACT. See *Tax Sales.*

1. When an assignee in bankruptcy voluntarily submits himself to the jurisdiction of a State court, and that court renders judgment against him, it is too late for him to allege that the Federal courts alone have jurisdiction in bankruptcy. *Scott* v. *Kelly*, 57.
2. When the question in a State court is not whether if the bankrupt had title, it would pass to his assignee under the Bankrupt Act, but whether he had title at all, and the State court decides that he had not, no question of which this court can take jurisdiction under section 709 of the Revised Statutes is presented. *Ib.*
3. The assignee in bankruptcy of the estate of an individual partner of a debtor copartnership, cannot maintain a suit to recover back money previously paid to a creditor of the copartnership, upon the ground that the money was paid to such creditor in fraud of the other creditors of the firm, and in fraud of the provisions of the Bankrupt Act. The suit should be by the assignee of the partnership. *Amsinck* v. *Bean*, 395.
4. The mere fact that one partner of a firm composed of two partners, after a stoppage of payment, suffered the other, who had put in two-thirds of the capital, and who was in addition a large creditor of the partnership for money lent, to manage the partnership assets apparently as if they had been his own, proposing to creditors a compromise at seventy cents on the dollar, taking the partnership stock, transacting business in his own name, buying some new stock, selling old and new, and mingling the funds—though keeping separate accounts—does not, of itself, dissolve the partnership, and vest such acting partner with the partnership property in such way as that on a decree of bankruptcy against him *individually*, the partnership assets pass to his assignee in bankruptcy. *Ib.*
5. Under the thirty-ninth section of the Bankrupt Act, enacting that a person may, in certain events, be decreed an involuntary bankrupt, "on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amounts to at least $250," it is not necessary that the *principal* of the debt should amount to $250. If with interest plainly due on it, according to what appears on the face of the petition, it amounts to at least $250, that authorizes the decree. *Sloan* v. *Lewis*, 150.
6. In a case where the decree is thus authorized, in other words, where jurisdiction exists in the District Court of the United States to decree a person a bankrupt, and the person has been decreed a bankrupt accordingly, a party against whom the assignee in bankruptcy brings suit in another court, not appellate, to recover assets of the bank-

BANKRUPT ACT (*continued*).

rupt's estate, cannot show that payments made on account had reduced the petitioning creditor's debt so low as that the bankrupt did not owe as much as the petitioning creditor in his petition alleged. The finding of the District Court of the existence of a debt to the amount of $250, due from the party proceeded against to the petitioning creditor, is conclusive, in a collateral action, of the fact that a debt of that amount was due. *Sloan* v. *Lewis*, 150.

7. Where a person owing money, principal and interest, for some time overdue, but secured by mortgage, accounts with his creditor, and on computation a sum is found as due for the principal and interest added together, any new mortgage given for the whole and on the same property on which the former mortgage was given, is not, upon satisfaction being entered on the old mortgage, to be considered as a new security and so open to attack under the Bankrupt law if made within four months before a decree in bankruptcy against the debtor. If the old security was not a preference, neither will the new one be so. They are to be considered as being for the same debt. *Burnhisel* v. *Firman*, 170.

8. In those States where the landlord has no lien upon the personal property of his tenant on the premises leased, before an actual levy of distress, if proceedings in bankruptcy are begun by other persons against his tenant before such warrant of distress be actually levied, the subsequent assignment in bankruptcy will vest the property in the assignee, to the exclusion of the landlord's right to levy on it. The act prevents any particular creditor asserting any lien but such as existed when the petition in bankruptcy was filed. *Morgan* v. *Campbell*, 381.

BILL OF REVIEW.

1. On a bill of review in equity nothing can be examined but the pleadings, proceedings, and decree, which, in this country, constitute what is called the record in the cause. The proofs cannot be looked into as they can on appeal. *Putnam* v. *Day*, 60

2. On such a bill filed by a defendant to set aside the decree, he is bound by the answer filed on his behalf by his solicitor, though he did not himself read it, unless he can show mistake or fraud in filing it. The answers of other defendants cannot be read in his favor. *Ib.*

3. Where the defendant, by his answer, admits the claim to be due, and prays contribution from other defendants, without setting up any defence to the demand, he cannot, after a decree, and on a bill of review, ask to have the decree set aside on the ground of laches on the part of the complainant in bringing suit. *Ib.*

BILL OF REVIVOR.

New defences, *i. e.*, defences not made in an answer to the original bill, cannot be first set up in an answer to a bill of revivor. Such bill puts in issue nothing but the character of the new party brought in *Fretz* v. *Stover*, 198.

BOTANICAL GARDEN, THE.

At Washington, is a different garden from the garden established by the Department of Agriculture; and the eighteenth section of the act of July 28th, 1866, providing an increase of 20 per cent. in pay for several persons, including "the three superintendents of the public gardens," is confined to the superintendents of the former garden. *United States* v. *Saunders*, 492.

CAPTURED AND ABANDONED PROPERTY See *Court of Claims*, 1; *Executory Contract*, 1, 2; *Rebellion*, 1, 2.

CASES DOUBTED, DENIED, OR OVERRULED.

Railway Company v. *Prescott* (16 Wallace, 603) modified and overruled so far as it asserts the contingent right of pre-emption, in lands granted to the Pacific Railroad Company, to constitute an exemption of those lands from State taxation. *Railway Company* v. *McShane*, 444.

CHANCERY. See *Bill of Review; Bill of Revivor; Conflict of Jurisdiction*, 2; *Demurrable Bill; Injunction; Parties; Practice*, 2–7; *Trustee's Sale.*

CHATTEL MORTGAGE.

The effect of the tenth and twenty-first sections of the statute of frauds in Indiana, which enact "that no assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, when such goods are not delivered to the mortgagee, or assignee, and retained by him, unless such assignment or mortgage shall be duly recorded," and "that the question of fraudulent intent in all cases shall be deemed a question of fact," considered and passed upon. *Robinson* v. *Elliott*, 513.

CLIENT AND SOLICITOR. See *Bill of Review*, 2.

"COLLECTION OF JUDGMENTS."

1. A. having certain judgments claimed by B. against an embarrassed railroad company, in which B. was a large stockholder, the road was sold under a mortgage existing prior to the judgments and was bought by A., who, under the laws of the State where it was, organized a new company, issued new stock, and having got, as an allotment to him, a quantity of such stock, which he sold for more than enough to pay the judgments—entered satisfaction on the judgments—*held*,

1st. That such satisfaction was not in any sense a "collection" of the judgments. *French* v. *Hay*, 231.

2. That if it could be so considered, yet that the sale to A. having been judicially declared void (as it was afterwards declared), and set aside, and the old company thus brought again into existence, and B so reinstated in his old ownership of his stock in it, unimpaired by the sale, he could claim no proceeds of the judgments from A., because, if they were ever his (B.'s), they remained his still, since no one but the owner could enter satisfaction on them. *Ib.*

COMMON CARRIER.

1. On a suit for injury to person, against a railway company carrying passengers, the doctrine of *Stokes* v. *Saltonstall* (13 Peters, 181) affirmed; that if the passenger is in the exercise of that degree of care which may reasonably be expected from a person in his situation, and injury occur to him, this is *primâ facie* evidence of the carrier's liability. *Railroad Company* v. *Pollard*, 341.
2. Whether a passenger in a rail car, standing up in it, when getting into the station-house, at the close of the journey, but before an actual stoppage of the car, is guilty of negligence in the circumstances of the case, is a question of fact for the jury to decide under proper instructions. *Ib.*
3. Though where goods received at one place are to be transported over several distinct lines of road to another and distant one, the liability of the common carrier receiving them (where no special contract is made) is limited to his own line, yet he may subject himself by special contract to liability for them over the whole course of transit. *Railroad Company* v. *Pratt*, 123; *Railroad Company* v. *Androscoggin Mills*, 594.
4. A waybill in which the heading spoke of the goods as goods to be transported *by* the first road, *from* the place of departure *to* the place at the end of the whole line, and at which the owner wished to have them delivered, is evidence of such a contract; as is also a waybill speaking of a "through route;" and of the particular contract as one "for through rate." *Ib.*
5. Where in such a line of roads as that described in the third paragraph above, the common carrier owning the first road undertakes to carry goods over the entire line—part of the goods being put aboard the cars on his line, and a part *to be* put on at its termination and where the next road begins—the fare asked and agreed to be paid being, however, the fare usually asked and paid for the carriage over the whole line, and the contract being for transportation over the whole road and not for carriage to the end of the first line and then for delivering to the carrier owning the next road and for carriage by him—the fact that a part of the goods were put on the cars only where the second road begins, will not exonerate the owner of the first road from liability for their loss. *Railroad Company* v. *Pratt*, 123.
6. Where on such a line of road as that in the said third paragraph described, the second road posts *its* rules in the station-house of the first, a person furnishing goods for transportation "through" is not to be held as of necessity to have notice of them from the fact of such posting, and because he was often in the station-house of the first company where they were posted. Independently of which, his contract being with the first company only, and *it* agreeing to carry for the whole distance, *its* rules are the rules that are to govern the case. *Ib*
7. If a common carrier by rail is negligent and careless in furnishing cars, and so furnish cars unsuitable for the case—even though they be cars for cattle, which cars the owner of the cattle himself sees, and which cattle the owner himself attends—the carrier is not relieved from

COMMON CARRIER (*continued*).

responsibility, even though there have been an agreement that he shall not be responsible. *Railroad Company* v. *Pratt*, 123.

8. An exemption against fire, on the bills of lading of a company owning a road which was but a link in a chain of roads over which it transported goods, *held*, in a case not free from some obscurity as to meaning, to apply to the whole road. *Railroad Company* v. *Androscoggin Mills*, 594.

CONDITIONS. See *Insurance*, 2.

CONFLICT OF JURISDICTION. See *Judicial Comity*.

BETWEEN FEDERAL AND STATE COURTS.

1. When an assignee in bankruptcy voluntarily submits himself to the jurisdiction of a State court, and that court renders judgment against him, it is too late for him to allege that the Federal courts alone have jurisdiction in bankruptcy. *Scott* v. *Kelly*, 57.
2. When, in a case which is properly removed from a State court, under one of the acts of Congress relating to removals, into the Circuit Court of the United States, a complainant, getting a decree in the State court and sending a transcript of it into another State, sues the defendant on it there, the Circuit Court into which the case is removed may enjoin the complainant from proceeding in any such or other distant court until *it* hears the case; and if, after hearing, it annuls the decree in the State court, and dismisses, as wanting equity, the bill on which the decree was made, it may make the injunction perpetual. *French, Trustee*, v. *Hay*, 250.
3. Whether a court established during the rebellion by the proclamation of a general commanding the army of the United States, in a department and State then lately in rebellion, and now held only by military occupation—the jurisdiction of the court being nowhere clearly defined in the order constituting it—acted, in fact, within its jurisdiction in a case adjudged by it, where one bank of the State was claiming from another bank of the same State a large sum of money, is not a question for this court to determine, but a question exclusively for the State tribunals. *Mechanics' and Traders' Bank* v. *Union Bank*, 276.

CONSIDERATION.

A consideration is of the essence of any binding agreement, that is to say of any contract. An agreement without a consideration is not a contract, but is only a nude pact; the promise of a gratuity spontaneously made, and which may be kept, changed, or recalled at pleasure; and this rule applies to agreements made by States as well as to those made by persons. *Tucker* v. *Ferguson*, 527; and see *Bailey* v. *Magwire*, 215.

CONSTRUCTION, RULES OF. See *Judicial Comity*.

I. AS APPLIED TO STATUTES OR CONSTITUTIONS.

1. A provision in a constitution of a State, that no law enacted by the legislature of a State shall relate to more than one subject, and that shall be expressed in its title, is not violated by an act having va-

CONSTRUCTION, RULES OF (*continued*).
rious details, provided they all relate to one general subject. *Woodson* v. *Murdock*, 351.

2. Statutes are to be interpreted not only by their exact words, but also by the apparent general purpose of the statutes. If, *ex gr.*, a statute in its general purpose have plain reference to a *class* of persons, it will not include a person, a single individual merely, in a distinct class, though the mere words might include him. *United States* v. *Saunders*, 492.

II. AS APPLIED TO CONTRACTS.

3. Although since the legal tender acts, an undertaking to pay in gold may be *implied*, and be as obligatory as if made in express words, yet the implication must be found in the language of the contract, and cannot be gathered from the mere *expectations* of the parties. *Maryland* v. *Railroad Company*, 105.

4. A reference to what are called "surrounding circumstances," is allowed for the purpose of ascertaining the subject-matter of a contract, or for an explanation of the terms used, not for the purpose of adding a new and distinct undertaking. *Ib.*

5. An implication that a railroad company having an unfinished road in which the State was largely interested should pay gold instead of currency to the State which has lent to the company sterling bonds of the State, of which the interest was payable abroad, and, of course, in coin, cannot be made from the fact that unless the contract between the company and the State be so interpreted, the State has not exacted from the company all that was necessary to its own complete indemnification; this being especially true in the case of a contract, where, in other parts, a complete indemnification was specifically and carefully provided for, and in one where at the time it was made there was no difference, existing or anticipated, in the value of currency and coin, and the difference having been brought about by events supervening long afterwards. *Ib.*

CONTEMPT OF COURT.
Where the purpose of a suit (a proceeding in equity) is to establish the complainant's right to certain property (negotiable bonds), and to free it from embarrassment by *any* claim or title to it on the part of the defendant, and a decree, in which nothing further remains to be executed, has been made in favor of the plaintiff, perpetually enjoining the defendant from setting up *any* such claim or title, the defendant commits a contempt of court if he subsequently assert ownership to the property, even though he now assert a different title or source of title from the one imputed to him in the suit where the decree was made, and defended by him. *In re Chiles*, 157.

CONTINUING DEBT. See *Bankrupt Act*, 7.

CONTRACT. See *Construction, Rules of*, 3–5; *Evidence*, 7; *Executory Contract; Implied Contract.*
A consideration is of the essence of any binding agreement, or in other

CONTRACT (*continued*).

words, of any contract. An agreement without a consideration is not a contract, but is only a nude pact; the promise of a gratuity spontaneously made, and which may be kept, changed, or recalled at pleasure; and this rule applies to agreements made by States as well as to those made by persons. *Tucker* v. *Ferguson*, 527; and see *Bailey* v. *Magwire*, 215.

"COSTS OF CONVEYING."

The meaning of this expression, used in an act of Congress of July 2d, 1864, in reference to certain public lands, not clear; there being no statute which this court knew of authorizing a charge for issuing a patent. *Hunnewell* v. *Cass County*, 465.

"COTTON NOTES."

Certain notes, thus called, issued by the State of Mississippi, A.D. 1861, declared void, as in aid of the rebellion. *Taylor* v. *Thomas*, 479.

COUNTER CLAIM. See *Court of Claims.*

COURT AND JURY. See *Chattel Mortgages.*

There exists no such rule as that if there is a scintilla of evidence in a case tried before a jury, the case must be submitted to the jury. The rule is, that where the court would decide for the defendant on a demurrer to all the evidence—in other words, if, to the judicial mind, the evidence, tested by the law of the issue and the rules of evidence, is not sufficient to justify a jury fairly and reasonably in finding a verdict for the plaintiff—the court should so tell the jury; or, to put the matter in yet different words, if the court can see that if a verdict for the plaintiff should be rendered, it ought to be set aside as being unwarranted by the testimony, such instruction should be given in advance of the verdict. *Pleasants* v. *Fant*, 116.

COURT OF CLAIMS. See *Rebellion*, 1, 2.

1. Under the act of March 12th, 1863, relating to captured and abandoned property, and which enacted that any person claiming to be the owner of such property may, "at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims, and, on proof . . . that he has never given any aid or comfort to the present rebellion," receive the proceeds of the sale of such property, a person who did give aid and comfort to the rebellion, and who has not been pardoned until after two years from the suppression of the rebellion, cannot, on then preferring his petition, obtain the benefit of the act, even though in cases generally the limitation of actions in the said court is one of six years. The question is not one of limitation but of jurisdiction. And the inability of an unpardoned rebel to sue in the Court of Claims does not control the operation of the statute. *Haycraft* v. *United States*, 81.
2. When the government means to set up any counter claim to the claim of a party suing in the Court of Claims, it must be set up in the pleadings or on motion for new trial. *United States* v. *O'Grady*, 641.

CREDITOR AND DEBTOR. See *Rebellion*, 3.

CURATIVE ACT. See *Special Legislation.*

DEMURRABLE BILL. See *Practice*, 2.

A., by executory contract, offered to sell to B. a large amount ($31,000) of judgments which he, B., held against a railroad company, if B. would pay him $5000. B., regarding the contract as one executed, and as transferring the judgments to him *in præsenti*, filed a bill against A., alleging that A. had collected the judgments, and claiming the proceeds less the $5000 and interest. *Held* that the bill was demurrable, it not being one of discovery and the complainant having complete remedy at law. *French* v. *Hay*, 231.

DEPARTMENT OF AGRICULTURE. See *Botanical Garden.*

DEPOSITION. See *Evidence*, 6.

DISSOLUTION OF PARTNERSHIP. See *Bankrupt Act*, 4.

DIVIDEND. See *Internal Revenue*, 1, 2; *Preferred Stock.*

"DIVIDEND IN SCRIP."

The nature of this sort of dividend in connection with the internal revenue laws taxing it. *Bailey* v. *Railroad Company*, 604.

EQUITY. See *Bill of Review; Bill of Revivor; Conflict of Jurisdiction*, 2; *Demurrable Bill; Injunction; Parties; Practice*, 2–7; *Trustee's Sale.*

EVIDENCE. See *Common Carrier*, 4; *Insurance*, 1; *Louisiana Purchase*, 2; *Presumption.*

1. Every admission upon which a party relies is to be taken as an entirety of the fact which makes for his side, with the qualifications which limit, modify, or destroy its effect. *Insurance Company* v. *Newton*, 32.
2. The preliminary proofs presented to an insurance company, in compliance with the condition of its policy of insurance, are admissible as *primâ facie* evidence of the facts stated therein, against the insured and on behalf of the company. *Ib.*
3. Where the question before the jury is whether F. (the defendant) was a partner with K., so as to make him liable for the debts of the firm, K.'s declarations to third persons are not admissible in favor of the plaintiffs until they have established a *primâ facie* case of partnership by other evidence. *Pleasants* v. *Fant*, 116
4. The admission of the defendant and the deposition of K. to the effect that the defendant had procured for K. a loan of money to be used in a purchase of cotton, and that K. had voluntarily promised to give the defendant a part of the profits, if any were made, for his assistance in procuring the loan, when no sum or proportion of profits was named, does not raise such a presumption of partnership. *Ib.*
5. Nor is such evidence sufficient to require the court to submit the question of partnership to a jury; and its instruction to find for the defendant was right. *Ib.*

EVIDENCE (*continued*).

6. In courts of the United States, under section 858 of the Revised Statutes, which enacts (with a proviso excepting to a certain extent suits by or against executors, administrators, or guardians) that in those courts no witness shall be excluded in any civil action because he is a party to or interested in the issue tried, parties to a civil suit (the suit not being one of the sort excepted by or against executors or guardians) may testify by deposition as well as orally, there being, under the act of Congress, no difference between them and other persons having no interest in the suit. *Railroad Company* v. *Pollard*, 341.
7. Where a written contract in plain terms is conditional, and declares that IF, after a certain time, A. shall be in person or have an attorney in person in a place named, *then* the party of the other side (the party binding himself), shall have a right to tender him a certain sort of money (depreciated money) in payment of a debt, parol evidence is inadmissible to show that it was part of the contract that the person should be in the place named after the date named. *Gavinzel* v. *Crump*, 308.

EXECUTORY CONTRACT.

1. On the 31st of July, 1863, during the late rebellion, E. and C., owning certain crops of cotton in Wilkinson County, Mississippi, executed a paper thus: "We *have*, this 31st of July, 1863, *sold* unto Mr. L. our crops of cotton, now lying in the county aforesaid, numbering about 2100 bales, at the price of ten cents per pound, currency, the said cotton to be delivered at the landing of Fort Adams, and to be paid for when weighed; Mr. L. agreeing to furnish at his cost the bagging, rope, and twine necessary to bale the cotton unginned, *and we do acknowledge to have received, in order to confirm this contract, the sum of thirty dollars.* This cotton will be received and shipped by the house of D. & Co., New Orleans, and *from this date is at the risk of Mr. L.* This cotton is said to have weighed an average of 500 lbs. when baled." *Held* (under some circumstances), that the contract was executory only and had not divested E. and C. of their property in the cotton; no money but the thirty dollars having been paid, and nothing else done in execution of the contract; and that in a suit for the proceeds of it under the Captured and Abandoned Property Act, which gives to the "owner" a right to recover, under certain circumstances, property captured or abandoned during the late civil war, they alone could sue. *The Elgee Cotton Cases*, 180.
2. The same E. and C., subsequently to the above-quoted contract with L., made another contract with N. (he not having notice of the first contract), by which E. and C. contracted for the sale to N. "for so much of the 2100 bales as N. should get out in safety to a market, for the price of £15 per bale, to be paid at Liverpool. The risk of the cotton to be on the vendors." *Held*, equally, that no property passed by the contract; no cotton ever having been got out. *Held*, further, that this was not altered by a letter in these words from the owners of the cotton: "It having been agreed on between you and myself that I sell to you all the cotton of E. and C. now baled and under

EXECUTORY CONTRACT (*continued*).

shed, for the price of £15 sterling per bale, payable in Liverpool, you will cause the same to be placed to my credit with J. A. J. & Co., of Liverpool." *The Elgee Cotton Cases*, 180.

3. In 1859 A. lent to B., who was largely interested in an embarrassed railroad, $5000 to buy certain judgments against the road, and B. having bought, in 1859 and the early part of 1860, judgments to the amount of $31,000, assigned the whole of them to A., absolutely. Subsequently, that is to say in August, 1860, A. made a transfer (so-called) of them to B., "upon B.'s payment of $5000, with interest from this date," and gave to B. a power of attorney of the same date, authorizing him "for me and in my name" to dispose of them as he might see proper. *Held*, that the so-called transfer was executory, amounting only to an offer that if B. would pay the $5000, B. should become owner of the judgments. *French* v. *Hay*, 231.

FEDERAL QUESTION. See *Jurisdiction*, 4, 5

FEME COVERT. See *Married Woman*.

FLINT AND PÈRE MARQUETTE RAILROAD COMPANY. See "*Sale*;" *Taxation*, 1-4.

FRAUD. See *Chattel Mortgages; Omnia contra proferentem prœsumuntur; Trustee's Sale*.

Not a good plea to an action in one State, upon a judgment in another. *Maxwell* v. *Stewart*, 77.

ILLINOIS.

Under the Landlord and Tenant Act of Illinois, a landlord has no lien upon the personal property of his tenant prior to an actual levy of distress, and consequently if proceedings of bankruptcy are begun by other persons against his tenant before such warrant of distress be actually levied, the subsequent assignment in bankruptcy will vest the personal property of the tenant in the assignee, to the exclusion of the landlord's right to levy on it. *Morgan* v. *Campbell*, 381.

IMPLIED CONTRACT. See *Construction, Rules of*, 3-5.

In November, 1863, during the rebellion, Confederate notes being then so much depressed in market value that in Richmond, Virginia, $3260 of them were worth but $204 in gold coin, G., a Swiss, at the time resident in Richmond, but desirous to go to Europe—to escape to which through the rebel lines was then extremely difficult—agreed to lend C., an American, resident in Richmond, the said sum of $3260 in the Confederate notes above mentioned, and C. borrowed the said sum in such notes. C. executed his bond to G., by which it was agreed that the money was not to become due and payable until the civil war should be ended (during which no interest should be chargeable), nor become payable then unless demand was made for it; and, moreover, that if C. was not at that time prepared to pay the said sum, he should have a right to retain it for two years longer, when it should become absolutely payable. The bond continued:

IMPLIED CONTRACT (*continued*).

"And upon this further condition, that at any time after the 1st day of April, 1864, and during the continuance of said war, IF the said G., or any attorney in fact duly authorized by him to receive payment of said sum, shall be present *in person* in the city of Richmond, I shall have the right (if I elect to do so) to tender said sum, without interest thereon, to said G. *in person*, or to his said attorney in fact *in person*, in said city, in current bankable funds; and upon such tender being made the said G. or his attorney in fact shall be bound to receive the same in full payment and satisfaction of this obligation, and thereupon the said obligation shall be surrendered and cancelled. But said tender is not to be made except to said G. or his said attorney in fact in person, in the city aforesaid."

G. went to Europe after the execution of the bond, and did not return till after the war was ended, that is to say, not until June, 1865. On suit by him then for the $3260 in lawful money of the United States, *held*, that there was nothing in this above-quoted paragraph of the bond which impliedly obliged G. either to be himself in Richmond at any time after the 1st day of April, 1864, and during the continuance of the war, or to have an attorney in fact there to receive the money due on the bond. *Gavinzel* v. *Crump*, 308.

IMPLIED REPEAL OF STATUTES. See *Judicial Comity*, 2.

A statute making it unlawful for any company for internal improvement to mortgage its works so as to defeat, postpone, endanger, or delay contractors, laborers, or workmen employed in its construction, and in favor of whom the statute makes a lien, is not repealed as to a particular company, simply by a subsequent statute authorizing that company to borrow money and to pledge its income and property to secure the payment. *Fox* v. *Seal*, 424.

INDIANA.

The tenth and twenty-first sections of its statute of frauds, relating to chattel mortgages and the effect of recording them, considered and declared. *Robinson* v. *Elliott*, 513.

INDORSER.

Of a promissory note, though an indorser for accommodation only, is not a "security" within the meaning of that word as used in a statute of Arkansas, which declares that any person bound as "security" for another on any bond, bill, or note, may require the person having the right to sue on the instrument, to proceed against the principal under penalty of the surety's being exonerated. *Ross* v. *Jones*, 576.

INJUNCTION. See *Conflict of Jurisdiction*, 2.

The court will not, on any ground, issue an injunction to stay taxation by State authorities of land granted by the United States to a State corporation for the purpose of public improvements, when it is in doubt as to the meaning of certain statutes, Federal and State, on which the prayer for relief by injunction is prayed. *Hunnewell* v. *Cass County*, 465.

INSURANCE. *Evidence*, 1.

1. The preliminary proofs presented to an insurance company, in compliance with the condition of its policy of insurance, are admissible as *primâ facie* evidence of the facts stated therein, against the insured and on behalf of the company. *Insurance Company* v. *Newton*, 32.
2. Where a policy of life insurance contains the following conditions, to wit: "This policy is issued by the company, and accepted by the assured, on the following *express conditions and agreements, which are a part of the contract of insurance. First.* That the statements and declaration made in the application for said policy, and on the faith of which it is issued, *are in all respects true*, and without the suppression of any fact relating to the health or circumstances of the insured *affecting the interests of the company.*" And the further condition: "That in case of the violation of the foregoing condition, . . . this policy shall become *null and void*"—any answer untrue in fact, and known by the applicant for insurance to be so, avoids the policy, irrespective of the question of the materiality of the answer given, to the risk. *Jeffries* v. *Life Insurance Company*, 47.

INTEREST.

1. Where a party agrees, by note, to pay a certain sum at the expiration of a year, with interest on it at a rate named, the rate being higher than the customary one of the State where he lives, and does not pay the note at the expiration of the year, it bears interest not at the old rate but at the customary or statute rate. *Burnhisel* v. *Firman*, 170.
2. If, however, the parties calculate interest and make a settlement upon the basis of the old rate, and the debtor gives new notes and a mortgage for the whole on that basis, the notes and mortgage are, independently of the Bankrupt Act, and of any statute making such securities void *in toto* as usurious, valid securities for the amount which would be due on a calculation properly made. They are bad only for the excess above proper interest. *Ib.*

INTERESTED PARTY. See *Evidence*, 6.

INTERNAL REVENUE.

1. Where depositors in a savings bank do not receive a fixed rate of interest independently of what the bank itself may make or lose in lending their money, but receive a share of such profits as the bank, by lending their money, may, after deducting expenses, &c., find that it has made, such share of profits is a "dividend" within the meaning of the Internal Revenue Act of 1864, as amended by the act of 1866, and not "interest." *Cary, Collector*, v. *The Savings Union*, 38
2. "Dividend in scrip." The nature of this sort of dividend explained and settled in connection with the internal revenue laws, laying a tax of 5 per cent. upon it. *Bailey* v. *Railroad Company*, 604.
3. The provisions of the fourteenth section of the Internal Revenue Act of 1864, as amended by the act of 1866, which make it *lawful* for the assessor to do various things in order to get at the taxable property

INTERNAL REVENUE (*continued*).

of a party whom he is seeking to assess, and who will not make proper returns of his estate, do not make it *obligatory* on him to do so. *Bailey* v. *Railroad Company*, 604.

4. Irregularity in giving the notice of time and place of appeal, &c., required by the nineteenth section of the same act, is not important where the party subsequently takes an appeal in fact. *Ib.*

INTERPRETATION OF CONTRACTS AND STATUTES. See *Construction*, *Rules of.*

JUDGMENT, VALIDITY OF.

1. To make a record of a judgment valid upon its face, it is only necessary for it to appear that the court had jurisdiction of the subject-matter of the action and of the parties, and that a judgment had in fact been rendered. *Maxwell* v. *Stewart*, 77.
2. A trial by the court without the waiver of a jury is at most only error. A judgment after such a trial is not necessarily void. Mere errors cannot be set up as a defence to an action brought upon it. *Ib.*
3. When the record of a case, a judgment in which is sued upon, shows that an attachment was issued in it and laid on property appraised at a less sum than the judgment was given for, a demurrer which makes, in virtue of the attachment, a defence of payment and satisfaction, is not good. *Ib.*
4. A seizure of personal property even to the full value of the sum claimed, under an order of attachment issued during the pendency of an action, is not necessarily a satisfaction of the judgment when afterwards obtained. The defendant must show affirmatively that it was applied to and satisfied the judgment. *Ib.*
5. A court will acquire jurisdiction of the person in a suit originally commenced by an attachment *in rem*, if the party against whom the claim is set up voluntarily appears and submits himself to the jurisdiction, demurs, pleads, and goes to trial on issues made. *Ib.*
6. Fraud cannot be pleaded to an action in one State upon a judgment in another. *Ib.*
7. Nor can *nil debet. Ib.*
8. Where a decree in bankruptcy has been made by a court having jurisdiction in bankruptcy, a party sued by the assignee in bankruptcy as having assets of the estate, cannot show that the debt on which the party was decreed a bankrupt had been so far reduced by credits, as that it was not large enough to give jurisdiction to the court to consider the petition in bankruptcy. *Sloan* v. *Lewis*, 150.

JUDICIAL COMITY.

1. In a suit on a replevin bond given to the sheriff, where the question whether the proper party to sue is the sheriff or the party for whose benefit the bond was given depends upon the statutes or code of practice of a particular State or Territory, this court will not reverse the decision of the Supreme Court of that State or Territory on the question; that being a question on the construction of their own statutes or code. *Sweeney* v. *Lomme*, 208.

JUDICIAL COMITY (*continued*).

2. Whether or not an act of a State prescribing a particular mode of taxation, has been impliedly repealed by a general revenue act of the same State confessedly not in terms repealing it, is a matter peculiarly within the province of the highest courts of the State, whose acts are the subjects of the question, to decide. And when such courts have decided the question, their decision is controlling. *Bailey* v. *Magwire*, 215.

JURISDICTION. See *Court of Claims*, 1; *Judgment*, *Validity of*, 5, 8.

1. A court will acquire jurisdiction of the person in a suit originally begun *in rem*, if the party against whom the claim is made voluntarily appears and submits himself to the jurisdiction, demurs, pleads, and goes to trial on the issues made. *Maxwell* v. *Stewart*, 77.
2. Whether a court established during the rebellion, by the proclamation of a general commanding the army of the United States, and occupying a place lately in rebellion and now held by military occupation, was in fact acting within its jurisdiction in a civil controversy between two banks of the place, about a sum of money, does not present a question for this court on error; the order establishing the court not having with any clearness defined its jurisdiction, whether civil or criminal, and the courts of the State having decided in the particular case that it was acting within its jurisdiction. *Mechanics' and Traders' Bank* v. *Union Bank*, 276.
3. Although consent of the parties to a suit cannot give jurisdiction to the courts of the United States, the parties may admit the existence of facts which show jurisdiction, and the facts being true the courts may act judicially upon such an admission. *Railway Company* v. *Ramsey*, 322.

Of the Supreme Court of the United States.

(*a*) It HAS jurisdiction under section 709 of the Revised Statutes—

4. When a plaintiff in error alleges that a court which has decided a case against him was constituted in violation of the Federal Constitution, and the Supreme Court of the State where the court sat has decided that it was not so constituted. *Mechanics' and Traders' Bank* v. *Union Bank*, 276.

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

5. When the question in a State court is not whether, if the bankrupt had title, it would pass to his assignee under the Bankrupt Act, but whether he had title at all, and the State court decides that he had not. *Scott* v. *Kelly*, 57.

JURY. See *Court and Jury*; *Judgment*, *Validity of*, 2.

LACHES. See *Removal of Causes*.

LANDLORD AND TENANT. See *Bankrupt Act*, 8.

LEGAL TENDER. See *Construction*, *Rules of*, 3–5; *Implied Contract*; *Rebellion*, 3.

LEGISLATIVE POWER.

One legislature cannot in matters of ordinary and general legislation tie

LEGISLATIVE POWER (*continued*).

up the power of subsequent ones to act on the same subject; *ex. gr.*, in a State where, though a *statute* may require that no bonds be issued by counties to make roads unless the voters have approved the expenditure, there is nothing in the State *constitution* which forbids the legislature from conferring on counties the authority to borrow money for the purpose named without such approval; the legislature can confer on counties the power to borrow money to pay debts already contracted for this purpose without such consent, and bonds issued accordingly will be valid. *Ritchie* v. *Franklin County*, 67.

LIEN. See *Pennsylvania*, 1.

LIFE INSURANCE. See *Insurance.*

LIMITATIONS, STATUTE OF. See *Court of Claims*, 1; *Statute of Limitations.*

LOUISIANA PURCHASE.

1. Under proceedings before the boards of commissioners appointed under the act of March 2d, 1805, for ascertaining and adjusting the claims to land embraced in the Louisiana purchase, and the several subsequent acts on the same subject, where a claimant presents not only the evidence of original concession, but that also which purports to be the evidences of the title to himself, the confirmation, though made to the original grantee (or "concessionee," as he is sometimes styled), "and *his* legal representatives," operates as a grant to the claimant, although the name of the claimant be omitted in the form of confirmation. *Connoyer* v. *Schaeffer*, 254.

2. In a suit for recovery of land, under the act of Congress of July 4th, 1836, the plaintiff offered in evidence a written request to the recorder of lands in and for the Territory of Missouri, to record all registered concessions found in certain books named, then in his office. But it did not appear that those under whom the plaintiff claimed had any agency in giving the notice, nor that any signer of the paper was interested in the lands in question, nor that any of them represented those who were or professed to be so interested. The notice named no claimant, and described no land, and did not intimate that any one was in fact claiming under the concessions referred to. *Held*, that the paper was not such notice of the claim as the act contemplated. *Ib.*

MARRIED WOMAN.

A married woman may charge her separate property for the payment of her husband's debt, by any instrument in writing in which she in terms plainly shows her purpose so to charge it; she describing the property specifically and executing the instrument of charge in the manner required by law. *Stephen* v. *Beall*, 329.

MISSOURI. See *Legislative Power*; *Retrospective Legislation*; *Special Legislation.*

1. The provision of the constitution of Missouri which ordains that "the General Assembly shall have no power, for any purpose whatever, to release the lien held by the State upon any railroad," was not meant,

MISSOURI (*continued*).

in case of a failure by the railroad companies, to prevent the State from making a compromise with any railroad company of any debt due to it or to become due; and on the compromise being effected to release the lien. *Woodson* v. *Murdock*, 351.

2. The provision in the same constitution, "that no law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in its title," is not violated by any act having various details, provided they all relate to one general subject. *Ib.*

NEGLIGENCE. See *Common Carrier*, 1, 2, 7.

NEW ORLEANS. See *Rebellion*, 4–6.

NEW SECURITY. See *Bankrupt Act*, 7.

NIL DEBET.

Not a good plea to an action in one State upon a judgment in another. *Maxwell* v. *Stewart*, 77.

NOTICE. See *Common Carrier*, 6.

NUDE PACT,

That is to say, an agreement without consideration, is not a contract, and is of no obligation on the party making it, whether such party be a person or a State. *Tucker* v. *Ferguson*, 527; and see *Bailey* v. *Magwire*, 215.

OMNIA CONTRA PROFERENTEM PRÆSUMUNTUR.

Complainants, *cestui que trusts* under a deed, who alleged a fraudulent sale by their trustee and a purchase for himself, through a nominal third party, and who relied on the trustee's possession of the trust property after an alleged sale of it, as evidence of it, not stating *when* the trustee came into possession—that is to say, how soon after his former sale—the court assumed the time to be thirteen years; this term having elapsed between the date of the sale by the trustee and the filing of the bill (or cross-bill, rather) to set it aside; the court acting on the presumption that the complainant stated the case as favorably as he could for himself, and would have mentioned the fact that the trustee had been in possession long before the bill was filed, if he had really been so. *Stephen* v. *Beall*, 330.

OWNER.

A person who has been decreed a bankrupt, considered such, within statutes authorizing a redemption by "the owner of lands" sold for taxes. *Hampton* v. *Rouse*, 263.

PARTIES.

1. Where one of four joint tenants makes a deed of trust (a mortgage) of land conveyed to the four—the deed of trust purporting to convey the *whole* estate—it is not necessary, on a bill filed to have the land sold under the deed of trust (in other words, to foreclose the mortgage), to make the three who do not convey parties defendant to the bill. *Stephen* v. *Beall*, 329.
2. When a bill claiming real estate alleges that certain persons named,

PARTIES (*continued*).

being several in number, *all* claim through a deed which the bill alleges was void for reasons stated, no demurrer lies to the bill on the ground that the defendants were improperly joined, inasmuch as they had separate and distinct interests which could not be joined in one suit. *House* v. *Mullen*, 42.

PARTNERSHIP, DISSOLUTION OF. See *Bankrupt Act*, 4; *Evidence*, 3–5.

PASSENGERS BY RAIL CARS. See *Common Carrier*, 1, 2, 7.

PATENTS.

I. GENERAL PRINCIPLES RELATING TO.

1. A reissue cannot be granted of a patent which describes and claims a composite device (as a tunnel) composed of elements (such as sides, top, and bottom), so as to claim as distinct inventions the several components of such integral devices, such as the side, the top, or the bottom of the tunnel. *Gill* v. *Wells*, 1.

Where a patentee in his *original* patent claimed a tunnel composed of four parts, top, two sides, and bottom, and subsequently discovered that the top of said tunnel or sides of said tunnel alone would serve a useful purpose, he could not surrender and obtain a *valid* reissue for such use of the top, the sides, or the bottom *alone*. This would be an invention different from the original one and made subsequently to the original patent. The description of such new mode of operation as would be involved in the use of only a portion of the elements composing the tunnel, would constitute "*new matter*," which is forbidden by the Patent Act of 1870. *Ib.*

2. The rule laid down in *Gould* v. *Reese* (15 Wallace, 394), restated, viz., that an "equivalent," in the sense of the Patent law, must be one known to be a proper substitute at the date of the original patent. *Ib.*

II. PARTICULAR PATENTS, VALIDITY OF.

3. Wells's reissued patent for a machine for making hat-bodies, No. 2942, would be held invalid by the court. *Ib.*

PENNSYLVANIA.

1. Under the joint resolution of the legislature of this State, passed January 21st, 1843, intended for the protection of unpaid contractors, laborers, or workmen, upon railroads, canals, or other internal improvements in the State, such persons have a lien of indefinite duration on the road, which has precedence over every right that can be acquired by any mortgage made after the debt to the road was incurred; and such lien is not merged in any judgment got by the contractor against the company for his debt, nor by any proceedings in or judgment on a scire facias brought by him to revive his original judgment. The characteristics of the liens given by the statute stated. *Fox* v. *Seal*, 424.

2. The joint resolution not repealed as to a particular road company, by a statute authorizing the company to borrow money and to pledge its income and property to secure the payment. *Ib.*

PENNSYLVANIA (*continued*).

3. Mortgagees in this State are not terre-tenants, in such a sense that on a scire facias to revive a judgment against an owner of land notice need be given to a mortgagee as terre-tenant. *Fox* v. *Seal*, 424.

PLEADING. See *Omnia contra proferentem præsumuntur.*

Neither fraud nor "*nil debet*" can be pleaded to an action in one State upon a judgment in another. *Maxwell* v. *Stewart*, 77.

PRACTICE. See *Bill of Review; Bill of Revivor; Judgment*, *Validity of*, 2.

(*a*) *In cases generally.*

1. When it appears, for the first time in the argument of a cause, that the existence of the judgment appealed from is not stated in the record, the court of its own motion may allow the plaintiff in error a certiorari and time to produce a certified copy of it *Sweeny* v. *Lomme*, 208.

(*b*) *In chancery.*

2. Where a bill is properly demurred to on a matter of form merely, and therefore matter capable of being amended, and is also demurred to *im*properly on a ground of substance (as *ex. gr.*, the statute of limitations), which last ground of demurrer a reference to the bill shows to be unfounded in fact, and the bill, instead of being dismissed "without prejudice," or with a statement in the decree that it is dismissed for the matter of form, is dismissed "generally," this court will not affirm, as it would have done had the dismissal been in either of the two ways last mentioned. It will reverse and remand with directions to allow the complainant to amend his bill, or in his failing to do that, to dismiss the bill without prejudice. *House* v. *Mullen*, 42.
3. The point cannot be first made in this court that no replication has been made to an answer in chancery, and, therefore, that the answer is to be taken as conclusively true in all points. If such a point is meant to be insisted on here, it should have been made in the court below. *Fretz* v. *Stover*, 198.
4. New defences, *i. e.*, defences not made in an answer to the original bill, cannot be first set up in an answer to a bill of revivor. Such bill puts in issue nothing but the character of the new party brought in. *Ib.*
5. Where an original bill was filed in a State court by a trustee of lands against two persons, B. and C., charging both with a fraudulent purchase of the land, and charging B. with a receipt of the rents, but not so charging C., and a final decree was made charging B., but not charging C., it was grossly irregular in an amended bill filed after such final decree to charge C. with the rents; and a decree *pro confesso* against C., so charging him—he having had no knowledge of the amended bill, and no proof being made of the truth of the allegations of the bill, and he on obtaining knowledge of the bill denying all its allegations—was rightly annulled *in toto* by the Circuit Court of the United States, on the case being removed from the State court into the Circuit Court. *French*, *Trustee*, v. *Hay et al*, 238.
6. But the decree against B was not rightly annulled; the decree in the State court on the original bill against him for the rents having been *res judicata* and unimpeachable as to everything covered by it. *Ib.*

PRACTICE (*continued*).

7. The amended bill, above mentioned, in the State court having charged B. with damage to certain furniture in the premises with whose rents he had been charged, and an issue having been directed by the State court to be tried as to that matter, and B. having had leave to answer the amended bill, *held* further, that as to that matter the decree of the State court should not have been annulled *in toto*, and things put as if nothing had been done, but that the Circuit Court should have ascertained by a jury, or by a master, the amount of damages, and have decreed accordingly. *French, Trustee*, v. *Hay et al.*, 238.

PREFERRED CREDITOR. See *Bankrupt Act*, 7, 8.

"PREFERRED STOCK."

This term, in companies whose capital is divided into shares, and which also issue bonds, is to be taken generally as referring to the shares, and not to anything in the nature of debt; and this is true equally of the term "preferred stock." Hence, where a railroad company, built by money contributed as stock or capital, which had incumbered its road with a succession of mortgages, and which had also issued bonds unsecured by any liens, became embarrassed, and being about to have its road sold under the mortgages reorganized itself, converting, by the terms of its reorganization, the unsecured bondholders into holders of "preferred stock," with a declaration in the deed of reorganization that "such preferred stock shall be entitled to preferred *dividends* out of the *net* earnings of said road, payable after payment of mortgage interest and delayed coupons in full;" *held* that mortgagees subsequent to the reorganization were entitled to have the interest on their mortgages paid in preference to the promised dividends on the preferred stock. *St. John* v. *Erie Railroad*, 137.

PRESUMPTION.

1. A court established by proclamation of the commanding general in New Orleans, on the 1st of May, 1862, during the late rebellion, on the occupation of the city by the government forces, will in the absence of proof to the contrary be presumed to have been established by the consent and authorization of the President. *Mechanics' and Traders' Bank* v. *Union Bank*, 276.
2. Where the statutes of the United States authorizing a removal into the Circuit Court of the United States of a cause brought originally in the courts of a State, require that the parties to the suit shall be citizens of different States, and where a cause has been removed from a State court to a Circuit Court, and all the papers in it have been afterwards destroyed by fire, and the parties then, by writing filed in the Circuit Court, admit that the cause was brought to the Circuit Court by transfer from the State court, *in accordance with the statutes in such case provided*, and—being now anxious apparently only to get to trial—simply ask and get leave to file a declaration and plea as substitutes for the ones originally filed and now destroyed,—in such case this court will, in the absence of all proof to the contrary, presume that the citizenship requisite to give the Circuit Court jurisdic-

PRESUMPTION (*continued*).

tion was shown in some proper manner; though it be not apparent on the mere pleadings. *Railway Company* v. *Ramsey*, 322.

PROMISSORY NOTE. See *Indorser.*

PROVOST COURT. See *Rebellion, The*, 4–6.

PUBLIC LANDS. See "*Costs of Conveying;*" *Taxation.*

PUBLIC LAW. See *Rebellion.*

PUBLIC POLICY. See *Common Carrier*, 7.

RAILROAD COMPANY. See *Common Carrier;* "*Preferred Stock;*" "*Sale;*" *Taxation*, 1, 2.

REBELLION, THE. See "*Cotton Notes;*" *Court of Claims*, 1; *Statute of Limitations.*

1. Corporations created by the legislatures of rebel States while the States were in armed rebellion against the government of the United States, have power, since the suppression of the rebellion, to sue in the Federal courts, if the acts of incorporation had no relation to anything else than the domestic concerns of the State, and they were neither in their apparent purpose nor in their operation hostile to the Union or in conflict with the Constitution, but were mere ordinary legislation, such as might have been, had there been no war or no attempted secession, and such as is of yearly occurrence in all the States. *United States* v. *Insurance Companies*, 99.
2. Such corporations may in proper cases sue under the Captured and Abandoned Property Act. *Ib.*
3. After the late rebellion broke out, debtors in the rebellious States had no right to pay to the agents or trustees of their creditors in the loyal States debts due to these last in any currency other than legal currency of the United States. Payment in Confederate notes or in Virginia bank notes (security for whose payment was Confederate bonds. and which notes like the bonds themselves never, after the rebellion broke out, were safe, and before it closed had become worthless), *held* to have been no payment, and the debtor charged *de novo*. *Fretz* v. *Stover*, 198.
4. The Constitution did not prohibit the creation by military authority of courts for the trial of civil causes during the civil war in conquered portions of the insurgent States. The establishment of such courts was the exercise of the ordinary rights of conquest. *Mechanics' and Traders' Bank* v. *Union Bank*, 276.
5. A court established by proclamation of the commanding general in New Orleans, on the 1st of May, 1862, on the occupation of the city by the government forces, will, in the absence of proof to the contrary, be presumed to have been established with the consent and authorization of the President. *Ib.*
6. Though, in the order establishing it, a court was *called* a Provost's Court, a larger jurisdiction than that commonly given to such courts, that is to say larger than jurisdiction over minor criminal offences, might have been properly, in fact, given to it. *Ib.*

REBELLION, THE (*continued*).

7. Whether such larger jurisdiction and one over civil cases was given to it, is not a Federal question, the case being one where the order defining the jurisdiction did not show at all clearly what jurisdiction was given to it, and where the courts of the State decided that it had a cognizance of civil suits. *Mechanics'*, *&c.*, *Bank* v. *Union Bank*, 276.

REDEMPTION. See *Tax Sales.*

REFERENCE. See *Submission to Award.*

REISSUED PATENT. See *Patent.*

REMAND. See *Practice*, 2.

REMOVAL OF CAUSES. See *Conflict of Jurisdiction*, 2; *Presumption*, 2.

When a case has been removed from a State court into the Circuit Court of the United States, under one of the acts of Congress relating to such removal of cases, an objection that the act has not been complied with in respect of time and other important particulars, will not be listened to in this court, the point not having been made in the court below until three years after the removal made, and when the testimony was all taken and the case ready for hearing. Nor ought it under such circumstances to have been listened to in the Circuit Court. It came too late, and must be held to have been conclusively waived. *French*, *Trustee*, v. *Hay et al.*, 238.

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

REPLEVIN BOND. See *Judicial Comity*, 1.

1. In a suit on a replevin bond the defendants cannot avail themselves of the failure of the court to render in the replevin suit the alternative judgment for the return of the property or for its value; even if that were an error for which that judgment might be reversed. *Sweeny* v. *Lomme*, 208.
2. If a return be awarded in the replevin suit, the surety is liable on the condition of the bond to return, and this without execution or other demand for its return. The judgment establishes the liability. *Ib.*
3. Nor is this liability to be measured in this action by the value of the interest in the property of the attachment debtor, for whose debt it was seized by the sheriff. The value of the property at the time it was replevied, limited by the debt still due on the attaching creditor's judgment and the penalty of the replevin bond, are the elements of ascertaining the damages in the suit on that bond. *Ib.*

REPLICATION. See *Practice*, 3.

RETROSPECTIVE LEGISLATION. See *Special Legislation.*

The act of the legislature of Missouri of March 21st, 1868, to authorize County Courts to issue bonds for the purpose of paying for the building of bridges and macadamized roads *theretofore* contracted to be built, is valid under the constitution of the State, though the constitution forbids both special and retrospective legislation, whether the act be considered as an original act or as one merely curative. *Ritchie* v. *Franklin County*, 67.

REVERSAL See *Practice*, 2.

REVISED STATUTES OF THE UNITED STATES.

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

Section 630. See *Presumption*, 2.
Section 709. See *Bankrupt Act*, 2; *Jurisdiction*, 4, 5.
Section 858. See *Evidence*, 6.

"SALE."

What amounts to a sale of lands, within the meaning of acts of Congress, making grants of land to aid in the making of railroads, so that the lands shall be open to taxation by State laws, as having passed into private ownership free from trust. The matter specially considered in relation to the act of June 3d, 1856, granting lands to the State of Michigan to aid in the construction of certain railroads. How far a mortgage is such a sale. *Tucker* v. *Ferguson*, 527; and see *Railroad Company* v. *McShane*, 444.

SAVINGS BANK. See *Internal Revenue*, 1.

"SCRIP, DIVIDEND IN."

The nature of this sort of dividend explained as respects the internal revenue laws taxing it. *Bailey* v. *Railroad Company*, 604.

"SECURITY."

An indorser of a promissory note, even though it be an accommodation note, is not one; but is a principal debtor if the note be not paid and proper steps have been taken to fix his liability. *Ross* v. *Jones*, 576.

SET-OFF. See *Court of Claims*.

SETTLEMENT OF ACCOUNTS. See *Action*, 2.

SPECIAL LEGISLATION.

Where a constitution of a State forbids special legislation, an act demanded by considerations of high justice and by the fact that carelessness in the language of previous statutes has worked the necessity for the act, may be presumed to have been meant as a curative act, and as applicable to a particular case as well as to all others similar, and this is true though the new act be couched in general words only. *Ritchie* v. *Franklin County*, 67.

STATUTES. See *Construction, Rules of*, 1, 2; *Implied Repeal of Statutes; Judicial Comity*.

A provision in a constitution, that no law enacted by the legislature shall relate to more than one subject, and that this shall be expressed in its title, is not violated by an act having various details, provided they all relate to one subject. *Woodson* v. *Murdock*, 351.

STATUTE OF LIMITATIONS. See *Court of Claims*.

Ran, during the flagrancy of the late civil war, not only as between citizens of the loyal States and those of the rebellious ones, but also between citizens of the general ones of this latter class. *Ross* v. *Jones*, 576.

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

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

1805. March 2d. See *Louisiana Purchase.*
1806. April 21st. See *Louisiana Purchase.*
1832. July 9th. See *Louisiana Purchase.*
1833. March 2d. See *Louisiana Purchase.*
1855. February 24th. See *Court of Claims.*
1856. June 3d. See *Sale.*
1862. July 1st. See *Taxation*, 5, 6.
1863. March 3d. See *Court of Claims.*
1863. March 12th. See *Court of Claims.*
1864. June 30th. See *Internal Revenue.*
1864. July 1st. See *Costs of Conveying.*
1864. July 2d. See *Costs of Conveying.*
1866. July 13th. See *Internal Revenue.*
1867. March 2d. See *Bankrupt Act; Illinois; Practice*, 5–7; *Removal of Causes; Tax Sales.*
1868. June 25th. See *Court of Claims.*

STOCK. See *Preferred Stock.*

SUBMISSION TO AWARD.

1. There is nothing in the nature of the admiralty jurisdiction, or of an appeal in admiralty, which prevents parties in the court of admiralty, whether sitting in prize or as an instance court, from submitting their case by rule of the court to arbitration. *United States* v. *Farragut*, 406.
2. Awards made in pursuance of submissions in that court are to be construed on appeal, and their effect is to be determined, by the same general principles which would govern them in a court of common law or of equity. *Ib.*
3. An expression in the agreement of submission, that all questions of *law* in the case are to be concluded by the award, held to mean no more than a submission of all matters involved in the suit. *Ib.*
4. *Held* further, and accordingly, where the award found facts, it was conclusive; where it found or announced concrete propositions of law, unmixed with facts, its mistake, if one was made, could have been corrected in the court below, and could be corrected here; that where a proposition was one of mixed law and fact, in which the error of law, if there was any, could not be distinctly shown, the parties must abide by the award. *Ib.*
5. That the award was also liable, like any other award, to be set aside in the court below, for such reasons as would be sufficient in other courts; as for exceeding the power conferred by the submission, for manifest mistake of law, for fraud, and for all other reasons on which awards are set aside in other courts of law or chancery. *Ib.*

SURROUNDING CIRCUMSTANCES.

A reference to is allowed for the purpose of ascertaining the subject-matter of a contract, or for an explanation of the terms used, but not for

SURROUNDING CIRCUMSTANCES (*continued*).
the purpose of adding a new and distinct undertaking. *Maryland* v. *Railway Company*, 105

TAX SALES.
1 Under a statute which enacts that the "owner," may within a time named, redeem land sold for taxes, a redemption may properly be made by a person who has been decreed a bankrupt, the lands having been his. In the case here before the court there had as yet been no appointment of an assignee, nor assignment and conveyance to such person, as provided for in the fourteenth section of the Bankrupt Act of 1867; and the redemption was made between the date of the decree and of such appointment *Hampton* v. *Rouse*, 263.
2. A charge that a person who had been decreed a bankrupt on his own application had by *such decree* ceased to be owner and had lost the right to redeem, *held* to be erroneous; there having been evidence tending to show a redemption by such a person. *Ib.*

TAXATION. See *Injunction;* "*Sale.*"
1. A statute, after laying a certain tax *on a "railroad company"*—a specific annual tax of one per cent. on the cost of the road—and reserving a right to impose a further tax upon gross earnings, enacted that "the above several taxes shall be in lieu of all other taxes to be imposed within the State:"
Held, that the statute imposed a tax in reference to the railroad itself, and had no relation to lands owned by the company and not used nor necessary in working the road, and in the exercise of its franchise, but which it had mortgaged and was holding for sale. And that these lands might be taxed notwithstanding the above-mentioned agreement. *Tucker* v. *Ferguson*, 527.
2. An act of the legislature exempting property of a railroad from taxation is not a "contract" to exempt it, unless there be a consideration for the act. An agreement where there is no consideration is a nude pact, the promise of a gratuity spontaneously made, which may be kept, changed, or recalled at pleasure; and this rule of law applies to States as well as to persons. *Ib.*
3. No presumption exists in favor of a contract by a State to exempt lands from taxation. Nothing is to be implied in such a matter. Every reasonable doubt should be resolved against the existence of a contract. *Ib.;* and see *Bailey* v. *Magwire*, 215.
4. When such a contract exists it must be rigidly scrutinized and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. *Ib.*
5 Public lands of the United States, granted to States or companies for public improvements, on which the costs of survey have not been paid, and for which the United States have not issued a patent to the company, are exempt from State taxation. *Railroad Company* v. *McShane*, 444.
6. Where, however, the government has issued the patent, the lands are

TAXATION (*continued*).

taxable, whether payment of those costs have been made to the United States or not. *Railroad Company* v. *McShane*, 444.

7. The contingent right of the United States in public lands of the United States granted to the Pacific Railroad Company does not constitute an exemption of those lands from taxation. *Ib.*

TITLE OF STATUTES See *Statutes*

TRUSTEE'S SALE. See *Omnia contra proferentem prœsumuntur.*

Though equity will enforce in the most rigid manner good faith on the part of a trustee, and vigilantly watch any acquisition by him in his individual character of property which has ever been the subject of his trust, yet where he has sold the trust property to another, that sale having been judicially confirmed after opposition by the *cestui que trust*, the fact that thirteen years afterwards he bought the property from the person to whom he once sold it does not, of necessity, vitiate his purchase. The question in such a case becomes one of actual fraud. And where on a bill charging fraud, the answer denies it in the fullest manner, alleging a purchase *bonâ fide* and for full value paid, and that when he, the trustee, made the sale to the person from whom he has since bought it, the purchase by himself, now called in question, was not thought of either by himself or his vendee, the court will not decree the purchase fraudulent, the case being heard on the pleadings, and without any proofs taken. *Stephen* v. *Beall*, 329.

UNCONSTITUTIONAL STATUTE. See *Statutes.*

UNPARDONED REBEL See *Court of Claims*, 1.

USURY. See *Interest.*

WAIVER OF JURY. See *Judgment*, *Validity of*, 2.

WITNESS. See *Evidence*, 6.